



City of La Quinta

CITY / SA / HA / FA MEETING DATE: January 21, 2014

AGENDA CATEGORY:

ITEM TITLE: APPROVE A DEVELOPMENT IMPROVEMENT AGREEMENT WITH POINT HAPPY LOTS, LLC FOR THE COMPLETION OF ON-SITE AND OFF-SITE IMPROVEMENTS FOR POINT HAPPY ESTATES

BUSINESS SESSION:

CONSENT CALENDAR: 10

STUDY SESSION:

PUBLIC HEARING:

RECOMMENDED ACTION:

Authorize the City Manager to execute the Development Improvement Agreement with Point Happy Lots, LLC, subject to any final revisions approved by the City Manager and the City Attorney, and to take all steps necessary to implement the Agreement.

EXECUTIVE SUMMARY:

- The proposed Development Improvement Agreement ("Agreement") is predicated upon the City agreeing to the proposed settlement agreement with Arch Insurance relating to the subdivision bonds for Point Happy Estates.
- Under the settlement agreement, Arch will pay the City \$250,000.
- Under the Agreement, Point Happy Lots, LLC or its successor will complete all of the required on-site and off-site subdivision improvements for that project, with the exception of the installation of the "flap gate" on the drainage pipe that drains into the White Water Channel, which will be constructed by the City with the funds received from Arch Insurance.
- After the City is reimbursed for both the flap gate and litigation costs of pursuing Arch Insurance, the remaining amount of the settlement proceeds will be used to reimburse Point Happy Lots, LLC, or its successor-in-interest, for the costs to complete the subdivision improvements.

FISCAL IMPACT:

The City will recoup its legal expenses of pursuing the litigation against Arch Insurance. The City will be able to utilize the settlement proceeds to complete a portion of the subdivision improvements, and Point Happy Lots, LLC, will be responsible for covering any shortfall.

BACKGROUND/ANALYSIS:

In 2005, PH Ranch, LLC, ("PH Ranch") finalized and recorded Tract Map 31348 and entered into a subdivision improvement agreement for the uncompleted on- and off-site improvements. PH Ranch defaulted and also lost the property in foreclosure after finishing several homes in the development. Twenty-nine vacant lots remain, and are currently owned by Point Happy Lots, LLC.

In 2012, the City began to pursue the subdivision bonds for the Tract. Arch Insurance and the City had several discussions and exchanges regarding the completion of the improvements, but could not reach an agreement. The City filed suit against Arch Insurance and PH Ranch. Legal discovery ensued.

Point Happy Lots, LLC is in the process of selling the 29 lots and contacted the City to see if a three-way settlement could be negotiated. The uncertainty associated with the litigation and status of the improvements is creating difficulty in the sale of the property; Point Happy Lots, LLC was therefore willing to contribute to the completion of the improvements in order to get closure on the litigation and to set up a program to complete the final punch list items.

The proposed agreement reimburses the City for its litigation costs, obligates the City to complete the installation of the flap gate on a drainage structure that empties into the White Water Channel, and provides that the rest of the settlement proceeds will be available to reimburse Point Happy Lots, LLC for the remaining items completed. If the owner of the 29 lots wishes to build on any of the 29 lots prior to completion of the improvements, it will be required to execute a new subdivision improvement agreement for the unfinished work and post new bonds. No certificates of occupancy for homes adjacent to the hillside will be issued until a "rock fall wall" is installed.

ALTERNATIVES:

The overall strategy of settling the litigation with Arch Insurance is predicated on the City simultaneously entering into this Agreement. If the City disapproves this Agreement, it would need to reconsider its approach to the litigation; therefore, no alternatives are recommended.

Report prepared by: M. Katherine Jenson, City Attorney

Report approved for submission by: Frank J. Spevacek, City Manager

Attachment: Development Improvement Agreement

DEVELOPMENT IMPROVEMENT AGREEMENT

THIS DEVELOPMENT IMPROVEMENT AGREEMENT (“Agreement”) is made and entered into as of January 21, 2014 (“Effective Date”) by and between the CITY OF LA QUINTA, a municipal corporation operating pursuant to a Charter adopted by it as authorized by the State of California (“City”) and POINT HAPPY LOTS, LLC, a Colorado Limited Liability Company registered to conduct business in the State of California (“PHL”). City and PHL are sometimes referred to herein separately as a “Party” and jointly as the “Parties.”

RECITALS

A. PHL is the current owner in fee of that certain real property located in the City, Riverside County (“County”), California (“State”), described in Exhibit “A” (“Property”). The Property currently consists of 29 vacant lots within the Point Happy residential development.

B. On January 12, 2005, City and PH Ranch, LLC, (“PH Ranch”), a prior owner of the Property, caused to be recorded Tract Map 31348 (“Map”) in the Office of the County Recorder of the County. The Property, along with adjoining property previously built and sold and together with the recorded Map and approved Conditions of Approval, has been referred to from time to time as the “The Estates at Point Happy.” For clarity purposes, the Property, including adjoining property previously built and sold, the Map and the Conditions of Approval shall be referred to herein simply as the “Project.”

C. While under the ownership and control of PH Ranch, certain initial actions were taken to commence development of the Project. Those actions included posting with the City certain labor and material bonds and performance bonds (collectively, the “Bonds”) issued by ARCH Insurance Company (“Arch”) in favor of the City as beneficiary for certain improvements related to the Project, some of which are subdivision improvements (referred to herein as “On-Site Improvements”) and some of which are improvements within the public rights-of-way (referred to herein as “Off-Site Improvements”) (the On-Site Improvements and the Off-Site Improvements are sometimes referred to herein collectively as the “Improvements”). A majority of the Improvements were completed by PH Ranch. A punch-list of on-site and off-site improvements remain incomplete for the Project. Copies of the outstanding punch lists are set forth in Exhibit “B” (On-Site Improvements) and Exhibit “C” (Off-Site Improvements) hereto. Collectively, the on-site and off-site punch lists shall be referred to as “Punch List Items.”

D. PH Ranch defaulted on its obligations to complete the Punch List items and subsequently lost ownership of the Property. A dispute then arose between Arch and the City regarding the completion of Punch List Items, and the City filed suit against Arch. A settlement was reached according to terms set forth in that certain “Settlement Agreement” dated _____, whereby Arch agreed to pay to the City \$250,000.00 (the “Bond Fund”) in final and complete settlement of all obligations of Arch’s concerning the Project, and City agreed to accept the Bond Fund in full settlement. Said funds are to be collected by the City, and placed in a separate City account for use as specified in this Agreement.

E. City desires that the Punch List Items be completed and has proposed to PHL that City will make available to PHL a portion of Bond Fund if PHL agrees to complete the Punch List Items.

F. PHL has agreed to complete the Punch List Items, with the exception that the City will complete Item No. 14 on the On-Site Punch List, the permitting and installation of a flapgate at the Whitewater Channel, unless the City, within its sole and absolute discretion, determines to waive the requirement of the flapgate for the Project. The Punch List Items, minus No. 14 on the On-Site Punch List, shall be referred to as the "PHL Punch List".

G. The Parties agree on the appropriate use of the Bond Fund, including the use of the fund to first compensate the City for its attorney's fees spent in its litigation with Arch regarding the Improvements, to secondly cover the City's cost to install the flapgate, and lastly to cover PHL's expenses in completing the PHL Punch List.

Based on the foregoing Recitals, and in consideration of the covenants, terms and conditions set forth hereinafter, the Parties agree as follows:

AGREEMENT:

1. Recitals.

1.1 Recitals True and Correct. The Recitals are true and correct.

1.2 Defined Terms. All defined terms therein are adopted below.

2. PHL Punch List; Flapgate; Use of Bond Fund.

2.1 Licensed Contractors. PHL shall enter into a contract or contracts with licensed and insured contractors in the State of California to perform the work required to complete the PHL Punch List. Through such licensed contractors, PHL shall cause the completion of the PHL Punch List at its costs, subject to reimbursement as provided herein. To the extent that the remaining balance of the Bond Funds is insufficient to cover the costs of the PHL Punch List items, PHL shall not be entitled to reimbursement for said costs.

2.2 Flapgate. City shall be solely responsible for obtaining all permits and installing the flapgate pursuant to On-Site Punch List Item No. 14. City may use the proceeds of the Bond Fund for design, engineering, permitting and construction costs of the flapgate as set forth below. City shall not withhold or delay the issuance of any permits for the Project based on the timing or progress of its installation of the flapgate. The City shall prepare a reasonable estimate for amount of the Bond Funds the City anticipates needing to complete the City's obligations under this Agreement for the flapgate and segregate those funds in order to preserve the funds necessary to complete the flapgate. The City, in its sole and absolute discretion, may determine to waive the requirement for the flapgate for this Project if it subsequently determines that the flapgate is infeasible or unnecessary.

2.3 Insurance. PHL agrees to require its contractors to carry a policy of Commercial General Insurance naming City and PHL as additional insureds as to the PHL Punch List Items, with coverages in accordance with the terms specified in Exhibit “D.”

2.4 Construction Schedule. PHL shall complete the PHL Punch List prior to any new Certificate of Occupancy being issued in the Project. If the PHL Punch List is not complete prior to the time PHL desires to receive a building permit within the Project, PHL shall be required to enter into the City’s standard form Subdivision Improvement Agreement for the uncompleted PHL Punch List Items and post appropriate security assuring the City the PHL Punch List will be complete. In establishing the amount of security needed, the City shall consider the remaining funds in the Bond Fund available for the PHL Punch List Items, thus reducing the amount of security needed. PHL shall have no obligation to post security if the PHL Punch List items are completed before it receives a building permit within the project. PHL, on behalf of itself and its successors in interest, agree that with regard to On-Site Punch List Items No. 9, no Certificate of Occupancy may be granted for any structure on a lot adjacent to the hillside unless the On-Site Punch List Item No. 9 has been completed in compliance with the requirements applicable to that improvement.

2.5 Expedited Reviews and Approvals. City agrees to provide reasonably expedited review for all plans (both new and as refreshed as previously approved plans) and for any permit applications that require City approvals or issuance. This reasonably expedited review and approval process shall be coordinated through a contact person at the City designated by the City Manager.

2.6 Mutual Assistance. The Parties agree to assist one another, and their respective contractors, as reasonably necessary and possible, with the processing of all permits and applications with Coachella Valley Water District (“CVWD”) and all other public agencies and public utility companies necessary in connection with the Punch List Items.

2.7 Prevailing Wages. As City is a charter city and has elected under its charter not to be subject to the State’s prevailing wage requirements, construction contracts entered into by PHL and General Contractor requiring the use of the Bond Fund shall not be required to be subject to such prevailing wage requirements. However, due to SB 7, the requirement to pay prevailing wages in the City may change for contracts awarded in 2015. PHL shall be required to comply with all laws in completing the PHL Punch List items, including prevailing wages if it becomes applicable to the work in the future.

2.8 Attorneys Fees. City shall first use the proceeds of the Bond Fund to reimburse itself for its actual attorneys fees and costs associated with its litigation with Arch that led to the creation of the Bond Fund. (“Attorney’s Fees”). No attorney’s fees shall be deducted from the Bond Fund for litigation expenses incurred following the dismissal of the Arch Insurance litigation and no cost allocation for staff time or non-legal expenses shall be paid for with proceeds from the Bond Fund, except as provided for in the Agreement.

2.9 Default. In the event of a default under this Agreement by PHL, the City may use proceeds from the Bond Fund as compensation for costs incurred by the City to

complete the Punch List Items. In addition, PHL shall be responsible for all costs incurred by the City in completing the PHL Punch List items to the extent that the costs exceed the available Bond Funds.

3. Bond Fund; Payment of Construction Invoices.

3.1 Priority and Use of Bond Fund. The Bond Fund shall first be utilized as follows:

3.1.1 First, to pay the Attorney's Fees.

3.1.2 Second, City shall reserve a reasonable amount of the remaining Bond Fund to pay for the installation of the flapgate. To the extent funds reserved for the City's installation of the flapgate exceed the City's actual costs, those funds shall be released and made available to reimburse PHL for actual expenses incurred to complete the items on the PHL Punch List. If for any reason the City determines not to install the flapgate, the remaining funds being held for the flapgate shall be available for reimbursement to PHL for the costs of completing the PHL Punch List items.

3.1.3 The balance of the Bond Fund shall be used to reimburse PHL for its actual expenses incurred to complete the items on the PHL Punch List.

3.2 No City Liability. The City shall have no liability for any construction or other costs which exceed the balance of the Bond fund.

3.3 Payment of Bond Fund Available for PHL Punch List Items. The City shall pay to PHL (or to the entity specified in an approved assignment and assumption agreement) the portion of the Bond Funds available as reimbursement for the PHL Punch List items once both of the following have occurred: (1) the PHL Punch List items have been completed to the satisfaction of the Public Works Director and accepted by the City Council, which acceptance shall be agendized promptly once the Public Works Director is satisfied with the performance; and (2) the contractor(s) performing PHL Punch List items have repaired any damages caused by the contractor(s) in completing the PHL Punch List items. If the flapgate construction is not completed as of the time of the payment, PHL acknowledges that the City will withhold funds sufficient to cover the costs of the flapgate design, engineering, permitting and construction. If any of the withheld Bond Funds remain after the completion of the flapgate, those funds shall be promptly paid to PHL (or to the entity specified in an approved assignment and assumption agreement).

4. Insurance.

4.1 Commercial General Liability Insurance. PHL shall require its contractors to carry the insurance coverage (at a minimum) described in Exhibit "D" in full force at all times during construction of the PHL Punch List, with City and PHL named as additional insureds.

5. Fees, Deposits, Refunds and Reimbursements.

5.1 Fees; Deposits. In completing the PHL Punchlist items, PHL shall be entitled to full credit for all fees and deposits previously made for or on behalf of the Project

(assuming that the review or approval to which the fees and deposits applied are still valid), and in the event City has raised or increased such fee or deposit requirement after the date originally made, then PHL shall be required to pay or deposit only the difference between the original paid fee or deposit and the new fee or deposit.

6. Notices.

6.1 Acceptable Methods for Notice. All notices, consents and communications to a Party shall be in writing and shall be deemed to have been duly given when (a) delivered by hand with a signed delivery receipt requested, (b) sent by facsimile (with receipt confirmed), provided a copy is mailed on the same day by registered mail, return receipt requested, or (c) received by the addressee, if sent by U.S. Mail or Express Mail, Federal Express or other express delivery service (receipt requested), in each case, to the appropriated addresses and telecopier numbers set forth below (or to such other addresses or telecopier numbers as a Party or might designate as to itself by notice to the others).

6.2 To the City: All notices to the City shall be delivered to the following:

Frank Spevacek
City Manager
City of La Quinta
78-495 Calle Tampico
La Quinta, CA 92253
Telephone: (760) 777-7030
Facsimile: (760) 777-7155
Email: citymanagersoffice@la-quinta.org

with copy to

M. Katherine Jenson
Rutan & Tucker, LLP
611 Anton Blvd., Suite 1400
Costa Mesa, CA 92626
Telephone: (714) 641-3413
Facsimile: (714) 546-9035
Email: kjenson@rutan.com

6.3 To PHL:

Joseph Rivani
Point Happy Lots, LLC
3470 Wilshire Blvd., Ste. 1020
Los Angeles, CA 90010
Telephone: (213) 365-0005
Facsimile: (213) 365-0405
Email: JRivani@GIDLLCO.COM

with copy to

Robert A. Bernheimer
Robert A. Bernheimer, APLC
45025 Manitou Drive, Suite 3
Indian Wells, CA 92210
Telephone: (760) 360-7666
Facsimile: (760) 776-1760
Email: Rob@RobBernheimer.com

7. Assignment. PHL may, in its sole discretion, assign all or any part of its benefits and/or obligations in this Agreement to any future purchaser of the remainder of the Project, without the express written consent of the City, through a formal assignment and assumption agreement executed by PHL, the City, and the assignee. PHL shall notify the City in writing within 10 days of any such assignment and present executed assignment and assumption agreement in a form approved by the City Attorney. To the extent any part of this Agreement references PHL, such reference shall become the obligation of any assignee the City has been notified about. The Parties recognize that a future assignment may include assigning obligations from PHL to a future assignee, while keeping benefits, including, but not limited to, reimbursements from the Bond Fund, to PHL.

8. General Provisions.

8.1 Applicable Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State.

8.2 Equitable Remedies. Each Party shall, in addition to all other rights provided herein or as may be provided by law, be entitled to all equitable remedies including those of specific performance and injunction, to enforce its rights hereunder.

8.3 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same document.

8.4 No Partnership. Nothing herein shall constitute or be construed to be or create a partnership or joint venture between the City on the one hand and either PHL or General Contractor on the other.

8.5 Entire Agreement. This Agreement, together with any Exhibits referred to herein, each of which is hereby incorporated in this Agreement and made a part hereof, embodies the entire agreement and understanding between the Parties and supersedes all prior agreements and understandings between them with respect thereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

POINT HAPPY LOTS, LLC, a Colorado limited liability company

CITY OF LA QUINTA, a municipal corporation

By: _____
Joseph Rivani, Manager

By: _____
Frank Spevacek, City Manager

Attest to City Manager's Signature:

By: _____
Susan Maysels, City Clerk

Approved as to Form

By: _____
M. Katherine Jenson, City Attorney

EXHIBIT "A"

Property Description

The Property referred to in the within Agreement is that certain real property located in the City of La Quinta, Riverside County, California, more particularly described as:

EXHIBIT “B”

On-Site Punch List

<i>Item No.</i>	<i>Item Description</i>	<i>Date Accepted</i>
1	Repair chipped curb & gutter throughout project limits, as needed.	
2	Remove concrete splatter on all finished concrete surfaces throughout project limits, as needed.	
3	Re-grade all eroded slopes within Lots G and K (Retention Basins).	
4	Construct 5 ft. wide by 6" Thk. Conc. Swale w/6 x 6 - 10 x 10 W.W.M., Per Section E-E on Sheet 2 as shown on the approved Rough Grading Plans (plan set no. 04113).	
5	Construct 1/4 ton by 12-inch Deep Rip-rap Energy Dissipator as shown on the approved Rough Grading Plans (plan set no. 04113).	
6	Construct Retaining Wall per separate permit as shown on the approved Rough Grading Plans (plan set no. 04113).	
7	Construct 3-inch Asphalt Concrete over 3-inch Aggregate Base as shown on the approved Rough Grading Plans (plan set no. 04113).	
8	Construct 6-inch Asphalt Concrete Dike per City of La Quinta Std. 204 as shown on the approved Rough Grading Plans (plan set no. 04113).	
9	Construct High-Energy Rock-Fall Protection Barrier By Geobruigg or equal by separate permit as shown on the approved Rough Grading Plans (plan set no. 04113).	
10	Install 6-inch PVC (SCH 40) Drain Pipe as shown on the approved Rough Grading Plans (plan set no. 04113).	
11	Install 6-inch NDS Atruim Grate Model NDS-90 or equal as shown on the approved Rough Grading Plans (plan set no. 04113).	
12	Install Landscape Improvements within Common Area Lots G, H, and K.	
13	Contact Mr. David Sawyer, Planning Manager at (760) 777-7125 for acceptance of landscape improvements.	
14	Submit plan to Coachella Valley Water District to Install Flapgate at Whitewater Channel; as shown on Sheet 1 of 7 of the approved Storm Drain Improvement Plans (plan set no. 05090).	
15	Construct Manhole per City of La Quinta Std. 340 on Bradshaw Trl. at station 22+35.16 of storm line "D" as shown on the approved Storm Drain Improvement Plans (plan set no. 05090).	

<i>Item No.</i>	<i>Item Description</i>	<i>Date Accepted</i>
16	Secure all grate assemblies at all CMP risers as shown on the approved Storm Drain Improvement Plans (plan set no. 05090).	
17	Remove all plants, weeds, trees, etc. to insure installation of storm drain improvements within the bottom of all retention basins.	
18	Construct Stairway Access to Retention Basins, Lots G, J, and K; as shown on the approved Storm Drain Improvement Plans (plan set no. 05090).	
19	Install Rip-rap Class No. 1, Method B Placement per CalTRANS Spec. (Depth = 2.5'); as shown on the approved Storm Drain Improvement Plans (plan set no. 05090).	
20	Install Driveways per City Std. Dwg. No. 221 at all vacant lots; as shown on the approved On-site Street Improvement Plans (plan set no. 05098).	
21	Paint "STOP" per CalTRANS Std. Plan A24D; as shown on the approved On-site Street Improvement Plans (plan set no. 05098).	
22	Paint Stop Bar 12-inch per CalTRANS Std. Plan A24E; as shown on the approved On-site Street Improvement Plans (plan set no. 05098).	
23	Install blue reflective pavement markers at all Fire Hydrants as shown on the approved On-site Street Improvement Plans (plan set no. 05098).	
24	Install R-1 "STOP" signs (30 x 30) and post per CalTRANS Std. as shown on the approved On-site Street Improvement Plans (plan set no. 05098).	
25	Install R-10 sign per CalTRANS Std. as shown on the approved On-site Street Improvement Plans (plan set no. 05098).	
26	Install Type "H" Marker per CalTRANS Std. as shown on the approved On-site Street Improvement Plans (plan set no. 05098).	
27	Construct Curb Outlet (W=5') per City of La Quinta Std. 320 as shown on the approved On-site Street Improvement Plans (plan set no. 05098).	
28	Install K-1 Type marker per CalTRANS Std. plan A73A as shown on the approved On-site Street Improvement Plans (plan set no. 05098).	
29	On vacant lots 1 through 7 remove all construction material and debris.	
30	Provide a long-term stabilization on all vacant lots per the approved Dust Mitigation plan (plan set no. 04024).	
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EXHIBIT “C”

Off-Site Punch List

1. Grout all cracks and patch chips on all concrete work throughout project limits.
2. Remove all concrete splatter on concrete improvements throughout project limits.
3. Remove and replace sidewalk panel at approximately station 145+00 along Washington Street per the approved Offsite Street Improvement plans (Plan Set No. 05096).
4. Remove existing sidewalk panels between stations 147 +40 through station 147 +91 along Washington Street per the approved Offsite Street Improvement plans (Plan Set No. 05096):
5. Due to the removal of the existing sidewalk panels per item no. 4, the owner must contact the Planning Department for approval of design and installation of landscaping improvement.
6. Remove and replace sidewalk panel at approximately station 149 + 52 along Washington Street per the approved Offsite Street Improvement plans (Plan Set No. 05096).
7. Construct concrete panel at the traffic signal pole base to provide ADA/pedestrian access to the pedestrian push button. Traffic signal pole base is located at the southwest corner of Washington Street and Point Happy Way.

Exhibit “D”

EXHIBIT “E”

Insurance Requirements

General

Prior to the beginning of and throughout the duration of the Work, General Contractor will maintain insurance in conformance with the requirements set forth below. General Contractor will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, it will be amended to do so. General Contractor acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to City in excess of the limits and coverage required in this Contract and which is applicable to a given loss, will be available to City.

General Contractor shall submit coverage verification for review and approval by the City upon execution of the Contract.

The Notice to Proceed with the Work under this Contract will not be issued, and the General Contractor shall not commence work, until such insurance has been approved by the City. The General Contractor shall not allow any subcontractors to commence work on its subcontract until all similar insurance required of the subcontractor has been obtained and verified by General Contractor. Such insurance shall remain in full force and effect at all times during the prosecution of the Work and until the final completion and acceptance thereof.

General Contractor shall provide the following types and amounts of insurance:

Commercial General Liability Policy

Commercial General Liability Insurance using Insurance Services Office “Commercial General Liability” policy form CG 00 01 or the equivalent. Defense costs must be paid in addition to limits. Limits shall be no less than Two Million Dollars (\$2,000,000) per occurrence for all covered losses and no less than Four Million Dollars (\$4,000,000) general aggregate.

General Contractor’s policy shall contain no endorsements limiting coverage beyond the basic policy coverage grant for any of the following:

- a. Explosion, Collapse or Underground Hazard(X CU).
- b. Products and Completed Operations.
- c. Pollution liability.
- d. Contractual liability.

Coverage shall be applicable to City for injury to employees of: contractors, subcontractors or others involved in the project. Policy shall be endorsed to provide a separate limit applicable to this project.

Workers' Compensation Insurance

Workers' Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for all covered losses.

Business Auto Policy

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 06 92 including symbol 1 (Any Auto) or the equivalent. Limits shall be no less than \$1,000,000 per accident, combined single limit. If General Contractor owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above.

Excess or Umbrella Liability Insurance

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverage. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage for liability not covered by primary but covered by the umbrella. Self-insured retentions are not permitted. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of General Contractor, subcontractors or others involved in the Work. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$1,000,000 per occurrence and aggregate.

Insurance procured pursuant to these requirements shall be written by insurers that are authorized carriers in the state of California and with an A.M. Best rating of A- or better and a minimum financial size of VII.