

**MOORPARK CITYCITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: David C. Moe II, Economic Development and Housing Manager *DCM**

DATE: December 8, 2014 (CC meeting of 12/17/14)

SUBJECT: Consider Approving Exclusive Negotiating Agreement Between the City of Moorpark and The Area Housing Authority of the County of Ventura to Study the Feasibility of an Affordable Housing Project at the Southeast Corner of Everett Street and Moorpark Avenue

BACKGROUND

On August 27, 2012, the City of Moorpark ("City"), acting as the Successor Housing Agency of the Redevelopment Agency of the City of Moorpark, officially acquired all housing related properties and assumed the affordable housing obligations of the former Redevelopment Agency of the City of Moorpark. On January 1, 2014, SB 341 became effective, adding additional rules for expenditures of money in the housing successor's low and moderate income housing asset fund; annual reporting requirements; and establishing a five (5) year limit to develop the housing related properties (August 27, 2017).

DISCUSSION

The Area Housing Authority of the County of Ventura ("Developer") would like to study the feasibility of constructing an affordable housing project on City property located on at the southeast corner of Everett Street and Moorpark Avenue ("Property"). The Developer has requested that the City not consider any other development proposals or conduct negotiations with any other parties while they perform their due diligence review of the Property.

Staff has prepared an Exclusive Negotiating Agreement ("ENA") between the City and the Developer (Attachment 1), which the City Attorney has reviewed. The ENA will secure the Developer's interest to enter into negotiations with the City for the purchase and development of the Property for a period of three (3) months. During the term of the ENA, the City is restricted from discussion or considering any development proposal for the Property. Staff is recommending approval of the ENA.

FISCAL IMPACT

Developer shall pay \$1.00 for the exclusive right to negotiate with the City for a period of three (3) months. Developer shall also pay City for all staff time worked on processing and managing the ENA with an initial deposit of \$2,500.00.

STAFF RECOMMENDATION

Approve Exclusive Negotiating Agreement subject to final language approval by the City Manager and City Attorney.

Attachment 1 - Exclusive Negotiating Agreement

**AGREEMENT BETWEEN THE CITY OF MOORPARK AND
THE AREA HOUSING AUTHORITY OF THE COUNTY OF
VENTURA TO NEGOTIATE EXCLUSIVELY**

THIS AGREEMENT, is dated as of ____ day of _____, 201__, and is entered into by and between the City of Moorpark, a municipal corporation, hereafter referred to as "CITY" and The Area Housing Authority of the County of Ventura, a body public and politic, hereinafter referred to as "DEVELOPER".

WITNESSETH:

WHEREAS, the CITY intends to sell property to a developer to construct affordable housing units on such property in accordance with the Housing Element of the CITY's General Plan; and

WHEREAS, DEVELOPER is desirous of negotiating a contract to purchase and develop property and develop an affordable housing project.

NOW, THEREFORE, in consideration of the mutual covenants, benefits, and premises herein stated, the parties hereto agree as follows:

1. During the period from the date of this Agreement until March 31, 2015, hereafter referred to as "NEGOTIATION PERIOD", CITY and DEVELOPER shall seek, in good faith, to negotiate a Disposition and Development Agreement, hereinafter referred to as "DDA" for the sale and development of said real property, as shown on Exhibit A "REAL PROPERTY". Such DDA shall provide for the CITY to sell REAL PROPERTY to the DEVELOPER for a price and on terms and conditions to be determined by the parties during the NEGOTIATION PERIOD, including the condition that the affordable housing project be completed with a specified period of time.

2. The DEVELOPER Developer shall pay \$1.00 for the exclusive right to negotiate with the City for a period of three (3) months.

3. The CITY shall not negotiate regarding said REAL PROPERTY or any portion thereof with any person or entity other than DEVELOPER during the NEGOTIATION PERIOD, provided DEVELOPER is pursuing its obligations under this Agreement with reasonable diligence. At the end of the NEGOTIATION PERIOD, this AGREEMENT, if not extended by mutual written agreement, shall automatically terminate and neither party shall have any further obligations to the other party under this AGREEMENT, except for those terms and conditions that expressly survive termination as set forth below.

4. Upon execution of this AGREEMENT, DEVELOPER hereby stands ready to proceed diligently and in good faith with its obligations under this AGREEMENT. If the negotiations do not result in an agreement to purchase and develop said REAL PROPERTY, DEVELOPER will submit to the CITY copies of all studies, plans, and

reports made by DEVELOPER, provided that such studies, plans and reports shall be delivered in their as-is condition with no representations or warranties by DEVELOPER.

5. During the term of this AGREEMENT, DEVELOPER shall submit biweekly written progress reports to the CITY advising of activities undertaken and completed, as part of DEVELOPER's due diligence.

6. DEVELOPER shall produce a concept plan for development of an affordable housing residential project, hereafter referred to as "PROJECT" within the 90 days after the date of this AGREEMENT. The concept plan will include the following:

- A. Adequate on-site parking
- B. Site plan
- C. Preliminary elevations

7. DEVELOPER is hereby granted temporary access for the benefit of itself and its employees, contractors and consultants, to access the REAL PROPERTY to conduct research and studies to determine the feasibility of the PROJECT.

8. By its execution of this AGREEMENT, the CITY is not committing itself to or agreeing to undertake: (a) any disposition of land to the DEVELOPER; (b) any DDA with DEVELOPER; or (c) any other acts or activities requiring the subsequent independent exercise of discretion by the CITY, or any department thereof. This AGREEMENT does not constitute a disposition of property or exercise of control over property owned by the CITY and does not require a public hearing. Execution of this AGREEMENT by the CITY is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by the CITY as to any DDA and all proceedings and decisions in connection therewith in its sole and absolute discretion.

9. The CITY shall not be liable for any finder's fee, real estate commissions or brokerage fees which may arise herefrom or from subsequent sales of the property to developers. The CITY and DEVELOPER each represent that it has not engaged a broker in connection with the prospective transaction.

10. Any notice to be given pursuant to this AGREEMENT shall be in writing, and all such notices and any other document to be delivered shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the party for whom intended as follows:

To: City of Moorpark
799 Moorpark Avenue
Moorpark, CA 93021
Attention: Steven Kueny, City Manager

To: The Area Housing Authority of the County of Ventura
1400 West Hillcrest Drive
Newbury Park, CA 91320
Attention: Douglas Tapking, Executive Director

Either party may, from time to time, by written notice to the other, designate a different address, which shall be substituted for the one above specified. Notices, payments, and other documents shall be deemed delivered upon receipt by personal service or upon deposit in the United States mail.

11. DEVELOPER agrees to indemnify, protect, defend, and hold harmless the CITY, and any and all of its officials, employees, and agents from and against any and all claims, losses, liabilities, damages, costs and expenses, including attorney's fees and costs, to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of DEVELOPER, its officers, agents, employees, contractors or sub-consultants in the performance of this AGREEMENT.

DEVELOPER agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every consultant, contractor, subcontractor, or any other person or entity involved by, for, with, or on behalf of DEVELOPER in the performance of this AGREEMENT. Failure of CITY to monitor compliance with these requirements imposes no additional obligations on CITY and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend CITY as set forth here is binding on the successors and assigns of DEVELOPER and shall survive the termination of this AGREEMENT or this section.

CITY does not and shall not waive any rights that it may have against DEVELOPER by reason of this Section, because of the acceptance by CITY, or the deposit with CITY, of any insurance policy or certificate required pursuant to this AGREEMENT. The defense, hold harmless and indemnification provisions shall apply regardless of whether or not said insurance policies are determined to be applicable to any losses, liabilities, damages, costs and expenses described in this Agreement.

12. DEVELOPER shall maintain prior to the beginning of and for the duration of this AGREEMENT, insurance coverage as specified in Exhibit B attached hereto and incorporated herein by this reference as though set forth in full. City shall be named as an "additional insured" on all liability insurance.

13. Time is of the essence of each provision hereof in which time is a factor.

14. In the event of any litigation between the parties relating to this AGREEMENT (including the interpretation hereof or alleged breach), the prevailing party shall be entitled to collect its attorneys' fees from the other party.

15. DEVELOPER acknowledges that the City must comply with the California Environmental Quality Act ("CEQA") with respect to the DDA (because it will described, contemplate and require a project) prior to approving or executing the DDA and that

CEQA may require analyses, studies and reports by consultants. Developer shall cooperate with the City in connection therewith.

16. DEVELOPER shall reimburse City for its actual out-of-pocket costs and expenses (including legal fees and costs) incurred in fulfilling its obligations under this Agreement from the date hereof, including but not limited to: (i) the cost of preparing, reviewing and processing all CEQA documents; and (ii) the costs of consultants and attorneys retained by City in connection with CEQA compliance or the DDA (collectively, the "Reimbursable Costs"). Concurrently with its execution of this Agreement, Developer shall deposit with the City the sum of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) (the "Reimbursement Funds"). The Reimbursement Funds may be used and applied from time to time by the City to pay itself for Reimbursable Costs not otherwise paid or reimbursed by Developer. Developer shall deposit with the City funds sufficient to replenish the Reimbursement Funds held by City within ten (10) days after written demand by the City with a description of the costs paid from the Reimbursement Funds (unless previously described in writing to Developer). Any remaining amount of the Reimbursement Funds shall be delivered to Developer (along with a final accounting of the City's application of the Reimbursement Funds) within thirty (30) days after the earlier of: (i) the execution of the DDA by the Parties, or (ii) the termination of this Agreement. The provisions of this Section shall survive the expiration or earlier termination of this Agreement. Notwithstanding anything to the contrary in this Agreement, express or implied, City shall have the right in its sole and absolute discretion to cease evaluation of submittals relating to the DDA or Project, stop any other staff work and/or work of its consultants and stop negotiating or discussing the DDA, in whole or in part, in the event that City determines that the sums then on deposit with City are not sufficient to pay for all of the Reimbursable Costs projected/estimated by City to be incurred over the following thirty (30) days. City shall not be obligated to pay interest on the Reimbursement Funds deposited.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY:

CITY OF MOORPARK

By _____
Steven Kueny
City Manager

DEVELOPER:

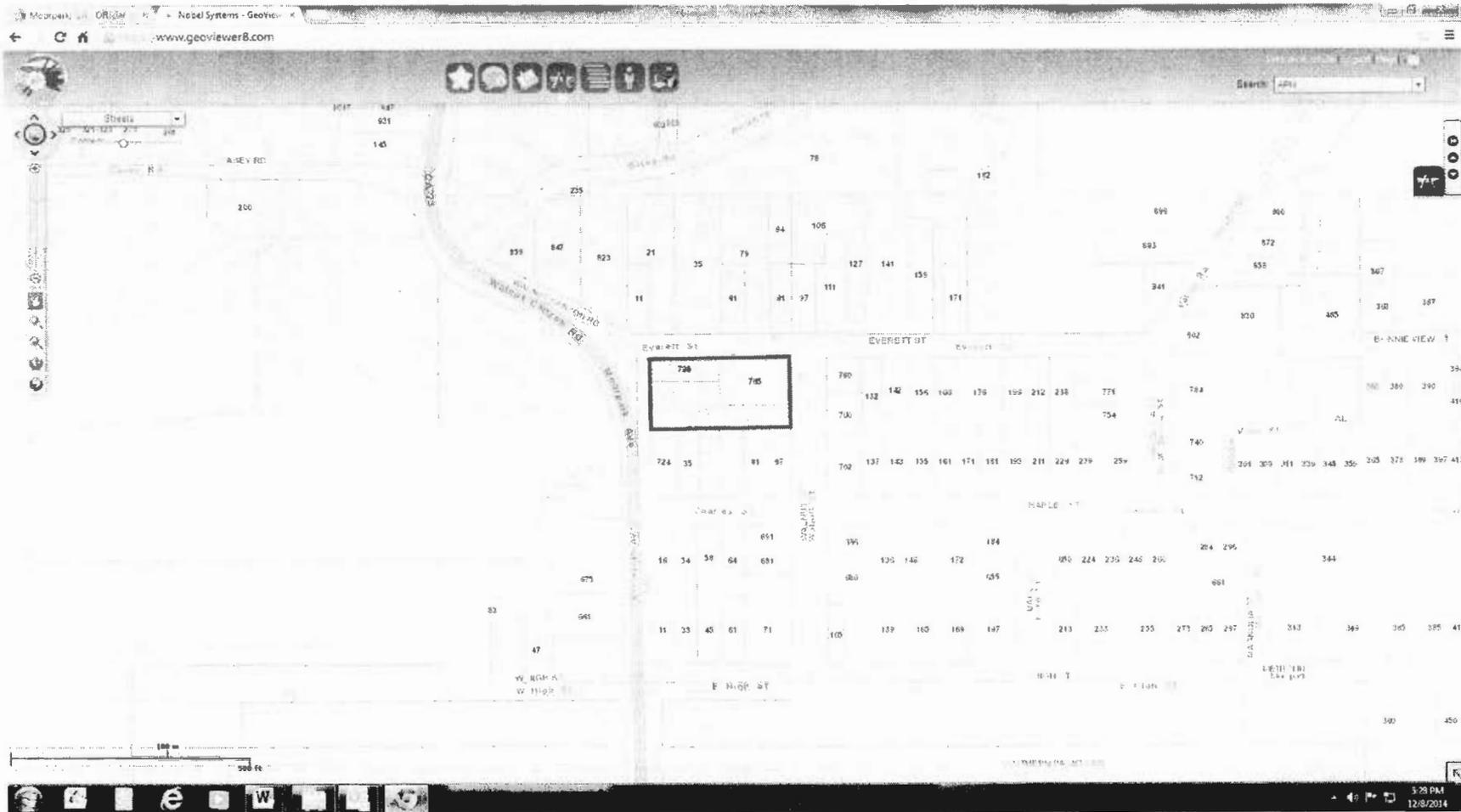
The Area Housing Authority of the County
of Ventura

By _____
Douglas Tapking
Executive Director

Exhibit A – Map of the Property

Exhibit B – Developer Insurance Requirements

Exhibit A



Property Proposed for Development

Exhibit B

INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of this AGREEMENT, DEVELOPER will maintain insurance in conformance with the requirements set forth below. DEVELOPER will use existing coverage to comply with these requirements. If that existing coverage does not meet requirements set forth here, DEVELOPER agrees to amend, supplement or endorse the existing coverage to do so. DEVELOPER 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 the City in excess of the limits and coverage required in this AGREEMENT and which is applicable to a given loss, will be available to the City.

DEVELOPER shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office (ISO) "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregate.

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If DEVELOPER owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If DEVELOPER or DEVELOPER's employees will use personal autos in any way on this project, DEVELOPER shall provide evidence of personal auto liability for each such person.

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 or disease.

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 coverages. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to the City for injury to employees of DEVELOPER, subconsultants or others involved in the Work. The scope of coverage provided is subject to approval by the City following receipt of proof of insurance as required herein.

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

General conditions pertaining to provision of insurance coverage by DEVELOPER. DEVELOPER and the City agree to the following with respect to insurance provided by DEVELOPER:

1. DEVELOPER agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds the City, its officials, employees, and agents, using standard ISO endorsement CG 2010 with an edition prior to 1992. DEVELOPER also agrees to require all contractors and subcontractors to do likewise.
2. No liability insurance coverage provided to comply with this AGREEMENT shall prohibit DEVELOPER, or DEVELOPER's employees, or agents, from waiving the right to subrogation prior to a loss. DEVELOPER agrees to waive subrogation rights against the City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.
3. All insurance coverage and limits provided by Contractor and available or applicable to this AGREEMENT are intended to apply to the full extent of the policies. Nothing contained in this AGREEMENT or any other agreement relating to the City or its operation limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include limiting endorsement of any kind that has not been first submitted to the City and approved in writing.
5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.
6. All coverage types and limits required are subject to approval, modification, and additional requirements by the City, as the need arises. DEVELOPER shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect the City's protection without the City's prior written consent.
7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to DEVELOPER's general liability policy, shall be delivered to city at or prior to the execution of this AGREEMENT. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled or reduced at any time and no replacement coverage is provided, the City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any

premium so paid by the City shall be charged to and promptly paid by DEVELOPER or deducted from sums due DEVELOPER, at the City's option.

8. Certificate(s) are to reflect that the insurer will provide 30 days notice to the City of any cancellation or reduction of coverage. DEVELOPER agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation or reduction of coverage imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.
9. It is acknowledged by the parties of this AGREEMENT that all insurance coverage required to be provided by DEVELOPER or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self-insurance available to the City.
10. DEVELOPER agrees to ensure that subcontractors, and any other party involved with the Work who is brought onto or involved in the Work by DEVELOPER, provide the same minimum insurance required of DEVELOPER. DEVELOPER agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. DEVELOPER agrees that upon request, all agreements with subcontractors and others engaged in the Work will be submitted to the City for review.
11. DEVELOPER agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer, or other entity or person in any way involved in the performance of Work contemplated by this AGREEMENT to self-insure its obligations to the City. If DEVELOPER's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time, the City shall review options with the DEVELOPER, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
12. The City reserves the right at any time during the term of the AGREEMENT to change the amounts and types of insurance required by giving the DEVELOPER 90 days advance written notice of such change. If such change results in substantial additional cost to the DEVELOPER, the City will negotiate additional compensation proportional to the increased benefit to the City.
13. For purposes of applying insurance coverage only, this AGREEMENT will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this AGREEMENT.
14. DEVELOPER acknowledges and agrees that any actual or alleged failure on the part of the City to inform DEVELOPER of non-compliance with an insurance

requirement in no way imposes any additional obligations to the City nor does it waive any rights hereunder in this or any other regard.

15. DEVELOPER will renew the required coverage annually as long as the City, or its employees or agents face an exposure from operations of any type pursuant to this AGREEMENT. This obligation applies whether or not the AGREEMENT is canceled or terminated for any reason. Termination of this obligation is not effective until the City executes a written statement to that effect.
16. DEVELOPER shall provide proof that policies of insurance required herein expiring during the term of this AGREEMENT have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. As coverage binder or letter from DEVELOPER's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specification applicable to the renewing or new coverage must be provided to the City within five days of the expiration of coverage.
17. The provisions of any Workers' Compensation or similar act will not limit the obligations of DEVELOPER under this AGREEMENT. DEVELOPER expressly agrees not to use any statutory immunity defenses under such laws with respect to the City, its employees, officials, and agents.
18. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits, or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
19. These insurance requirements are intended to be separate and distinct from any other provision in this AGREEMENT and are intended by the parties here to be interpreted as such.
20. The requirements in this section supersede all other sections and provisions of this AGREEMENT to the extent that any other section or provision conflicts or impairs the provisions of this section.
21. DEVELOPER agrees to be responsible for ensuring that no contract used by any party involved in any way with the Work reserves the right to charge the City or DEVELOPER for the cost of additional insurance coverage required by this AGREEMENT. Any such provisions are to be deleted with reference to the City. It is not the intent of the City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against the City for payment of premiums or other amounts with respect thereto.
22. DEVELOPER agrees to provide immediate notice to City of any claim or loss against DEVELOPER arising out of the work performed under this

AGREEMENT. The City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the City.