



CITY of CALABASAS

**PROFESSIONAL SERVICES AGREEMENT**

**CONTRACT SUMMARY**

<b>Name of Contractor:</b>	TKM ENGINEERING INC
<b>City Department in charge of Contract:</b>	Public Works
<b>Contact Person for City Department:</b>	Robert Yalda
<b>Period of Performance for Contract:</b>	August 10, 2021 – August 9, 2022
<b>Not to Exceed Amount of Contract:</b>	Sixty Thousand Dollars (\$60,000)
<b>Scope of Work for Contract:</b>	Traffic Engineering Staff Augmentation Services

**Insurance Requirements for Contract:**

yes  no - Is General Liability insurance required in this contract?

*Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.*

yes  no - Is Auto insurance required in this contract?

*Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.*



yes  no - Is Professional insurance required in this contract?

*Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).*

yes  no - Is Workers Comprehensive insurance required in this contract?

*Worker's Compensation insurance as required by the laws of the State of California.*

Other: n/a

Initials: (City)  (Contractor) 

**PROFESSIONAL SERVICES AGREEMENT  
(TKM ENGINEERING INC)**

**1. IDENTIFICATION**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the City of Calabasas, a California municipal corporation (“City”), and TKM ENGINEERING INC, a California Incorporation (“Consultant”).

**2. RECITALS**

- 2.1 City has determined that it requires the following professional services from a consultant: Traffic Engineering Staff Augmentation Services.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

**3. DEFINITIONS**

- 3.1 “Scope of Services”: Such professional services as are set forth in Consultant’s August 10, 2021 proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2 “Approved Fee Schedule”: Such compensation rates as are set forth in Consultant’s August 10, 2021 fee schedule to City attached hereto and included within Exhibit A and incorporated herein by this reference.
- 3.3 “Commencement Date”: August 10, 2021.
- 3.4 “Expiration Date”: August 9, 2022.

**4. TERM**

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 17 (“Termination”) below.

**5. CONSULTANT’S SERVICES**

- 5.1 Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any

Initials: (City)  (Contractor) 

such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of Sixty Thousand Dollars (\$60,000) unless specifically approved in advance and in writing by City.

- 5.2 Consultant shall perform all work to the highest professional standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.3 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.4 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Thomas Mericle shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.

## 6. COMPENSATION

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the Approved Fee Schedule.
- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. Within ten business days of receipt of each invoice, City shall notify Consultant in writing of any disputed amounts included on the invoice. Within thirty calendar days of receipt of each invoice, City shall pay all undisputed amounts included on the invoice. City shall not withhold applicable taxes or other authorized deductions from payments made to Consultant.
- 6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Consultant by City on a time-and-materials basis using Consultant's standard fee schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients

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generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that fee schedule. Fees for such additional services shall be paid within sixty days of the date Consultant issues an invoice to City for such services.

7. **OWNERSHIP OF WRITTEN PRODUCTS**

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

8. **RELATIONSHIP OF PARTIES**

Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

9. **CONFIDENTIALITY**

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

10. **INDEMNIFICATION**

10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.

10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of

Initials: (City)  (Contractor) 

Consultant or any of its officers, employees, servants, agents, or subcontractors in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.

- 10.3 City shall have the right to offset against the amount of any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 10 and related to Consultant's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.4 The obligations of Consultant under this Section 10 will not be limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
- 10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible and indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 10.6 City does not, and shall not waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

## 11. INSURANCE

- 11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:

11.1.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and

Initials: (City)



(Contractor)



operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.

- 11.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.
- 11.1.3 Worker's Compensation insurance as required by the laws of the State of California.
- 11.1.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).
- 11.2 Consultant shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.
- 11.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.4 Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay, at Consultant's expense, the premium thereon.
- 11.5 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds. Consultant shall, prior to commencement of work under this Agreement, file with City's Risk Manager such certificate(s).
- 11.6 Consultant 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. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- 11.7 The General Liability Policy of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees, agents and volunteers as additional insureds. The General Liability Policy required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions. If this contract provides service to a Homeowners Association, that Homeowners Association must be listed as an additional insured

Initials: (City)



(Contractor)



in addition to the City.

- 11.8 The insurance provided by Consultant shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 11.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.
- 11.10 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.
- 11.11 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

**12. MUTUAL COOPERATION**

- 12.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.
- 12.2 In the event any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require.

**13. RECORDS AND INSPECTIONS**

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

**14. PERMITS AND APPROVALS**

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary in the performance of this Agreement. This includes, but shall not be limited to, encroachment permits and building and safety permits and inspections.

Initials: (City) BE (Contractor) [Signature]

**15. NOTICES**

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City

City of Calabasas  
100 Civic Center Way  
Calabasas, CA 91302  
Attn: Robert Yalda  
Telephone: (818) 224-1600  
Facsimile: (818) 225-7338

If to Consultant:

TKM ENGINEERING INC  
1244 Poli Street  
Ventura, CA 93001  
Attn: Thomas Mericle  
Telephone: (805) 701-2977  
email: Tom@tkm-engineering.com

With courtesy copy to:

Matthew T. Summers  
Colantuono, Highsmith & Whatley, PC  
City Attorney  
790 E. Colorado Blvd., Suite 850  
Pasadena, CA 91101  
Telephone: (213) 542-5700  
Facsimile: (213) 542-5710

**16. SURVIVING COVENANTS**

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

**17. TERMINATION**

17.1. City shall have the right to terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant shall have the right to terminate this Agreement for any reason on sixty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.

17.2. If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

Initials: (City)

(Contractor)



**18. GENERAL PROVISIONS**

- 18.1 Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 18.2 In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.
- 18.3 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).
- 18.4 The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.
- 18.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment that such failure was due to causes beyond the control and without the fault or negligence of Consultant.

Initials: (City) PBT (Contractor) [Signature]

- 18.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. In the event legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be Los Angeles County, California.
- 18.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 18.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Consultant.
- 18.10 In consideration of this agreement, consultant ( or artist(s), or performer(s) grants to city and its officers and employees, the right to film, through photography, video, or other media, the performance(s) contemplated under this agreement. The city is authorized to use of the performer(s) name(s) and/or Artist approved photographs. The city is also authorized, without limitation, to broadcast or re-broadcast the performance(s) on City CTV, through the city's website, news media, or through other forms of media (e.g. streaming).

Initials: (City)

(Contractor)

Professional Services Agreement  
City of Calabasas//TKM ENGINEERING INC

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

**"City"**  
City of Calabasas

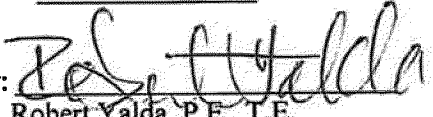
**"Consultant"**  
TKM ENGINEERING INC

By:   
Kondon Meik, City Manager

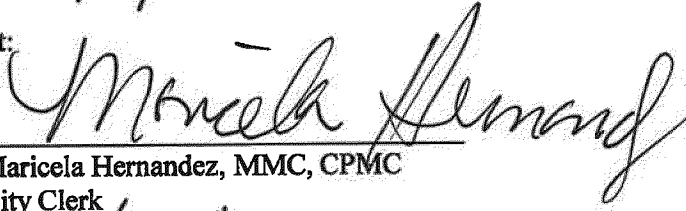
By:   
Thomas Mericle, P.E., T.E.  
President

Date: 8/30/2021

Date: 08/18/2021

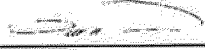
By:   
Robert Yalda, P.E., T.E.  
Public Works Director/City Engineer

Date: 8/19/2021

Attest:  
By:   
Maricela Hernandez, MMC, CPMC  
City Clerk

Date: 8/30/2021

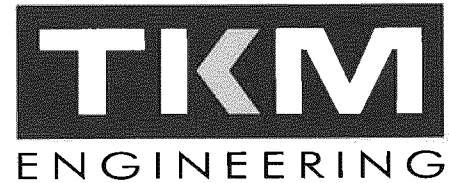
Approved as to form:

By:   
for Matthew T. Summers  
Colantuono, Highsmith & Whatley, PC  
City Attorney

Date: 8/30/2021

EXHIBIT A  
SCOPE OF WORK & FEE SCHEDULE

August 10, 2021



Robert Yalda, PE, TE  
Public Works Director | City Engineer  
City of Calabasas  
100 Civic Center Way  
Calabasas, CA 91302

**SUBJECT:** Proposal to Provide City Traffic Engineering Staff Augmentation Services

Dear Mr. Yalda,

TKM Engineering is pleased to present this proposal to provide City Traffic Engineering and City Transportation Planning staff services to the City of Calabasas to augment current staff related efforts and workload. I am providing this proposal to continue the staff augmentation services I was previously providing under Interwest Consulting. This proposal includes a scope of work, identifies staffing, and provides our billing rate. The work performed by TKM Engineering will be done under the direction of you and your staff.

**PROJECT SCOPE OF WORK**

The proposed scope of work will include providing professional services for a variety of transportation and traffic engineering work efforts in two main areas; City Traffic Engineering and City Transportation Planning. The work efforts outlined below show expected primary areas of work. However, additional items of work can be performed at the direction of the City.

**City Traffic Engineering Services**

TKM Engineering will provide assistance to City staff for specialized traffic engineering safety and operations with work efforts including, but not limited to the following:

- Traffic Signal System Hardware Support and Timing
- Capital Improvement Project Support and Project Management
- Traffic Safety Identification and Evaluation
- Citizen Request Evaluations and Recommendations
- Review of Traffic Control Device Installation
- Peer review traffic reports and plans prepared by others
- Attendance at Traffic & Transportation Commission Meetings
- Recommend Additions or Changes to the City's Municipal Code

**City Transportation Planning Services**

TKM Engineering will provide assistance to City staff for review of land development and other transportation planning related projects and programs as follows:

- Review and Provide Comments to City Staff Regarding Land Development Projects and Project Plans
- Prepare Vehicle Miles Traveled Screening Level Analysis for Projects, as needed
- Peer review traffic studies prepared by others
- Attend Planning Commission Meetings, if needed

Attendance at additional meetings such as City Council or Project Meetings at the request of the City is also included in this scope of work.

**PROJECT STAFFING**

The services proposed in this letter will be performed by me; Thomas Mericle, PE, TE, President/Principal. As stated above, I have experience in working with City staff and I am familiar with the City. My resume is attached for your reference.

**PROJECT FEE RATE**

TKM Engineering will provide the services listed in the Scope of Work above, or additional services as directed by the City Engineer, on a time and material bases shown on the following fee schedule. These rates are current as of the date of this letter and may be reviewed and revised on an annual basis beginning January 1 as contractual requirements allow.

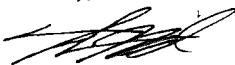
<b>Classification</b>	<b>Hourly Billing Rate</b>
Principal/Principal Engineer	\$185

This rate includes normal materials, mileage, and administrative overhead costs. A not-to-exceed amount may be determined by the City.

I appreciate the opportunity to continue to assist City of Calabasas staff and provide this proposal for your consideration. If you have any questions, or would like additional information please contact me at:

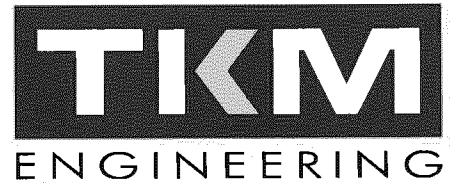
Email: Tom@tkm-engineering.com  
Phone: (805) 701-2977

Sincerely,



Thomas Mericle  
President/Principal

Thomas Mericle, PE, TE  
PRESIDENT/PRINCIPAL ENGINEER



Years of Experience: 30+

Education

- ▣ MPA, California State University at Northridge
- ▣ B.S., Civil Engineering, California State Polytechnic University, Pomona

Registrations/Certifications

- ▣ CA Professional Civil Engineer | 54385
- ▣ CA Professional Traffic Engineer | 2122

Professional Affiliations

- ▣ Institute of Transportation Engineers (ITE), Central Coast Section President, 1999 and 2019
- ▣ ITE, Western District, Legislative Committee Chair, 2013-2019
- ▣ ITE, Western District Annual Meetings:
  - Monterey 2019, Technical Chair
  - Santa Barbara 2012, General Committee Chair
- ▣ ITE Member (Fellow)
- ▣ American Society of Civil Engineers, Member

Awards (individual and shared)

- ▣ APWA Project of the Year, California Street Bridge, 2019,
- ▣ Contributor Recognition, ITE Western District Student Endowment Fund, 2016
- ▣ Caltrans Excellence in Transportation, Ventura Bus Transfer Center, 2003
- ▣ APWA Project of the Year, Ventura Bus Transfer Center, 2002
- ▣ Caltrans Excellence in Transportation, City of Ventura Traffic Safety Program, 1997

Mr. Mericle has over 30 years of experience in traffic engineering, traffic operations, transportation planning, design, and parking management. He is a registered Civil Engineer and Traffic Engineer in California. In addition to his 11 years working in consulting, Tom served as the City Transportation Manager for the City of Ventura for 18 years as an Associate Engineer for an additional 4 years. Tom's responsibilities leading a division of up to 24 staff that was responsible for traffic engineering, transportation planning, traffic operations and maintenance, parking management, and pavement and sidewalk maintenance. In addition to his work for the City of Ventura most of his consulting experience has been in providing traffic engineering staff augmentation services for the Cities of Calabasas, Carpinteria, Eastvale, Ojai, Oxnard, Port Hueneme, Westlake Village, and Ventura

Tom has served as an extension class instructor for the University of California, Berkeley Institute of Transportation Studies since 1999. He currently group-teaches a California Traffic Engineer License Exam preparation class.

SELECTED PROJECT EXPERIENCE

▣ **Signal timing, coordination, and networking projects, various agencies, 2019-2021.** | Working with City and staff, evaluate traffic signal systems for hardware, software, and traffic signal timing improvements. This work included the use of Synchro and SimTraffic.

▣ **City of Calabasas SB 743 Implementation and General Plan Update, Calabasas, CA 2019-2021.** Managed a consultant supported project to develop VMT CEQA impact analysis screening criteria and thresholds. The project includes the preparation of new Traffic Impact Study Guidelines. Also included in the project was an update to the Circulation Element of the General Plan.

▣ **Carpinteria High School Crossing Evaluation and Pedestrian Hybrid Beacon Design, Carpinteria, CA 2020-2021.** Conducted an evaluation of a marked school crossing serving Carpinteria High School. The multi-use trail crosses a state highway in front of the school and is used by students and community members to access the school and hiking trail. The project included coordination with the City and School District as well as Caltrans.

▣ **City of Eastvale SB 743 Implementation, Eastvale, CA, 2019-2020.** Managed a consultant supported project to develop VMT CEQA impact analysis screening criteria and thresholds. The project includes the preparation of new Traffic Impact Study Guidelines. The screening criteria and thresholds were approved by Planning Commission and City Council in June 2020. The new TIS Guidelines includes (at City Council Direction) the removal of Level of Service criteria, while keeping site related operational and safety analyses for the discretionary approval process.

▣ **City of Ojai Active Transportation Project, Ojai, CA 2019-2020.** Mr. Mericle led the design of the signing and striping plans for an \$5M project to add bike

facilities along Maricopa Highway and Ojai Avenue in the City of Ojai. The project is along two State of California highways and includes Class IV and Class II bike facilities as well as many enhanced pedestrian and bicycle crossings and school access enhancements.

☞ **Schleisman Road / I-15 Interchange, Eastvale, CA, 2019.** | The City of Eastvale approved the removal of an interchange from its General Plan. Leading up to that decision, Tom prepared a technical white paper outlining the background of the interchange concept being initially included in the General Plan as well as the pros and cons related to regional and local transportation networks, funding, safety, economic development, land use, environmental, and design to inform the policy makers.

☞ **Church Street Pedestrian and Bicycle Improvements Project, Lodi, CA, 2019.** Mr. Mericle was the engineer of record on the signing and striping as well as signal modifications plans for a road reconfiguration project to improve conditions for walking and biking through the addition of Class II bike lanes and modifications to six traffic signals.

☞ **ADA Access Improvements, City of Palm Desert, 2019.** This project involved the design of an ADA improvement design to provide access to a private property from the on-street parking area. It included the design of ADA accessible parking spaces on-street as well as accessible ramps to the site.

☞ **City of Los Angeles Bureau of Engineering Strategic Plan, Los Angeles, CA, 2018.** | Tom led a team that worked closely with City staff to develop a new strategic plan for the City of Los Angeles Bureau of Engineering. The project included several interviews with strategic partners across the City as well as an internal working group of more than 50 staff to identify new mission statement, goals, strategies, actions, and performance measures to guide the agency forward to be a leading in the region.

☞ **University of British Columbia - Stadium Neighbourhood, Vancouver, Canada, 2018.** | Tom was the project manager for a transportation plan for a new community on the UBC campus around the construction of a new football stadium. The project included integrating land uses, transportation, parking, active transportation networks, and emerging mobility.

☞ **Covina Town Center Specific Plan, Covina, CA, 2018.** Led transportation team on preparation of new transportation circulation and parking vision for the City of Covina Town Center including the preparation of traffic impact study for the Specific Plan.

☞ **Mendenhall Glacier Parking, Juneau, AK, 2018.** The National Park Service was rehabilitating and reconstructing parts of the visitors center at Mendenhall Glacier near Juneau Alaska. Tom worked on a team evaluating new transit service queuing and loading areas as well as visitor parking areas for the different scenarios being evaluated.

☞ **TransLink Transit Signal Priority, Vancouver, Canada, 2018.** Developed a scope of work for evaluating installation and implementation of transit signal priority for TransLink, a regional transit service in Vancouver, Canada.

☞ **Mueller Development Street Design, Austin, TX, 2017-2018.** | Worked with the Catellus Development Corporation and City of Austin, TX to review and change street designs for a 700-acre mixed use development to address new access requirements from the City's Fire Department. The work included collaboration with a fire safety expert to review emergency service delivery to the development.

☞ **Bridalveil Fall Rehabilitation, Yosemite, CA, 2017.** Tom worked with a landscape architect to improve parking supply, traffic flow, and traffic safety at Bridalveil Fall in Yosemite. The purpose of the project was to improve safety and congestion in and around the parking lot for visitors, improve interpretation and wayfinding, and protect natural and cultural resources within the area.

☞ **California Street Bridge Pedestrian Enhancement Project, Ventura, CA, 2012-2017.** Tom served as the project manager for the design and construction of this project that created a safer walking and biking facility over US 101 in Downtown Ventura. The project included public art integrated into the design and was awarded the 2019 APWA Project of the Year award.



- **Bike Master Plan, Ventura, CA, 2011.** Complete update of the General Bikeway Plan. Tom served as the project manager for the project and led a 12-member community focus group in the development of the plan.
- **Downtown Specific Plan and Parking Management Program, Ventura, CA, 2007.** Tom served as the lead for development of the Mobility and Park Once policies and actions and was heavily involved in the Streetscapes chapter. He wrote the Downtown Parking Management Program.
- **Creation and Implementation of Neighborhood Traffic Management Program, Ventura, CA, 1997-2008.** Created a new Neighborhood Traffic Management Program for the City to address traffic safety in neighborhoods. The program used a unique (for its time) 4-level process of improvements and programs to address residents' concerns. Tom presented this program at an ITE Spring Technical Conference in 1998.
- **Ventura Bus Transfer Center, Ventura, CA, 2002.** | This exciting transit facility design collaboration between an architect and internationally recognized artist won local and state awards and appeared in art industry publications and Time Magazine. Tom served as the project manager and was responsible for identifying and programming several sources of federal, state and local funding for the project.
- **School Area Traffic Safety Guidelines, Ventura, CA, 2001.** Created a new program that improved safety for kids walking and biking to school, including creating a unique crossing guard and adult crossing assistant service. Also resulted in convincing local school district to move some school boundaries to remove the need for elementary school children to cross major streets.

#### **SELECTED PUBLICATIONS AND LECTURES**

- Routledge Publishing (2018). *Parking and The City* – Chapter about the City of Ventura's Downtown Parking Program. Edited by Don Shoup
- National Association of City Transportation Officials (2017). *Urban Street Stormwater Guide* – Project Steering Committee



CITY of CALABASAS

AFFIDAVIT OF COMPLIANCE WITH WORKERS' COMPENSATION  
INSURANCE REQUIREMENTS

The Consultant shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

I, the undersigned, do hereby declare that the business has no employees other than myself.

I, the undersigned, also hereby declare that I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Date: 08/18/21

By:   
Signature

Company: TKM Engineering

Title: President

Attest:  
By: \_\_\_\_\_

Signature: \_\_\_\_\_

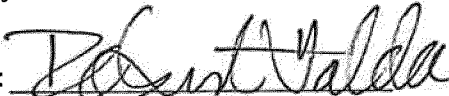
Title: \_\_\_\_\_

**Waiver of Bid Requirement**  
(City of Calabasas and TKM ENGINEERING INC)

In accordance with the Calabasas Municipal Code, Section 3.40.090 – Sole-source purchasing, TKM ENGINEERING INC has been identified by the undersigned as the only provider for the purchasing of a particular item or service, and can hereby be awarded the contract without competition.


City Traffic Engineering Staff Augmentation Services; Extension of City Staff – Traffic Services, Continued Project Management of Neighborhood Traffic Calming Guidelines, the Automated License Plate Recognition Program, the Installation of the Uninterrupted Power Supply Systems for Citywide Traffic Signals and additional traffic related required services/work in order to continue with services in regards to the processing and subsequent completion of those projects and other duties that require a necessary response in an adequate yet reasonable amount of time.

**“City”**  
City of Calabasas

By:   
Robert Yalda, P.E., T.E.  
Public Works Director/City Engineer

Date: 8/24/2021

**“Contractor / Supplier”**  
TKM ENGINEERING INC

By:   
Thomas Mericle, P.E., T.E.  
President

Date: 08/24/2021



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/17/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> AssuredPartners Design Professionals Insurance Services, LLC 3697 Mt. Diablo Blvd Suite 230 Lafayette CA 94549  License#: 6003745 TKMENGI-01	<b>CONTACT NAME:</b> The Certificate Team <b>PHONE (A/C, No, Ext):</b> <b>FAX (A/C, No):</b> <b>E-MAIL ADDRESS:</b> CertsDesignPro@AssuredPartners.com													
	<table border="1"> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A : Sentinel Insurance Company</td> <td>11000</td> </tr> <tr> <td>INSURER B : Travelers Casualty and Surety Co of America</td> <td>31194</td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Sentinel Insurance Company	11000	INSURER B : Travelers Casualty and Surety Co of America	31194	INSURER C :		INSURER D :		INSURER E :		INSURER F :
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INSURER D :														
INSURER E :														
INSURER F :														
<b>INSURED</b> TKM Engineering 1244 Poli Street Ventura CA 93001														

**COVERAGES**

CERTIFICATE NUMBER: 1747456568

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	Y	Y	57SBWBN7685	8/9/2021	8/9/2022	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
							MED EXP (Any one person)	\$ 10,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
A	<input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	57SBWBN7685	8/9/2021	8/9/2022	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	Y	Y	57SBWBN7685	8/9/2021	8/9/2022	EACH OCCURRENCE	\$ 1,000,000
							AGGREGATE	\$ 1,000,000
								\$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE	
							OTH-ER	
							E.L. EACH ACCIDENT	\$
							E.L. DISEASE - EA EMPLOYEE	\$
							E.L. DISEASE - POLICY LIMIT	\$
B	Professional Liability			107484265	8/9/2021	8/9/2022	Per Claim	\$1,000,000
							Annual Aggregate	\$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 Insured owns no company vehicles; therefore, hired/non-owned auto is the maximum coverage that applies. Umbrella Liability policy is a follow-form underlying General Liability/Auto Liability.  
 Re: All Operations of the Named Insured  
 City of Calabasas, its officers, employees, agents and volunteers are named as an additional insured as respects general liability and auto liability as required per written contract or agreement. General Liability is Primary/Non-Contributory per policy form wording. Insurance coverage includes waiver of subrogation per the attached endorsement(s).

**CERTIFICATE HOLDER****CANCELLATION 30 Days Notice of Cancellation**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

City of Calabasas  
 100 Civic Center Way  
 Calabasas CA 91302

AUTHORIZED REPRESENTATIVE

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(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

**b. Real Estate Manager**

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

**c. Temporary Custodians Of Your Property**

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

**d. Legal Representative If You Die**

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

**e. Unnamed Subsidiary**

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

**3. Newly Acquired Or Formed Organization**

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

**4. Operator Of Mobile Equipment**

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

**5. Operator of Nonowned Watercraft**

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

**6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit**

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written

**BUSINESS LIABILITY COVERAGE FORM**

contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section

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**F. Optional Additional Insured Coverages.**

**a. Vendors**

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (d) or (f); or
- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

**b. Lessors Of Equipment**

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

**c. Lessors Of Land Or Premises**

- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
- (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

**d. Architects, Engineers Or Surveyors**

- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
- (a) In connection with your premises; or
- (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:
- This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:
- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

**e. Permits Issued By State Or Political Subdivisions**

- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

**f. Any Other Party**

- (1) Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
- (a) In the performance of your ongoing operations;
- (b) In connection with your premises owned by or rented to you; or
- (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
- (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
- (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

**BUSINESS LIABILITY COVERAGE FORM**

- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

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**D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE**

**1. The Most We Will Pay**

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

**2. Aggregate Limits**

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

**3. Each Occurrence Limit**

Subject to 2.a. or 2.b above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

**4. Personal And Advertising Injury Limit**

Subject to 2.b. above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

**5. Damage To Premises Rented To You Limit**

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

**6. How Limits Apply To Additional Insureds**

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.



If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

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## **E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS**

### **1. Bankruptcy**

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

### **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit**

#### **a. Notice Of Occurrence Or Offense**

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

#### **b. Notice Of Claim**

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

#### **c. Assistance And Cooperation Of The Insured**

You and any other involved insured must:

## **BUSINESS LIABILITY COVERAGE FORM**

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

#### **d. Obligations At The Insured's Own Cost**

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

#### **e. Additional Insured's Other Insurance**

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

#### **f. Knowledge Of An Occurrence, Offense, Claim Or Suit**

Paragraphs a. and b. apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

**BUSINESS LIABILITY COVERAGE FORM**

This Paragraph f. applies separately to you and any additional insured.

**3. Financial Responsibility Laws**

- a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

**4. Legal Action Against Us**

No person or organization has a right under this Coverage Form:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

**5. Separation Of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom a claim is made or "suit" is brought.

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**6. Representations**

**a. When You Accept This Policy**

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and

- (3) We have issued this policy in reliance upon your representations.

**b. Unintentional Failure To Disclose Hazards**

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

**7. Other Insurance**

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

**a. Primary Insurance**

This insurance is primary except when b. below applies. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

**b. Excess Insurance**

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

**(1) Your Work**

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

**(2) Premises Rented To You**

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

**(3) Tenant Liability**

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

**(4) Aircraft, Auto Or Watercraft**

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section A. – Coverages.

**(5) Property Damage To Borrowed Equipment Or Use Of Elevators**

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion k. of Section A. – Coverages.

**(6) When You Are Added As An Additional Insured To Other Insurance**

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

**(7) When You Add Others As An Additional Insured To This Insurance**

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

**(a) Primary Insurance When Required By Contract**

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

**(b) Primary And Non-Contributory To Other Insurance When Required By Contract**

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

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When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

**c. Method Of Sharing**

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**8. Transfer Of Rights Of Recovery Against Others To Us**

**a. Transfer Of Rights Of Recovery**

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

**b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)**

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **HIRED AUTO AND NON-OWNED AUTO**

This endorsement modifies insurance provided under the following:

### **BUSINESS LIABILITY COVERAGE FORM**

This coverage is subject to all provisions in the **BUSINESS LIABILITY COVERAGE FORM** not expressly modified herein:

#### **A. Amended Coverage:**

Coverage is extended to "bodily injury" and "property damage" arising out of the use of a "hired auto" and "non-owned auto".

#### **B. Paragraph B. EXCLUSIONS is amended as follows:**

1. Exclusion **g. Aircraft, Auto or Watercraft** does not apply to a "hired auto" or a "non-owned auto".

2. Exclusion **e. Employers Liability** does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured contract".

3. Exclusion **f. Pollution** is replaced by the following:

"Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

a. That are, or that are contained in any property that is:

(1) Being transported or towed by, handled, or handled for movement into, onto or from, the covered "auto";

(2) Otherwise in the course of transit by or on behalf of the "insured"; or

(3) Being stored, disposed of, treated or processed in or upon the covered "auto".

b. Before the "pollutants" or any property in which the "pollutants" are contained are

moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or

c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph a. above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if:

(1) The "pollutants" escape, seep, migrate, or are discharged or released directly from an "auto" part designed by its manufacturer to hold, store, receive, or dispose of such "pollutants"; and

(2) The "bodily injury" and "property damage" does not arise out of the operation of any equipment listed in paragraphs 15.b. and 15.c. of the definition of "mobile equipment".

Paragraphs b. and c. above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

(1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and

(2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage as a result of the maintenance or use of a covered "auto".

4. With respect to this coverage, the following additional exclusions apply:

**a. Fellow employee**

Coverage does not apply to "bodily injury" to any fellow "employee" of the "insured" arising out of the operation of an "auto" owned by the "insured" in the course of the fellow "employee's" employment.

**b. Care, custody or control**

Coverage does not apply to "property damage" involving property owned or transported by the "insured" or in the "insured's" care, custody or control.

C. With respect to "hired auto" and "non-owned auto" coverage, Paragraph **C. WHO IS AN INSURED** is deleted and replaced by the following:

The following are "insureds":

a. You.

b. Your "employee" while using with your permission:

- (1) An "auto" you hire or borrow; or
- (2) An "auto" you don't own, hire or borrow in your business or personal affairs; or
- (3) An "auto" hired or rented by your "employee" on your behalf and at your direction.

c. Anyone else while using a "hired auto" or "non-owned auto" with your permission except:

- (1) The owner or anyone else from whom you hire or borrow an "auto".
- (2) Someone using an auto while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.
- (3) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company), or a lessee or borrower or any of their "employees", while moving property to or from an "auto".
- (4) A partner (if you are a partnership), or a member (if you are a limited liability

company) for an "auto" owned by him or her or a member of his or her household.

d. Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

D. With respect to the operation of a "hired auto" and "non-owned auto", the following additional conditions apply:

**1. OTHER INSURANCE**

a. Except for any liability assumed under an "insured contract" the insurance provided by this Coverage Form is excess over any other collectible insurance.

However, if your business is the selling, servicing, repairing, parking or storage of "autos", the insurance provided by this endorsement is primary when covered "bodily injury" or "property damage" arises out of the operation of a customer's "auto" by you or your "employee".

b. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

**2. TWO OR MORE COVERAGE FORMS OR POLICIES ISSUED BY US**

If the Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us apply to the same "accident", the aggregate maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy. This condition does not apply to any Coverage Form or policy issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Form.

E. The following definitions are added:

**G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS:**

1. "Hired auto" means any "auto" you lease, hire, rent or borrow. This does not include any auto you lease, hire, rent or borrow from any of your "employees", your partners (if you are a partnership), members (if you are a limited liability company),

or your "executive officers" or members of their households.

This does not include a long-term leased "auto" that you insure as an owned "auto" under any other auto liability insurance policy or a temporary substitute for an "auto" you own that is out of service because of its breakdown, repair, servicing or destruction.

2. "Non-owned auto " means any "auto" you do not own, lease, hire, rent or borrow which is used in connection with your business. This includes:
  - a. "Autos" owned by your "employees" your partners (if you are a partnership), members (if you are a limited liability company), or your "executive officers", or members of their households, but only while used in your business or your personal affairs.
  - b. Customer's "auto" that is in your care, custody or control for service.