



CITY of CALABASAS

**PROFESSIONAL SERVICES AGREEMENT**

*(Company or Individual)*

**CONTRACT SUMMARY**

<b>Name of Contractor:</b>	M6 Consulting, Inc.
<b>City Department in charge of Contract:</b>	Community Development
<b>Contact Person for City Department:</b>	Maureen Tamuri
<b>Period of Performance for Contract:</b>	5 years
<b>Not to Exceed Amount of Contract:</b>	\$3,500,000
<b>Scope of Work for Contract:</b>	Consulting Engineering and Plan Check Services

**Insurance Requirements for Contract:**

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

- If yes, please provide coverage amounts:
- General Liability Aggregate: \$2,000,000
  - Products Comp/Op Aggregate \$2,000,000
  - Personal & Advertising Injury \$1,000,000
  - Each Occurrence \$1,000,000
  - Fire Damage (any one fire) \$ 50,000
  - Medical Expense (any 1 person) \$ 5,000

yes  no - Is Auto insurance required in this contract?

If yes, please provide coverage amounts: •Any vehicle, combined single limit \$1,000,000

yes  no - Is Professional insurance required in this contract?

If yes, please provide coverage amounts: •Professional Liability Insurance: \$1,000,000 per occurrence, \$2,000,000 aggregate

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

- If yes, please provide coverage amounts:
- Workers' Compensation Statutory Limits
  - EL Each Accident \$1,000,000
  - EL Disease - Policy Limit \$1,000,000
  - EL Disease - Each Employee \$1,000,000

**Proper documentation is required and must be attached.**

Initials: (City)    (Contractor)    29.1

## PROFESSIONAL SERVICES AGREEMENT

### FOR DESIGN PROFESSIONALS

(City of Calabasas / M6 Consulting, Inc)

#### 1. IDENTIFICATION

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into by and between the City of Calabasas, a California municipal corporation ("City"), and M6 Consulting, Inc., a California Corporation ("Consultant").

#### 2. RECITALS

- 2.1. City has determined that it requires the following professional services from a consultant: **Consulting Engineering and Plan Check 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.
- 2.3. Consultant represents that it has no known relationships with third parties, City Council members, or employees of City which would (1) present a conflict of interest with the rendering of services under this Agreement under Government Code Section 1090, the Political Reform Act (Government Code Section 81000 *et seq.*), or other applicable law, (2) prevent Consultant from performing the terms of this Agreement, or (3) present a significant opportunity for the disclosure of confidential information.

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

#### 3. DEFINITIONS

- 3.1. "Design Professional": A Design Professional is any individual satisfying one or more of the following: (1) licensed as an architect pursuant to Business and Professions Code 5500 *et seq.*, (2) licensed as a landscape architect pursuant to Business and Professions Code 5615 *et seq.*, (3) licensed as a professional land surveyor pursuant to Business and Professions Code 8700 *et seq.*, or (4) registered as a professional engineer pursuant to Business and Professions Code 6700 *et seq.*

- 3.2. "Scope of Services": Such professional services as are set forth in Consultant's March 14, 2019 proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.3. "Agreement Administrator": The Agreement Administrator for this project is Maureen Tamuri. The Agreement Administrator shall be the principal point of contact at the City for this project. All services under this Agreement shall be performed at the request of the Agreement Administrator. The Agreement Administrator will establish the timetable for completion of services and any interim milestones. City reserves the right to change this designation upon written notice to Consultant
- 3.4. "Approved Fee Schedule": Consultant's compensation rates are set forth in the fee schedule attached hereto as Exhibit B and incorporated herein by this reference. This fee schedule shall remain in effect for the duration of this Agreement unless modified in writing by mutual agreement of the parties.
- 3.5. "Maximum Amount": The highest total compensation and costs payable to Consultant by City under this Agreement. The Maximum Amount under this Agreement is three million, five-hundred thousand dollars and no cents (\$3,500,000.00).
- 3.6. "Commencement Date": April 15, 2019.
- 3.7. "Termination Date": April 15, 2024.

#### 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 Termination Date unless extended by written agreement of the parties or terminated earlier under Section 18 ("Termination") below. Consultant may request extensions of time to perform the services required hereunder. Such extensions shall be effective if authorized in advance by City in writing and incorporated in written amendments to this Agreement.

## 5. CONSULTANT'S DUTIES

- 5.1. **Services.** 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 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.
- 5.2. **Coordination with City.** In performing services under this Agreement, Consultant shall coordinate all contact with City through its Agreement Administrator.
- 5.3. **Budgetary Notification.** Consultant shall notify the Agreement Administrator, in writing, when fees and expenses incurred under this Agreement have reached eighty percent (80%) of the Maximum Amount. Consultant shall concurrently inform the Agreement Administrator, in writing, of Consultant's estimate of total expenditures required to complete its current assignments before proceeding, when the remaining work on such assignments would exceed the Maximum Amount.
- 5.4. **Professional Standards.** Consultant shall perform all work to the highest standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall keep itself fully informed of and in compliance with all local, state, and federal laws, rules, and regulations in any manner affecting the performance of this Agreement, including all Cal/OSHA requirements, the conflict of interest provisions of Government Code § 1090 and the Political Reform Act (Government Code § 81000 et seq.).
- 5.5. **Avoid Conflicts.** 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 such work would present a conflict interfering with performance under this Agreement. However, City may consent in writing to Consultant's performance of such work.
- 5.6. **Appropriate Personnel.** Consultant 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. Robert Woodward 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.
- 5.7. **Substitution of Personnel.** Any persons named in the proposal or Scope of Services constitutes a promise to the City that those persons will perform and coordinate their respective services under this Agreement. Should one or more of such personnel

become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. If City and Consultant cannot agree as to the substitution of key personnel, City may terminate this Agreement for cause.

- 5.8. **Required Licenses and Certifications.** Consultant shall obtain, at its sole cost and expense, all licenses and certifications necessary for Consultant's performance of this Agreement.
- 5.9. **Notification of Organizational Changes.** Consultant shall notify the Agreement Administrator, in writing, of any change in name, ownership or control of Consultant's firm or of any subcontractor. Change of ownership or control of Consultant's firm shall require an amendment to this Agreement.
- 5.10. **Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of City. In addition, pursuant to Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under this Agreement.

## 6. SUBCONTRACTING

- 6.1. **General Prohibition.** This Agreement covers professional services of a specific and unique nature. Except as otherwise provided herein, Consultant shall not assign or transfer its interest in this Agreement or subcontract any services to be performed without amending this Agreement.
- 6.2. **Consultant Responsible.** Consultant shall be responsible to City for all services to be performed under this Agreement.
- 6.3. **Identification in Fee Schedule.** All subcontractors shall be specifically listed and their billing rates identified in the M6 Proposal dated (March 14, 2019), Exhibit A. Any changes must be approved by the Agreement Administrator in writing as an amendment to this Agreement.

## 7. COMPENSATION

- 7.1. **General.** City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept payment in accordance with the M6 Proposal dated March 14 2019, in full satisfaction for such services. Compensation shall not exceed the Maximum Amount. Consultant shall not be reimbursed for any expenses unless provided for in this Agreement or authorized in writing by City in advance.
- 7.2. **Invoices.** Consultant shall submit to City an invoice, on a monthly basis or as otherwise agreed to by the Agreement Administrator, for services performed pursuant to this Agreement. Each invoice shall identify the Maximum Amount, the services rendered during the billing period, the amount due for the invoice, and the total amount previously invoiced. All labor charges shall be itemized by employee name and classification or position with the firm, the corresponding hourly rate, the hours worked, a description of each labor charge, and the total amount due for labor charges.
- 7.3. **Taxes.** City shall not withhold applicable taxes or other payroll deductions from payments made to Consultant except as otherwise required by law. Consultant shall be solely responsible for calculating, withholding, and paying all taxes.
- 7.4. **Disputes.** The parties agree to meet and confer at mutually agreeable times to resolve any disputed amounts contained in an invoice submitted by Consultant.
- 7.5. **Additional Work.** Consultant shall not be reimbursed for any expenses incurred for work performed outside the Scope of Services unless prior written approval is given by the City through a fully executed written amendment. Consultant shall not undertake any such work without prior written approval of the City.
- 7.6. **City Satisfaction as Precondition to Payment.** Notwithstanding any other terms of this Agreement, no payments shall be made to Consultant until City is satisfied that the services are satisfactory.
- 7.7. **Right to Withhold Payments.** If Consultant fails to provide a deposit or promptly satisfy an indemnity obligation described in Section 11, City shall have the right to withhold payments under this Agreement to offset that amount.

## 8. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material, and all electronic files, including computer-aided design files, developed by Consultant in the performance of this Agreement (such written material and electronic files are collectively known as "written products") shall be and remain the property of City without restriction or limitation upon its use or dissemination by City except as provided by law. Consultant may take and retain copies of such written products

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as desired, but no such written products shall be the subject of a copyright application by Consultant.

## 9. RELATIONSHIP OF PARTIES

- 9.1. **General.** Consultant is, and shall at all times remain as to City, a wholly independent contractor.
- 9.2. **No Agent Authority.** 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.
- 9.3. **Independent Contractor Status.** Under no circumstances shall Consultant or its employees look to the City as an employer. Consultant shall not be entitled to any benefits. City makes no representation as to the effect of this independent contractor relationship on Consultant's previously earned California Public Employees Retirement System ("CalPERS") retirement benefits, if any, and Consultant specifically assumes the responsibility for making such a determination. Consultant shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation, and other applicable federal and state taxes.
- 9.4. **Indemnification of CalPERS Determination.** In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

## 10. INDEMNIFICATION

- 11.1 **Definitions.** For purposes of this Section 11, "Consultant" shall include Consultant, its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement. "City" shall include City, its officers, agents, employees and volunteers.
- 11.2 **Consultant to Indemnify City.** To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and defend City from and against any and all claims, losses, costs or expenses for any personal injury or property damage that arises out of,

pertains to, or relates to Consultant's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or failure to comply with any provision in this Agreement.

- 11.3 **Scope of Indemnity.** Personal injury shall include injury or damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, Property damage shall include injury to any personal or real property. Consultant shall not be required to indemnify City for such loss or damage as is caused by the sole active negligence or willful misconduct of the City. If it is finally adjudicated that liability is caused by the comparative negligence or willful misconduct of an indemnified party, then Consultant's indemnification obligation shall be reduced in proportion to the established comparative liability.
- 11.4 **Consultant to Defend City.** The duty to defend shall be a separate and distinct obligation from Consultant's duty to indemnify. Consultant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by City, City and its officers, employees, agents, and volunteers, immediately upon tender to Consultant of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination that persons other than Consultant are responsible for the claim does not relieve Consultant from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Consultant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an indemnified party, Consultant may submit a claim to City for reimbursement of reasonable attorneys' fees and defense costs in proportion to the established comparative liability of the indemnified party.
- 11.5 **Attorneys Fees.** Such costs and expenses shall include reasonable attorneys' fees for counsel of City's choice, expert fees and all other costs and fees of litigation. Consultant shall not be entitled to any refund of attorneys' fees, defense costs or expenses in the event that it is adjudicated to have been non-negligent.
- 11.6 **Defense Deposit.** The City may request a deposit for defense costs from Consultant with respect to a claim. If the City requests a defense deposit, Consultant shall provide it within 15 days of the request.
- 11.7 **Waiver of Statutory Immunity.** The obligations of Consultant under this Section 11 are not 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.
- 11.8 **Indemnification by Subcontractors.** Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 11 from



each and every subcontractor or any other person or entity involved in the performance of this Agreement on Consultant's behalf.

- 11.9 **Insurance Not a Substitute.** City does not waive any indemnity rights by accepting any insurance policy or certificate required pursuant to this Agreement. Consultant's indemnification obligations apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.
- 11.10 **Civil Code.** The parties are aware of the provisions of Civil Code 2782.8 relating to the indemnification and the duty and the cost to defend a public agency by a Design Professional and agree that this Section 11 complies therewith.

## 11. INSURANCE

- 11.1. **Insurance Required.** Consultant shall maintain insurance as described in this section and shall require all of its subcontractors, consultants, and other agents to do the same. Approval of the insurance by the City shall not relieve or decrease any liability of Consultant. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.
- 11.2. **Documentation of Insurance.** City will not execute this agreement until it has received a complete set of all required documentation of insurance coverage. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. Consultant shall file with City:
- Certificate of Insurance, indicating companies acceptable to City, with a Best's Rating of no less than A:VII showing. The Certificate of Insurance must state that the City is an named additional insured.
  - Documentation of Best's rating acceptable to the City.
  - Original endorsements effecting coverage for all policies required by this Agreement.
  - Complete, certified copies of all required insurance policies, including endorsements affecting the coverage.

- 11.3. **Coverage Amounts.** Insurance coverage shall be at least in the following minimum amounts:

- Professional Liability Insurance: \$1,000,000 per occurrence,  
\$2,000,000 aggregate
- General Liability:
  - General Aggregate: \$2,000,000
  - Products Comp/Op Aggregate \$2,000,000
  - Personal & Advertising Injury \$1,000,000

- Each Occurrence \$1,000,000
- Fire Damage (any one fire) \$ 50,000
- Medical Expense (any 1 person) \$ 5,000
  
- Workers' Compensation:
  - Workers' Compensation Statutory Limits
  - EL Each Accident \$1,000,000
  - EL Disease - Policy Limit \$1,000,000
  - EL Disease - Each Employee \$1,000,000
  
- Automobile Liability
  - Any vehicle, combined single limit \$1,000,000

Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements or limits shall be available to the City as additional insured. Furthermore, the requirements for coverage and limits shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured

- 11.4. **General Liability Insurance.** Commercial General Liability Insurance shall be no less broad than ISO form CG 00 01. Coverage must be on a standard Occurrence form. Claims-Made, modified, limited or restricted Occurrence forms are not acceptable.
- 11.5. **Worker's Compensation Insurance.** Consultant is aware of the provisions of Section 3700 of the Labor Code which requires every employer to carry Workers' Compensation (or to undertake equivalent self-insurance), and Consultant will comply with such provisions before commencing the performance of the work of this Agreement. If such insurance is underwritten by any agency other than the State Compensation Fund, such agency shall be a company authorized to do business in the State of California.
- 11.6. **Automobile Liability Insurance.** Covered vehicles shall include owned if any, non-owned, and hired automobiles and, trucks.
- 11.7. **Professional Liability Insurance or Errors & Omissions Coverage.** The deductible or self-insured retention may not exceed \$50,000. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work. Coverage shall be continued for two years after the completion of the work by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.

- 11.8. **Claims-Made Policies.** If any of the required policies provide coverage on a claims-made basis the Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work. Claims-Made Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
- 11.9. **Additional Insured Endorsements.** The City, its City Council, Commissions, officers, and employees of Calabasas must be endorsed as an additional insured for each policy required herein, other than Professional Errors and Omissions, for liability arising out of ongoing and completed operations by or on behalf of the Consultant. Consultant's insurance policies shall be primary as respects any claims related to or as the result of the Consultant's work. Any insurance, pooled coverage or self-insurance maintained by the City, its elected or appointed officials, directors, officers, agents, employees, volunteers, or consultants shall be non-contributory. All endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. General liability coverage can be provided using an endorsement to the Consultant's insurance at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37.
- 11.10. **Failure to Maintain Coverage.** In the event any policy is canceled prior to the completion of the project and the Consultant does not furnish a new certificate of insurance prior to cancellation, City has the right, but not the duty, to obtain the required insurance and deduct the premium(s) from any amounts due the Consultant under this Agreement. Failure of the Consultant to maintain the insurance required by this Agreement, or to comply with any of the requirements of this section, shall constitute a material breach of this Agreement.
- 11.11. **Notices.** Contractor shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. Consultant shall provide no less than 30 days' notice of any cancellation or material change to policies required by this Agreement. Consultant shall provide proof that cancelled or expired policies of insurance 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. The name and address for Additional Insured Endorsements, Certificates of Insurance and Notices of Cancellation is: City of Calabasas, Attn: Maureen Tamuri, Community Development Department, 100 Civic Center Way, Calabasas, California 91302.

- 11.12. **Consultant's Insurance Primary.** The insurance provided by Consultant, including all endorsements, 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.
- 11.13. **Waiver of Subrogation.** Consultant hereby waives all rights of subrogation against the City. Consultant shall additionally waive such rights either by endorsement to each policy or provide proof of such waiver in the policy itself.
- 11.14. **Report of Claims to City.** Consultant shall report to the City, in addition to the Consultant's insurer, any and all insurance claims submitted to Consultant's insurer in connection with the services under this Agreement.
- 11.15. **Premium Payments and Deductibles.** Consultant must disclose all deductibles and self-insured retention amounts to the City. The City may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within retention amounts. Ultimately, City must approve all such amounts prior to execution of this Agreement.
- City has no obligation to pay any premiums, assessments, or deductibles under any policy required in this Agreement. Consultant shall be responsible for all premiums and deductibles in all of Consultant's insurance policies. The amount of deductibles for insurance coverage required herein are subject to City's approval.
- 11.16. **Duty to Defend and Indemnify.** Consultant's duties to defend and indemnify City under this Agreement shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.

## 12. MUTUAL COOPERATION

- 12.1. **City Cooperation in Performance.** 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. **Consultant Cooperation in Defense of Claims.** If 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 in the defense of that claim or action.

## 13. 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

Maureen Tamuri  
City of Calabasas  
Community Development Department  
100 Civic Center Way  
Calabasas, CA 91302  
Telephone: (818) 224-1600  
Facsimile: (818) 225-7308

If to Consultant

Robert Woodward  
M6 Consulting, Inc.  
4165 E Thousand Oaks Blvd Ste 355,  
Westlake Village, CA 91362  
Telephone: (805) 379-1015

With courtesy copy to:

Scott H. Howard  
Colantuono, Highsmith & Whatley, PC  
City Attorney  
790 E. Colorado Blvd., Ste. 850  
Pasadena, CA 91101  
Telephone: (213) 542-5700  
Facsimile: (213) 542-5710

#### 14. SURVIVING COVENANTS

The parties agree that the covenants contained in paragraph 5.11 (Records), paragraph 10.4 (Indemnification of CalPERS Determination), Section 11 (Indemnity), paragraph 12.8 (Claims-Made Policies), paragraph 13.2 (Consultant Cooperation in Defense of Claims), and paragraph 18.1 (Confidentiality) of this Agreement shall survive the expiration or termination of this Agreement, subject to the provisions and limitations of this Agreement and all otherwise applicable statutes of limitations and repose.

#### 15. TERMINATION

- 15.1. **City Termination.** City may terminate this Agreement for any reason on five calendar days' written notice to Consultant. 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.

- 15.2. **Consultant Termination.** Consultant may terminate this Agreement for a material breach of this Agreement upon 30 days' notice.
- 15.3. **Compensation Following Termination.** Upon termination, 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. The City shall have the benefit of such work as may have been completed up to the time of such termination.
- 15.4. **Remedies.** City retains any and all available legal and equitable remedies for Consultant's breach of this Agreement.

## 16. INTERPRETATION OF AGREEMENT

- 16.1. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 16.2. **Integration of Exhibits.** 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 on by City and Consultant.
- 16.3. **Headings.** The headings and 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 language of the section or paragraph shall control and govern in the construction of this Agreement.
- 16.4. **Pronouns.** 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).
- 16.5. **Severability.** 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 shall be enforceable in its amended form. 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, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

- 16.6. **No Presumption Against Drafter.** Each party had an opportunity to consult with an attorney in reviewing and drafting this agreement. Any uncertainty or ambiguity shall not be construed for or against any party based on attribution of drafting to any party.

## 17. GENERAL PROVISIONS

- 17.1. **Confidentiality.** All data, documents, discussion, or other information developed or received by Consultant for performance of this Agreement are deemed confidential and Consultant shall not disclose it without prior written consent by City. City shall grant such consent if disclosure is legally required. All City data shall be returned to City upon the termination or expiration of this Agreement.
- 17.2. **Conflicts of Interest.** Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subcontractor to file, a Statement of Economic Interest with the City's Filing Officer if required under state law in the performance of the services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer, or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 17.3. **Non-assignment.** 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.
- 17.4. **Binding on Successors.** This Agreement shall be binding on the successors and assigns of the parties.
- 17.5. **No Third-Party Beneficiaries.** Except as expressly stated herein, there is no intended third-party beneficiary of any right or obligation assumed by the parties.
- 17.6. **Time of the Essence.** Time is of the essence for each and every provision of this Agreement.
- 17.7. **Non-Discrimination.** Consultant shall not discriminate against any employee or applicant for employment because of race, sex (including pregnancy, childbirth, or

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related medical condition), creed, national origin, color, disability as defined by law, disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, or sexual orientation. Employment actions to which this provision applies shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; or in terms, conditions or privileges of employment, and selection for training. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, the provisions of this nondiscrimination clause.

- 17.8. **Waiver.** No provision, covenant, or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing signed by one authorized to bind the party asserted to have consented to the waiver. The waiver by City or Consultant of any breach of any provision, covenant, or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other provision, covenant, or condition.
- 17.9. **Excused Failure to Perform.** 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.
- 17.10. **Remedies Non-Exclusive.** 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 from 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 or all of such other rights, powers or remedies.
- 17.11. **Attorneys' Fees.** If legal action shall be necessary to enforce any term, covenant or condition contained in this Agreement, each party shall pay its own costs, including any accountants' and attorneys' fees expended in the action.
- 17.12. **Venue.** The venue for any litigation shall be Los Angeles County, California and Consultant hereby consents to jurisdiction in Los Angeles County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.



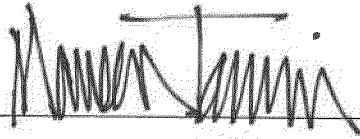
TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

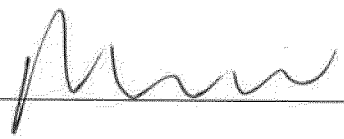
“City”

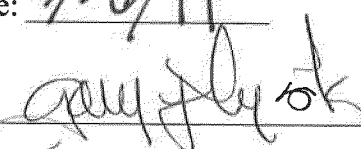
“Consultant”

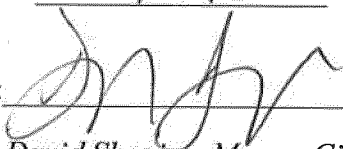
City of Calabasas

M6 Consulting, Inc.

By:   
Maureen Tamuri,  
Community Development Director

By:   
Robert Woodward, President

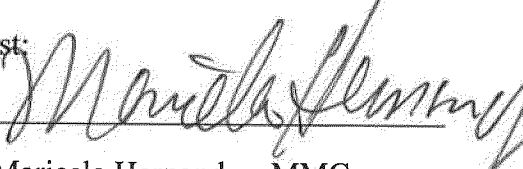
Date: 3/26/19  
By:   
Dr. Gary J. Lysik, City Manager


Date: 3/26/2019  
By:   
David Shapiro, Mayor, City of Calabasas

(CU)

Date: 4/1/19

Date: 4/1/19

Attest:  
By:   
Maricela Hernandez, MMC  
City Clerk

Approved as to form:  
By:   
Scott H. Howard, City Attorney  
Colantuono, Highsmith & Whatley, PC

Date: 4/2/19

Date: 3/27/19

EXHIBIT A  
SCOPE OF WORK



**ATTACHMENT A  
SCOPE OF WORK**

**SCOPE OF WORK  
PROFESSIONAL BUILDING CODE SERVICES  
CITY OF CALABASAS**

---

**SCOPE**

The following scope provides professional support for the City's administration of the building code, including, but not limited to, development and plan review, code enforcement support, inspections and investigations, soils and geotechnical review, grading and drainage review, surveying and mapping services, support of and coordination with Public Works and other building code administrative duties as assigned.

Specifically, these services include:

- Review of residential, commercial and industrial development, buildings, structures and associated site work in compliance with the currently adopted California Building Standards Codes with local amendments, as well as the City's Municipal Code as appropriate.
- Structural design compliance review in coordination with the submitted geotechnical report findings and recommendations for design and construction.
- Review of soils/geotechnical reports, and preparation of geotechnical studies and related investigations when required.
- Preparation of written summaries of review comments.
- Review staff will be available to meet with applicants and their design professionals and/or contractors during the specified days and hours noted below.
- Review staff will attend meetings as required.
- Coordination with Code Enforcement and assistance with the development of corrective measures with associated recommendations.
- Review of grading, drainage and site improvements as necessary and required for projects.
- Provision of survey, mapping services or review of such documents as required.



- Provision of professional staffing as necessary to accomplish the above scope of services and other duties as assigned and as mutually agreed.

Building plan review services will be accomplished on a percent-of-fees basis, with additional services provided at an hourly rate in accordance with the Schedule of Hourly Rates.

### **A. PERCENT OF FEES**

The following compensation method separates the normal plan review effort from other services not associated with a paid plan check application fee. The following "percent-of-fees collected" compensation is proposed to provide for the following services:

- The cost of providing for in-house and over-the-counter plan checking at the City by one plans examiner 2 days per week (16 hours at the City).
- Allow for plan review of large or complex projects at m6's main office.
- Allow for additional plan review effort as the valuation and plan check revenues increase. This may include additional m6 staff or hours at the City depending on plan check revenues.
- If the monthly compensation from the percent fee collected is less than the m6 plan check effort, the compensation for that month may be based on the m6 plan check effort at hourly rates.
- The percent of fee covers the first two (2) plan reviews. After two reviews the plan review will be subject to hourly review time.

### **PERCENT OF FEES SCHEDULE**

Based on the anticipated activity levels, the proposed percent-of-fee compensation is:

1. 55% of City plan check fees collected.
2. 60% if plan review turnaround time meets the following goal:  
80% of the projects meet the turnaround goals listed below (Turnaround Time Goals).



## **HOURLY EFFORT**

Compensation for the following assignments is proposed at current m6 hourly rates appropriate to the requested task:

- Allow for hourly compensation for services not directly associated with a project plan check fee.
- Plan check effort beyond the second check.
- City or other projects where no fee is collected.
- Code enforcement activities or effort separate from an active plan check where a fee was collected.
- Staff or other project or City requested meetings.  
Preliminary project reviews.
- Development review, grading/drainage and site reviews.
- LEED reviews.
- OWTS reviews.
- Reports, documents, policies, consultations, code adoptions and studies.
- Supplemental staffing
- Field reviews not part of an active application.
- Other duties as assigned and mutually agreed.

### **Other Direct Costs:**

- Printing
- Mileage



**TURN-AROUND TIMES**

Based on our understanding of the City and its plan review process, we propose the following turnaround times for types of projects noted below.

<b>TYPE OF PROJECT</b>	<b>TURNAROUND TIME</b>
<b>Residential</b>	
New Construction	10 Working Days
Addition	5 Working Days
Remodel	5 Working Days
Pools/Spa	3 Working Days
SFD Addition (one-story)	5 Working Days
SFD 2 Story Addition	10 Working Days
Major Projects (complex/greater than 6,000 SF)	15 Working Days/TBD Depending on Scope
OWTS Residential	5 Working Days
<b>Non-Residential</b>	
New Construction	15 Working Days
Addition	10 Working Days
Major TI's (10,000 SF or greater)	15 Working Days
Large TI's (greater than 400 SF, less than 10,000 SF)	10 Working Days
Minor TI's and Other Minor Projects	5 Working Days
Major Projects	15 Working Days/TBD Depending on Scope
<b>Other</b>	
Standard Retaining Walls	5 Working Days
Non-Standard Retaining Walls	10 Working Days

For special projects and circumstances, arrangements can be made for accelerated review and prioritization of reviews based on requests from the City.

EXHIBIT B  
APPROVED FEE SCHEDULE



**ATTACHMNET B  
APPROVED FEE SCHEDULE**

m6 Consulting, Inc.  
March 14, 2019

**Schedule of Hourly Rates**

<u><b>Plan Check Services:</b></u>	<u><b>Percentage*</b></u>
Building Plan Review .....	55% of Fee
Structural Only Plan Review .....	55% of Fee
Electrical, Plumbing, or Mechanical Plan Review .....	55% of Fee

\* Percentage fee shall be increased to 60% if the City's monthly turnaround goal is achieved.

<u><b>Hourly Plan Check Services:</b></u>	<u><b>Hourly*</b></u>
Plan check review fee includes two checks and hourly thereafter as per the hourly rate below. Building Plan Check Review Fee.....	\$130.00

\* One hour Minimum fee.

<u><b>Personnel Services:</b></u>	<u><b>Hourly*</b></u>
Plan Check Engineer .....	\$130.00
Certified Plan Examiner .....	\$95.00
Plan Check Coordinator .....	\$65.00
Assistant Building Inspector .....	\$58.00
Building Inspector .....	\$65.00
Senior Building Inspector .....	\$75.00
Inspector of Record/Major Projects.....	\$85.00
Permit Technician .....	\$45.00
Senior Permit Technician .....	\$55.00
Building Official .....	\$140.00
Electrical Engineer .....	\$155.00
Mechanical Engineer .....	\$155.00
Civil Engineer .....	\$155.00
Structural Engineer .....	\$165.00
Soils/Geotechnical Engineer .....	\$165.00
Traffic Engineer .....	\$175.00
OWTS Engineer .....	\$175.00
Map Review/PLS .....	\$185.00
1-Man/2-Man Survey .....	\$175.00/
.....	\$215.00
Principal Engineer .....	\$175.00

\* A four hours per day minimum will be billed for out of office services, unless otherwise agreed upon. Rates are increased by a factor of 1.5 times for overtime, and for holiday and weekend assignments. All rates are subject to a 2% increase annually on January 1<sup>st</sup>.

<u><b>MISCELLANEOUS CHARGES:</b></u>	<u><b>Hourly</b></u>
Administration .....	\$45.00
Direct Costs .....	Cost+15%
Outside Reproduction .....	Cost +15%
Materials & Expenses .....	Cost + 15%
Mileage .....	\$0.58/Mile

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Effective January, 2019





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/18/2019

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> Risk Strategies Company 2040 Main Street, Suite 450 Irvine, CA 92614  www.risk-strategies.com	<b>CONTACT NAME:</b> Risk Strategies Company <b>PHONE (A/C, No, Ext):</b> 949-242-9240 <b>E-MAIL ADDRESS:</b> syoung@risk-strategies.com <b>FAX (A/C, No):</b>
	<b>INSURER(S) AFFORDING COVERAGE</b> INSURER A : Massachusetts Bay Insurance Co. NAIC # 22306 INSURER B : Hanover American Insurance Co. 36064 INSURER C : Arch Insurance Company 11150 INSURER D : Allmerica Financial Benefit Insurance Co 41840 INSURER E : INSURER F :
CA DOI License No. 0F06675	<b>INSURED</b> m6 Consulting, Inc. 4165 Thousand Oaks Blvd., Ste 355 Westlake Village CA 91362

**COVERAGES**

CERTIFICATE NUMBER: 47565217

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 checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	<input checked="" type="checkbox"/>		OD3A251052	3/14/2019	3/14/2020	EACH OCCURRENCE	\$2,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000
							MED EXP (Any one person)	\$5,000
							PERSONAL & ADV INJURY	\$2,000,000
							GENERAL AGGREGATE	\$4,000,000
							PRODUCTS - COMP/OP AGG	\$4,000,000
								\$
D	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY			AW3D678957	1/1/2019	1/1/2020	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE	\$
							AGGREGATE	\$
								\$
B	<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 Y/N <input type="checkbox"/> N/A			WZ3A270713	4/8/2019	4/8/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	
							E.L. EACH ACCIDENT	\$1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$1,000,000
							E.L. DISEASE - POLICY LIMIT	\$1,000,000
C	<b>Professional Liability</b>			PAAEP0023602	3/15/2019	3/15/2020	Per Claim: \$1,000,000 Aggregate: \$2,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Projects as on file with the insured.  
 City of Calabasas is named as additional insured on the general liability policy-see attached endorsement.

**CERTIFICATE HOLDER****CANCELLATION**

City of Calabasas  
 100 Civic Center Way  
 Calabasas CA 91302

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

AUTHORIZED REPRESENTATIVE

Michael Christian

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## Architects and Engineers

The following policy language is from Businessowners General Liability Coverage Part

**NAMED INSURED:** m6 Consulting, Inc.

**POLICY NUMBER:** OD3A251052

The following are mandatory forms on the policy identified on the Certificate of Insurance:

391-1586 (08-16) BUSINESSOWNERS GENERAL LIABILITY SUPPLEMENTARY ENDORSEMENT  
Additional Insured by Contract, Agreement or Permit

A. **Section II – Liability, C – Who is an Insured** is amended to include as an additional Insured any person or organization with whom you agreed in a written contract, written agreement or permit but only 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, but only with respect to:

- (i) "Your work" for the additional insured(s) designated in the contract, agreement or permit including "bodily injury" or "property damage" included in the "products - completed operations hazard" only if this Coverage Part provides such coverage;
- (ii) Premises you own, rent, lease, or occupy; or
- (iii) Your maintenance, operation or use of equipment leased to you.

\*Definition: "Your work" a. Means: (1) Work or operations performed by you or on behalf; and (2) materials, parts or equipment furnished in connection with such work or operations; b. Includes (1) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and (2) the providing of or failure to provide warnings or instructions.

This provision does not apply:

- (1) Unless the written contract or written agreement has been executed or permit has been issued prior to the "bodily Injury", "property damage", "personal injury" or "advertising injury".
- (2) To any person or organization Included as an Insured by an endorsement Issued by us and made part of this Coverage Part.
- (3) To any lessor of equipment (a) After the equipment lease expires; or (b) If the "bodily Injury", "property damage", "personal injury" or "advertising Injury" arises out of sole negligence of the lessor.
- (4) To any: (a) Owners or other Interests from whom land has been leased which takes place after the lease for the land expires; or (b) Managers or lessors of premises if: (i) The occurrence takes place after you cease to be a tenant in that premises; or (ii) The "bodily injury", "property damage", "personal injury" or "advertising injury" arises out of structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor.
- (5) To "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional services.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" or the offense which caused the "personal and advertising injury" involved the rendering of or failure to render any professional services by or for you.

### Other Insurance Primary & Non-Contributory

The following paragraph is added to **SECTION III – COMMON POLICY CONDITIONS, H – Other Insurance: Additional Insured – Primary and Non-Contributory**. If you agree in a written contract, written agreement or permit that the insurance provided to any person or organization included as an Additional Insured under **SECTION II – Liability, C. Who is an Insured** is primary and non-contributory, the following applies: If other valid and collectible insurance is available to the Additional Insured for a loss covered under **SECTION II – LIABILITY** of this Coverage Part, our obligations are limited as follows:

- (1) **Primary Insurance:** This insurance is primary to other insurance that is available to the Additional Insured which covers the Additional Insured as a Named Insured. We will not seek contribution from any other insurance available to the Additional Insured except: (a) For the sole negligence of the Additional Insured; (b) When the Additional Insured is an Additional Insured under another primary liability policy; or (c) When b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary.
- (2) **Excess Insurance:**
  - (a) This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:
    - (i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
    - (ii) That is Fire insurance for premises rented to the Additional Insured or temporarily occupied by the Additional Insured with permission of the owner;

No coverage is provided by this Notice, nor can it be construed to replace any provisions of the policy (including its endorsements). If there is any conflict between this Notice and the policy (including the endorsements), the provisions of the policy (including its endorsements) shall prevail.

- (iii) That is insurance purchased by the Additional Insured to cover the Additional Insured's liability as a tenant for "property damage" to premises rented to the Additional Insured or temporarily occupied by the Additional with permission of the owner; or
- (iv) 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 II - LIABILITY. B. Exclusions, 1. Applicable to Business Liability Coverage.
- (v) That is insurance available to you for your participation in any past or present "unnamed joint venture".
- (vi) That is any insurance you may have that provides coverage for your professional services.

(b) When this insurance is excess, we will have no duty 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.

(c) 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:

- (i) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (ii) 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.

**(3) Method Of Sharing**

If all of 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.

**Per Project Aggregate**

The following changes are made to SECTION II - LIABILITY:

1. The following is added to SECTION II - LIABILITY, D. Liability and Medical Expenses Limits of Insurance, paragraph 4:

The Aggregate Limits of Insurance apply separately to each of "your projects" or each "location" listed in the Declarations.

2. For the purpose of coverage provided by this endorsement only, the following is added to SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions:

1. "Your project" means:

- a. Any premises, site or "location" at, on, or in which "your work" is not yet completed; and
- b. Does not include any "location" listed in the Declarations.

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

**Separation Of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part 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 claim is made or "suit" is brought.

**Waiver Of Subrogation**

The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Condition (Section IV – COMMERCIAL GENERAL LIABILITY CONDITIONS) is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization *where required by written contract* because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization *where required by written contract*.

**Notice Of Cancellation**

For any statutorily permitted reason other than non-payment of premium, the number of days required for notice of cancellation, as provided in paragraph 2. of either the CANCELLATION Common Policy Condition or as amended by an applicable state cancellation endorsement, is increased to 90 Days.



AUTHORIZED REPRESENTATIVE

\*From Hanover Forms: 391-1003 (08/16); 391-1445 (08/16); 391-1586 (08/16), 391-1003 (08/16)

No coverage is provided by this Notice, nor can it be construed to replace any provisions of the policy (including its endorsements). If there is any conflict between this Notice and the policy (including the endorsements), the provisions of the policy (including its endorsements) shall prevail.

**ACTION AGENDA  
WEDNESDAY, MARCH 27, 2019**

**OPEN SESSION:** – 7:01 P.M.

**ROLL CALL:** – *All present*

**ANNOUNCEMENTS/INTRODUCTIONS:**

➤ Adjourn in memory – Don Wallace

**PRESENTATIONS:**

- Proclamation honoring April Donate Life California Month
- Proclamation honoring March 31-April 6 as Safety Seat Checkup Week
- To City Clerk, Maricela Hernandez on her completion of the California Professional Municipal Clerks (CPMC) certificate program at University of California, Riverside

**COMMISSION APPOINTMENTS:**

1. Consideration and approval of appointments to the Traffic & Transportation Commission and swearing in ceremony – **APPROVED**

**ORAL COMMUNICATIONS – PUBLIC COMMENT:**

**CONSENT**

2. Approval of meeting minutes from March 13, 2019 – **APPROVED**
3. Adoption of Resolution No. 2019-1620, formal adoption of the 2018 Las Virgenes-Malibu Council of Governments Multi-Jurisdictional Hazard Mitigation Plan – **APPROVED**
4. Recommendation to approve a professional services agreement for specialty engineering and plan check services with M6 Consulting, Inc. in the amount of \$3,500,000 (Three Million Five-Hundred Thousand Dollars) for a five year period – **APPROVED**

**NEW BUSINESS**

5. Report on annual progress – General Plan Housing Element 2018

6. Sheriff's Crime Report

**INFORMATIONAL REPORTS**

7. Check Register for the period of March 6-15, 2019

**No action taken on this item.**

**TASK FORCE REPORTS**

**CITY MANAGER'S REPORT**

**FUTURE AGENDA ITEMS**

**ADJOURN:**

Adjourned at 9:14 p.m.