

Public Works Department
STAFF REPORT

2100 Thousand Oaks Boulevard • Thousand Oaks, CA 91362
Phone 805/449.2400 • Fax 805/449.2475 • www.toaks.org

TO: Andrew P. Powers, City Manager

FROM: Clifford G. Finley, Public Works Director

DATE: November 9, 2021

SUBJECT: Drake Drive Flood Mitigation (CI 5656)

RECOMMENDATION:

1. Approve Professional Services Agreement with M6 Consulting Inc., (Westlake Village, CA) in an amount not-to-exceed \$94,830, for design and engineering services for the Drake Drive Flood Mitigation project (CI 5656), plus extra services of \$9,470, with a term ending June 30, 2024.
2. Approve budget transfer in the amount of \$78,225 from A/C #183-5310-631-8300, FY 2022-23 (CI 5656, Drake Drive Flood Mitigation), to A/C #183-5310-631-8300, FY 2021-22 (CI 5656, Drake Drive Flood Mitigation).
3. Authorize expenditure in the amount of \$104,300 (\$94,830 agreement plus extra services of \$9,470); \$78,225 from A/C #183-5310-631-8300 (CI 5656, Drake Drive Flood Mitigation) and \$26,075 from A/C #001-5310-631-8300 (CI 5656, Drake Drive Flood Mitigation).

FINANCIAL IMPACT:

\$78,225 Increase to FY 2021-22 Capital Budget, Fully Offset by FY 2022-23 Capital Budget Transfer. \$78,225 budget transfer from FY 2022-23 Hazard Mitigation Grant Program (HMGP) is requested. \$384,000 is included in the Adopted FY 2021-23 Capital Improvement Budget. Total project cost is estimated at \$412,800. Additional budget appropriation will be requested at the time of construction contract award depending on bids received.

BACKGROUND:

During the November 2018 Hill/Woolsey Fires, the area at the northern terminus of Drake Drive was impacted by the fire. Due to subsequent rain events, this location was inundated with storm water, debris/sediment spilled onto the roadway made the road impassable, and extensive debris removal was required. The storm

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water runoff and sediments/debris deposit also extended to the intersection of Drake Drive and La Granada Drive, making that intersection nearly impassable.

Following the 2018 fires and Presidential Major Disaster Declaration (DR 4407) in several areas of the state, including Ventura County, Hazard Mitigation Grant Program (HMGP) funds from the Federal Emergency Management Agency (FEMA) were made available. The goal of the HMGP, administered by the California Office of Emergency Services (Cal-OES), is to identify and fund qualifying projects that mitigate or reduce the risk of loss of life and future property damage caused by floods and fires.

The City submitted a HMGP application to Cal-OES in 2019 for the Drake Drive Flood Mitigation Project. The concept consisted of a detention basin and drainage inlet on the northern terminus of Drake Drive, installation of catch basin(s) at the intersection of Drake Drive and La Granada Drive, along with a parkway drain on La Granada Drive to divert excess storm water from the intersection (Attachment #1). Subsequently, the City received \$288,000 HMGP funding for the project, with a 25 percent City matching fund requirement.

DISCUSSION/ANALYSIS:

In accordance with Government Code section 4526 and Thousand Oaks Municipal Code section 3-10.401, Proposals are solicited from qualified consulting firms through issuance of Request for Proposals/Qualifications (RFP/Q). Unlike the low bid requirements of the Public Contract Code, contracts for professional, management, general or special services should only be awarded to firms or persons who have demonstrated an adequate level of experience, competence, training, credentials, resources, staffing, and other professional qualifications necessary for more than a satisfactory performance of the services solicited. The award of a Professional Services Agreement is based upon a variety of factors that demonstrate best value for the solicited scope of service. The cost of the service may be considered as one of those factors; however, the lowest cost is not the sole factor in deciding who will be awarded the contract.

On August 13, 2021, the City published a RFP/Q for engineering consulting services in connection with Drake Drive Flood Mitigation Project (CI 5656). The City received four proposals as follows:

Consultant	Location
M6 Consulting, Inc.	Westlake Village, CA
Michael Baker International	Santa Ana, CA
Huitt-Zollars, Inc.	Thousand Oaks, CA
Westcon Engineering, Inc.	Woodland Hills, CA

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Each proposal was evaluated for content, qualifications, creativity, project understanding, and quality using the following considerations:

- Project understanding and approach
- Relevant experience (projects of similar size and scope)
- Quality, clarity, responsiveness, and conformance with the terms of the RFP/Q
- Qualifications and availability of key persons working on the project
- Team members' (subconsultants) qualifications
- Reasonableness of completion schedule and estimated level of effort dedicated to completing each task
- Best overall qualifications and value

After careful review and consideration of the listed criteria, M6 Consulting, Inc. was determined to be most qualified to best fit the City's needs for this project. A detailed scope of work and fee schedule have been negotiated and finalized with M6 Consulting, Inc. Approval of the Professional Services Agreement with M6 Consulting, Inc. (Attachment #2) is recommended.

ESTIMATED PROJECT COST SUMMARY

Description	Federal Fund 183	City Fund 001	Total Cost
Design (This Action)	\$ 71,123	\$ 23,707	\$ 94,830
Design Extra Services (This Action)	\$ 0	\$ 9,470	\$ 9,470
Construction Estimate	\$216,877	\$ 91,623	\$308,500
Total Estimated Project Cost	\$288,000	\$124,800	\$412,800

PROJECT TIMELINE

Begin Design	November 2021
FEMA/Cal-OES Project Approval	Summer 2022
Bid Process & Award	Fall 2022
Construction	Spring – Fall 2023

City Council authorization to bid on the construction of the Flood Mitigation is scheduled to be presented in Summer/Fall 2022. Additional budget appropriation will be requested at the time of construction contract award.

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This project meets City Council's Top Ten Priorities #9 to, "Adopt and implement two-year Operating and Capital Improvement budgets that are aligned with best practices on fiscal sustainability and financial resiliency. Make strategic investments in existing critical public works infrastructure including pavement management, sidewalks, water resources, and streetscape."

Community Outreach: Staff has established a public outreach plan for the project, with a focus on residents located adjacent to the project as well as the general public. Various communications tools and strategies, including community meetings (if needed), press releases, website updates, and social media posts will continue to be utilized to inform the public and receive feedback. A dedicated project website will be created where updated project information will continue to be provided throughout the construction phase of the project.

CIP PROJECT PRIORITY (as outlined in FY 2021-22 and FY 2022-23 CIP Program Budget)

Priority Three – Nice to do and would contribute to quality of life, but not essential.

COUNCIL GOAL COMPLIANCE:

Meets City Council Goal C and F:

- C. Operate City government in a fiscally and managerially responsible and prudent manner to ensure that the City of Thousand Oaks remains one of California's most desirable places to live, work, visit, recreate, and raise a family.
- F. Provide and enhance essential infrastructure to ensure that the goals and policies of the Thousand Oaks General Plan are carried out and the City retains its role and reputation as a leader in protecting the environment and preserving limited natural resources.

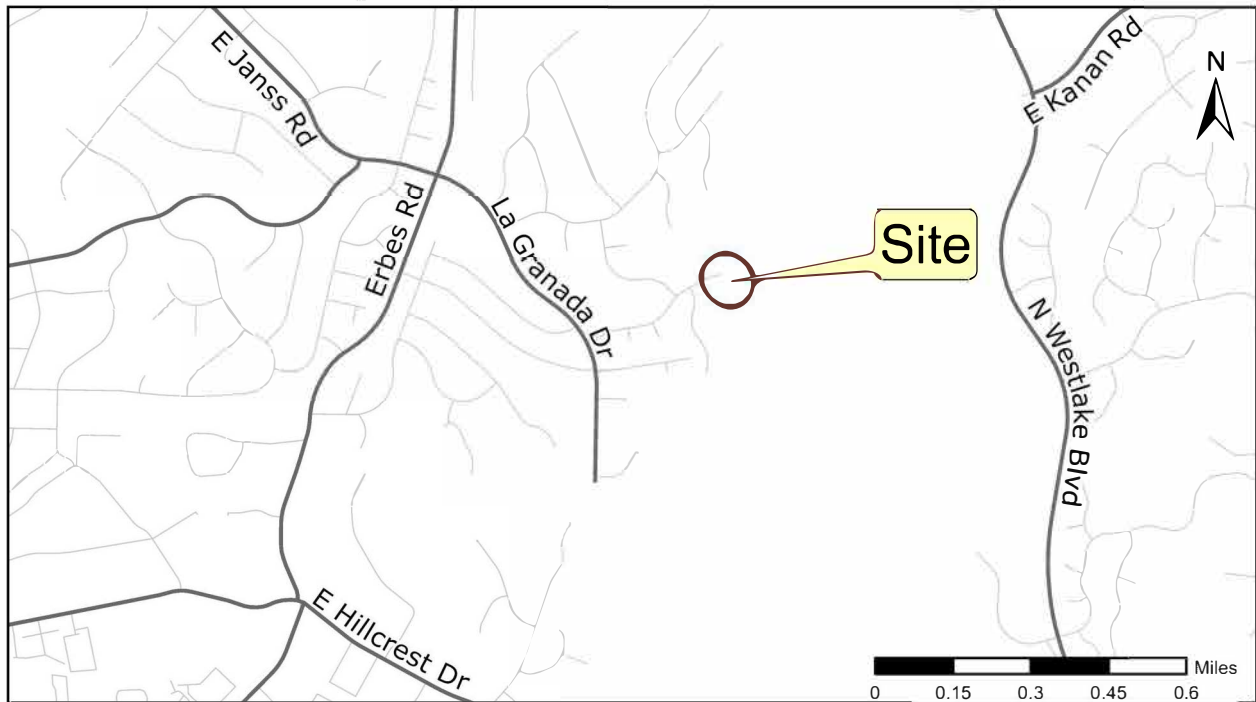
PREPARED BY: Masoud Razavi, Engineering Associate

Attachments:

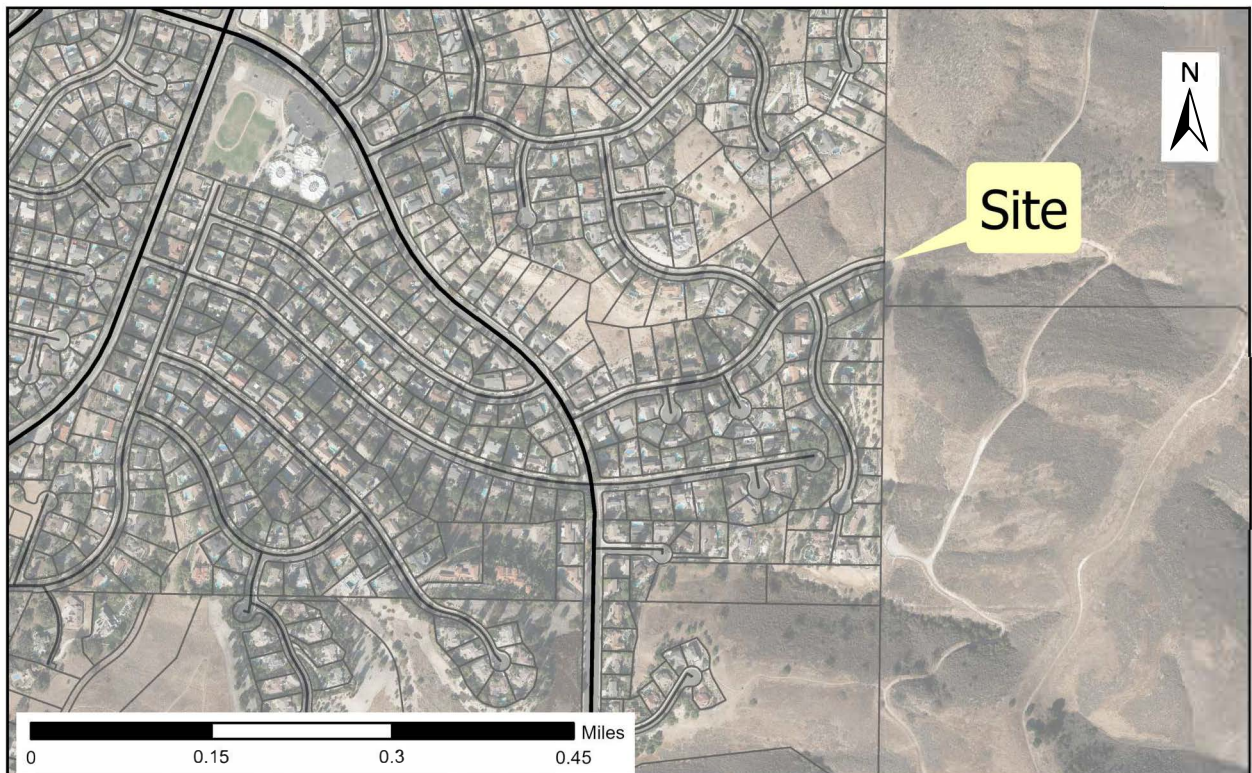
Attachment #1 – Vicinity and Location Map

Attachment #2 – Professional Services Agreement with M6 Consulting, Inc.

Drake Drive Flood Mitigation



VICINITY MAP



LOCATION MAP

ATTACHMENT #2

Project Name: Drake Drive Flood
Mitigation (CI 5656)

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF THOUSAND OAKS
AND
M6 CONSULTING, INC.**

THIS AGREEMENT is made and entered into this 9th day of November 2021, by and between **CITY OF THOUSAND OAKS**, a municipal corporation ("City"), and **M6 CONSULTING, INC.**, ("Consultant").

City and Consultant agree as follows:

1. RETENTION OF CONSULTANT

City hereby retains Consultant, and Consultant hereby accepts such engagement, to perform the services described in Section 2. Consultant warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

2. DESCRIPTION OF SERVICES

The services to be performed by Consultant are as follows:

Professional services in conjunction with the design, surveying, geotechnical investigation, Plans, Specifications and Estimate (PS&E), and bid-phase services of Drake Drive Flood Mitigation project. Services and deliverables shall generally include meetings, technical memorandums, plans and specifications, and are more particularly set forth in the Scope of Work, attached as Exhibit "A," which is incorporated herein by reference.

3. COMPENSATION AND PAYMENT

(a) **Maximum and Rate.** The total compensation payable to Consultant by City for the services under this Agreement **SHALL NOT EXCEED** the sum of \$94,830 (herein "not to exceed amount"), and shall be earned as the work progresses on the following basis:

Hourly, at the hourly rates and with reimbursement to Consultant for those expenses set forth in Consultant's Schedule of Fees, attached as Exhibit "B" and incorporated herein. The rates and expenses set forth in that exhibit shall be

binding upon Consultant until December 31, 2022, after which any change in the rates and expenses must be approved in writing by City's Project Manager (City is to be given 60 days' notice of any rate increase request), provided the not to exceed amount is the total compensation due Consultant for all work described under this Agreement.

(b) **Prevailing Wage.** Consultant may be obligated to pay prevailing wages under the California Labor Code. Consultant agrees to indemnify, defend and hold City harmless from any claim that prevailing wages should have been paid, and shall be liable for the payment of the same and any penalties thereon. It is the responsibility of Consultant to be familiar with the California Labor Code as it relates to this Agreement, and failure or neglect of Consultant to understand the California Labor Code shall in no way relieve Consultant from any obligations.

(c) **Department of Industrial Relations Requirements.** Consultant's work may be subject to the payment of not less than prevailing wages under California Labor Code Sections 1720 and 1770 et seq. and subject to compliance monitoring and enforcement by the Department of Industrial Relations. No consultant or subcontractor may be awarded a contract for public work unless registered with the Department of Industrial Relations, pursuant to California Labor Code Section 1725.5. Consultant's DIR registration number is 1000051549.

(d) **Payment.** Consultant shall provide City with written verification of the actual compensation earned, in a form satisfactory to City's Project Manager. Invoices shall be made no more frequently than on a monthly basis, and describe the work performed (including, if applicable, a list of hours worked by personnel classification). All payments shall be made within 30 days after City's approval of the invoice.

(e) **Extra Services.** Additional work not reasonably encompassed by the Scope of Services described in Section 2 may be agreed upon only by execution of a written Amendment to this Agreement. No liability or right to compensation for extra services shall exist without such Amendment. Unless otherwise stated in the Amendment, applicable rates for extra services shall be at the rates set forth in Exhibit "B."

4. CITY PROJECT MANAGER

The services to be performed by Consultant shall be accomplished under the general direction of, and coordinate with, City's "Project Manager", as that staff person is designated by City from time to time, and who presently is Masoud Razavi.

5. TERM, PROGRESS AND COMPLETION

The term of this Agreement is from the date first written above to June 30, 2024, unless term of this Agreement is extended, or the Agreement is terminated as provided for herein.

City Manager or his or her designee shall have the authority to extend the term of this Agreement in writing no more than 3 separate times, for a period of one (1) year each. Extensions of time shall be memorialized by execution of a written amendment.

Consultant shall not commence work on the services to be performed under the Agreement until (i) Consultant furnishes proof of insurance as required by paragraph 9 below, and (ii) City's Project Manager gives written authorization to proceed with the work. All services shall be completed within the term of this Agreement.

6. OWNERSHIP OF DOCUMENTS

All drawings, designs, data, photographs, reports and other documentation (other than Consultant's drafts, notes and internal memorandum), including duplication of same prepared by Consultant in the performance of these services, are the property of City. City shall be entitled to immediate possession of the same upon completion of the work under this Agreement, or at any earlier or later time when requested by City. City agrees to hold Consultant harmless from all damages, claims, expenses, and losses arising out of any reuse of the plans, specifications, graphics, brochures, reports, and other documentation for purposes other than those described in this Agreement, unless written authorization of Consultant is first obtained.

7. PERSONAL SERVICES/NO ASSIGNMENT/SUBCONTRACTS

This Agreement is for professional services, which are personal to City. Robert Woodward, Principal-In-Charge is deemed to be especially experienced and is a key member of Consultant's firm, and shall be directly involved in performing, supervising or assisting in the performance of this work. This key person shall communicate with, and periodically report to, City on the progress of the work. Should said individual be removed from assisting in this contracted work for any reason, City may terminate this Agreement.

This Agreement is not assignable by Consultant without City's prior written consent.

The following portions of the work described in this Agreement may be subcontracted out to other parties by Consultant: Survey and base mapping (Chris Nelson & Associates, Inc.), geotechnical investigation (Gorian and Associates, Inc.).

8. HOLD HARMLESS AND INDEMNITY

(a) **Hold Harmless for Consultant's Damages.** Consultant holds City, its elected officials, officers, agents, employees and volunteers, harmless from all of Consultant's claims, demands, lawsuits, judgments, damages, losses, injuries or liability to Consultant, to Consultant's employees, to Consultant's contractors or subcontractors, or to the owners of Consultant's firm, which damages, losses, injuries or liability occur during the work or services required under this Agreement, or performance of any activity or work required under this Agreement.

(b) **Defense and Indemnity of Third Party Claims/Liability.** To the maximum extent allowed by law, Consultant shall indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, officials, agents, employees and volunteers from and against all liability including, but not limited to, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Consultant's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in the Agreement, except such loss or damage which is caused by the sole or active negligence or willful misconduct of City. Should conflict of interest principles preclude a single legal counsel from representing both City and Consultant, or should City otherwise find Consultant's legal counsel unacceptable, then Consultant shall reimburse City its costs of defense, including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation. The Consultant shall promptly pay City any final judgment rendered against City (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of Consultant's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

Consultant's obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of City under any provision of this Agreement, Consultant shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of the Consultant will be for that entire portion or percentage of liability not attributable to the active negligence of City.

(c) **Nonwaiver.** City does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by City, or the deposit with City, of any insurance certificates or policies described in Section 9.

9. **MINIMUM SCOPE AND LIMIT OF INSURANCE**

Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide, and maintain at its own expense during the term of this Agreement, and any extension thereof, policies of insurance of the type and amounts described below and in a form that is satisfactory to City.

Coverage shall be at least as broad as:

(a). **Commercial General Liability (CGL):** Consultant shall, at Consultant's sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry General Liability insurance coverage at least as broad as Insurance Services form CG 00 01 in an amount not less than \$2,000,000 per occurrence, \$4,000,000 general aggregate for bodily injury, personal and advertising injury and property damage, including without limitation, blanket contractual liability.

(b). **Automobile Liability:** Consultant shall, at Consultant's sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry Automobile Liability insurance coverage at least as broad as Insurance Services form CA 00 01 or the exact equivalent covering bodily injury and property damage for all activities of Consultant arising out of or in connection with the work to be performed under this Agreement, including coverage of any owned, hired, non-owned, or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

(c). **Worker's Compensation:** Consultant shall, at Consultant's sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry workers' compensation statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for bodily injury or disease. Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its elected officials, officers, agents, employees and volunteers for all work performed by Consultant, its employees, agents and subcontractors.

(d). **Professional Errors and Omissions Insurance:** Consultant shall, at Consultant's sole cost and expense throughout the term of this Agreement, and any extensions thereof, carry professional errors and omissions coverage of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate, with tail coverage for an extended reporting period of three (3) years.

If Consultant maintains higher limits than the minimum shown above, City requires and shall be entitled to coverage for the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Other Insurance Provisions

Additional Insured Status

City, its elected officials, officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 10 01 and CG 20 37 10 01 if a later edition is used). The provision shall also apply to any excess liability policies. In addition, Consultant shall ensure that the automobile liability policy contains a provision covering City as an additional insured and shall obtain an endorsement to that effect if it does not.

Excess Insurance

The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Umbrella or excess policies shall provide coverage at least as broad as specified for underlying coverages and covering those insured in the underlying policies. Coverage shall be "pay on behalf" with defense costs payable in addition to policy limits. There shall be no cross-liability exclusion of claims or suits by one insured against the other. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and no-contributory basis for the benefit of City as required in written contract or agreement before City's own insurance or self-insurance shall be called upon to protect it as a named insured.

City's Rights of Enforcement

In the event any policy of insurance required under this Agreement does not comply with these specifications or is cancelled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant, or City will withhold amounts sufficient to pay premium from Consultant's payments. In the alternative, City may cancel this Agreement.

City's Right to Revise Specifications

City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.

Primary and Non-Contributory Coverage

For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance as respects City, its elected officials, officers, agents, employees and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees or volunteers shall be excess of Consultant's insurance and shall not contribute with it and shall be at least as broad as CG 20 01 04 13.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by City. City may require Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with a current A.M. Best's rating of no less than A:VII, (unless otherwise acceptable to City).

Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its elected officials, officers, agents, employees or volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications - to waive their right of recovery prior to a loss. Consultant hereby waives his own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors. Copies of these waivers shall be submitted to City prior to commencement of work.

Claims Made Policies

If any of the required policies provided coverage on a claims-made basis:

- (a). The Retroactive Date must be shown and must be before the date of the Agreement or the beginning of contract work.
- (b). Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the work required under this Agreement.
- (c). If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of Agreement work.

Verification of Coverage

Consultant shall provide City with copies of certificates (on City certificate form or an Accord form as modified per City direction) for all policies, with the appropriate named additional insured coverage and an endorsement that they are not subject to cancellation without 30 days prior written notice to City. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Consultant's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

10. RELATION OF THE PARTIES

a. Consultant is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Contractor shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or

any of its officers, employees or agents are in any manner officers, employees or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

b. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

11. CORRECTIONS

In addition to the above indemnification obligations, Consultant shall correct, at its expense, all errors in the work that may be disclosed during City's review of Consultant's report or plans. Should Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by City, and the cost thereof shall be charged to Consultant or withheld from any funds due to Consultant hereunder.

12. TERMINATION BY CITY

City may terminate without cause any or all of the services agreed to be performed under this Agreement upon 30 calendar days written notice. If termination is for cause, no advance notice need be given. In the event of termination, Consultant shall have the right and obligation to immediately assemble work in progress for the purpose of closing out the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by City to Consultant within 30 days following submission of a final statement by Consultant unless termination is for cause. In such event, Consultant shall be compensated only to the extent required by law.

13. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE

The acceptance by Consultant of the final payment made under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Consultant for anything done, furnished, or relating to Consultant's work or services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within 10 calendar days of the receipt of that check. However, approval or payment by City shall not constitute, nor be deemed, a release of the responsibility and liability of Consultant, its employees, subcontractors, agents and consultants for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Consultant, its employees, subcontractors, agents and consultants.

14. AUDIT OF RECORDS

Consultant shall maintain, in accordance with generally accepted accounting principles, complete and accurate records of all activities and operations relating to this Agreement. Records, including but not limited to, timecards, employment records, work progress reports, reimbursements, invoices, project records, proprietary data and information, as well as licensed software and any electronic records shall be kept for a period of four years beyond the termination of this Agreement. Consultant agrees that City, or its authorized representative, shall have the right to examine, audit, excerpt, copy or transcribe any of the records pertaining to this Agreement at any time during normal business hours. Consultant shall reimburse City for all reasonable costs of the audit, including travel time and auditor costs, should such audit reveal an overcharge of five (5) percent or more. Any overcharge will be considered a breach of this Agreement and could be cause for termination. The obligations of this section shall be explicitly included in any subcontracts or other agreements entered into by Consultant with respect to this Agreement.

15. WAIVER; REMEDIES CUMULATIVE

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

16. CONFLICT OF INTEREST

Consultant is unaware of any City employee or official that has a financial interest in Consultant's business. During the term of this Agreement and/or as a result of being awarded this Agreement, Consultant shall not offer, encourage or accept any financial interest in Consultant's business by any City employee or official.

17. CONSTRUCTION OF LANGUAGE OF AGREEMENT

The provisions of this Agreement shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

18. MITIGATION OF DAMAGES

In all situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

19. GOVERNING LAW

This Agreement, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Should litigation occur, venue shall be in Superior Court of Ventura County.

20. TAXPAYER IDENTIFICATION NUMBER

Consultant shall provide City with a complete Request for Taxpayer Identification Number and Certification, Form W-9, as most recently issued by the Internal Revenue Service.

21. NON-APPROPRIATION OF FUNDS

Payments due and payable to Consultant for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of City funds. In the event City has not appropriated sufficient funds for payment of Consultant's services beyond the current fiscal year, this Agreement shall cover only those costs incurred up to the conclusion of the current fiscal year.

22. MODIFICATION/AMENDMENT OF AGREEMENT

Any amendment, modification, or variation of the terms or tasks of this Agreement shall be in writing and shall be effective only upon the mutual written approval of the City and Consultant.

23. USE OF THE TERM "CITY"

Reference to "City" in this Agreement includes the City Manager or any authorized representative acting on behalf of City.

24. PERMITS AND LICENSES

Consultant, at its sole expense, shall obtain and maintain during the term of this Agreement all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.

25. CAPTIONS

The captions or headings in this Agreement are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the Agreement.

26. AUTHORIZATION

Each party has expressly authorized the execution of this Agreement on its behalf and binds said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint venturers, insurance carriers and any others who may claim through it to this Agreement.

27. ENTIRE AGREEMENT BETWEEN PARTIES

Except for Consultant's proposals and submitted representations for obtaining this Agreement, this Agreement supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering of services and contains all of the covenants and agreements between the parties with respect to said services.

28. PARTIAL INVALIDITY

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

29. FEDERAL REQUIREMENTS

Consultant acknowledges that federal funds are being used for this Agreement and that Consultant is required to comply with all material obligations required by federal or state law in reporting work completed with said funds, and certifies that Consultant and its subcontractors are eligible to participate in the Federally funded contract, pursuant to the "System for Award Management (SAM)" database, as maintained by the General Services Administration and required by 2 CFR, part 180.

Consultant shall also comply with the federal Americans with Disability Act, Public Law 101-336, and observe the disability discrimination prohibitions of such laws in the performance of the work required under this Agreement.

30. **NOTICES**

Any notice required to be given hereunder shall be deemed to have been given by submitting said notice via email as follows:

TO CITY:	Masoud Razavi Public Works Department City of Thousand Oaks mrzavi@toaks.org
TO CONSULTANT:	Robert Woodward, PE M6 Consulting, Inc. robert@m6consultinginc.com

31. **SIGNATURES**

(a) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument.

(b) **Scanned Signatures.** In the event that any signature is delivered by facsimile transmission or submitted electronically as a scanned image (i.e., files with .pdf, .tiff or .jpeg extensions), such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or scanned signature page were an original thereof.

(c) **Digital/Electronic Signatures.** This Agreement may be executed through the use of digital or electronic signatures provided they meet the requirements of the Electronic Signatures in Global and National Commerce (ESIGN) Act and the California Uniform Electronic Transactions Act (UETA) and are produced using a City-approved method. The presence of an electronic signature on this document shall be construed as the parties' consent to do business electronically.

In concurrence and witness whereof, this Agreement has been executed by the parties effective on the date and year first above written.

M6 CONSULTING INC.

Robert Woodward
Principal Engineer/CEO

Masoud Mahmoud
Principle Engineer/CFO

CITY OF THOUSAND OAKS

Claudia Bill-de la Peña, Mayor

ATTEST:

Cynthia M. Rodriguez, City Clerk

APPROVED AS TO ADMINISTRATION:

Andrew P. Powers, City Manager

APPROVED BY DEPARTMENT HEAD:

Clifford G. Finley, Public Works Director

APPROVED AS TO FORM:

Office of the City Attorney

Tracy Friedl, Assistant City Attorney

DRAKE DRIVE FLOOD MITIGATION (CI 5656)**EXHIBIT A****SCOPE OF WORK****Phase 1 – Design****Task 1 – Kick Off Meeting**

The Consultant shall conduct project kick-off meeting to introduce the Consultant's project team members with the City's project team members, formalize methods of communication, present the overall project scope, and approach, and receive feedback from the City staff, discuss project schedules and milestones, and request information from the City.

Deliverables:

- Meeting agenda, minutes, action items list
- Project schedule

Task 2 – Progress Meetings:

The Consultant shall arrange and conduct project meetings at and in-between periodic project milestones to discuss progress of the work, project challenges, schedule updates, and any additional pressing issues. These meetings are anticipated to be at least once per month as deemed necessary by the City project manager.

Deliverables:

- Meeting agenda, minutes, action items list
- Monthly progress reports
- Project schedule updates

Task 3 – Review Existing Plans/Reports/Documents

Consultant shall identify, obtain, and review all available plans, reports, documents, etc. (from the City), including but not limited to geotechnical reports, record drawings, site plan, and site maps that may be applicable/required to accurately capture the condition of existing improvements and the scope of the proposed improvements for successful completion of the project. It shall be understood that the City will take no responsibility for the completeness and accuracy of the provided documents. The Consultant shall exercise due diligence with this task to confirm all such information from the City for the design of the project.

Task 4 – Surveying

Consultant shall perform a field survey to collect topographic survey/utility base map based upon aerial photogrammetric methods with GPS ground control and/or field survey at a scale of 1" = 20' with one-foot contour intervals. Existing development, site

DRAKE DRIVE FLOOD MITIGATION (CI 5656)

conditions such as building footprints, setbacks, hardscape, and above-ground visible utilities, as well as key features located within the project extents shall be delineated not the map. Approximately 5' of the adjacent properties and/or streets shall also be delineated onto the map, if accessible. Easements, if any, shall be plotted based upon any documents, if provided by the City. The exterior boundary shall be compiled and delineated onto the map from record information and a field survey. The map will be prepared in both PDF and AutoCAD digital file formatted. Physical survey markers will not be set as part of this scope.

Deliverables:

- Survey Mapping Data
- AutoCAD drawing

Task 5 – Utilities Surveys:

Consultant shall notify the utility providers within the project limits of the impending project and request atlas sheets or record drawings for existing utilities and appurtenances within the project corridor. Consultant shall contact and coordinate all activities as required with utility providers and agencies to confirm design requirements and approval process to execute the project scope. Consultant Shall review project plans to determine potential utility conflicts with respect to proposed infrastructure design and will identify any required potholing and related locations to be completed during the construction process.

Deliverables:

- Utility base map
- Meeting minutes with utility providers

Task 6 – Geotechnical Study:

Consultant shall perform a geotechnical investigation of the site and prepare a geotechnical report and recommendations. The report shall be in accordance with the standard procedures, regulations, manuals, policies, and format. The evaluation shall consist of the excavation of 7 borings, laboratory testing, and analysis to provide geotechnical recommendation for design and construction of the flood mitigation improvements. All phases of the geotechnical site evaluation shall be conducted under the supervision of a California State licensed geotechnical engineer and a certified engineering geologist.

If the City allows use of an infiltration at both locations of the project (at the detention basin and at the catch basins) the proposed stormwater infiltration evaluation shall be performed in accordance with the generally accepted geotechnical engineering practices as well as following requirements of the Ventura County Technical Guidance Manual for Stormwater Quality Control Measures Manual (Update 2011 Errata Update 2018). Two pairs of infiltration borings (four total) shall be excavated at the northern

DRAKE DRIVE FLOOD MITIGATION (CI 5656)

and southern terminus of Drake Dr. At least two infiltration tests shall be performed at each proposed infiltration location.

Three geotechnical exploratory pits shall be excavated to depths of approximately 5 to 7 feet below the existing ground surface on the north, south, and west facing hillside areas above the proposed detention basin and the northern terminus of Drake Drive.

The report shall include recommendations regarding the seismic design criteria, soil expansion and collapse potential, slope stability analysis including rapid drawdown analysis, preliminary recommended infiltration rates, site preparation/remedial grading and placement of fill and backfill, pavement structural sections based on R value testing and City plates, and utility trench backfill recommendations.

Deliverables:

- Draft geotechnical report
- One revision set
- Final geotechnical report

Task 7 – Hydrology/Hydraulics:

Consultant shall provide a hydraulic study for the project demonstrating ponding reduction in the downstream flow as part of the hydraulic study. The study shall be based on the City's master drainage plan and any additional available hydrology references the City has available that is needed to complete the hydraulic study.

Deliverables:

- Draft hydrology/hydraulics report
- One revision set
- Final hydrology/hydraulics report

Task 8 – Easements

Consultant shall identify the need for any temporary construction easements (or rights of entry) to complete this project.

Deliverables:

- Draft report
- Base map

Task 9 – Preliminary Design Report (PDR)

Consultant shall prepare a brief technical memorandum to discuss the preliminary design options and rough order magnitude costs. Consultant shall conduct analysis needed to complete and present the preliminary design recommendations to the City for the project, based upon capturing Q100 (burned and bulked, and releasing Q10 (clear). Consultant shall submit the preliminary design report packaging including all

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findings, and recommendations for the project to be reviewed and approved by the City. Consultant shall arrange for, prepare, and conduct a workshop with the City to present the preliminary design report and all findings performed and facilitate discussions to determine the final design parameters.

Deliverables:

- Preliminary Technical Memorandum
- Draft and final Preliminary Design Report

Task 10 – Plans, Specification and Estimates (PS&E)

Consultant shall prepare final design packages including all engineering reports, plans, specifications, and the engineer's construction estimate based on the approved preliminary design. Consultant shall prepare special conditions and technical specification, including the bid schedule and measurement and payments sections, using City's master specifications templates. Consultant shall edit the City-furnished general conditions and other front-end documents.

Consultant shall submit PS&E at 60%, 90%, and 100% level of completions. Each subsequent submittal shall incorporate comments from the previous level of submission. Consultant shall provide for design review meetings for each level of submission.

Drawings shall be delivered in AutoCAD 2018.dwg format with a layering standard capable of being translated into the City's Cad and drafting standards using AutoCAD's CAD standards translator. Specifications shall be provided in Microsoft Word.doc document format.

Deliverables:

- 60 percent plans, specification, and estimate
- 90 percent plans, specification, and estimate
- 100 percent plans, specification, and estimate
- 2 meetings at 3 hours each for each level of submission

Task 11 – Bid-Phase Services

Consultant shall provide on-going support as required during the bid/award phase.

Consultant's project manager shall attend and provide input at the pre-bid meeting and job walk. Consultant shall respond to up to 5 Requests for Information/Clarification (RFI) by perspective bidders. Consultant shall prepare up to 2 bid addenda in response to bidder questions and possible changes to the contract documents. Consultant shall answer informal phone and email questions from bidders where no changes or clarification of bid documents are required.

Deliverables:

- Respond to five (5) Request for Information (RFI)
- Prepare up to two (2) addenda

EXHIBIT B SCHEDULE OF HOURLY RATES

m6 Consulting Inc.
City of Thousand Oaks
Drake Drive Flood Mitigation
October 8, 2021

Hourly Public Works Services:

Project Manager	\$165.00
Project Engineer	\$145.00
Project Designer	\$120.00
Hydrology/Hydraulic Engineer	\$150.00
Structural Engineer	\$145.00
Traffic Engineer	\$175.00
Inspector	\$95.00
Map Review/City Surveyor	\$250.00
1 Man Survey Crew	\$205.00
2 Man Survey Crew	\$250.00
Minimum Survey Trip Charge	\$750.00
Office Survey/Mapping	\$165.00
Soils/Geotechnical Engineer	\$165.00
Principal Engineer	\$185.00

MISCELLANEOUS CHARGES:

Hourly

Administration/Tech Aide	\$64.00
Direct Costs	Cost+10%
Outside Reproduction	Cost +10%
Materials & Expenses	Cost + 10%
Mileage (Portal to Portal)	\$0.58/Mile