

**AMENDMENT NO. 2 TO THE AGREEMENT
BETWEEN
CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY
AND
FEHR & PEERS**

WHEREAS, the City/County Association of Governments for San Mateo County (hereinafter referred to as “C/CAG”) and Fehr & Peers. (hereinafter referred to as “Consultant”) are parties to an Agreement originally dated November 25, 2019 (the “Agreement”), for development of the Vehicle Miles Traveled (VMT) Estimation tool (the “Tool”); and

WHEREAS, C/CAG and Consultant have agreed to enter into to a separate Web-Based Services Service Level Agreement (the “SLA”) effective as of _____ (the “Effective Date”) for Consultant to host the Tool on Consultant’s server,

WHEREAS, C/CAG and Consultant have determined that additional tasks are required for Consultant to provide professional technical support services for the operation of the Tool; and

WHEREAS, C/CAG and Consultant therefore desire and agree to enter into this Amendment No. 2 to the Agreement (“Amendment No. 2”) and amend the Agreement as set forth herein.

IT IS HEREBY AGREED by C/CAG and Consultant as follows:

1. The term of this Amendment No. 2 shall begin upon execution by both parties, and unless terminated earlier under the Agreement, shall expire at the expiration or termination of the SLA.
2. The Scope of Work of the Agreement, as provided in Attachment B “SCOPE OF WORK,” is amended to add those tasks described in Consultant’s proposal “Additional Services (#2) for C/CAG Senate Bill 743 Vehicle Miles Traveled (VMT) Regional Baseline Study and C/CAG VMT Estimation Tool,” dated September 28, 2021, attached hereto as Attachment B-2, and incorporated therein (the “Additional Services”).
3. Section 2 of the Agreement is amended by adding the following:
In consideration of Consultant providing the Additional Services rendered with all terms, conditions, and specifications set forth herein, C/CAG shall pay Consultant as provided in Attachment B-2. Notwithstanding any provision to the contrary, the aggregate total amount payment by C/CAG to Consultant for the performance of the Additional Services shall not exceed \$21,100. Payments shall be made to Consultant monthly based on an invoice submitted by Consultant that has been reviewed and approved by C/CAG and identifies expenditures and describes services performed. C/CAG shall have the right to receive, upon request, documentation substantiating charges billed to C/CAG.

4. Section 3 of the Agreement is amended by adding the following:

Notwithstanding any provision to the contrary, the following shall apply to the provision of the Additional Services:

A. Consultant's Properties

Consultant shall own exclusively all rights, title, and interest in and to the following:

1. all intellectual properties owned by Consultant under the Agreement, subject to any grant of license under the Agreement;
2. all of Consultant's inventions, improvements, discoveries, methods, models, formats, software, algorithms, processes, procedures, designs, specifications, findings, other intellectual properties created, developed, gathered, compiled or produced by Consultant prior to or independently of any of its services under this Amendment No. 2 which F&P may employ in the performance of this Amendment No. 2, or may incorporate into any part of its Additional Services or work product from the Additional Services ("Background IP");
3. Consultant's server, and all information, data, trade secrets or know-how, including, but not limited to, ideas, works of authorship, research, product plans, products, services, customers, customer lists, markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances or other business information, maintenance, updates, upgrades, enhancements, including any that may be accessed through Consultant's server, except any property owned by C/CAG under Section 4.B. below, and subject to the provisions of Consultant's contract with any third parties.

B. C/CAG's Properties

C/CAG shall own all rights, title, and interest in and to the following:

1. the Tool, and all intellectual properties owned by C/CAG under the Agreement, subject to any grant of license under the Agreement;
2. all documents, information, and data first created, developed, gathered, compiled or produced by Consultant in the performance of the Additional Services, except any Background IP;
3. all information and data provided by C/CAG that may be used by Consultant in the performance of the Additional Services.

C. Licenses

1. Consultant grants C/CAG an irrevocable, non-exclusive, non-transferable, royalty-free, license in perpetuity to use, disclose, derive from all Background IP, but only as an inseparable part of Consultant's Additional Services.
2. Consultant grants C/CAG and those authorized by C/CAG a revocable, non-exclusive, transferable, royalty-free, license to access F&P's server, but only for the purpose of accessing the Tool.

3. Consultant grants C/CAG a revocable, non-exclusive, transferable, royalty-free, license to access Consultant's server, but only for the purpose of accessing Consultant's Additional Services.

4. C/CAG grants Consultant an irrevocable, non-exclusive, non-transferable, royalty-free, license to use, disclose, derive from all properties owned by C/CAG under Section 4.B. above, for the purposes of Consultant's performance of the Additional Services.

5. In the event Consultant uses or incorporates intellectual property owned or created by any third party other than Consultant or C/CAG ("Third-party Content"), or derivative work based on Third-party Content, or a compilation that includes Third-party Content, or in the event any Third-party Content is needed for Consultant to perform the Additional Services or for C/CAG to use or enjoy Consultant's Additional Services under this Amendment No. 2, Consultant shall secure on C/CAG's behalf and in the name of C/CAG, an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license in perpetuity to use, reproduce, prepare derivative works based upon, distribute, disclose, perform, and display, the Third-party Content, including the right of C/CAG to authorize contractors, consultants and others to do the same on Client's behalf, but only as an inseparable part of the Additional Services.

D. Consultant and C/CAG each reserves all rights, titles, and interests, except those expressly granted in sections 4.A., 4.B., and 4.C. above. No other license or transfer or assignment of right, title, or interest is granted or implied.

E. Consultant shall bear no liability or responsibility for any part of the Tool and for the result of any part of the Additional Services, or any of their content, that have been modified post-delivery not by Consultant or used for a purpose other than that for which they were prepared or provided under this Amendment No. 2.

5. Except as expressly amended herein, all other provisions of the Agreement shall remain in full force and effect.

Signatures of parties on following page.

City/County Association of Governments
(C/CAG)

Fehr & Peers

Marie Chuang, C/CAG Chair

By

Title: _____

Date: _____

Date: _____

Approved as to form:

Melissa Andrikopoulos
Legal Counsel for C/CAG

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ATTACHMENT B-2

Additional Services (#2) for C/CAG Senate Bill 743 Vehicle Miles Traveled (VMT)
Regional Baseline Study and C/CAG VMT Estimation Tool

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