

**CITY OF FORT BRAGG
PROFESSIONAL SERVICES AGREEMENT
WITH
DE NOVO PLANNING GROUP**

THIS AGREEMENT is made and entered into this ___ day of April, 2022 (“Effective Date”), by and between the CITY OF FORT BRAGG, a municipal corporation, 416 N. Franklin Street, Fort Bragg, California 95437 (“City”), and DE NOVO PLANNING GROUP, a California corporation, 1020 Suncastr Lane, Suite 106, El Dorado Hills, California 95762 (“Consultant”).

WITNESSETH:

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to prepare an Environmental Impact Report for the proposed Grocery Outlet at 825, 848, and 851 South Franklin Street, Fort Bragg, as more fully described herein; and

B. WHEREAS, City and Consultant desire to contract for the specific services described in Exhibit “A” (the “Project”) and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

C. WHEREAS, no official or employee of City has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

D. WHEREAS, the legislative body of the City on April 25, 2022 by Resolution No. [REDACTED] authorized execution of this Agreement on behalf of the City in accordance with Chapter 3.20 of the City Municipal Code and/or other applicable law;

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

1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Work. Consultant shall provide the professional services described in the Consultant’s Proposal (“Proposal”), attached hereto as **Exhibit A** and incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant’s performance of this Agreement. Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. City officers and employees shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this section.

1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to the complete satisfaction of the City as hereinafter specified. Evaluations of the work will be done by the City Manager or his or her designee. If the quality of work is not satisfactory, City in its

discretion has the right to:

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;
- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

Satisfactory work shall mean work that follows customary good professional standards. The City will inform Consultant of any unsatisfactory work within 30-days of receipt of the work being delivered to City.

1.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

1.5. Non-discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender, sexual orientation, or disability except as permitted pursuant to Section 12940 of the Government Code. Such actions 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 and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, a notice setting forth provisions of this non-discrimination clause.

Consultant shall, in all solicitations and advertisements for employees placed by, or on behalf of Consultant, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender, sexual orientation, or disability. Consultant shall cause the paragraphs contained in this Section to be inserted in all subcontracts for any work covered by the Agreement, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

1.6. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written

consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense. All insurance requirements contained in this Agreement are independently applicable to any and all subcontractors that Consultant may engage during the term of this Agreement.

1.8. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

2.0. COMPENSATION AND BILLING

2.1. Compensation. Consultant's total compensation shall not exceed **Fifty-six Thousand Thirteen Dollars (\$56,013.00)**.

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of work specified in the Consultant's Proposal or which is inconsistent with or in violation of the provisions of this Agreement unless the City or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable. Should the City request in writing additional services that increase the hereinabove described "Scope of Work," an additional fee based upon the Consultant's standard hourly rates shall be paid to the Consultant for such additional services. The City Manager may approve contract change orders not exceeding a total of 10% of the approved contract or up to the contingency amount whichever amount is less for any one project.

2.3. Method of Billing. Consultant may submit invoices to the City for approval on a progress basis, but not more often than monthly. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times for a period of three (3) years from the date of final payment.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the issuance of Notice to Proceed. Said services shall be performed in strict compliance with the schedule set forth in the Scope of Work attached hereto as **Exhibit A**. Consultant will complete the services in accordance with this Agreement by **December 30, 2022**. The Time of Completion may only be

modified by a written amendment of the Agreement signed by both the City and the Consultant and in accordance with its terms.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party. If a delay beyond the control of the Consultant is encountered, a time extension may be mutually agreed upon in writing by the City and the Consultant. The Consultant shall present documentation satisfactory to the City to substantiate any request for a time extension.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and expire on **March 30, 2023** unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing at least ten (10) days prior written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City. If the City suspends, terminates or abandons a portion of this Agreement, such suspension, termination or abandonment shall not make void or invalidate the remainder of this Agreement.

If the Consultant defaults in the performance of any of the terms or conditions of this Agreement, it shall have ten (10) days after service upon it of written notice of such default in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

The City shall have the right, notwithstanding any other provisions of this Agreement, to terminate this Agreement, at its option and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement, immediately upon service of written notice of termination on the Consultant, if the latter should:

- a. Be adjudged a bankrupt;
- b. Become insolvent or have a receiver of its assets or property appointed because of insolvency;
- c. Make a general assignment for the benefit of creditors;
- d. Default in the performance of any obligation or payment of any indebtedness under this Agreement;
- e. Suffer any judgment against it to remain unsatisfied or unbonded of record for thirty (30) days or longer; or
- f. Institute or suffer to be instituted any procedures for reorganization or

rearrangement of its affairs.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination within thirty-five (35) days after service of the notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant. City shall not be liable for any claim of lost profits.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Broad-form commercial general liability, in a form at least as broad as ISO form #CG 20 01 04 13, including premises-operations, products/ completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) aggregate, combined single limits. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit. If Consultant maintains higher limits than the specified minimum limits, City requires and shall be entitled to coverage for the high limits maintained by the Consultant.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, each incident for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California and Employers Liability Insurance with a minimum limit of \$1,000,000 per accident for any employee or employees of Consultant. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officials, officers, agents, employees, and volunteers for losses arising from work performed by Consultant for

the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

Before execution of this Agreement by the City, the Consultant shall file with the City Clerk the following signed certification:

I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work.

The Consultant shall also comply with Section 3800 of the Labor Code by securing, paying for and maintaining in full force and effect for the duration of this Agreement, complete Workers' Compensation Insurance, and shall furnish a Certificate of Insurance to the City Clerk before execution of this Agreement by the City. The City, its officers and employees shall not be responsible for any claims in law or equity occasioned by failure of the consultant to comply with this section.

- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than Two Million Dollars (\$2,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

Neither the City nor any of its elected or appointed officials, officers, agents, employees, or volunteers makes any representation that the types of insurance and the limits specified to be carried by Consultant under this Agreement are adequate to protect Consultant. If Consultant believes that any such insurance coverage is insufficient, Consultant shall provide, at its own expense, such additional insurance as Consultant deems adequate.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Fort Bragg and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant."
- (b) Notice: "Consultant 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; or (3) the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, Consultant shall forthwith obtain and submit proof of substitute insurance. Should Consultant fail to immediately procure other insurance, as specified, to substitute for any canceled policy, the City may procure such insurance at Consultant's sole cost and expense."

- (c) Other insurance: "The Consultant's insurance coverage shall be primary insurance as respects the City of Fort Bragg, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Fort Bragg shall be excess and not contributing with the insurance provided by this policy."
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Fort Bragg, its officers, officials, agents, employees, and volunteers.
- (e) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self-Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance. Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement. The certificates of insurance and endorsements shall be attached hereto as **Exhibit B** and incorporated herein by this reference.

5.5. Non-limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The City Manager or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. The Project Manager designated to work directly with Consultant in the performance of this Agreement will be **Heather Gurewitz**, Associate Planner. It shall be the Consultant's responsibility to assure that the Project Manager is kept informed of the

progress of the performance of the services and the Consultant shall refer any decision, which must be made by City, to the Project Manager. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Project Manager.

Consultant designates **Steve McMurtry**, Principal Planner, as its Project Manager, who shall represent it and be its agent in all consultations with City during the term of this Agreement and who shall not be changed by Consultant without the express written approval by the City. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or if mailed, shall be addressed as set forth below and placed in a sealed envelope, postage prepaid, and deposited in the United States Postal Service. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 72 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:
Steve McMurtry
De Novo Planning Group
1020 Suncastr Lane, Suite 106
El Dorado Hills, CA 95762
Tel: 916-580-9818

IF TO CITY:
City Clerk
City of Fort Bragg
416 N. Franklin St.
Fort Bragg, CA 95437
Tel: 707-961-2823
Fax: 707-961-2802

6.5. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.6. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Mendocino County, California. Consultant agrees to submit to the personal jurisdiction of such court in the event of such action.

6.7. Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.8. Indemnification and Hold Harmless.

If Consultant is not a design professional performing "design professional" services under this Agreement, as that term is defined in Civil Code Section 2782.8, Consultant agrees to defend, indemnify, hold free and harmless the City, its elected and appointed officials, officers, agents

and employees, at Consultant's sole expense, from and against any and all claims, demands, actions, suits or other legal proceedings brought against the City, its elected and appointed officials, officers, agents and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply whenever any claim, action, complaint or suit asserts liability against the City, its elected and appointed officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

If Consultant is a design professional performing "design professional" services under this Agreement, as that term is defined in Civil Code Section 2782.8, Consultant agrees to defend, indemnify, hold free and harmless the City, its elected and appointed officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, demands, actions, suits or other legal proceedings arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant. The defense obligation provided for hereunder shall apply whenever any claim, action, complaint or suit asserts liability against the City, its elected and appointed officials, officers, agents and employees based upon the negligence, recklessness, or willful misconduct of the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

6.9. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise 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, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.10. PERS Eligibility Indemnification. 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 the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS 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 PERS 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.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.11. Cooperation. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

6.12. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, preliminary notes, working documents, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City, but shall be made available to the City within ten (10) days of request or within ten (10) days of termination. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, preliminary notes and working documents, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City. Consultant or Consultant's agents shall execute such documents as may be necessary from time to time to confirm City's ownership of the copyright in such documents.

6.13. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.14. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political

Reform Act (Government Code Sections 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.15. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction. To the extent that any errors or omissions are attributable to the City, the City's representatives, or information provided by others to the City, the Consultant shall not be responsible.

6.16. Prohibited Employment. Consultant will not employ any regular employee of City while this Agreement is in effect.

6.17. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, the conflict shall be resolved by giving precedence in the following order, if applicable: This Agreement, the City's Request for Proposals, the Consultant's Proposal.

6.18. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.19. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.20. Headings. Paragraph and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.21. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.22. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.23. Waiver. The delay or failure of either party at any time to require performance or

compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.24. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.25. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.26. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

6.27. Use of Recycled Paper Products. In the performance of this Agreement, Consultant shall use paper products and printing and writing paper that meets Federal Trade Commission recyclability standards as defined in 16 CFR 260.12.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY

CONSULTANT

By: _____

David Spaur

Its: City Manager

By: _____

Steve McMurtry

Its: Principal Planner

ATTEST:

By: _____

June Lemos, MMC

City Clerk

APPROVED AS TO FORM:

By: _____

Keith F. Collins

City Attorney

SCOPE OF WORK

TASK A – PROJECT INITIATION

Within one week of project commencement, the De Novo team will meet with City Staff to discuss the following:

- Refinement of project work scope and schedule,
- City preferences for point of contact, method of communication, meeting responsibilities, project updates, etc.
- Collection of relevant background documents (adopted documents, reports, and studies), and
- Project deliverables.

TASK B – PREPARE PROJECT DESCRIPTION

De Novo will prepare a detailed description including text and graphics utilizing the information provided to the City by the applicant and applicant’s engineer. The project description will include a regional and local setting, project history and land uses, past ownership, objectives, characteristics, important project features including discretionary actions and entitlements, consistency with the General Plan and zoning designations, a list of responsible and other agencies expected to use the product document in decision making, and a list of approvals for which the product document will be used. We will provide the draft project description to the City staff for review and comment. Upon receipt of comments from the City staff we will finalize the project description for use in the NOP/Initial Study as described in Task C, which will involve a second review of the Project Description along with the Initial Study.

TASK C – NOP/INITIAL STUDY

De Novo will prepare an Initial Study and Notice of Preparation (NOP) in an administrative draft form for City staff to review. Comments received will be incorporated into the Initial Study and Notice of Preparation for public circulation. After the document is “Screen Checked” by City staff, we will finalize the document. The public draft will be published and distributed with the proper notices to the State Clearinghouse. We will provide City staff with a copy to be filed by the City with the County Clerk, and a newspaper of regional circulation. The results of the Initial Study and NOP will be presented at a public scoping meeting in coordination with City staff.

The intent of the Initial Study/NOP and public scoping meeting is to narrow the focus of the environmental analysis in the EIR to the most pertinent and relevant environmental issues. The Initial Study will review the following topics: Aesthetics, Agricultural Resources, Air Quality, Biological Resources, Cultural Resources, Energy, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use Planning, Mineral Resources, Population, Public Services, Noise, Recreation, Traffic, Tribal Resources, and Utilities. Once the Initial Study is completed, we may find that the project will not have significant adverse impacts

on certain topics and a cursory level of analysis is all that would be needed in the EIR for that particular topic. For other topics, we would require a full EIR analysis of the topic.

From our initial review of the project relative, we believe that the following topics will be scoped out of the EIR: Aesthetics/Visual Resources, Agricultural Resources, Cultural and Tribal Resources, Geology/Soils/Seismicity, Hazards and Hazardous Materials, Hydrology and Water Quality, Mineral Resources, Population and Housing, Public Services/Recreation, and Wildfires. If the above topics are scoped out during the NOP phase of the project, we would have the following topics be the focus of the EIR: Air Quality, Biological Resources, Energy, Greenhouse Gas Emissions, Land Use Planning, Noise, Traffic, and Utilities. This Scope of Work is based on these assumptions. Additional topics may need to be added to the scope after the NOP phase concludes, which would require additional budget.

The Initial Study and Scoping Meeting will also serve as an opportunity to define and solidify the project alternatives in a public forum. This will be an important step during this project task in an effort to streamline the Environmental Review process. We will review all available community information to assist in the development of up to four (4) project alternatives to be addressed in the EIR.

Deliverables: One (1) electronic copy of the Admin Draft NOP with appendices, in MS Word and PDF format. One (1) electronic copy of the Final NOP with appendices, in MS Word and PDF format. Hard copies can be prepared at time and materials if requested.

TASK D – TECHNICAL STUDIES

The following discusses the individual technical studies that will be prepared for the project.

HEALTH RISK ASSESSMENT (HRA)

The objective of the HRA is to determine the public health risks from existing emissions from nearby rail and other toxic air sources, combined with the new public health risks from project-related traffic. The HRA consists of two main tasks: 1. Exposure Assessment, and 2. Risk Calculations.

- *Task 1 Exposure Assessment:* The main steps involved in exposure assessment includes estimating the emission rates of toxic air pollutants and running an air dispersion model to calculate the concentration of a toxic air pollutant at each location in the modeling domain. The modeling domain would include proposed project site, portions of adjacent roadways, and any other known source(s) of toxic air pollutants proximate to the site. The main toxic air contaminant (TAC) associated with industrial uses is diesel particulate matter (DPM), although various manufacturing uses also emit TACs. The emission rates of DPM will be calculated on the basis of site-specific characteristics. We propose to use the AERMOD air dispersion model with 5 years of meteorological data collected at the closest monitoring station. The proposed dispersion model is recommended by the Air District.

- *Task 2 Risk Calculations:* We propose to calculate the residential (70 year) cancer health risks by multiplying the concentration of DPM by its unit risk factor. The current unit risk factor recommended by the Office of Environmental Health Hazard Assessment is 4.15×10^{-4} (ug/m³)-1. The resulting cancer risks will be plotted on the base map.

This section will provide an analysis including the methodology, thresholds of significance, a consistency analysis, cumulative impact analysis, and a discussion of feasible mitigation measures that should be implemented to reduce impacts on air quality.

RUN CALFEEMOD

The project's unmitigated and mitigated NO_x and PM₁₀ emissions will be modelled with the CalFEEMod. The model will incorporate project details as provided to the City by the Project Applicant. We will confer with the City and Project Applicant regarding the feasibility of a wide variety of project NO_x and PM₁₀ emissions reduction (mitigation) measures.

NOISE STUDY

The De Novo team includes Saxelby Acoustics to prepare a Noise and Vibration Study. The following outlines the scope of work for this study:

1. 1A. Existing Noise Environment:
 - **Traffic Noise:** Existing noise levels due to nearby transportation noise sources will be quantified. Saxelby Acoustics uses the Federal Highway Administration (FHWA) traffic noise prediction model for the prediction of traffic noise levels. Direct inputs to the traffic model will include traffic data provided by the project traffic consultant, existing posted speed limits, truck count information, and 24-hour traffic split data collected by Saxelby Acoustics.
 - **Community Noise Survey:** Saxelby Acoustics will conduct a noise survey within the project site to quantify existing background noise levels. The noise survey will consist of short-term noise level measurements and continuous noise level measurements for a minimum period of 24-hours.
2. **Analysis of Transportation Noise Environment:** Saxelby Acoustics will evaluate increased traffic noise levels at existing sensitive receptors in the project vicinity. This task will be performed using traffic volumes provided by the traffic engineer. We anticipate providing traffic noise levels for existing, existing plus project, cumulative, and cumulative plus project scenarios. However, should additional scenarios be included in the traffic study, we will also evaluate those scenarios. We will also calculate exterior and interior traffic noise levels on the proposed residential uses. If necessary, we will evaluate any required exterior or interior noise control measures needed to achieve compliance with the City noise level standards.
3. **Analysis of Stationary Noise Environment:** Saxelby Acoustics will provide an analysis of the noise and vibration impacts associated with construction of the project at existing

sensitive receptors in the project vicinity. It is expected that this analysis will follow the assumptions used in the project air quality analysis.

4. Report Preparation: Saxelby Acoustics will provide a draft report which details our findings, methodology, and noise reduction measures (if required). The report will be prepared to meet the requirements of the City and CEQA.
5. Response to Comments: Saxelby Acoustics will respond to comments on the draft technical report. After comments are received, a final report will be provided.

TASK E –ADMINISTRATIVE DRAFT EIR

De Novo will prepare the project-level EIR for the project in an administrative draft form for City staff to review. The EIR will be intended to provide the information and environmental analysis necessary to assist public agency decision-makers in considering approval of the project.

The EIR will consider the potential environmental effects of the project to determine the level of significance and will analyze these potential effects to the detail necessary to make these determinations on significance. Each section will include GIS graphics and figures to create an easy to comprehend document that is user-friendly. It is noted that the scope of the EIR is focused on the following topics: Air Quality, Biological Resources, Energy, Greenhouse Gas Emissions, Land Use Planning, Noise, Traffic, and Utilities.

The EIR will consist of the following sections:

EXECUTIVE SUMMARY

This section will provide a concise description of the project, the potential areas of controversy, issues to be resolved, project alternatives, and a summary of impacts and mitigation measures. The intent of this section is to provide the City and the public with a simple and easy to understand overview of the project and related issues, which will be analyzed and discussed much more thoroughly in the contents of the EIR.

INTRODUCTION

The Introduction will serve as an overview of the EIR, describing its purpose and relevant environmental review procedures, the document organization, and the methodology used.

PROJECT DESCRIPTION

The Project Description section will consist of a detailed description of the project (See Task B), including the proposed actions, the project goals and objectives, and the relationship of the project to other regional plans and projects. This section will also present the City's and other agency involvement in the project, and the use of the EIR by other agencies, including permits and approvals. This section will be consistent with the requirements of State CEQA Guidelines Section 15124.

De Novo will prepare the Project Description prior to including it in the Initial Study and Notice of Preparation. The Project Description will be provided in an administrative draft form for City staff to review. Comments received will be incorporated into the revised Project Description and included in the Initial Study and Notice of Preparation. After the document is “Screen Checked” by City staff, we will finalize the Project Description for public release.

ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION MEASURES

The Environmental Setting, Impacts, and Mitigation Measures section will present a detailed discussion of each individual environmental topic. Each discussion will include the following:

- An environmental setting and environmental baseline conditions (including figures and GIS graphics);
- The applicable local, state, and federal regulatory setting;
- The threshold of significance used for each impact determination;
- The methodology used for conducting the environmental analysis and making significance determinations;
- An analysis of all identified direct and indirect impacts associated with project;
- An analysis of the cumulative impacts associated with the project;
- Identification of mitigation measures to reduce impacts; and
- A determination of the significance of each impact after mitigation.

De Novo will work closely with City staff to formulate the appropriate mitigation measure language and timing that is appropriate for inclusion in the EIR. Each EIR section will be organized concisely for ease of use and future reference.

AIR QUALITY

The project will include an assessment of short-term construction-related emissions and long-term operational emissions, primarily attributable to emissions from vehicle trips and from energy consumption by the uses. We will consult with the local Air District regarding the project’s potential to cause impacts, and the applicability of the Air District’s Rules and Regulations. The Air Quality analysis will include the following:

- Regional air quality and local air quality in the vicinity of the project site will be described. Meteorological conditions in the vicinity of the project site that could affect air pollutant dispersal or transport will be described. Applicable air quality regulatory framework, standards, and significance thresholds will be discussed.
- Short-term (i.e., construction) increases in regional criteria air pollutants will be quantitatively assessed. The ARB-approved CalEEMod computer model will be used to estimate regional mobile source and particulate matter emissions associated with the construction of the proposed project.
- Long-term (operational) increases in regional criteria air pollutants will be quantitatively assessed for area source, mobile sources, and stationary sources. The ARB-approved

CalEEMod computer model will be used to estimate emissions associated with the proposed project. Exposure to odorous or toxic air contaminants will be assessed through a screening method as recommended by the Air District.

- Local mobile-source CO concentrations will be assessed through a CO screening method as recommended by the Air District. Mobile source CO concentrations are modeled for signalized intersections expected to operate at unacceptable levels of service (i.e., LOS E or worse). If the screening method indicates that modeling is necessary, upon review of the traffic analysis, CO concentrations will be modeled using the Caltrans-approved CALINE4 computer model.

We will incorporate the results of the HRA and CalEEMod modeling identified in a previous task. This section will provide an analysis including the methodology, thresholds of significance, a consistency analysis, cumulative impact analysis, and a discussion of feasible mitigation measures that should be implemented to reduce impacts on air quality. Greenhouse Gases and Climate Change will be addressed in a separate chapter.

BIOLOGICAL RESOURCES

We plan to utilize the Wildland Resource Manager’s Wetland Report and Biological Review to prepare this section of the EIR. This task does not include any new analysis, but will include a reconnaissance level survey by a qualified biologist to verify site conditions.

ENERGY

De Novo will prepare an Energy analysis pursuant to the requirements of CEQA. This will include an evaluation of the energy consumption (electricity, oil, and natural gas) and a review of the project related to the Title 24, Part 6 of the California Code of Regulations, known as the Building Energy Efficiency Standards (Standards), including the CALGreen standards. In order to ensure that energy implications are considered in project decisions, Appendix F of the CEQA Guidelines requires that EIRs include a discussion of the potential energy impacts of proposed projects, with particular emphasis on avoiding or reducing inefficient, wasteful and unnecessary consumption of energy. The goal of conserving energy implies the wise and efficient use of energy.

Per Appendix G of the State CEQA Guidelines, the proposed project would result in a significant impact on energy use if it would result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation; or conflict with or obstruct a state or local plan for renewable energy or energy efficiency.

This section will provide an analysis including the methodology, thresholds of significance, a consistency analysis, cumulative impact analysis, and a discussion of feasible mitigation measures that should be implemented to reduce impacts associated with energy consumption.

GREENHOUSE GASES AND CLIMATE CHANGE

De Novo will prepare a Green House Gas Emissions analysis pursuant to the requirements of federal, state, regional, and local laws and regulations related to thresholds and methodology for this analysis. The analysis will follow the California Air Pollution Control Officers Association (CAPCOA) white paper methodology and recommendations presented in Climate Change & CEQA, which was prepared in coordination with the California Air Resources Board and the Governor’s Office of Planning and Research as a common platform for public agencies to ensure that GHG emissions are appropriately considered and addressed under CEQA. This analysis will consider a regional approach toward determining whether GHG emissions are significant, and will present mitigation measures to reduce impacts. The discussion and analysis will include quantification of GHGs generated by the project using ARB-approved CalEEMod computer model as well as a qualitative discussion of the project’s consistency with any applicable state and local plans to reduce the impacts of climate change. The De Novo team will work with City staff to implement a methodology and mitigation strategy that meets all legal requirements and is consistent with current City policies and preferences.

This section will provide an analysis including the methodology, thresholds of significance, a consistency analysis, cumulative impact analysis, and a discussion of feasible mitigation measures that should be implemented to reduce impacts associated with greenhouse gas emissions.

LAND USE AND PLANNING

This section will include a detailed discussion of the project entitlements as it relates to the existing General Plan, Zoning Code, and other local regulations. We will discuss and map the existing and planned land uses and the character of the region. The local, regional, state, and federal jurisdictions potentially affected by the project will be identified, as well as their respective plans, policies, laws, and regulations (including zoning), and potentially sensitive land uses. We will evaluate the proposed project for consistency the General Plan, the Zoning Ordinance, and any other relevant planning document. Planned development and land use trends in the region will be identified based on currently available plans. Reasonably foreseeable future development projects within the region will be noted, and the potential land use impacts associated with the project will be presented.

This section will provide an analysis including the methodology, thresholds of significance, a consistency analysis, cumulative impact analysis, and a discussion of feasible mitigation measures that should be implemented to ensure consistency with the existing and planned land uses.

NOISE

The De Novo Team includes Saxelby Acoustics, an acoustical consulting firm with exceptional local knowledge and experience. The scope of work includes the preparation of a noise study described in a previous task, which will be incorporated into this section of the EIR.

This EIR section will include a full discussion of any existing noise environment, an analysis of station noise generated by the project, including proposed loading docks, on-site truck circulation, parking lots, and any proposed mechanical equipment. We will also conduct an analysis of the noise and vibration impacts associated with construction of the project at existing sensitive receptors in the project vicinity. This section will include a comprehensive mitigation plan to address any potentially significant impacts identified.

TRANSPORTATION AND CIRCULATION

We plan to utilize the KD Anderson traffic report and addendum to prepare this section of the EIR. The Traffic Report includes a VMT analysis to comply with the requirements of SB 743, and a LOS Analysis for compliance with General Plan policy. This task does not include any new analysis.

UTILITIES AND SERVICES SYSTEMS

We understand that an engineer has been retained by the applicant to perform civil engineering for this project, and that the applicant’s plan has been engineered to City specifications. We will utilize the engineering design/calculations performed by the engineer in the preparation of this section of the EIR. This section will focus on wastewater, water, and storm drainage infrastructure, as well as other utilities (i.e. solid waste, gas, electric, etc.) that are needed to serve the proposed project. It is noted that these topics are relevant to the Utilities Department and the appropriate level of coordination will be performed to confirm that the plans are acceptable and that the project description is accurate. This section will provide an analysis, including the methodology, thresholds of significance, a consistency analysis, cumulative impact analysis, and a discussion of feasible mitigation measures that should be implemented to reduce impacts associated with utilities and service systems.

CUMULATIVE IMPACT SUMMARY

De Novo will analyze the environmental impacts of the project when viewed in combination with other known, approved, or reasonably foreseeable projects in the region. The cumulative analysis will address each topic covered in the environmental analysis and will identify appropriate mitigation measures for any significant impacts identified. This cumulative analysis will be based on a list of known projects in the region as well as forecasts.

ALTERNATIVES

De Novo will coordinate with City staff to formulate up to four (4) alternatives for analysis in the EIR as required by the CEQA Guidelines. Our efforts will result in an EIR that will include an examination of a range of reasonable alternatives that could feasibly achieve the basic objectives of the project.

The CEQA Guidelines require that a “No Project” alternative be analyzed among the range of alternatives. An alternative location must also be analyzed unless it is determined by the lead

agency that a feasible alternative location does not exist. If the lead agency determines that an alternative location does not exist, it must disclose the reasons for this conclusion in the EIR.

The alternatives section will provide a description and comparison of the alternatives. Finally, an environmental superior alternative will be selected. From our experience with similar EIRs, we will provide suggested alternatives for City staff to consider. Once the alternatives are initially formulated, they will be presented at the public scoping meeting and refined based on public input. (*Note: We do not anticipate the need to analyze the alternatives at an equal level to the proposed project.*)

OTHER CEQA REQUIREMENTS

The section will include the other required CEQA sections including issues previously determined to be less than significant, growth-inducing impacts, significant irreversible environmental effects, and a summary of significant and unavoidable impacts.

REPORT PREPARERS AND REFERENCES

This section will provide a list of all persons, agencies, and references used to prepare the EIR.

Deliverables: One (1) electronic copy of the Admin Draft EIR with appendices, in MS Word and PDF format. Hard copies can be prepared at time and materials if requested.

TASK F – PUBLIC DRAFT EIR AND NOTICE OF COMPLETION

Comments received from City staff regarding the Administrative Draft EIR will be incorporated into the Draft EIR for public circulation. De Novo will generate a “Screen-check” Draft EIR for a final staff review before we produce the document for public review. After the document is finalized, we will publish the document and distribute it with the proper notices to the State Clearinghouse. We will provide City staff with a copy to be filed by the City with the County Clerk, and a newspaper of regional circulation.

Deliverables: One (1) electronic copy of the Public Draft EIR with appendices, in MS Word and PDF format. Hard copies can be prepared at time and materials if requested.

TASK G – ADMINISTRATIVE FINAL EIR

Upon completion of the public review period De Novo will coordinate with City staff and prepare a written response to the public comments, and where necessary the appropriate revisions will be made to the EIR text. Any additional text will be marked in underline format and any deleted text will be marked in ~~strikeout~~ format. All responses will be prepared pursuant to Section 15088 of the State CEQA Guidelines and provided to Stockton staff for review.

We anticipate 20 or fewer comment letters, two to three pages in length. Excessively long comment letters, or those that are complicated and require a significant effort and/or additional analysis to respond to are considered outside the scope of work and cost estimate.

Deliverables: One (1) electronic copy of the Admin Final EIR with appendices, in MS Word and PDF format. Hard copies can be prepared at time and materials if requested.

TASK H – FINAL EIR AND MMRP

Comments received from City staff regarding the Administrative Draft Final EIR will be incorporated into the Final EIR for public circulation. De Novo will generate a “Screen-check” Final EIR for a final staff review before we produce the document for public review. After the document is finalized, we will produce the document and deliver it to the City for distribution.

This task will also include the preparation of a Mitigation Monitoring and Reporting Program (MMRP) pursuant to Section 21081.6 of the Public Resources Code. The MMRP will consolidate information contained in the environmental analysis, including the specific mitigation measure, the party responsible for implementation, the party responsible for monitoring, the time frame for implementation, and a section for confirmation of implementation.

Deliverables: One (1) electronic copy of the Public Final EIR with appendices, in MS Word and PDF format. Hard copies can be prepared at time and materials if requested.

TASK I – FINDINGS OF FACT/ OVERRIDING CONSIDERATIONS

De Novo will prepare the required CEQA Findings of Fact and Statement of Overriding Considerations pursuant to requirements of Sections 15091 and 15093 of the State CEQA Guidelines. These findings shall be prepared using Stockton’s format and will be provided to City staff for an administrative review. Comments received from staff regarding the Administrative Findings will be incorporated into a final version of the Findings for use by the City at the public hearings.

Deliverables: One (1) electronic copy of the findings.

TASK J – ATTENDANCE AT PLANNING COMMISSION/CITY COUNCIL MEETINGS

De Novo will attend up to two (2) public hearings, which includes a Planning Commission and City Council hearing. De Novo will be responsible for preparing any exhibits that may be necessary for display at these meetings, presentations, and responses to public comment. We anticipate that the Project Manager or Senior Planner will be required for each meeting. Technical support from other members is not included, but can be accommodated on a time and material basis.

TASK K – NOTICE OF DETERMINATION

Upon certification of the EIR De Novo will prepare a Notice of Determination for filing with the State Clearinghouse. The applicant will be responsible for paying the CDFW filing fees, which are approximately \$3,445.25, but are anticipated to increase on January 1, 2022. The applicant will also be responsible for paying the Clerk fee, which is \$50.

Deliverables: One (1) electronic copy of the NOD.

TASK L-ADMINISTRATION/PROJECT MANAGEMENT

This task includes time to administer the contract, invoicing, coordination with the City staff, developer team, and consultant team.

BUDGET AND SCHEDULE OF CHARGES

Task #	Task Description	McMurtry Project Manager \$175	Ritchie Prin. Planner \$175	Carroll Senior Planner \$135	Smith Senior Planner \$135	De Novo Support/GIS \$105	Direct Costs	Totals
	<i>Task J</i>	\$ 3,500.00	\$ -	\$ -	\$ -	\$ -	\$ 400.00	\$ 3,900.00
K Notice of Determination								
K.1	Prepare Notice of Determination	1.0						1.0
K.2	File with State Clearinghouse	1.0					\$ 75.00	1.0
	<i>Subtotal</i>	2.0	0.0	0.0	0.0	0.0		2.0
	<i>Task K</i>	\$ 350.00	\$ -	\$ -	\$ -	\$ -	\$ 75.00	\$ 425.00
L Administration/Project Management								
L.1	Project Management/Coordination	17.0	2.0	8.0	8.0			35.0
L.2	Administration	10.0	1.0	8.0	8.0	4.0		31.0
	<i>Subtotal</i>	27.0	3.0	16.0	16.0	4.0		66.0
	<i>Task L</i>	\$ 4,725.00	\$ 525.00	\$ 2,160.00	\$ 2,160.00	\$ 420.00	\$ -	\$ 9,990.00
De Novo Project Subtotals								
	Project Subtotal Hours	104.3	23.0	110.0	51.0	25.5		313.75
	Project Subtotal Cost	\$ 18,243.75	\$ 4,025.00	\$ 14,850.00	\$ 6,885.00	\$ 2,677.50	\$ 9,331.25	\$56,012.50
Total Project Cost								\$56,012.50



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 04/14/2022

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.

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.

PRODUCER: Cummins Insurance Agency, Inc. License # OC42488. CONTACT NAME: Cummins Insurance Agency. PHONE: 916-961-6000. FAX: 916-961-3046. INSURED: De Novo Planning Group, Steve McMurtry.

COVERAGES CERTIFICATE NUMBER: 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.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSD, SUBR WVD, POLICY NUMBER, POLICY EFF, POLICY EXP, LIMITS. Rows include Commercial General Liability, Automobile Liability, Umbrella Liab, Workers Compensation, and Professional Liab.

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

Re: EIR for Grocery Outlet Project
Additional Insured: City of Fort Bragg, its elected and appointed boards, officers, officials, agents, employees, and volunteers as per the attached.

CERTIFICATE HOLDER: CITYF-2, City of Fort Bragg, 416 N. Franklin Street. CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE: Denise B...



Primary and Non-Contributory Insurance

This endorsement, effective 4/8/2022 attaches to and forms a part of Policy Number FEI-ECC-14846-08. This endorsement changes the Policy. Please read it carefully.

SCHEDULE

1. Name and Address of Person or Organization (Additional Insured):

**City of Fort Bragg, its elected and appointed boards, officers, officials,
agents, employees and volunteers
416 N. Franklin St.
Fort Bragg, CA 95437**

2. Additional Premium: \$Applied

This insurance is primary with respect to the coverage afforded to the Additional Insured shown in the Schedule above by the following endorsement: ECC-535-0712

Any other insurance which the Additional Insured may have is excess and non-contributory.



Waiver Of Subrogation Endorsement

This endorsement, effective 4/8/2022 attaches to and forms a part of Policy Number FEI-ECC-14846-08. This endorsement changes the Policy. Please read it carefully.

In consideration of an additional premium of \$Applied, this endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART CONTRACTORS POLLUTION LIABILITY COVERAGE PART

SCHEDULE

Name and Address of Person or Organization:

**City of Fort Bragg, its elected and appointed boards, officers, officials,
agents, employees and volunteers
416 N. Franklin St.
Fort Bragg, CA 95437**

The Company waives any right of recovery it may have against the person or organization shown in the above Schedule because of payments the Company makes for injury or damage arising out of the *insured's* work done under a contract with that person or organization. The waiver applies only to the person or organization in the above Schedule.

Under no circumstances shall this endorsement act to extend the policy period, change the scope of coverage or increase the Aggregate Limits of Insurance shown in the Declarations.



Additional Insured – Owners, Lessees or Contractors

This endorsement, effective 4/8/2022 attaches to and forms a part of Policy Number FEI-ECC-14846-08. This endorsement changes the Policy. Please read it carefully.

In consideration of an additional premium of \$Applied, this endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART CONTRACTORS POLLUTION LIABILITY COVERAGE PART

SCHEDULE

Name and Address of Person or Organization:

**City of Fort Bragg, its elected and appointed boards, officers, officials,
agents, employees and volunteers
416 N. Franklin St.
Fort Bragg, CA 95437**

The person or organization shown in this Schedule is included as an insured, but only with respect to that person's or organization's vicarious liability arising out of your ongoing operations performed for that insured.



Amendment of Cancellation Notice Endorsement

This endorsement, effective 4/8/2022 attaches to and forms a part of Policy Number FEI-ECC-14846-08. This endorsement changes the Policy. Please read it carefully.

In consideration of an additional premium of \$Applied, this endorsement modifies insurance provided under the following:

Notwithstanding the appropriate provision of this policy, in the event cancellation of this policy is instigated by the Company for any reason except nonpayment of premium, the Company will endeavor to provide 30 days advance notice of such cancellation to the following:

**City of Fort Bragg, its elected and appointed boards,
officers, officials, agents, employees and volunteers
416 N. Franklin St.
Fort Bragg, CA 95437**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

SCHEDULE

Name Of Person(s) Or Organization(s):
City of Fort Bragg
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph **A.1.** of Section **II** – Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph **D.2.** of Section **I** – Covered Autos Coverages of the Auto Dealers Coverage Form.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – PRIMARY AND NON-CONTRIBUTORY ENDORSEMENT

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

SCHEDULE

Name of Person(s) or Organization(s):

City of Fort Bragg

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to the endorsement.)

A. **Who Is An Insured** for **COVERED AUTOS LIABILITY COVERAGE** is amended to include as an “insured” for Covered Autos Liability Coverage:

Each person or organization shown in the Schedule, but only to the extent that person or organization qualifies as an “insured”. The “accident” must arise out of ongoing operations performed for the Named Insured.

B. **Changes in CONDITIONS**

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to the person or organization named in the Schedule under your policy provided that:

- (1) The person or organization is a Named insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to them.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

SCHEDULE

Name(s) Of Person(s) Or Organization(s): City of Fort Bragg
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF OUR RIGHT TO RECOVER FROM
OTHERS ENDORSEMENT - CALIFORNIA**

Policy Number: 57 WEC ZO3688

Endorsement Number:

Effective Date: 04/29/21

Effective hour is the same as stated on the Information Page of the policy.

Named Insured and Address: DE NOVO PLANNING GROUP, INC.

1020 SUNCAST LN STE 106
EL DORADO HILLS CA 95762

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 2 % of the California workers' compensation premium otherwise due on such remuneration.

SCHEDULE

Person or Organization

Job Description

Any person or organization for whom you are required by written contract or agreement to obtain this waiver of rights from us

Countersigned by _____
Authorized Representative