

PROFESSIONAL SERVICES AGREEMENT

AGREEMENT

This Agreement is made and entered into this ____ day of August, 2019 by and between the CITY OF FORT BRAGG, a California Municipal Corporation, 416 N. Franklin Street, Fort Bragg, California, 95437 ("City"), and TJKM TRANSPORTATION CONSULTANTS, 3405 Hacienda Drive, Suite 550, Pleasanton, CA 94588 ("Consultant").

RECITALS

WHEREAS, City has determined that it requires the following professional services from a consultant: to prepare a traffic study for the Mill Site Reuse Plan; and

WHEREAS, Consultant represents and warrants that it is fully qualified to perform such professional services by virtue of specialized experience and training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, the legislative body of the City on August 12, 2019, by Resolution No. ____ - 2019 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, City and Consultant, for the consideration hereinafter described, mutually agree as follows:

1. CONTRACT DOCUMENTS

This Agreement consists of the following documents, all of which are incorporated into and made a part of the Agreement:

- a. Professional Services Agreement;
- b. Consultant's Proposal (Exhibit 1)

2. DESCRIPTION OF SERVICES OR SCOPE OF WORK

The services to be performed under this Agreement ("Services") are as follows: Preparation of a traffic and congestion study based on the maximum build-out of the City's proposed Mill Site Land Use Plan. The Services are further described in Consultant's proposal (the "Proposal"), which is attached to and made a part of this Agreement as Exhibit 1. Changes in the scope, character, or complexity of the Services, if such changes become desirable or necessary as the work progresses, shall be agreed upon by both parties in a written change order. For special cases where it is essential that the extra work be performed immediately, execution of a change order or

amendment to the Agreement covering the changes shall be completed as soon as possible.

3. TERM

The Agreement term will commence on August 13, 2019, and expire on September 30, 2020, unless the Agreement term is amended or the Agreement is terminated in accordance with its terms.

4. PAYMENT TERMS

a. City agrees to pay Consultant for Services that are actually performed in accordance with this Agreement. To be eligible for payment, Consultant invoices must be submitted not more often than monthly to the City and list the Services performed and the amounts to be paid according to the cost categories and prices in the Proposal.

b. NOT TO EXCEED CONTRACT: In no event will the City's obligation to pay the Consultant under this Agreement exceed **Sixty-four Thousand Nine Hundred Ninety Dollars (\$64,990.00)** (the "Not to Exceed Amount"), unless this Agreement is first modified in accordance with its terms. The Not to Exceed Amount includes salary, fringe benefits, overhead, profit, and all other expenses incurred by the Consultant in completing its Services under this Agreement.

c. [SECTION REMOVED.]

d. In accordance with California Government Code § 8546.7, if this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), this Agreement and the Consultant's books and records related to this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of four (4) years after final payment under the Agreement.

e. COST PRINCIPLES. The Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., are the governing factors regarding allowable elements of cost. Also the administrative requirements set forth in 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments are also included in this Agreement. This also applies to all subcontracts in excess of \$25,000.

5. TIME OF COMPLETION

Consultant must commence performance of the Services upon receipt of written direction to proceed from City. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 9 below and to satisfy Consultant's obligations hereunder. Consultant will complete the Services in accordance with this Agreement by **June 30, 2020** (the "Time of Completion"). 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.

6. INDEPENDENT CONTRACTOR

Consultant and City agree that the Consultant will perform the Services as an independent contractor and not as an employee or agent of the City. Persons employed or utilized by Consultant in the performance of the Services will not be employees or agents of the City. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

7. SUBCONTRACTING

a. The Consultant shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this Agreement shall be subcontracted out without written authorization by the City's Contract Manager, except that, which is expressly identified in the approved Cost Proposal.

b. Any subcontract in excess of \$25,000 entered into by the Consultant relating to this Agreement shall incorporate by reference all of the provisions of this Agreement and make them applicable to said subcontractor.

c. Consultant will be solely responsible for payment of such subcontracted Services.

d. Any substitution of subcontractors must be approved in writing by the City's Contract Manager.

e. Subcontractors are bound to Consultant and City in the same manner and to the same extent as Consultant is bound to City under the Agreement. Subcontractor further must agree to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

f. If the Consultant uses subcontractors, it must comply with Civil Code § 8814 and all other California law relating to the prompt payment of subcontractors.

8. RECORD RETENTION

For the purpose of determining compliance with Public Contracts Code §§ 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, §§ 2500 *et seq.*, when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code § 8546.7, the Consultant, subcontractors, and the City shall maintain all books, documents, papers, accounting records, and other evidence

pertaining to the performance of this Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement. The State, the State Auditor, City, Federal Highway Administration (“FHWA”), or any duly authorized representative of the federal government shall have access to any books, records, and documents of the Consultant and its subcontractors that are pertinent to the Agreement for audit, examination, excerpts, and transactions, and copies thereof shall be furnished if requested.

9. STANDARD OF PERFORMANCE

a. Consultant will perform the Services in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession and will prepare all work products required by this Agreement in accordance with such standards. Consultant will comply with federal, state, and local laws and regulations applicable to performance of the Services, including, but not limited to, the California Building Standards Code as in effect in the City, the Americans with Disabilities Act, any air pollution control laws and regulations applicable to Consultant, and any laws and regulations related to any copyright, patent, trademark, or other intellectual property right involved in performance of the services. Consultant's failure to comply with any law(s) or regulation(s) applicable to the performance of the services hereunder shall constitute a material breach of this agreement.

b. The Consultant should not substitute key personnel (Project Manager and others listed by name in the cost proposal) or subcontractors without prior written approval from the City. The Consultant must request and justify the need for the substitution and obtain approval from the City prior to use of a different subcontractor on the Agreement. The proposed substituted person or subcontractor must be as qualified as the original, and at the same or lower cost.

c. If this Agreement includes engineering services, the Consultant's Project Manager must be a registered Engineer in the State of California.

d. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

10. OTHER GOVERNMENTAL REGULATIONS

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.

11. USE OF RECYCLED PRODUCTS

Consultant shall endeavor to prepare and submit all reports, written studies, and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

12. INDEMNITY

To the maximum extent permitted by law, Consultant shall, at its own expense, indemnify, defend with counsel acceptable to the City (which acceptance will not be unreasonably withheld), and hold harmless City and its officers, officials, employees, agents, and volunteers ("Indemnitees") from and against any and all liability, loss, damage, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, claims expenses, attorneys' fees and costs and litigation costs) (collectively, "Liability") of every nature, whether actual, alleged or threatened, arising out of or in connection with the Services, or Consultant's failure to comply with any of the terms of this Agreement, regardless of any fault or alleged fault of the Indemnitees but excepting the sole negligence or willful misconduct of the Indemnitees.

The Consultant's obligation to indemnify, defend, and hold harmless under this provision shall not be excused because of the Consultant's inability to evaluate Liability, or because the Consultant evaluates Liability and determines that the Consultant is not or may not be liable. The Consultant must respond within 30 calendar days to any tender for defense and indemnity by the City, unless the time for responding is extended by an authorized representative of the City in writing. If the Consultant fails to accept tender of defense and indemnity within 30 calendar days, in addition to any other remedies authorized by law, so much of the money due or that may become due the Consultant under this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the matter subject to tender, or until the Consultant accepts the tender, whichever occurs first.

The Consultant waives any and all rights to express or implied indemnity against the Indemnitees concerning any Liability of the Consultant arising out of or in connection with the Services or Consultant's failure to comply with any of the terms of this Agreement.

Notwithstanding the foregoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code § 2783, as may be amended from time to time, Consultant's duty to indemnify under this provision shall not apply when to do so would be prohibited by California Civil Code § 2782, as may be amended from time to time.

Notwithstanding the foregoing, to the extent that the Services include design professional services subject to Cal. Civil Code § 2782.8, as amended from time to

time, Consultant's duty to indemnify shall only be to the maximum extent permitted by Civil Code § 2782.8.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement 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 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.

The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this agreement.

Consultant/subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

13. INSURANCE

a. Before commencing performance of the Services, Consultant, at its own cost and expense, must: (1) procure "occurrence coverage" insurance of the kinds and in the amounts specified below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services hereunder by the Consultant or its agents, representatives, employees, or subcontractors; and (2) submit to the City certificates of insurance and endorsements evidencing insurance coverage that meets the requirements of this section. Consultant must maintain the insurance policies required by this section throughout the Agreement term. The cost of such insurance must be included in the Consultant's proposal.

Consultant agrees to include with all subcontractors in their subcontract the same requirements and provisions of this Agreement including the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. The Consultant shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in this Agreement prior to commencement of any work and Consultant will provide proof of compliance to the City.

Consultant may not allow any subcontractor to commence work on the Services until Consultant and/or the subcontractor have obtained all insurance required by this Agreement for the subcontractor(s) and submitted certificates of insurance and endorsements evidencing such coverage to City.

b. Workers Compensation Insurance. Consultant must, at its sole cost and expense, maintain Workers' Compensation Insurance and Employer's Liability

Insurance for any and all persons employed directly or indirectly by Consultant. Workers' Compensation Insurance as required by the State of California, with coverage providing Statutory Limits, and Employer's Liability Insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence must be provided. The insurance must be endorsed to waive all rights of subrogation against City and its officials, officers, employees, and volunteers for loss arising from or related to the Services.

c. For the Term of this Agreement, Consultant, at its own cost and expense, must maintain: (1) commercial general liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, TWO MILLION DOLLARS (\$2,000,000.00) aggregate, combined single limit coverage for risks associated with Services; and (2) automobile liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit coverage. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Services or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include, but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

d. Except for Workers' Compensation insurance and Professional Liability insurance, all other insurance coverages required pursuant to this Agreement must include or be endorsed to include the following:

(1) City and its officials, officers, employees, agents, and volunteers ("Additional Insured") shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by Consultant. The coverage may contain no special limitations on the scope of protection afforded to City or its officials, officers, employees, agents, or volunteers.

(2) The Additional Insured coverage under the Consultant's policy shall be "primary and non-contributory" and Consultant's coverage will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

e. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.

f. The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

g. Insurance coverage required pursuant to this Agreement must include or be endorsed to include the following:

(1) Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

(2) Required insurance coverage may not be suspended, voided, canceled, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.

h. Consultant, at its own cost and expense, must maintain for the period covered by this Agreement professional liability insurance in an amount not less than TWO MILLION DOLLARS (\$2,000,000) covering errors and omissions. Any deductible or self-insured retention under the required professional liability insurance may not exceed \$150,000 per claim.

i. All insurance required under this Agreement must be placed with insurers with a Best's rating of no less than A:VII unless otherwise approved by the City.

j. The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverages, scope, limits, and forms of such insurance are either not commercially available, or that the City's interests are otherwise fully protected.

k. All self-insured retentions (SIR) must be disclosed to City for approval and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or by the City. City reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

l. To the extent this Agreement is a "construction contract" as defined by California Civil Code § 2783, as may be amended from time to time, Consultant shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following completion of the Services. In the event Consultant fails to obtain or maintain completed operations

coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Consultant.

14. NON DISCRIMINATION

During the performance of this Agreement, Consultant will not discriminate against any employee of the Consultant or applicant for employment because of race, religion, creed, color, national origin, gender, sexual orientation, or age. Consultant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, creed, color, national origin, gender, sexual orientation, or age.

15. [SECTION REMOVED.]

16. [SECTION REMOVED.]

17. LICENSES & PERMITS

a. BUSINESS LICENSE

Before the City will issue a notice to proceed with the Services, Consultant and any subcontractors must acquire, at their expense, a business license from City in accordance with Chapter 5.04 of the Fort Bragg Municipal Code. Such licenses must be kept valid throughout the Agreement term.

b. OTHER LICENSES AND PERMITS

Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions.

18. CONSULTANT REPORTS AND/OR MEETINGS

a. The Consultant shall submit progress reports at least once a month. The report should be sufficiently detailed for the Contract Manager to determine, if the Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.

b. The Consultant's Project Manager shall meet with the City's Contract Manager, as needed, to discuss progress on the contract.

19. DOCUMENTATION, OWNERSHIP OF WORK PRODUCTS, AND TREATMENT OF DOCUMENTS

a. Consultant shall document the results of the work to the satisfaction of the City, and if applicable, the State and FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the agreement objectives.

b. The Consultant shall sign all plans, specifications, estimates, and engineering data furnished by him/her, and where appropriate, indicate his/her California registration number.

c. All plans, specifications, reports, designs and other documents prepared by Consultant pursuant to this Agreement shall be and remain the property of the City. Any modification or reuse of such documents by the City without Consultant's prior consultation will be at the City's sole risk. Except as may be otherwise required by law, Consultant will disclose no data, plans, specifications, reports or other documents pertaining to the Services without the prior written consent of City.

20. DISPUTES

a. Any dispute, other than an audit, concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by a committee consisting of the City's Contract Manager and the City Manager, who may consider written or verbal information submitted by the Consultant.

b. Not later than thirty (30) days after completion of all work under the Agreement, the Consultant may request review by the City Council of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

c. Neither the pendency of a dispute, nor its consideration by the committee will excuse the Consultant from full and timely performance in accordance with the terms of this Agreement.

d. Should a dispute not be resolved by the procedures set forth above, then the parties must mediate the dispute before a mutually agreed upon neutral party within ninety (90) days of the completion of all Services under the Agreement. If mediation is not successful, the Consultant and City may pursue all rights and remedies available under California law.

21. TERMINATION AND REMEDIES

a. City or Consultant may terminate this Agreement for convenience by giving at least 30 days written notice to the other party specifying the termination effective date. Upon receipt of such notice from City, Consultant may continue performance of the Services through the date of termination. City shall pay Consultant for all Services actually performed in accordance with this Agreement through the termination effective date.

b. If Consultant materially breaches any term of this Agreement, in addition to any other remedies the City may have at law or equity, the City may:

(1) Terminate the Agreement by notice to the Consultant specifying the termination effective date;

(2) Retain, and/or recover from the Consultant at no additional cost to the City, the plans, specification, drawings, reports, and other design documents and work products prepared by Consultant, whether or not completed;

(3) Complete the unfinished Services itself or have the unfinished Services completed, and/or;

(4) Charge Consultant, or deduct from monies that may be due or become due the Consultant under this Agreement, the difference between the cost of completing the unfinished Services pursuant to this Agreement and the amount that would otherwise be due Consultant had Consultant completed the Services in accordance with this Agreement.

22. BINDING EFFECT AND ASSIGNMENT PROHIBITION

This Agreement is binding upon City, Consultant, and their successors. Except as otherwise provided herein, neither City nor Consultant may assign, sublet, or transfer their interest in this Agreement or any part thereof without the prior written consent of the other, and any purported assignment without such consent will be void.

23. REPRESENTATIVES

a. City Contract Manager for purposes of this Agreement will be Marie Jones, Community Development Director. Consultant's representative for purposes of this Agreement will be Colin Burgett, Project Manager. The parties' designated representatives will be the primary contact persons regarding the performance of the Services. The parties intend that their designated representatives will cooperate in all matters regarding this Agreement and in such manner so as to achieve performance of the Services in a timely and expeditious fashion.

b. Notices:

Any written notice to Consultant shall be sent to:

Colin Burgett
Project Manager
TJKM Transportation Consultants
4305 Hacienda Drive, Suite 550
Pleasanton, CA 94588

Any written notice to City shall be sent to:

Marie Jones
Community Development Director
City of Fort Bragg
416 N. Franklin Street
Fort Bragg, CA 95437

24. INTEGRATION AND AMENDMENT

This Agreement represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements between the parties, whether written or oral. If a discrepancy, disagreement, ambiguity, inconsistency, or difference in interpretation of terms arises as to terms or provisions of this Agreement and any Exhibit(s) attached to this Agreement, this Agreement shall control and shall be deemed to reflect the intent of the parties with respect to the subject matter hereof. This Agreement may only be amended by a writing signed by a representative authorized to bind the Consultant and a representative authorized to bind the City.

25. COVENANT AGAINST CONTINGENT FEES, REBATES, KICKBACKS, OR OTHER UNLAWFUL CONSIDERATION

a. The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the consultant, to solicit or secure this agreement; and that it has not paid or agreed to pay any company or person other than a bona fide employee any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this agreement. For breach or violation of this covenant, the City shall have the right to annul this agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

b. The Consultant warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration, either promised or paid to any City employee. For breach or violation of this warranty, City shall have the right in its discretion, to terminate the Agreement without liability, to pay only for the value of the work actually performed, or to deduct from the Agreement price, or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

c. The Consultant warrants and represents that it has not participated in any lobbying activities.

26. CONFLICT OF INTEREST PROHIBITION

City and Consultant will comply with the requirements of the City's Conflict of Interest Code adopted pursuant to California Government Code § 87300 *et seq.*, the Political

Reform Act (California Government Code § 81000 *et seq.*), the regulations promulgated by the Fair Political Practices Commission (Title 2, § 18110 *et seq.* of the California Code of Regulations), California Government Code § 1090 *et seq.*, and any other ethics laws applicable to the performance of the Services and/or this Agreement. Consultant may be required to file with the City Clerk a completed Form 700 before commencing performance of the Services unless the City Clerk determines that completion of a Form 700 is not required, pursuant to City's Conflict of Interest Code. Form 700 forms are available from the City Clerk.

Consultant may not perform Services for any other person or entity that, pursuant to any applicable law or regulation, would result in a conflict of interest or would otherwise be prohibited with respect to Consultant's obligations pursuant to this Agreement. Consultant agrees to cooperate fully with City and to provide any necessary and appropriate information requested by City or any authorized representative concerning potential conflicts of interest or prohibitions concerning Consultant's obligations pursuant to this Agreement.

Consultant may not employ any City official, officer, or employee in the performance of the Services, nor may any official, officer, or employee of City have any financial interest in this Agreement that would violate California Government Code § 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of City. If Consultant was an employee, agent, appointee, or official of City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code § 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for Consultant's performance of the Services, including reimbursement of expenses, and Consultant will be required to reimburse City for any sums paid to Consultant under this Agreement. Consultant understands that, in addition to the foregoing, penalties for violating Government Code § 1090 *et seq.* may include criminal prosecution and disqualification from holding public office in the State of California.

Any violation by Consultant of the requirements of this provision will constitute a material breach of this Agreement, and the City reserves all its rights and remedies at law and equity concerning any such violations.

27. APPLICABLE LAW AND VENUE

The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and the interpretation of this Agreement. Any action or proceeding that is initiated or undertaken to enforce or interpret any provision, performance, obligation or covenant set forth in this Agreement shall be brought in a state court in Mendocino County.

28. SEVERABILITY

If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged will remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

29. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, the parties have caused their authorized representative to execute this Agreement on the date first written above.

CITY

By: _____
Tabatha Miller
Its: City Manager

CONSULTANT

By: N. Amin
Nayan Amin
Its: President

[Attach Notary Acknowledgment Page]

ATTEST:

By: _____
June Lemos, CMC
City Clerk

APPROVED AS TO FORM:

By: _____
Keith F. Collins
City Attorney

Exhibit 1: Consultant's Proposal

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Santa Clara)

On 8/5 /2019 before me, Stephen Tinh Lam / Notary Public
(insert name and title of the officer)

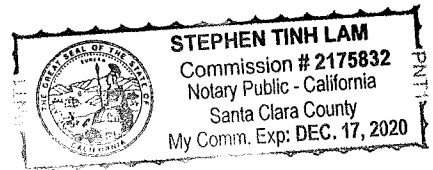
personally appeared NAYAD AMIN,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)



If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged will remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

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CITY

CONSULTANT

By: _____

Tabatha Miller

Its: City Manager

By: _____

Nayan Amin

Its: President

[Attach Notary Acknowledgment Page]

ATTEST:

By: _____

June Lemos, CMC

City Clerk

APPROVED AS TO FORM:

By: Keith Collins

Keith F. Collins

City Attorney

Exhibit 1: Consultant's Proposal

SCOPE OF WORK

PROJECT UNDERSTANDING

Located on California's Mendocino Coast and famous for its Glass Beach, Fort Bragg is a town of new opportunities. In the past, the City has largely been dependent on the timber and fishing industries but after the Georgia-Pacific lumber mill ceased its operation in 2002 and decline in the fishing industry, the City is looking for new ways to boost its economy. The availability of the 420 acres of the mill site for redevelopment has enabled the City to develop into a waterfront community.

In 2003, the Coastal Conservancy awarded the City an urban waterfront grant to plan for reuse of the Georgia-Pacific mill site and regain access along the coast. The City of Fort Bragg intends to redevelop the 420 acres site into a sustainable community and working town (Mill Site Reuse Plan, Community Survey Analysis Report). The City has already completed the development of 115 acres for the Noyo Headlands Park into a passive recreation facility. The City is now geared towards the rezoning of the remaining 295 acres with a mix of zoning types.

It is our understanding that the land use plan for the Mill Site is under consideration and will be finalized in the upcoming two months. The City has completed a build-out analysis for the proposed zoning and the maximum level of development intensity. The redevelopment of the Mill Site will be intended to maximize local benefits from tourism in the area. As part of this effort: the City would like to conduct a transportation study along Highway 1 and Highway 20 that provides access and are major thoroughfares for the region and City of Fort Bragg. The purpose of the study is to determine:

- Determine the effect of the proposed Mill Site development on the multi-modal transportation system, including potentially significant transportation impacts taking into account upcoming changes to CEQA requirements including an assessment of vehicle miles traveled (VMT); and
- Determine the effect of the proposed Mill Site development on intersection level of service (LOS) and corridor congestion with maximum build-out of the proposed Mill Site Reuse Plan at key intersections; and
- Provide any recommended changes to the Mill Site circulation plan, as well as any recommended changes to the local Circulation Element of the Coastal General Plan.
- Include best practices in transportation planning that will complement the city's vision for smart growth and compact development policies.

WORK PLAN

Task 1: Project Management

TJKM's Project Manager, Mr. Colin Burgett will coordinate all tasks with the City, including establishing and updating schedules and ensuring that the work is successfully completed. This will include conducting a monthly check-in conference call and reporting any issues related to performance, schedule or budget. He will be available to the City on short notice and will be responsible for the day-to-day coordination and activities of the project. Colin has hands-on experience as a senior-level project manager with over two decades of experience.

Task 2: Existing Document Review

Under this task, TJKM will review relevant planning and transportation studies and plans, including but not limited to the following:

- Proposed Land Use Plan
- Maximum build-out analysis for the former GP Mill Site
- Proposed Coastal General Plan Amendment (Circulation Element)
- Mendocino County General Plan (Transportation and Circulation Element)

In addition to the above the TJKM Team will also review some of the major development projects within the City of Fort Bragg. We will also identify, collect and review additional documents from regional agencies and



surrounding cities. The review will be summarized to highlight relevant policies, programs and actions and also identify any gaps that needs to be addressed for the Traffic and Congestion Study.

Task 3: Kick-Off Meeting

TJKM will meet with the City staff following authorization to proceed on the project. We will prepare an agenda for the Kick-Off meeting and distribute it in advance. The purpose of the Kick-Off meeting is to discuss the project background, scope, concepts, schedule and management; particularly the proposed land-use plan, maximum build-out analysis, proposed circulation network.

At this meeting, TJKM will describe the process to be used in data collection and will request any available relevant information from the City and ascertain any study details that have not been discussed. TJKM suggests that representatives of community development, engineering and maintenance functions be present. We will prepare and distribute the minutes of the Kick-Off meeting.

Task 4: Methodology

TJKM is very familiar with the emerging and evolving requirements of SB 743 and recent updates to CEQA guidelines that specify that shift from LOS to VMT for CEQA traffic impact analysis purposes must be made by July 2020. The shift from LOS to VMT as a performance metric is intrinsically intertwined with regional travel patterns, including the establishment of significance thresholds and baselines.

TJKM recently assisted the City of Seaside in conducting a VMT analysis for both the city's General Plan update and for near-term development included in the CampusTown Specific Plan. Similarly, TJKM assisted the City of Menlo Park in evaluating VMT for both the Facebook Campus Expansion and General Plan update. Selection of an appropriate significance threshold for VMT impacts is a key part of the process, and state guidelines grant local jurisdictions discretion in choosing a methodology and threshold.

TJKM will collaborate with the City to explore ways to adopt policies and implemented VMT thresholds that address the state requirements to use VMT as a performance metric and basis for traffic impacts under CEQA. In addition, we will provide recommendations concerning multi-modal impact thresholds (i.e., impacts to bicycle, pedestrian and/or transit circulation).

Deliverables:

- ✓ *Technical Memorandum describing the recommended VMT approach, methodology and multi-modal impact thresholds.*

Task 5: Mobility & Congestion Analysis

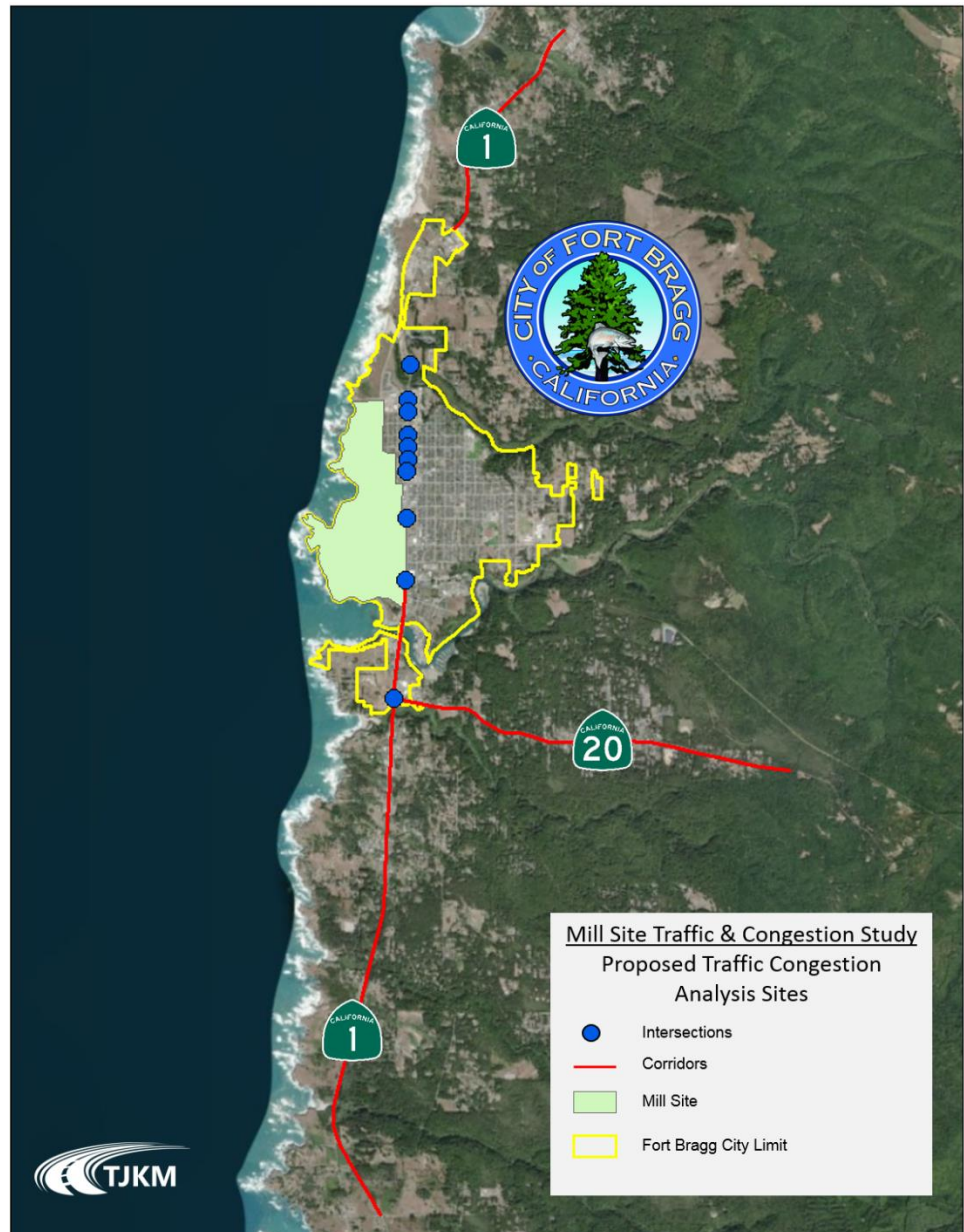
TJKM will conduct a Mobility and Congestion Analysis to identify recommended changes to improve multi-modal circulation, and to identify potentially significant transportation impacts consistent with upcoming changes to CEQA requirements.

In addition, although intersection LOS will no longer be required for CEQA purposes when the upcoming changes take effect in July 2020, the Mobility & Congestion Analysis will include an evaluation of level of service (LOS) impacts to study intersections. TJKM will calculate the intersection LOS for the study intersections using the latest approved Highway Capacity Manual (HCM) methodology.

The Mobility & Congestion Analysis will include an assessment of potential impacts on transit, pedestrian and bicycle circulation, and internal circulation.

The Mobility & Congestion Analysis will be calculated for the following scenarios:

- **Existing Conditions:** In this scenario, the existing multi-modal circulation pattern will be evaluated.
- **Existing plus Project Conditions:** In this scenario, potential impacts will be based on the proposed design of the Mill Site project and the anticipated addition of project trips to the surrounding transportation network at full buildout, as well as potential transportation impacts that could result from proposed physical improvements under the proposed project. This will include an impact assessment based on vehicle miles traveled (VMT).
- **Cumulative (2040) Conditions:** In this scenario, travel volumes will be forecasted to 2040 conditions based on the Regional Travel Demand Model without the Mill Site project. The forecasting will be based on the land use and socioeconomic projections considering the past trends.
- **Cumulative plus Project Conditions:** In this scenario, potential impacts will be based on the addition of project trips resulting from full build-out of the Mill Site to the forecasted traffic, as well as potential transportation impacts that could result from proposed physical improvements under the proposed project.



Trip Generation Forecast

TJKM will prepare a forecast of net vehicle trips that would be generated by the project, for use in evaluating intersection LOS and segment operations based on the new vehicle trips that will be generated by the Project. The vehicle trip generation forecast will take into account pass-by trips and internal trips, both of which would reduce the net increase in trips resulting from the Mill Site development.

Intersection Level of Service Analysis

The TJKM Team will conduct morning (7:00 a.m. to 9:00 a.m.) and evening (4:00 p.m. to 6:00 p.m.) peak period counts of motor vehicle, pedestrian and bicycle volumes at each study intersection, to be conducted on a Friday per the RFP. In addition, weekend counts will be conducted on Saturday from 10:00 a.m. to 3:00 p.m. The intersection count data will be included in the appendices to the final report. TJKM will evaluate intersection LOS under each scenario, and will also provide recommendations relevant to bicycle and pedestrian circulation at each study intersection. The anticipated list of study intersections is as follows:

- Main Street and Elm Street
- Main Street and Spruce Street
- Main Street and Fir Street
- Main Street and Pine Street
- Main Street and Laurel Street
- Main Street and Redwood Street
- Main Street and Maple Street
- Main Street and Cypress Street
- Highway 1 and Highway 20
- Highway 1 and Pudding Creek Road

Multi-Modal & Segment Impacts

The TJKM Team will conduct segment counts of daily traffic, and TJKM will conduct segment analysis taking into account conditions for all modes of travel, and assessing the effect of the Mill Site development on each of those modes. This will include an evaluation of collision data on the corridor, and the severity of collisions relevant to each model of travel.

TJKM will evaluate ADT, travel time and speed data from sources such as Census, INRIX, Streetlight and Caltrans reports as available. Travel mode based information including truck traffic will be collected to ensure in-depth analysis of the existing conditions. The data collected under this subtask will be compiled in a number of shapefiles organized by data features and attributes. The data will be made available to the City in Microsoft Excel and all GIS maps or other original software formats.

Study Segments

- Highway 1 between Cypress Street and Highway 20
- Highway 1 between Highway 20 and the Hare Creek Bridge
- Highway 1 between Hare Creek and Fern Creek Road
- Highway 1 between the northern City limits of Fort Bragg and Cleone
- Highway 20 west of Highway 1 (approximately 3-mile segment)

The level of congestion is dependent on the average speed of traffic on the segment during the peak periods. The level of congestion will be determined based on the HCM standards in each travel direction during both weekday and weekend peak period. The analysis of congestion shall be consistent with the requirements of the Coastal Act.



Vehicles Miles Travelled

The VMT measures the amount and distance of automobile travel attributable to the proposed project. There are various methods available for the calculation and evaluation of VMT. These approaches fall into several categories:

- Reduce trip generation and VMT estimates by removing trips that are not new. For example: only a portion of VMT generated by tourists and hotel guests would be considered “net new” VMT. Rather, in many cases the effect of a new hotel on tourist VMT is often limited to redistributing VMT by tourists. Retail development often has a similar effect.
- Use statistical models to derive estimates for net VMT based on project and context characteristics.
- Utilize census data for estimating home-to-work trip lengths for employment-related trips.
- Use separate elasticities for specific project or context characteristics to derive reduced estimates for VMT.

TJKM proposes a use of combination of these approaches and utilization of tools such as URBEMIS (Urban Emissions Model), VMT+, Caltrans’ California Statewide Travel Demand Modal, California Smart Growth Trip Generation (SGTG) Adjustment Tool, Sketch 7, and Urban Footprint.

Task 6: Recommended Changes to Circulation Plan

On the basis of Mobility & Congestion Analysis and the requirements of the Coastal Act, Caltrans standards and the city’s Coastal General Plan, TJKM will provide recommendations for updating the Mill Site circulation plan, as well as recommendations concerning updates to the Circulation Element of the City’s Coastal General Plan to conform to State legislation adopted in recent years concerning VMT and complete streets.

Task 7: Draft Report

TJKM will prepare an Administrative Draft Report summarizing the results of the Mobility & Congestion Analysis and Recommended Changes to the Circulation Plan, including technical appendices, for staff review and comment.

Deliverables:

- ✓ *Administrative Draft Report*

Task 8: Final Report

TJKM will submit a final report that is responsive to staff comments on the administrative draft report.

Deliverables:

- ✓ *Final Report*

Task 9: Presentation to the City Council

TJKM will prepare and deliver a summary presentation to the City Council of the key findings of the study as well as any recommended changes to the Land Use Plan and the Circulation Element of the Coastal General Plan.

Deliverables:

- ✓ *Presentation to the City Council*

Task 10: Electronic & Paper Copies

TJKM will submit both electronic and hard copies of the finished product in PDF and Microsoft Word, and all GIS maps or other original software formats, including three printed copies of the final report.

Deliverables:

- ✓ *Electronic and Paper Copies*

