



**MEMORANDUM
PUBLIC WORKS
TRANSPORTATION DIVISION**
County of Placer

TO: Honorable Board of Supervisors **DATE:** September 28, 2021
FROM: Ken Grehm, Director of Public Works
BY: Katie Jackson, Associate Civil Engineer
SUBJECT: Vehicle Miles Traveled Evaluation Tool Support / Agreement with the Town of Loomis

ACTION REQUESTED

Approve and authorize the Director of Public Works, or designee, to execute an Agreement with the Town of Loomis for ongoing support associated with Placer County Vehicle Miles Traveled Evaluation Tool.

BACKGROUND

As required by Senate Bill (SB) 743 and the California Environmental Quality Act (CEQA) Guidelines, Placer County has begun using Vehicle Miles Traveled (VMT) as an evaluation metric for land development and other projects that are subject to CEQA. As part of the SB 743 Implementation Plan, Placer County developed the VMT Evaluation Tool. The Tool is a web-based application that is intended to provide screening and evaluation guidance for land development projects. The Tool estimates VMT rates for certain land use types. It covers unincorporated Placer County, along with the City of Colfax and Town of Loomis.

The Town of Loomis provided a financial contribution for the development of the VMT Evaluation Tool to facilitate application within the Town's jurisdiction. The County is the owner of the VMT Evaluation Tool. This agreement would provide the Town with a limited license to use the VMT Evaluation Tool moving forward. The Town of Loomis and Placer County agree to work together to keep the VMT Evaluation Tool updated and functional. The agreement was executed by the Town on August 31, 2021. A similar agreement with the City of Colfax was authorized by the Board on June 8, 2021.

ENVIRONMENTAL IMPACT

The execution of this agreement is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15378(b)(5) which exempts administrative activities of governments that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

There is no cost associated with this agreement.

ATTACHMENTS

VMT Agreement with the Town of Loomis

AGREEMENT BETWEEN THE COUNTY OF PLACER AND THE TOWN OF LOOMIS

This Agreement is entered into on _____ between the County of Placer, a political subdivision of the State of California (hereinafter "County") and the Town of Loomis (hereinafter "Town", collectively "Parties").

Whereas, Placer County and the Town contracted with Fehr & Peers to assist in developing an online tool for evaluating vehicle miles traveled ("VMT") for proposed development projects ("VMT Tool") within unincorporated Placer County, the Town of Loomis, and the City of Colfax; and

Whereas, the Town contributed funding for the development of the VMT Tool; and

Whereas, the County owns the VMT Tool and is providing the Town with a limited license to use the VMT Tool while this Agreement is in place;

Whereas, the Parties wish to memorialize their commitment to mutually maintain and support the VMT Tool moving forward.

Therefore, it is agreed by the Parties to this Agreement as follows:

1. Term

Subject to the terms and conditions herein, the term of this Agreement shall become effective _____, 2021 and shall remain in full force and effect until terminated as hereinafter provided. The Parties may update the maintenance and hosting costs through the written Agreement of authorized representatives of each Party.

2. Permitted Use of the VMT Tool; Disclaimer

The Town is authorized to use the VMT Tool, which includes access to data, and authorization to make changes to data within the Town's jurisdiction and other jurisdiction-specific inputs (i.e. thresholds, mitigation measures, or other inputs that apply to the Town only).

3. Town Data

All data input by the Town will remain in the tool unless/until this Agreement ends or is terminated. The Town will retain the rights to its data. At the end of the Agreement or in the event of termination, Town will be given a reasonable opportunity to download, copy, and/or transfer its data out of the Tool. The Town will be responsible for the financial cost of removing Town data from the Tool.

4. Cooperation, Collaboration, Contribution

Town and County will cooperate with each other and with Fehr & Peers to support the functionality of the VMT Tool, and Town specifically agrees to work in good faith with the County to keep the VMT Tool updated and functional

The County will fund the cost of maintenance and hosting of the VMT Tool for the term of this Agreement, which is anticipated to be approximately \$6,000 per year.

To the extent there are other costs associated with the VMT Tool, including but not limited to updates or fixes, the Parties will meet and confer, and unless otherwise agreed to in writing, contribute on a pro rata basis, based on population; provided, however, that the Town's prior written consent shall be required before any such additional costs are incurred. An example of a cost that would not be split on a pro rata basis would be the cost for service that benefits one of the jurisdictions exclusively. In that case, the jurisdiction receiving the benefit would be expected to cover the cost, unless the Parties otherwise agree in writing.

5. Merger Clause; Amendments

This Agreement, including the Exhibits and Attachments, constitutes the sole Agreement between the Parties and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments to this Agreement shall be in writing and signed by the parties.

6. Warranty Disclaimer

A. Fehr & Peers and Placer County shall retain all rights, titles, and interests in the VMT Tool and its content, as well as all inventions, improvements, discoveries, methodologies, models, formats, software, algorithms, processes, procedures, designs, specifications, findings, other intellectual properties developed, gathered, compiled, or produced by Fehr & Peers in developing the Tool, or which is otherwise incorporated in the VMT Tool.

B. Fehr & Peers and Placer County make no promise and give no guaranty regarding the accuracy, completeness, reliability, or functionality of the VMT Tool. Fehr & Peers and Placer County do not assume responsibility for any impact that the use of the VMT Tool may have on your or any third party's operational environment or CPU performance. Fehr & Peers and Placer County does not promise that the VMT Tool, Fehr & Peers' server, or Fehr & Peers' other electronic, digital, computing, or communication system, is free of bugs, viruses, Trojan horses, or other harmful, unlawful, or malicious materials. Fehr & Peers may change the data, functionality, interface, or availability of the VMT Tool at any time in its sole discretion.

C. THE VMT TOOL AND ANY ASSOCIATED DOCUMENTATION ARE MADE AVAILABLE "AS IS," WITHOUT ANY WARRANTY OF ANY KIND. THERE IS NO WARRANTY THAT THE TOOL OR DOCUMENTATION WILL MEET YOUR EXPECTATIONS OR REQUIREMENTS, OR THAT THE OPERATION OF THE TOOL WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE TOOL WILL FUNCTION AS DESCRIBED IN THE DOCUMENTATION. FEHR & PEERS AND THE COUNTY OF PLACER HEREBY DISCLAIM ANY AND ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR INFRINGEMENT. IN NO EVENT WILL FEHR & PEERS OR THE COUNTY OF PLACER HAVE ANY LIABILITY TO YOU OR ANY OTHER PARTY FOR ANY LOSSES OR DAMAGES YOU MAY SUFFER DIRECTLY OR INDIRECTLY, OR FOR ANY EXPENSE OR COSTS YOU MAY INCURRED, IN CONNECTION WITH THE USE OF THE TOOL. FEHR & PEERS AND THE COUNTY OF PLACER SHALL HAVE NO LIABILITY TO YOU OR ANY OTHER PARTY FOR LOST DATA, LOST PROFITS, BUSINESS INTERRUPTION, TIME, MONEY, GOODWILL AND

ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, ARISING OUT OF THE USE OR INABILITY TO USE THE TOOL, EVEN IF YOU HAVE ADVISED FEHR & PEERS AND THE COUNTY OF PLACER OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. YOUR SOLE AND EXCLUSIVE REMEDY SHALL BE TO TERMINATE THE USE OF THE TOOL.

7. Termination

A. Termination for Convenience. Either Party may terminate this agreement without cause by providing 30 days advance written notice to the other. The Agreement will terminate at the completion of the 30-day period without further action. Town will be entitled to access the VMT Tool until termination.

B. Termination for Cause. Either party may terminate this agreement for cause. To terminate for cause, the terminating party must give the other party written notice of the alleged breach. The responding party has five (5) business days after receipt of notice to respond and a total of ten (10) calendar days after receipt of such notice to cure the alleged breach. If the responding party fails to cure the breach within this period, the terminating party may immediately terminate this Agreement without further action.

8. Relationship of Parties

Both Parties acknowledge that this Agreement does not create any employment relationship between their respective staff.

9. Hold Harmless & Indemnification

The Town agrees to protect, defend, indemnify, and hold the County free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by PLACER COUNTY arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the COUNTY) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of, the contract or agreement. TOWN OF LOOMIS agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the TOWN OF LOOMIS. TOWN OF LOOMIS also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against TOWN OF LOOMIS or the COUNTY or to enlarge in any way the TOWN OF LOOMIS liability but is intended solely to provide for indemnification of PLACER COUNTY from liability for damages or injuries to third persons or property arising from TOWN OF LOOMIS performance pursuant to this contract or agreement.

As used above, the term PLACER COUNTY means Placer County or its officers, agents, employees, and volunteers.

10. Insurance

It is agreed that TOWN OF LOOMIS and COUNTY shall each maintain at all times during the performance of this Agreement insurance coverage or self-insurance in the amounts of not less than One Million Dollars (\$1,000,000) to cover all of its operations. Specifically, but not limited to

not less than One Million Dollars (\$1,000,000) general liability, One Million Dollars (\$1,000,000) automobile Liability, One Million Dollars (\$1,000,000) workers' compensation, and One Million Dollars (\$1,000,000) professional liability (E&O).

11. Governing Law; Jurisdiction; Venue

The Parties enter into this Agreement in the County of Placer, California. The laws of the State of California shall govern its interpretation and effect. The parties agree that Placer County Superior Court is the proper venue for any dispute related to the Agreement.

12. Notices

Any notice, request, demand, or other communication required or authorized under this Agreement shall be deemed to be properly given when:

- A. Delivered personally to the person below, as of the date of delivery; or
- B. Mailed to the physical address listed below by U.S. Mail or similar service, with postage prepaid and properly addressed, as of the date of postmark.

In the case of County, to:

Name, Title: Katie Jackson, Associate Civil Engineer
Address: 3091 County Center Drive, Suite 220, Auburn, CA 95603
Telephone: (530) 745-7521
Email: kjackson@placer.ca.gov

In the case of Town, to:

Name, Title: Merrill Buck, Town Engineer
Address: 3665 Taylor Road
Telephone: (916) 824-1518
Email: townengineer@loomis.ca.gov


13. Counterparts; Electronic Signature

This Agreement may be executed in duplicate counterparts. Each counterpart shall be an original and both together shall constitute but one and the same document. This Agreement shall not be deemed executed unless and until at least one counterpart bears the signatures of all parties' designated signatories.

In addition, this Agreement and future documents relating to this Agreement may be digitally signed in accordance with California law. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement as of the day first above stated:

TOWN OF LOOMIS ("TOWN")



Sean Rabé, Town Manager


Date: 8/31/21

COUNTY OF PLACER ("COUNTY")

Ken Grehm, Director
Department of Public Works

Date: _____

Approved as to Form
Town Attorney



Jeffrey A. Mitchell

Date: 8/31/21

Approved as to Form
Office of Placer County Counsel

Print Name

Date: _____