

Attachment A

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**ASSOCIATION OF MONTEREY BAY AREA GOVERNMENTS
REGIONAL TRAVEL DEMAND MODEL USE AGREEMENT**

THIS AGREEMENT is entered into on this 7th day of May, 2024, by and between ASSOCIATION OF MONTEREY BAY AREA GOVERNMENTS, a California Joint Powers Agency (hereinafter referred to as "AMBAG"),

Fehr & Peers EMC Planning Group, Inc.

(hereinafter referred to as "CONSULTANT or USER"),

County of Monterey

(hereinafter referred to as "PUBLIC AGENCY or PROJECT SPONSOR").

WITNESSETH

WHEREAS, AMBAG has developed a Regional Travel Demand Model (hereinafter referred to as "MODEL") which consists of electronic model files, data files, GIS files as well as other documentation; and

WHEREAS, AMBAG established a Validation Data Set as updated for the 2045 MTP and makes available the MODEL for the below-referenced project; and

WHEREAS, AMBAG approved a 2022 regional population, housing units and employment forecast through 2045 which has been incorporated into this model; and

WHEREAS, CONSULTANT/USER/PUBLIC AGENCY/PROJECT SPONSOR wishes to use AMBAG's MODEL for

Moss Landing Community Plan Update

(hereinafter referred to as "PROJECT"); and

WHEREAS, CONSULTANT/USER/PUBLIC AGENCY/PROJECT SPONSOR represents that they are professionally qualified to use AMBAG's MODEL.

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:

1. TERM OF AGREEMENT

The term of this Agreement is for a period of 18 month(s) commencing May 7, 2024 and terminating November 7, 2025.

2. **CONSIDERATION**

AMBAG's MODEL is being provided to CONSULTANT/USER/PUBLIC AGENCY/PROJECT SPONSOR for use on the above-referenced PROJECT at no cost.

3. **SCOPE OF AMBAG SERVICES**

- A. AMBAG is to provide CONSULTANT/USER/PUBLIC AGENCY/PROJECT SPONSOR with a copy of AMBAG's MODEL and technical documentation for use on the PROJECT .
- B. AMBAG, ITS AFFILIATES, SUBCONTRACTORS AND REPRESENTATIVES MAKE NO WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM ANY WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE MODEL.

4. **CONSULTANT/USER/PUBLIC AGENCY/PROJECT SPONSOR AGREE AS FOLLOWS:**

- A. To only install, operate and use the MODEL on a computer system owned, leased or otherwise controlled by USER in its own facilities.
- B. To use and execute all portions of the MODEL on such computer systems for the limited purpose of the identified PROJECT unless prior written approval of AMBAG is obtained by CONSULTANT/USER/PUBLIC AGENCY/PROJECT SPONSOR.
- C. To use the most current release of the AMBAG MODEL and related data as determined by AMBAG in its sole discretion at the time the MODEL is requested for PROJECT unless written approval by AMBAG to use an earlier dataset is first obtained.
- D. To accept the sole responsibility for determining the suitability of the AMBAG MODEL and related data for use on the above-referenced PROJECT. AMBAG makes no warranty on the results, policies or decisions derived from these data for the PROJECT or any project, study or program not conducted by AMBAG. AMBAG accepts no liability for the results of the model applications.
- E. Any use, copying, distribution, adaptation or public display of the MODEL by USER not authorized by this Agreement shall automatically terminate USER's rights hereunder. Use of the MODEL on processors accessible through communications networks through terminals and devices not on premises owned or controlled by USER is prohibited unless otherwise agreed in writing by AMBAG.

- F. USER agrees not to make modifications, or additions to the MODEL without the prior written approval of AMBAG. In the event USER makes modifications, additions or updates after receiving written approval from AMBAG, USER shall promptly notify AMBAG of and make available to AMBAG all modifications, additions, or updates USER makes to the MODEL and shall grant AMBAG a perpetual, royalty-free license to use, reproduce, sublicense, and to otherwise make available to third parties the MODEL as modified, and to modify such modifications, additions, or updates.

- G. Title to the MODEL, including all modifications, additions, deletions, input and output file additions and modifications, updates, copies and derivative works thereof by USER, shall be in and remain with AMBAG. USER hereby assigns to AMBAG ownership of all such modifications, additions, deletions, input and output file additions and modifications, updates, copies and derivative works.

- H. To provide AMBAG access, upon request and/or upon completion, to electronic files and a copy of documentation, of the PROJECT. Failure to provide AMBAG access to electronic files and a copy of the PROJECT documentation through administrative draft working stages and failure to provide AMBAG the files themselves for draft and later PROJECT stages, as either requested by AMBAG or upon PROJECT completion, shall immediately terminate the rights of CONSULTANT/USER/PUBLIC AGENCY/PROJECT SPONSOR to use the AMBAG MODEL and related data for this PROJECT and/or future projects.

Nothing herein is intended to require the administrative draft of any environmental document for the PROJECT or the CONSULTANT/USER/PUBLIC AGENCY/PROJECT SPONSOR's internal deliberative processes to be provided or released for public review.

- I. Not to use, or claim to use, the AMBAG MODEL without the prior written consent of AMBAG. Prior to granting consent, AMBAG shall have sole discretion to examine all of the input data and process(es) including any modifications or adjustments to the AMBAG MODEL to determine if it is consistent with AMBAG standards.

- J. CONSULTANT/USER/PUBLIC AGENCY/PROJECT SPONSOR AGREES THAT ITS SOLE REMEDY AGAINST AMBAG, ITS AFFILIATES, SUBCONTRACTORS AND REPRESENTATIVES FOR LOSS OR DAMAGE CAUSED BY ANY DEFECT OR FAILURE OF THE MODEL, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, SHALL, TO THE EXTENT FEASIBLE (AS DETERMINED SOLELY BY AMBAG) BE THE REPAIR OR REPLACEMENT OF THE MODEL. IN NO EVENT SHALL AMBAG, ITS AFFILIATES, SUBCONTRACTORS OR REPRESENTATIVES BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL OR

CONSEQUENTIAL DAMAGES, OR FOR LOST PROFITS, SAVINGS, OR REVENUES OF ANY KIND, OR FOR LOST DATA OR DOWNTIME, WHETHER OR NOT AMBAG, ITS AFFILIATES, SUBCONTRACTORS OR REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

5. USE OF THE PROJECT MODEL

- A. CONSULTANT/USER/PUBLIC AGENCY/PROJECT SPONSOR shall include the following statement in any document that makes use of these data, either in whole or in part:

“AMBAG makes no warranty, express or implied, on the results or opinions derived from these data for any PROJECT study not conducted by AMBAG.”

- B. If the data files are used without modification or adjustment, as verified by AMBAG, the PROJECT study shall indicate use of the AMBAG MODEL.
- C. If the data files are used with modification or adjustment, unless those modifications are made by AMBAG, USER shall disclose in any document, plan, policy or program using the results of the modified MODEL, either in whole or in part, that those results are not the product of the AMBAG MODEL, rather that they are a product of an adjusted AMBAG MODEL. Those adjustments shall be disclosed to any user of the modeling results.

6. OWNERSHIP OF WORK PRODUCT

- A. Ownership of the AMBAG MODEL and any computer codes, customized computer routines developed using proprietary or commercial software packages, and other spreadsheets, databases and routines developed for the purpose of generating existing and forecast volumes for the AMBAG MODEL shall vest with AMBAG. Ownership of study reports, data, studies, surveys, charts, maps, figures, photographs, negatives, memoranda, and any other documents which are developed, compiled, or produced as a result of this Agreement, whether or not completed, shall vest with AMBAG and PUBLIC AGENCY.
- B. Methodology, materials, software, logic and systems developed under this Agreement are the property of AMBAG, and may be used as AMBAG sees fit, including the right to revise or publish the same without limitation.

7. INDEMNIFICATION

- A. The CONSULTANT/USER/PUBLIC AGENCY/PROJECT SPONSOR agrees, to the fullest extent permitted by law, to indemnify and hold harmless the AMBAG, its officers, directors and employees (collectively, AMBAG) against all damages,

liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the CONSULTANT/USER/PUBLIC AGENCY/PROJECT SPONSOR's negligent performance of professional services under this Agreement and that of its sub-consultants or anyone for whom the CONSULTANT/USER/PUBLIC AGENCY/PROJECT SPONSOR is legally liable.

AMBAG agrees, to the fullest extent permitted by law, to indemnify and hold harmless the CONSULTANT/USER/PUBLIC AGENCY/PROJECT SPONSOR, its officers, directors, employees and sub-consultants (collectively, CONSULTANT/USER/PUBLIC AGENCY/PROJECT SPONSOR) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by AMBAG's negligent acts in connection with the PROJECT and the acts of its contractors, subcontractors or consultants or anyone for whom AMBAG is legally liable. Neither AMBAG nor the CONSULTANT/USER/PUBLIC AGENCY/PROJECT SPONSOR shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or for the negligence of others.

8. SUSPENSION/TERMINATION OF AGREEMENT

- A. The right is reserved by AMBAG to terminate or suspend this Agreement with or without cause at any time by giving fifteen (15) days written notice to the other party(ies). In that event, all MODEL electronic files and associated documentation of revisions and adjustments related to the PROJECT shall be delivered to AMBAG within ten days of notice of termination/suspension. The requisite form for transmittal of these electronic files is FTP with the CONSULTANT/USER/PUBLIC AGENCY/PROJECT SPONSOR, PROJECT name, USER and date of transmittal clearly labeled as part of folder or file names. Upon termination, or upon immediate request by AMBAG, USER shall return all copies, and submit any modifications or derivative works and accompanying documentation of revisions to AMBAG. Thereafter, the provisions of Sections 3.B., 4.E and 4.G shall continue to apply in accordance with their terms, notwithstanding the termination of this Agreement.

9. NO THIRD PARTY RIGHTS

- A. This Agreement is made solely for the benefit of the Parties to this Agreement and their respective permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement unless otherwise agreed to by all parties hereto.

10. SEVERABILITY

- A. In the event any provision of this Agreement is found to be invalid, voidable or unenforceable, the parties agree that unless it materially affects the entire intent and purpose of this Agreement, such invalidity, voidability or unenforceability shall affect neither the validity of this Agreement nor the remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provisions.

11. ASSIGNMENT

- A. This Agreement may not be assigned or otherwise transferred by either party hereto without the prior written consent of the other party.

12. NOTICES

- A. Any notice to be given to the parties hereunder shall be addressed as follows (until notice of a different address is given to the parties):

ASSOCIATION OF MONTEREY BAY AREA GOVERNMENTS:

Director of Modeling
Dr. Bhupendra Patel
PO Box 2453
Seaside, CA 93955

CONSULTANT/USER:

Franziska Church, AICP
60 S. Market Street, Suite 700
San Jose, CA 95113

PUBLIC AGENCY/PROJECT SPONSOR:

- B. Any and all notices or other communications required or permitted relative to this Agreement shall be in writing and shall be deemed duly served and given when personally delivered to either of the parties, CONSULTANT/USER/PUBLIC AGENCY/PROJECT SPONSOR or the AMBAG, to whom it is directed; or in lieu of such personal service, when deposited in the United States mail, first class,

postage prepaid, addressed to CONSULTANT/ USER/PUBLIC AGENCY/ PROJECT SPONSOR or to the AMBAG at the addresses set forth above.

- C. Either party may change their address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided for in the preceding paragraph.

13. DISPUTE RESOLUTION

- A. The parties to this Agreement desire, if possible, to resolve disputes, controversies and claims (hereinafter referred to as "DISPUTES") arising out of this Agreement without litigation. To that end, at the written request of a party, each party shall appoint a knowledgeable, responsible management representative to meet and negotiate in good faith to resolve any DISPUTES arising under this Agreement. The parties intend that these negotiations be conducted by non-lawyer, business representatives. The discussions shall be left to the discretion of the representatives. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, shall be exempt from discovery and production, and shall not be admissible in any action or proceeding arising under or concerning this Agreement without the concurrence of all parties. Documents identified in or provided with such communications, which are not identified as being prepared for purposes of the negotiations are not so exempted and may, if otherwise admissible, be admitted in evidence in any such action or proceeding.

14. ATTORNEY'S FEES AND COURT VENUE

- A. Should either party to this Agreement bring legal action against the other, (formal judicial proceeding, mediation or arbitration), the case shall be handled in Monterey County, California, and the party prevailing in such action shall be entitled to a reasonable attorney's fee which shall be fixed by the judge, mediator or arbitrator hearing the case and such fee shall be included in the judgment, together with all costs.

15. AGREEMENT CONTAINS ALL UNDERSTANDINGS: AMENDMENT

- A. This document represents the entire and integrated Agreement between the AMBAG and CONSULTANT/USER/PUBLIC AGENCY/PROJECT SPONSOR, and supersedes all prior negotiations, representations and agreements, either written or oral.

16. GOVERNING LAW

A. This Agreement shall be governed by the laws of the State of California.

USER ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT AND UNDERSTANDS IT, AND THAT BY ENTERING INTO THE AGREEMENT, INSTALLING AND EXECUTING THE MODEL, OR MAKING ANY OTHER USE OF IT, USER AGREES TO BE BOUND BY THE TERMS AND CONDITIONS HEREOF. THE PARTIES FURTHER AGREE THAT, EXCEPT FOR SEPARATE WRITTEN AGREEMENTS BETWEEN AMBAG AND USER, THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE RIGHTS AND LIABILITIES OF THE PARTIES.

IN WITNESS WHEREOF, the parties, by those having the authority to bind their organization to the terms of this Agreement, have executed this AMBAG MODEL Use Agreement for the following project

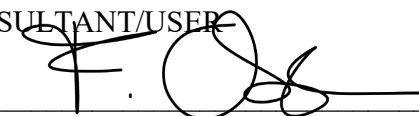
Moss Landing Community Plan Update _____ on
the date first hereinabove written.

ASSOCIATION OF MONTEREY BAY AREA GOVERNMENTS

By: _____

Title: _____

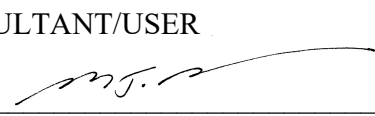
CONSULTANT/USER

By:  _____

Title: Principal

Firm: Fehr & Peers

CONSULTANT/USER

By:  _____

Title: President/Senior Principal

Firm: EMC Planning Group

PUBLIC AGENCY/SPONSOR

By: _____

Title: _____

Firm: _____