

## FRESNOCOG VEHICLE MILES TRAVELED (VMT) CALCULATOR TOOL USER AGREEMENT

Fresno Council of Governments (FCOG), in partnership with LSA Associates Inc. (LSA), has developed the Fresno COG Vehicle Miles Traveled (VMT) Calculator to estimate project-specific daily VMT per capita and daily VMT per employee for land use development projects. The VMT Calculator has been provided to You, the User, to assess vehicle miles traveled (VMT) outcomes of residential and office projects within Fresno County. The terms "FCOG" and "LSA" as used below shall include their respective affiliates, subconsultants, employees, and representatives.

In using the VMT Calculator, You agree to be bound by this VMT Calculator User Agreement (this Agreement).

**Limited License to Use.** This Agreement gives You a limited, non-transferrable, non-assignable, and nonexclusive license to use and execute a copy of the VMT Calculator on a computer system owned, leased or otherwise controlled by You in your own facilities, as set out below, provided You do not use the VMT Calculator in an unauthorized manner, and that You do not republish, copy, distribute, reverse-engineer, modify, decompile, disassemble, transfer, or sell any part of the VMT Calculator, and provided that You know and follow the terms of this Agreement. Your failure to follow the terms of this Agreement shall automatically terminate this license and your right to use the VMT Calculator.

**Warranty Disclaimer.** Despite FCOG's and LSA's best efforts, some information on the VMT Calculator may not be completely accurate. The VMT Calculator, OUTPUTS AND ASSOCIATED DATA ARE PROVIDED "**AS IS**" WITHOUT WARRANTY OF ANY KIND, whether expressed, implied, statutory, or otherwise, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

**Limitation of Liability.** It is understood that the VMT Calculator is provided without charge. Neither FCOG nor LSA can be responsible or liable for any information derived from its use, or for any delays, inaccuracies, incompleteness, errors or omissions arising out of your use of the VMT Calculator or with respect to the material contained in the VMT Calculator. You understand and agree that your sole remedy against FCOG or LSA for loss or damage caused by any defect or failure of the VMT Calculator, regardless of the form of action, whether in contract, tort, including negligence, strict liability or otherwise, shall be the repair or replacement of the VMT Calculator to the extent feasible, as determined solely by FCOG. In no event shall FCOG or LSA be responsible to You or anyone else for, or have liability for any special, indirect, incidental or consequential damages (including, without limitation, damages for loss of business profits or changes to businesses costs) or lost data or downtime, however caused, and on any theory of liability from the use of, or the inability to use, the VMT Calculator, whether the data, and/or formulas contained in the VMT Calculator are provided by the FCOG or LSA, or another third party, even if the FCOG or LSA have been advised of the possibility of such damages.

By using the VMT Calculator, You hereby waive and release all claims, responsibilities, liabilities, actions, damages, costs, and losses, known and unknown, against the FCOG and LSA for your use of the VMT Calculator.

Before making decisions using the information provided in this application, contact Fresno COG staff to confirm the validity of the data provided.