

**CITY OF COSTA MESA  
PROFESSIONAL SERVICES AGREEMENT  
WITH  
FCS INTERNATIONAL, INC. DBA FIRSTCARBON SOLUTIONS**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 1st day of May, 2020 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and FCS INTERNATIONAL, INC., a California corporation DBA FIRSTCARBON SOLUTIONS ("Consultant").

**WITNESSETH:**

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to provide environmental consulting services, as more fully described herein; and

B. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated within California Government Code section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and

C. 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

D. 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.

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 Services. Consultant shall provide the professional services described in Consultant's 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.

1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to the complete satisfaction of the City and within the 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.

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.

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, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status, except as permitted pursuant to section 12940 of the Government Code.

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.

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 shall be paid in accordance with the fee schedule set forth in Exhibit A. Consultant's total compensation shall not exceed Thirty-Three Thousand Dollars (\$33,000.00).

2.2. **Additional Services.** Consultant shall not receive compensation for any services

provided outside the scope of services specified in the Consultant's Proposal unless the City Manager or designee, 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.

2.3. Method of Billing. Consultant may submit invoices to the City for approval on a progress basis, but no more often than two times a month. 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 from the Effective Date until three (3) years after termination of this Agreement.

### 3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. Unless otherwise agreed to in writing by the parties, the professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Said services shall be performed in strict compliance with the Project Schedule approved by City as set forth in Exhibit A. The Project Schedule may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

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.

### 4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of two (2) years, ending on April 30, 2022, 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 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.

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. 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.

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) Commercial general liability, 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), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (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, per occurrence for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. 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 officers, agents, employees, and volunteers 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.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), 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.

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 Costa Mesa 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: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City."
- (c) Other insurance: "The Consultant's insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa 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 Costa Mesa, 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.

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.** City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement.

Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. 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 or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: (a) at the time of delivery if such communication is sent by personal delivery, and (b) 48 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:**

FirstCarbon Solutions  
250 Commerce, Suite 250  
Irvine, CA 92602  
Tel: (714) 508-4100  
Attn: Kerri Tuttle

**IF TO CITY:**

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Tel: (714) 754-5610  
Attn: Mino Ashabi

**Courtesy copy to:**

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Attn: Finance Dept. | Purchasing

6.5. **Drug-Free Workplace Policy.** Consultant shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit "B" and incorporated herein by reference. Consultant's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.

6.6. **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.

6.7. **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 Orange County, California.

6.8. **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.

6.9. **Indemnification and Hold Harmless.** Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected 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 without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected 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.

6.10. **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 agents 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.

6.11. 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.

6.12. 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.

6.13. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, 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. 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, 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.

6.14. 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.

6.15. 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.

6.16. 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.

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

6.18. 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, this Agreement shall govern over the document referenced.

6.19. 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.

6.20. Binding Effect. This Agreement binds and benefits the parties and their respective permitted successors and assigns.

6.21. 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.

6.22. Headings. Paragraphs 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.

6.23. 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.

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

6.25. 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.

6.26. 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.


6.27. 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.

6.28. Counterparts and Electronic Signatures. 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. Counterpart written signatures may be transmitted by facsimile, email or other electronic means and have the same legal effect as if they were original signatures.

[Signatures appear on following page.]

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.

**CONSULTANT**

  
Signature  
C. Patrick Sullivan / COO  
[Name and Title]

Date: 5/1/2020

[REDACTED]  
Social Security or Taxpayer ID Number

**CITY OF COSTA MESA**

Lori Ann Farrell Harrison  
Lori Ann Farrell Harrison  
City Manager

Date: 4/19/20

**ATTEST:**

Brenda Green 6/9/2020  
Brenda Green  
City Clerk



**APPROVED AS TO FORM:**

Kimberly Hall Barlow  
Kimberly Hall Barlow  
City Attorney

Date: 6/1/20

**APPROVED AS TO INSURANCE:**

Ruth Wang  
Ruth Wang  
Risk Management

Date: 5/19/20

**APPROVED AS TO CONTENT:**

Mirco Ashabi  
Mirco Ashabi  
Project Manager

Date: 5/29/20

DEPARTMENTAL APPROVAL:

  
\_\_\_\_\_  
Barry Curtis  
Economic and Development Services  
Director

Date: 5/20/20

APPROVED AS TO PURCHASING:

  
\_\_\_\_\_  
Carol Molina  
Budget and Purchasing Manager

Date: 5/14/20

**EXHIBIT A**  
**CONSULTANT'S PROPOSAL**



March 18, 2020  
*Revised March 25, 2020*

Michelle Halligan, Contract Planner  
Development Services Department  
City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626

**Subject: Revised Proposal to Prepare an Initial Study and Negative Declaration for a Proposed Hydrogen Refueling Dispenser Installation Project in Costa Mesa, California**

Dear Michelle:

FCS International, Inc., dba FirstCarbon Solutions (FCS) understands that the City of Costa Mesa needs an Initial Study and Negative Declaration (IS/ND) prepared for a proposed hydrogen refueling dispenser installation (project) at an existing gas station at 2995 Bristol Street, to demonstrate compliance with the California Environmental Quality Act (CEQA) and other governing regulations.

FCS appreciates the opportunity to continue our successful working relationship with the City. Per our conversation today, a revised approach, scope of work, schedule, and cost estimate for the preparation of a defensible and legally adequate environmental document for this project are detailed herein.

Should you have any questions regarding this proposal, please contact me at 760.401.7690 or via email at [ktuttle@fcs-intl.com](mailto:ktuttle@fcs-intl.com).

Sincerely,

Kerri Tuttle, Senior Director, Sales/Operations and Environmental Services  
FirstCarbon Solutions  
250 Commerce, Suite 250  
Irvine, CA 92602

**UNITED STATES**

T +1 888 826 5814  
T +1 714 508 4100  
F +1 714 508 4110  
E [info@fcs-intl.com](mailto:info@fcs-intl.com)

**Irvine**  
250 Commerce  
Suite 250  
Irvine, CA 92602

**Bay Area**  
1350 Treat Boulevard  
Suite 380  
Walnut Creek, CA 94597

**Central Valley**  
7265 N. First Street  
Suite 101  
Fresno, CA 93720

**Inland Empire**  
650 E. Hospitality Lane  
Suite 125  
San Bernardino, CA 92408

**Sacramento Valley**  
2204 Plaza Drive  
Suite 210  
Rocklin, CA 95765

**Utah**  
2901 Bluegrass Boulevard  
Suite 200-62  
Lehi, UT 84043

**Connecticut**  
2 Corporate Drive  
Suite 450  
Shelton, CT 06484

**New York**  
10 Monument Street  
Deposit, NY 13754

56 Broome Corporate Parkway  
Conklin, NY 13748

**CANADA**

**UNITED KINGDOM**

**PORTUGAL**

**FRANCE**

**KENYA**

**AUSTRALIA**

**PHILIPPINES**

**CHINA**

**MALAYSIA**

**SINGAPORE**





## PROJECT UNDERSTANDING

FCS understands that the City of Costa Mesa (City) is requesting the preparation of environmental documentation for a proposed hydrogen refueling dispenser installation at an existing gas station at 2995 Bristol Street, on the corner of Baker Street and Bristol Street. The site is currently designated as General Commercial in the Costa Mesa 2015-2035 General Plan Land Use map and zoned as C1–Local Business. The proposed project includes the construction two self-serve hydrogen refueling dispensers and the removal of one of the eight existing gasoline dispensers. The dispensers would provide refueling services to drivers of zero-emission fuel cell vehicles and would thereby help to grow the hydrogen vehicle market locally.

Hydrogen fueling station projects are typically exempt from CEQA (Class 1 exemption—existing facilities). However, due to the ongoing remediation on site, the City has determined that an Initial Study/Negative Declaration (IS/ND) will be the appropriate level of review for the purpose of CEQA compliance. The proposed project is expected to result in minimal environmental impacts. The remediation consultant reviewed the proposed site plan and did not foresee any environmental issues. As the proposed project would lead to a reduction of vehicle trips to the site, it is anticipated that a project traffic study is not required. It is assumed that hydrogen storage tanks will be above-ground and the project will not involve ground-disturbing activities. Construction of the proposed project will begin and finish in the fall of 2020, outside of the bird nesting season.

## SCOPE OF WORK

### Task 1: Project Initiation

FCS's Project Director and Project Manager will meet one time with the City via conference call to kick off the project and obtain information necessary for the preparation of a CEQA-level project description. Together with the City, we will establish lines of communication and reach a common understanding of the issues and concerns identified for environmental analysis. To facilitate this process, we will accomplish the following during the kick-off meeting:

- FCS will receive complete project information from the City for use in developing the project description. Information provided should include (but not be limited to):
  - A list of project objectives (including those of the City)
  - Existing and proposed site plans and building evaluations (including plans depicting any infrastructure improvements that are required)
  - Pertinent codes, ordinances, general plans, etc.
  - An IS/ND template (if the City prefers to utilize their own CEQA template)
  - Readily available base maps, aerial photographs, landscape plans, and graphics



- Relevant technical studies and related documentation
- List of project entitlements
- Timing and methods of construction
- CEQA distribution list for noticing
- Based on the outcomes of the kick-off meeting, FCS will revise/update the project schedule to account for any delays in the receipt of project-specific information or changes that may have occurred since the time of proposal preparation.

*Deliverable*

- Kick-off meeting agenda, updated project schedule (if needed)

## **Task 2: Prepare Comprehensive Project Description**

Using the information obtained at the project initiation meeting, FCS will prepare a comprehensive Project Description that clearly describes and illustrates the proposed activity, required discretionary approvals, and other pertinent information. The approved Project Description will form the basis for evaluating the project in the CEQA document.

Based on conversations with the City, it appears that the most appropriate level of CEQA documentation is an IS/ND. Thus, a Project Description suitable for an IS/ND will be prepared. The Project Description will be submitted to the City for review and approval prior to the development of the Screencheck Draft CEQA document.

*Deliverable*

- Electronic copy of the Project Description in Word format

## **Task 3: Prepare Initial Study/Negative Declaration**

### **Subtask 3.1: Prepare Screencheck Draft IS/ND**

FCS will prepare a Screencheck Draft IS/ND for the project in compliance with the 2019 CEQA Guidelines and State law. The IS/ND format will include separate sections for the discussion of each Environmental Checklist impact category, and it will be adequately supported by exhibits. Analysis and substantiating documentation will be provided to support all environmental checklist responses and conclusions. The following specific sections will be prepared that provide a discussion of the environmental setting, impacts, and mitigation measures (if applicable).

- Aesthetics, Light, and Glare
- Agriculture and Forestry Resources
- Air Quality
- Land Use
- Mineral Resources
- Noise



- Biological Resources
- Cultural and Tribal Cultural Resources
- Geology, Soils, and Seismicity
- Greenhouse Gas Emissions
- Energy
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Population and Housing
- Public Services
- Recreation
- Transportation
- Utility Systems
- Wildfires

FCS will prepare the Screencheck Draft IS/ND for review and comment by City staff. It is assumed that air quality, greenhouse gas emissions, noise, and transportation impacts can be addressed qualitatively, and that modeling is not needed. If it is later determined that modeling will be required, FCS will submit an augment to perform the additional analysis. It is anticipated that mandatory project compliance with the City's standard conditions will address all potential project impacts related to CEQA. A Word file and PDF of the Screencheck Draft IS/ND will be provided to the City via email. If there are substantive changes to the technical analyses and/or Project Description after preparation of the Screencheck Draft IS/ND, an augment/amendment and additional monies would be required.

*Deliverable*

- Electronic copy of the Screencheck Draft IS/ND in Word and PDF format

**Subtask 3.2: Prepare Proofcheck Draft IS/ND**

Following receipt of one set of consolidated comments on the Proofcheck Draft IS/ND, FCS will make revisions as directed by City staff and in accordance with the overall scope of work. The Proofcheck Draft IS/ND will be prepared as a final print copy for review by City staff prior to printing; it is FCS's intent that this submittal will satisfactorily address all City staff comments on the Screencheck Draft IS/ND. This scope of work assumes that comments will be provided as tracked changes within the electronic Word files.

*Deliverable*

- Electronic copy of the Proofcheck Draft IS/ND in Word and PDF format

**Subtask 3.3: Circulate the Draft IS/ND**

FCS will incorporate one set of final revisions to the Proofcheck Draft requested by City staff and in accordance with our scope of work. No major comments on the Proofcheck Draft are anticipated from City staff, and FCS has budgeted approximately 20 hours for the completion of this task. A print-ready copy of the Draft IS/ND will be provided to the City. FCS will prepare and distribute up to 30 hard copies of the Draft IS/ND to local agencies/districts, surrounding jurisdictions, and local community groups pursuant to the notification and distribution list. It is assumed that the project is not considered to have statewide, regional, or area-wide importance, nor review will be required by State agencies, so this project will not be sent to the State Clearinghouse for transmittal to State or other agencies. Unless





otherwise specified by the City, the Appendices to the Draft IS/ND will be provided on CD with the document. The distribution will be made by certified mail and will include the Notice of Intent to Adopt, and Notice of Completion to the County Clerk. The City will be responsible for the newspaper notice for the IS/ND. If additional hours are needed to finish the Draft IS/ND, separate authorization may be required.

*Deliverables*

- Up to 30 hard copies of the Draft IS/ND, which assumes State Clearinghouse review will *not* be required
- Up to 30 hard copies of the CEQA Notices

#### **Task 4: Prepare Responses to Comments**

FCS has included 12 hours of staff time to prepare responses to public and agency comments that raise substantive environmental issues associated with the proposed project and the Draft IS/ND. To maintain the project schedule, it is assumed that that the City will forward comments as soon as they are received. The responses will be substantive and thorough and will be provided in a separate Responses to Comments (RTC) document. Following the City's review, FCS will finalize and mail the RTC document to public agencies and individuals that provided comments on the Draft IS/ND. FCS assumes up to 15 hard copies of the RTC document will be provided, if one is prepared. Should substantive comments be received, and the level of effort involved in responding exceed the allotted hours (12), FCS would prepare the RTC document on a time and materials basis, with prior authorization from the City.

*Deliverables*

- Up to 15 hard copies and one electronic copy of the Responses to Comments document

#### **Task 5: Attend Public Hearings**

FCS has extensive experience in public outreach programs and scoping, including public participation programs and public hearings. FCS will be present at up to three public hearings to assist City staff with questions and answers on environmental issues. Meeting graphics depicting the project and other project description materials are assumed to be provided by the City staff in drafting staff reports and recommendations to the Planning Commission and City Council. The allocations of meetings can be altered by mutual agreement. FCS may attend additional meetings on a time-and-material basis, with prior written authorization from the City.

*Deliverables*

- Planning Commission public hearings (two meetings)
- City Council public hearing (one meeting)



## Task 6: Prepare Notice of Determination

After City Council approval of the IS/ND, FCS will prepare a Notice of Determination (NOD) form pursuant to CEQA Guidelines Section 15094. Once reviewed and approved by City staff, FCS will post the NOD with the Orange County Clerk’s Office. Timely filing (within 5 working days of final decision) of the NOD by the Lead Agency (City of Costa Mesa) reduces the statute of limitations on court challenges to the approval under CEQA from 180 days to 30 days. FCS will not be responsible for paying California Department of Fish and Wildlife and processing fees associated with this task.

### *Deliverables*

- Two hard copies and one PDF copy of the NOD

## Task 7: Project Management and Coordination

FCS is firmly committed to developing and maintaining close working relationships with City staff. Emphasis on communication, as well as involvement of FCS principals and senior staff in all projects, results in performance that satisfies project objectives, government requirements, and project needs. FCS will place top priority on working as a partner with City staff and other project team members, as necessary, during environmental processing of the project. We will help anticipate controversial issues, devise solutions, and provide expert environmental compliance consultation. Understanding the City objectives and ensuring they are reflected in the environmental review and analyses are key aspects of our approach. This scope of work assumes regular interaction with City staff and other project team members, as necessary, and requires frequent information sharing among project team members.

This task includes 22 hours of Project Manager time. If additional hours are needed or requested, they will be provided under separate authorization.

## Tasks Required from City Staff

To maintain the project schedule, FCS asks the City to diligently collect all requested materials prior to the kick-off meeting and provide them to FCS at or immediately after (i.e., within 24 hours of) the kick-off meeting. We also ask the City to be diligent about sharing new information as soon as it becomes available so we can incorporate the information into the IS/ND.

## PROPOSED SCHEDULE

Tasks	Week
Task 1: Project Initiation	Week 1
Task 2: Prepare Comprehensive Project Description	Week 2
Task 3: Prepare Initial Study/Negative Declaration	
Subtask 3.1: Prepare Screencheck Draft IS/ND	Week 6



Tasks	Week
Subtask 3.2: Prepare Proofcheck Draft IS/ND	Week 9
Subtask 3.3: Circulate the Draft IS/ND	Week 11
Review Period for Draft IS/ND	Week 11-13
Task 4: Prepare Responses to Comments (if required)	Week 13
Task 5: Attend Public Hearings	TBD
Task 6: Prepare Notice of Determination	Within 5 Days of Project Approval
Task 7: Project Management and Coordination	Ongoing

## COST ESTIMATE

Tasks	Fee
Task 1: Project Initiation	\$950
Task 2: Prepare Comprehensive Project Description	\$1,500
Task 3: Prepare Initial Study/Negative Declaration	
Subtask 3.1: Prepare Screencheck Draft IS/ND	\$15,500
Subtask 3.2: Prepare Proofcheck Draft IS/ND	\$4,200
Subtask 3.3: Circulate the Draft IS/ND	\$1,850
Task 4: Prepare Responses to Comments (if required)	\$1,550
Task 5: Attend Public Hearings	\$2,000
Task 6: Prepare Notice of Determination	\$750
Task 7: Project Management and Coordination	\$3,000
Direct Costs	\$1,700
<b>Total FCS Professional Labor with Direct Costs</b>	<b>\$33,000</b>

- The above fixed-fee estimates are valid for up to 30 days from the date of this scope, after which they may be subject to revision.
- This price is based upon completion of the work within the proposed schedule. If delays occur, an amendment of the price would be warranted to accommodate additional project management and other costs, and to reflect adjustments for updated billing rates.
- Costs have been allocated to tasks, based upon FCS's proposed approach. During the work, FCS may, on its sole authority, re-allocate costs among tasks, as circumstances warrant, so long as the adjustments maintain the total price within its authorized amount





- FCS's Project Manager will be the primary representative at the project meeting and public hearing.
- Printing costs are based on the method of printings and bindings proposed, numbers of copies proposed as work products, and estimated page lengths. Document printing costs are estimated and will be finalized at the time of printing. On further clarification of the documents (paper and/or digital CD) that the City Staff will need during the preparation effort, FCS will specifically identify a detailed reproduction work plan with more specific costs.
- Direct expenses are billed at the amount charged, plus a 10 percent administration cost.

**EXHIBIT B**  
**CITY COUNCIL POLICY 100-5**

**CITY OF COSTA MESA, CALIFORNIA**

**COUNCIL POLICY**

<b>SUBJECT</b>	<b>POLICY NUMBER</b>	<b>EFFECTIVE DATE</b>	<b>PAGE</b>
DRUG-FREE WORKPLACE	100-5	8-8-89	1 of 3

**BACKGROUND**

Under the Federal Drug-Free Workplace Act of 1988, passed as part of omnibus drug legislation enacted November 18, 1988, contractors and grantees of Federal funds must certify that they will provide drug-free workplaces. At the present time, the City of Costa Mesa, as a sub-grantee of Federal funds under a variety of programs, is required to abide by this Act. The City Council has expressed its support of the national effort to eradicate drug abuse through the creation of a Substance Abuse Committee, institution of a City-wide D.A.R.E. program in all local schools and other activities in support of a drug-free community. This policy is intended to extend that effort to contractors and grantees of the City of Costa Mesa in the elimination of dangerous drugs in the workplace.

**PURPOSE**

It is the purpose of this Policy to:

1. Clearly state the City of Costa Mesa's commitment to a drug-free society.
2. Set forth guidelines to ensure that public, private, and nonprofit organizations receiving funds from the City of Costa Mesa share the commitment to a drug-free workplace.

**POLICY**

The City Manager, under direction by the City Council, shall take the necessary steps to see that the following provisions are included in all contracts and agreements entered into by the City of Costa Mesa involving the disbursement of funds.

1. Contractor or Sub-grantee hereby certifies that it will provide a drug-free workplace by:
  - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Contractor's and/or sub-grantee's workplace, specifically the job site or location included in this contract, and specifying the actions that will be taken against the employees for violation of such prohibition;
  - B. Establishing a Drug-Free Awareness Program to inform employees about:

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	2 of 3

1. The dangers of drug abuse in the workplace;
  2. Contractor's and/or sub-grantee's policy of maintaining a drug-free workplace;
  3. Any available drug counseling, rehabilitation and employee assistance programs; and
  4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- C. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph A;
- D. Notifying the employee in the statement required by subparagraph 1 A that, as a condition of employment under the contract, the employee will:
1. Abide by the terms of the statement; and
  2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- E. Notifying the City of Costa Mesa within ten (10) days after receiving notice under subparagraph 1 D 2 from an employee or otherwise receiving the actual notice of such conviction;
- F. Taking one of the following actions within thirty (30) days of receiving notice under subparagraph 1 D 2 with respect to an employee who is so convicted:
1. Taking appropriate personnel action against such an employee, up to and including termination; or
  2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency;

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
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- G. Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 1 A through 1 F, inclusive.
2. Contractor and/or sub-grantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:
    - a. Contractor and/or sub-grantee has made a false certification under paragraph 1 above;
    - b. Contractor and/or sub-grantee has violated the certification by failing to carry out the requirements of subparagraphs 1 A through 1 G above;
    - c. Such number of employees of Contractor and/or sub-grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor and/or sub-grantee has failed to make a good faith effort to provide a drug-free workplace.
  3. Should any contractor and/or sub-grantee be deemed to be in violation of this Policy pursuant to the provisions of 2 A, B, and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, and local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a contractor and/or sub-grantee, the contractor and/or sub-grantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the contractor and/or sub-grantee, the contractor and/or sub-grantee shall be eligible for compensation as provided by law.