

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

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 3rd day of January, 2023 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and FCS INTERNATIONAL, INC. dba FIRST CARBON SOLUTIONS, a California corporation ("Consultant").

RECITALS

A. City proposes to utilize the services of Consultant as an independent contractor to provide on-call environmental, technical and staffing consultant services, as more fully described herein; and

B. 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. City and Consultant desire to contract for the specific services described in Exhibit "A" and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. 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 City's Request for Proposals, attached hereto as Exhibit "A," and Consultant's Proposal, attached hereto as Exhibit "B," both incorporated herein.

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. 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 "B."

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 Exhibits "A" and "B," attached hereto and incorporated herein. 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, pandemics, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party (each, a "Force Majeure Event"). If a party experiences a Force Majeure Event, the party shall, within five (5) days of the occurrence of the Force Majeure Event, give written notice to the other party stating the nature of the Force Majeure Event, its anticipated duration and any action being taken to avoid or minimize its effect. Any suspension of performance shall be of no greater scope and of no longer duration than is reasonably required and the party experiencing the Force Majeure Event shall use best efforts without being obligated to incur any material expenditure to remedy its inability to perform; provided, however, if the suspension of performance continues for sixty (60) days after the date of the occurrence and such failure to perform would constitute a material breach of this Agreement in the absence of such Force Majeure Event, the parties shall meet and discuss in good faith any amendments to this Agreement to permit the other party to exercise its rights under this Agreement. If the parties are not able to agree on such amendments within thirty (30) days and if suspension of performance continues, such other party may terminate this Agreement immediately by written notice to the party experiencing the Force Majeure Event, in which case neither party shall have any liability to the other except for those rights and liabilities that accrued prior to the date of termination.

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 and six (6) months, ending on June 30, 2025, 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, Consultant shall be paid 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) per occurrence, Two Million Dollars (\$2,000,000.00) general aggregate.
- (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 limit per accident 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:

FCS International, Inc.
250 Commerce, Suite 210
Irvine, CA 92602
Tel: (714) 508-4100 ext. 1106

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-5023

Attn: Jason Brandman

Attn: Silvia Kennerson

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 "D" and incorporated herein. 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 and have had an adequate opportunity to review each and every provision of the Agreement and submit the same to counsel or other consultants for review and comment. 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. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

[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

Date: _____

[Name and Title]

CITY OF COSTA MESA

Lori Ann Farrell Harrison
City Manager

Date: _____

ATTEST:

Brenda Green
City Clerk

APPROVED AS TO FORM:

Kimberly Hall Barlow
City Attorney

Date: _____

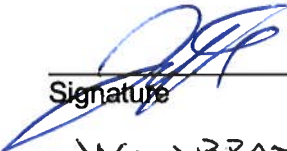
APPROVED AS TO INSURANCE:

Ruth Wang
Risk Management


Date: _____

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

 Date: 1-30-23
Signature
JASON BRANSMAN - VICE PRESIDENT
[Name and Title]

CITY OF COSTA MESA


 Date: 2/13/23
Lori Ann Farrell Harrison
City Manager

ATTEST:

Brenda Green 2/15/2023
Brenda Green
City Clerk



APPROVED AS TO FORM:

 KA Date: 2/23/23
Kimberly Hall Barlow
City Attorney

APPROVED AS TO INSURANCE:

 Date: 2/10/23
Ruth Wang
Risk Management

APPROVED AS TO CONTENT:



Silvia Kennerson
Project Manager

Date:

2/7/23

DEPARTMENTAL APPROVAL:



Jennifer Le
Economic Development Services Director

Date:

2-9-23

APPROVED AS TO PURCHASING:



Carol Molina
Finance Director

Date:

February 7, 2023

EXHIBIT A
REQUEST FOR PROPOSALS



REQUEST FOR STATEMENT OF QUALIFICATIONS

FOR

ON-CALL ENVIRONMENTAL, TECHNICAL AND STAFFING CONSULTANT LIST

RFQ No. 19-02

Development Services Department

CITY OF COSTA MESA

Released on May 29, 2019

**REQUEST FOR STATEMENT OF QUALIFICATIONS
FOR
ON-CALL ENVIRONMENTAL, TECHNICAL AND STAFFING CONSULTANT LIST**

The City of Costa Mesa (hereinafter referred to as the "City") is requesting Statements of Qualifications (RFSQ) from qualified organizations (hereinafter referred to as "Proposer") to establish a pre-qualified list of environmental and technical consultants for projects requiring technical studies and/or environmental review (i.e. initial studies, negative declarations, mitigate negative declarations, environmental impact reports, etc). The list shall be valid for **five (5) years**. The City will be able to award contracts to consultants on this pre-qualified list without the need to issue project-specific Request for Qualifications or Proposals. The awarded Consultant, (hereinafter referred to as "Consultant") in accordance with the Sample Professional Service Agreement, **Appendix A** terms, conditions, and scope of work. Prior to submitting a Proposal, Proposers are advised to carefully read the instructions below, including the Sample Professional Service Agreement and any solicitation attachments/exhibits.

I. GENERAL INFORMATION

The City of Costa Mesa is a general law city, which operates under the council/manager form of government with an annual General Fund budget of over \$117 million and a total budget of over \$145 million for fiscal year 2016-2017.

The City of Costa Mesa, incorporated in 1953, has an estimated population of 110,757 and has a land area of 16.8 square miles. It is located in the northern coastal area of Orange County, California, and is bordered by the cities of Santa Ana, Newport Beach, Huntington Beach, Fountain Valley and Irvine.

The City is a "full service city" providing a wide range of services. These services include: police and fire protection; animal control; emergency medical aid; building safety regulation and inspection; street lighting; land use planning and zoning; housing and community development; maintenance and improvement of streets and related structures; traffic safety maintenance and improvement; and full range of recreational and cultural programs.

The City of Costa Mesa is home of the Segerstrom Center for the Arts, Orange County Fairgrounds, South Coast Repertory Theater and the South Coast Plaza Shopping Center, which is the single largest commercial activity center in the City. The volume of sales generated by South Coast Plaza secures its place as the highest volume regional shopping center in the nation.

The successful Proposer, shall have experience in similar types of services. All Proposers responding to this Request for Qualifications (RFQ) will be evaluated on the basis of their expertise, prior experience on similar projects, demonstrated competence, ability to meet the requested services and schedules, adequate staffing, reference check, understanding of services, cost and responsiveness to the needs and concerns of the City of Costa Mesa.

- 1. Important Notice:** The City has attempted to provide all information available. It is the responsibility of each Proposer to review, evaluate, and, where necessary, request any clarification prior to submission of a Proposal. **Proposers are not to contact other City personnel with any questions or clarifications concerning this RFSQ.** Any City response

relevant to this RFSQ other than through or approved by City's Development Services Department, Management Analyst, is unauthorized and will be considered invalid.

If clarification or interpretation of this solicitation is considered necessary by the City, a written addendum shall be issued and the information will be posted on the City's website at www.costamesaca.gov. Any interpretation of, or correction to, this solicitation will be made only by addendum issued by the City's Development Services Department. It is the responsibility of each Proposer to periodically check the City's website to ensure that it has received and reviewed any and all addenda to this solicitation. The City will not be responsible for any other explanations, corrections to, or interpretations of the documents, including any oral information.

2. **Schedule of Events:** This RFSQ shall be governed by the following schedule:

Release of RFSQ	May 29, 2019
Deadline for Written Questions (11:00 AM)	June 19, 2019
Responses to Questions Posted on Web	June 21, 2019
Qualifications are Due (by 11:00 AM)	July 01, 2019
Interview (if held)	Week of July 22, 2019
Approval of List	TBD

**All dates are subject to change at the discretion of the City.

3. **Proposer's Minimum Requirements:** Interested and qualified Proposers that can demonstrate their ability to successfully provide the required services outlined in Attachment A – Scope of Work, of this RFSQ are invited to submit a proposal, provided they meet the following requirements. **If these requirements are not met, the proposal may not receive further consideration, as determined in the sole discretion of the City.**

a) The Proposer must have a minimum of 5 years experience within the last 8 years, providing Comprehensive Performance Evaluations or services equivalent or similar to the services identified in **Attachment A - Statement of Work**.

b) The Proposer for environmental services must have a working knowledge of requirements of the latest State requirements in terms of housing, air quality, greenhouse gas emissions, California Native American tribes, as well as the requirements of California Environmental Quality Act (CEQA) comprehensive of required air quality and greenhouse gas analysis, biological studies, hazard and hazardous materials, hydrology and water quality studies, noise analysis, land use and planning, public services, utility services, and transportation studies.

c) The Proposer for technical services must be knowledgeable in SB 743 requirements and experienced in preparation of parking and vehicular traffic related studies in an urban setting related to infill development.

d) The Proposer shall provide a description of local, state, or regional experience.

II. GENERAL INSTRUCTIONS AND PROVISIONS

1. **Proposal Format Guidelines:** Interested entities or contractors are to provide the City of Costa Mesa with a thorough Proposal using the following guidelines: Proposal should be typed and

should contain no more than 20 typed pages using a 12-point font size, including transmittal letter and resumes of key people, but excluding Index/Table of Contents, tables, charts, graphic exhibits and pricing forms. Each Proposal will adhere to the following order and content of sections. Proposal should be straightforward, concise and provide "layman" explanations of technical terms that are used. Emphasis should be concentrated on conforming to the RFSQ instructions, responding to the RFSQ requirements, and on providing a complete and clear description of the offer. Proposals which appear unrealistic in terms of technical commitments, lack of technical competence or are indicative of failure to comprehend the complexity and risk of this contract may be rejected. The following Proposal sections are to be included in the Proposer's response:

- **Vendor Application Form and Cover Letter:** Complete Vendor Application Form, **Appendix B** and attach to the cover letter. A cover letter, not to exceed three pages in length, should summarize key elements of the Proposal. An individual authorized to bind the Contractor must sign the letter. Indicate the address and telephone number of the contractor's office located nearest to Costa Mesa, California, and the office from which the project will be managed.
- **Background and Project Summary Section:** The Background and Project Summary Section should describe your understanding of the City, the work to be done, and the objectives to be accomplished. Refer to **Scope of Work, Attachment A** of this RFSQ.
- **Method of Approach:** Provide a detailed description of the approach and methodology that will be used to fulfill each requirement listed in the Scope of Work of this RFSQ. The section should include:
 1. An implementation plan that describes in detail (i) the methods, including controls by which your firm manages projects of the type sought by this RFSQ; (ii) methodology for soliciting and documenting views of internal and external stakeholders; (iii) and any other project management or implementation strategies or techniques that the respondent intends to employ in carrying out the work.
 2. Detailed description of efforts your firm will undertake to achieve client satisfaction and to satisfy the requirements of the "Scope of Work" section.
 3. Detailed project schedule, identifying all tasks and deliverables to be performed, durations for each task, and overall time of completion.
 4. Detailed description of specific tasks you will require from City staff. Explain what the respective roles of City staff and your staff would be to complete the tasks specified in the Scope of Work.
 5. Proposers are encouraged to provide additional innovative and/or creative approaches for providing the service that will maximize efficient, safe, and cost-effective operations or increased performance capabilities.
 6. Firms, individuals and entities wishing to be considered shall include in their submissions the steps they will, if selected, implement and adhere to for the recruitment, hiring and retention of former employees of the City who have been displaced due to layoff or outsourcing of functions and services formerly provided by the City

- **Qualifications & Experience:** Describe the qualifications and experience of the organization or entity performing services/projects within the past ten years that are similar in size and scope to demonstrate competence to perform these services. Information shall include:
 1. If the owner is a corporation please provide: Name of corporation, corporate office street address, city, state, and zip code, state where incorporated, date of incorporation, first and last name of officers, local office address, city, state & zip, and the date local office opened its doors for business.
 2. If the owner is a partnership or joint venture, please provide: Name of partnership or joint venture, principal office street address, city, state, and zip code, state of organization, date of organization, first and last name of general partner(s), local office address, city, state, and zip code, and date local office opened its doors for.
 3. List all businesses owned or controlled by yourself (applicant) or business manager doing similar business in California under another name. List business name and address and specify who owns or controls the business (e.g., self, business manager, etc.).
 4. List all businesses for which you or your business manager is or was an officer, director, or partner doing similar business in California under another name. List business name and address, title, date(s) in position; specify who was in position (e.g., self, business manager, etc.).
 5. How many years have you been in business under your present business name?
 6. Provide a list of current and previous contracts similar to the requirements for Costa Mesa, including all public agencies served (if any). For each, provide a brief description of the scope of work performed, the length of time you have been providing services, and the name, title, and telephone number of the person who may be contacted regarding your organization's service record.
 7. Submit a description of the organization's qualifications, experience and abilities that make it uniquely capable to provide the services specified in the Scope of Work.
 8. The City of Costa Mesa is interested in knowing how Proposers support the communities that they serve. Please provide information on your organization's participation in local community, charitable and civic organizations and events, including membership in the Costa Mesa Chamber of Commerce, charitable contributions made by your organization, etc.

Any public entity which submits a Proposal should describe in detail how it currently performs services like those identified in the Scope of Work within its or other jurisdictions, including photographs, written policies and/or video of services provided. If you have performed these services under contract for another public entity, please provide references for those entities as set forth above for private Proposers.

- **Financial Capacity:** Provide the Proposer's latest audited financial statement or other pertinent information such as internal unaudited financial statements and financial

references to allow the City to reasonably formulate a determination about the financial capacity of the Proposer. Describe any administrative proceedings, claims, lawsuits, or other exposures pending against the Proposer.

- **Staffing:** It is essential that the Proposer provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract. The Proposer must agree to assign specific individuals to the key positions.
 - Identify the members of the staff and their positions for the contract who would be assigned to act for Proposer's firm in key management and filed positions providing the services described in the Proposal, and the functions to be performed by each.
 - Include resumes or curriculum vitae of each such staff member, including name, position, telephone number, fax number, email address, education, and years and type of experience. Describe for each such person, the relevant transactions on which they have worked. (

- **Cost Proposal:** The proposed cost proposal schedule should be based upon direct labor hours and expenses, the proposal must include the rate for each position to be used in providing the services. It also must include the percentage of overhead the offeror proposes to charge.

The City intends to execute a contract with the successful offeror, which provide for the furnishing of technical services based upon the following;

- Direct labor hours at specified fixed hourly rates, including direct and indirect labor, overhead and profit.
- Expenses at cost.

The cost proposal shall contain "not to exceed" figures. Provide a fee schedule with a breakdown of rates for individual personnel and all reimbursable expenses. Provide mark-up percentage for all sub-consultants and identify all **reimbursable expenses**.

Pricing instructions should be clearly defined to ensure fees proposed can be compared and evaluated. Proposals shall be valid for a minimum of 180 days following submission.

- **Disclosure:** Please disclose any and all past or current business and personal relationships with any current Costa Mesa elected official, appointed official, City employee, or family member of any current Costa Mesa elected official, appointed official, or City employee. **Any past or current business relationship may not disqualify the firm from consideration.**
- **Sample Professional Service Agreement:** The firm selected by the City will be required to execute a Professional Service Agreement with the City. A sample of the Agreement is enclosed as **Appendix A**, but may be modified to suit the specific services and needs of the City. **If a Proposer has any exceptions or conditions to the Agreement, these must be submitted for consideration with the Proposal. Otherwise, the Proposer will be deemed to have accepted the form of Agreement.** See No. 12 of this RFSQ below.

- **Checklist of Forms to Accompany Proposal:** As a convenience to Proposers, following is a list of the forms, **Appendix B** included in this SOQ, which should be included with Proposals:
 1. Vendor Application Form
 2. Company Profile & References
 3. Ex Parte Communications Certificate
 4. Disclosure of Government Positions
 5. Disqualifications Questionnaire

2. Process for Submitting Proposals:

- **Content of Proposal:** The Proposal must be submitted using the format as indicated in the Proposal format guidelines.
- **Preparation of Proposal:** Each Proposal shall be prepared simply and economically, avoiding the use of elaborate promotional material beyond those sufficient to provide a complete, accurate and reliable presentation.
- **Cost for Preparing Proposal:** The cost for developing the Proposal is the sole responsibility of the Proposer. All Proposals submitted become the property of the City. Fee proposal shall be submitted in a separate sealed envelope containing the following:
 - ✓ Cover letter stating the total lump sum fee.
 - ✓ A spreadsheet with a detailed fee schedule of the proposed costs. Each fee schedule shall depict individual project asks, number of hours assigned for specific personnel and their basic hourly rates.
- **Number of Proposals:** Submit one original, three (3) hard copies plus one flash drive of your Proposal in sufficient detail to allow for thorough evaluation and comparative analysis. In the event of a conflict between the original and any hard copy or flash drive copy, the original shall control.
- **Submission of Proposals:** Complete written Proposals must be submitted in sealed envelopes marked and received no later than **11:00 a.m. (P.S.T)** on **July 1, 2019** to the address below. Proposals will not be accepted after this deadline. Faxed or e-mailed Proposals will not be accepted. **NO EXCEPTIONS.**

City of Costa Mesa
City Hall
Office of the City Clerk
77 Fair Drive
Costa Mesa, CA 92628-1200

RE: RFSQ No. 19-02 ON-CALL ENVIRONMENTAL, TECHNICAL AND STAFFING CONSULTANT LIST

- **Inquiries:** Questions about this RFSQ must be directed in writing, via e-mail to:

RFSQ Facilitator: Silvia Kennerson at silvia.kennerson@costamesaca.gov

The City reserves the right to amend or supplement this RFSQ prior to the Proposal due date. All addendum(s), responses to questions received, and additional information will be posted to the Costa Mesa Procurement Registry, [Costa Mesa-Official City Web Site-Business-Bids & RFSQ's](#). Proposers should check this web page daily for new information. The City will endeavor to answer all written questions timely received no later than **June 21, 2019**. The City reserves the right not to answer all questions.

From the date that this RFSQ is issued until a firm or entity is selected and the selection is announced, firms or public entities are not allowed to communicate outside the process set forth in this RFSQ with any City employee other than the contracting officer listed above regarding this RFSQ. The City reserves the right to reject any Proposal for violation of this provision. No questions other than written will be accepted, and no response other than written will be binding upon the City.

- **Conditions for Proposal Acceptance:** This RFSQ does not commit the City to award a contract or to pay any costs incurred for any services. The City, at its sole discretion, reserves the right to accept or reject any or all Proposals received as a result of this RFSQ, to negotiate with any qualified source(s), or to cancel this RFSQ in part or in its entirety. The City may waive any irregularity in any Proposal. All Proposals will become the property of the City of Costa Mesa, USA. If any proprietary information is contained in the Proposal, it should be clearly identified.
- **Insurance & W-9 Requirements:** Upon recommendation of contract award, Contractor will be required to submit the following documents with ten (10) days of City notification, unless otherwise specified in the solicitation:
 - **Insurance** - City requires that licensees, lessees, and vendors have an approved Certificate of Insurance (not a declaration or policy) or proof of legal self-insurance on file with the City for the issuance of a permit or contract. Within ten (10) consecutive calendar days of award of contract, successful Bidder must furnish the City with the Certificates of Insurance proving coverage as specified in the sample contract.
 - **W-9** – Current signed form W-9 (Taxpayer Identification Number & Certification) which includes Contractor's legal business name(s).

3. Evaluation Criteria: The City's evaluation and selection process will be conducted in

accordance with Chapter V, Article 2 of the City's Municipal Code (Code). In accordance with the Code, the responsive responsible proposer shall be determined based on evaluation of qualitative factors in addition to cost. At all times during the evaluation process, the following criteria will be used. Sub-criteria are not necessarily listed in order of importance. Additional sub-criteria that logically fit within a particular evaluation criteria may also be considered even if not specified below.

1. Method of Approach ----- 25%

2. **Qualifications of Experience ----- 35%**

3. **Staffing ----30%**

4. **Cost Proposal ---- 10%**

4. **Evaluation of Proposals and Selection Process:** In accordance with its Municipal Code, the City will adhere to the following procedures in evaluating Proposals. An Evaluation Committee, which may include members of the City's staff and possibly one or more outside experts, will screen and review all Proposals according to the weighted criteria set forth above. While price is one basic factor for award, it is not the sole consideration.

A. **Responsiveness Screening:** Proposals will first be screened to ensure responsiveness to the SOQ. The City may reject as non-responsive any Proposal that does not include the documents required to be submitted by this RFSQ. At any time during the evaluation process, the City reserves the right to request clarifications or additional information from any or all Proposers regarding their Proposals.

B. **Initial Proposal Review:** The Committee will initially review and score all responsive written Proposals based upon the Evaluation Criteria set forth above. The Committee may also contact Proposer's references. Proposals that receive the highest evaluation scores may be invited to the next stage of the evaluation process. The City may reject any Proposal in which a Proposer's approach, qualifications, or price is not considered acceptable by the City. An unacceptable Proposal is one that would have to be substantially rewritten to make it acceptable. The City may conclude the evaluation process at this point and recommend award to the lowest responsible bidder. Alternatively, the City may elect to negotiate directly with one or more Proposers to obtain the best result for the City prior to making a recommendation or selection.

C. **Interviews, Reference Checks, Revised Proposals, Discussions:** Following the initial screening and review of Proposals, the Proposers included in this stage of the evaluation process may be invited to participate in an oral interview. Interviews, if held, are tentatively scheduled for the week of **July 22, 2019** and will be conducted at City of Costa Mesa City Hall, 77 Fair Drive, Costa Mesa, CA 92628. This date is subject to change. The individual(s) from Proposer's organization that will be directly responsible for carrying out the contract, if awarded, should be present at the oral interview. The oral interview may, but is not required to, use a written question/answer format for the purpose of clarifying the intent of any portions of the Proposal.

In addition to conducting an oral interview, the City may during this stage of the evaluation process also contact and evaluate the Proposer's references, contact any Proposer to clarify any response or request revised or additional information, contact any current users of a Proposer's services, solicit information from any available source concerning any aspect of a Proposal, and seek and review any other information deemed pertinent to the evaluation process.

Following conclusion of this stage of the evaluation process, the Committee will again rank all Proposers according to the evaluation criteria set forth above. The Committee may conclude the evaluation process at this point, and make a recommendation for award, or it may request Best and Final Offers from Proposers. The City may accept the Proposal or negotiate the terms and conditions of the agreement with the highest ranked organization. The City may recommend award without Best and Final Offers, so Proposers should include their best Proposal with their initial submission.

Recommendation for award is contingent upon the successful negotiation of final contract terms. Negotiations shall be confidential and not subject to disclosure to competing Proposers unless an agreement is reached. If contract negotiations cannot be concluded successfully within a time period determined by the City, the City may terminate negotiations and commence negotiations with the next highest scoring Proposer or withdraw the RFSQ.

5. Protests: Failure to comply with the rules set forth herein may result in rejection of the protest. Protests based upon restrictive specifications or alleged improprieties in the Proposal procedure, which are apparent or reasonably should have been discovered prior to receipt of Proposals shall be filed in writing with the City's Purchasing Department at least 10 calendar days prior to the deadline for receipt of Proposals. The protest must clearly specify in writing the grounds and evidence on which the protest is based.

Protests based upon alleged improprieties that are not apparent or that could not reasonably have been discovered prior to submission date of the Proposals, such as disputes over the staff recommendation for contract award, shall be submitted in writing to the City's Purchasing Department, within 48 hours from receipt of the notice from the City advising of City's recommendation for award of contract. The protest must clearly specify in writing the grounds and evidence on which the protest is based. The City's Purchasing Department will respond to the protest in writing at least 3 days prior to the meeting at which City's recommendation to the City Council will be considered. Should Proposer decide to appeal the response of the City's Purchasing Department, and pursue its protest at the Council meeting, it will notify the City's Purchasing Department of its intention at least 2 days prior to the scheduled meeting.

A. Procedure – All protests shall be typed under the protester's letterhead and submitted in accordance with the provisions stated herein. All protests shall include at a minimum the following information:

- The name, address and telephone number of the protester;
- The signature of the protester or the protester's representative;
- The solicitation or contract number;
- A detailed statement of the legal and/or factual grounds for the protest; and
- The form of relief requested.

6. Accuracy of Proposals: Proposers shall take all responsibility for any errors or omissions in their Proposals. Any discrepancies in numbers or calculations shall be interpreted to reflect the cost to the City.

If prior to contract award, a Proposer discovers a mistake in their Proposal which renders the Proposal unwilling to perform under any resulting contract, the Proposer must immediately notify the facilitator and request to withdraw the Proposal. It shall be solely within the City's

discretion as to whether withdrawal will be permitted. If the solicitation contemplated evaluation and award of "all or none" of the items, then any withdrawal must be for the entire Proposal. If the solicitation provided for evaluation and award on a line item or combination of items basis, the City may consider permitting withdrawal of specific line item(s) or combination of items.

7. Responsibility of Proposers: The City shall not be liable for any expenses incurred by potential Contractors in the preparation or submission of their Proposals. Pre-contractual expenses are not to be included in the Contractor's Pricing Sheet. Pre-contractual expenses are defined as, including but not limited to, expenses incurred by Proposer in:

- Preparing Proposal in response to this RFSQ;
- Submitting that Proposal to the City;
- Negotiating with the City any matter related to the Proposal; and,
- Any other expenses incurred by the Proposer prior to the date of the award and execution, if any, of the contract.

8. Confidentiality: The California Public Records Act (Cal. Govt. Code Sections 6250 et seq.) mandates public access to government records. Therefore, unless information is exempt from disclosure by law, the content of any request for explanation, exception, or substitution, response to this RFSQ, protest, or any other written communication between the City and Proposer, shall be available to the public. The City intends to release all public portions of the Proposals following the evaluation process at such time as a recommendation is made to the City Council.

If Proposer believes any communication contains trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer shall request that the City withhold from disclosure the proprietary information by marking each page containing such proprietary information as confidential. Proposer may not designate its entire Proposal as confidential nor designate its Price Proposal as confidential.

Submission of a Proposal shall indicate that, if Proposer requests that the City withhold from disclosure information identified as confidential, and the City complies with the Proposer's request, Proposer shall assume all responsibility for any challenges resulting from the non-disclosure, indemnify and hold harmless the City from and against all damages (including but not limited to attorney's fees and costs that may be awarded to the party requesting the Proposer information), and pay any and all costs and expenses related to the withholding of Proposer information. Proposer shall not make a claim, sue, or maintain any legal action against the City or its directors, officers, employees, or agents concerning the disclosure, or withholding from disclosure, of any Proposer information. If Proposer does not request that the City withhold from disclosure information identified as confidential, the City shall have no obligation to withhold the information from disclosure and may release the information sought without any liability to the City.

9. Ex Parte Communications: Proposers and Proposers' representatives should not communicate with the City Council members about this RFSQ. In addition, Proposers and Proposers' representatives should not communicate outside the procedures set forth in this RFSQ with an officer, employee or agent of the City, including any member of the evaluation panel, with the exception of the RFSQ Facilitator, regarding this RFSQ until after Contract Award. Proposers and their representatives are not prohibited, however, from making oral statements or presentations in public to one or more representatives of the City during a public meeting.

A "Proposer" or "Proposer's representative" includes all of the Proposer's employees, officers, directors, consultants and agents, any subcontractors or suppliers listed in the Proposer's Proposal, and any individual or entity who has been requested by the Proposer to contact the City on the Proposer's behalf. Proposers shall include the Ex Parte Communications Form, **Appendix B** with their Proposals certifying that they have not had or directed prohibited communications as described in this section.

10. Conflict of Interest: The Proposer warrants and represents that it presently has no interest and agrees that it will not acquire any interest which would present a conflict of interest under California Government Code Sections 1090 et seq., or Sections 87100 et seq., during the performance of services under any Agreement awarded. The Proposer further covenants that it will not knowingly employ any person having such an interest in the performance of any Agreement awarded. Violation of this provision may result in any Agreement awarded being deemed void and unenforceable.

11. Disclosure of Governmental Position: In order to analyze possible conflicts that might prevent a Proposer from acting on behalf of the City, the City requires that all Proposers disclose in their Proposals any positions that they hold as directors, officers, or employees of any governmental entity. Additional disclosure may be required prior to contract award or during the term of the contract. Each Proposer shall disclose whether any owner or employee of the firm currently hold positions as elected or appointed officials, directors, officers, or employees of a governmental entity or held such positions in the past twelve months using the attached Disclosure of Government Positions Form, **Appendix B**.

12. Conditions to Agreement: The selected Proposer will execute a Professional Service Agreement for Services with the City describing the Scope of Services to be performed, the schedule for completion of the services, compensation, and other pertinent provisions. The contract shall follow the sample form of Agreement provided as **Appendix A** to this RFSQ, which may be modified by the City.

All Proposers are directed to particularly review the indemnification and insurance requirements set forth in the sample Agreement. **The terms of the agreement, including insurance requirements have been mandated by the City and can be modified only if extraordinary circumstances exist.**

Submittal of a Proposal shall be deemed acceptance of all the terms set forth in this RFSQ and the sample agreement for services unless the Proposer includes with its Proposal, in writing, any conditions or exceptions requested by the Proposer to the proposed Agreement.

13. Disqualification Questionnaire: Proposers shall complete and submit, under penalty of perjury, a standard form of questionnaire inquiring whether a Proposer, any officer of a proposer, or any employee of a Proposer who has a proprietary interest in the Proposer, has ever been disqualified, removed, or otherwise prevented from proposing on, or completing a federal, state, or local government project because of a violation of law or safety regulation and if so, to explain the circumstances. A Proposal may be rejected on the basis of a Proposer, any officer or employee of such Proposer, having been disqualified, removed, or otherwise prevented from proposing on, or completing a federal, state, or local project because of a violation of law or a safety regulation, **Appendix B**.

14. Standard Terms and Conditions: The City reserves the right to amend or supplement this RFSQ prior to the Proposal due date. All addendum(s) and additional information will be posted to the Costa Mesa Procurement Registry, Costa Mesa - Official City Web Site - Business - Bids & RFSQ's. Proposers should check this web page daily for new information.

ATTACHMENT A

SCOPE OF WORK
FOR
ON-CALL ENVIRONMENTAL, TECHNICAL AND STAFFING CONSULTANT LIST

The Development Services Department/Planning Division staff is creating a **pre-qualified consultant list for a 5-year period**. This pre-qualified list will be referred to as the "on-call" list within this document. This on-call list will streamline the consulting selection process and overall project timeframe to expedite technical, environmental studies and/or staffing services. The on-call list will be active for **five years** and used by the City to fulfill any demands on future or existing projects for technical review and California Environmental Quality Act (CEQA) related analysis and/or staffing.

Consultants will be assisting the City of Costa Mesa in the development of and/or peer review of technical documents/studies for parking, traffic/transportation, noise and/or air quality. Consultants may also be responsible for the preparation of materials required as part of the initial environmental review process as well as Responses to Comments, **Attendance at Planning Commission and City Council public hearings related to the projects assigned to each Consulting firm may also be required**. The consultant shall provide a history of related projects/services performed by the company. Consultants selected to appear on this list will have demonstrated the firm's qualifications for technical consulting services.

A sample list of the types of projects that might be requested are listed below. Qualifications should show how each firm will be able to conduct the studies listed below:

Transportation/Traffic	Air Quality	Noise
Preparation or peer review of traffic study for proposed project	Peer review of CEQA/Environmental Assessment	Peer Review of CEQA/Environmental Assessment Reports
Preparation or Peer Review of Parking study	Preparation or peer review of Greenhouse gas study	
Peer review of CEQA /Environmental Assessment		

COMPOSITION

While this on-call list is meant to serve the technical service needs for the City and streamline the contracting process for developer funded technical documents, **the City reserves the right to circulate separate Requests for Proposals for projects exceeding \$50,000**. Any firm on the on-call list is not precluded from these individual requests for proposals, but will be assessed by the same rubric as all other proposals.

PROJECT ASSIGNMENT

As technical services are needed, the City will request a proposal from consultants on the on-call list. This proposal will consist of:

Project Specifics:

- Scope of work
- Budget
- Name and resume for primary contact for the specific project
- Proof of current insurance policies

If the proposal meets the needs of the City, the prequalified consultant may be awarded the contract without further review of other applicants or other consultants on the on-call list.

Once a consulting firm is on the on-call list and has been contacted by the City of Costa Mesa requesting a proposal for a particular project, a brief project description will be provided to them from the City. The consultant has **14 calendar days** to provide a complete proposal for that particular project. During that time, they may coordinate with the City for edits or comments, but **at the close of the 14 day period, if a final proposal is not submitted, the budget is not suitable, or the scope of work does not meet the needs of the project the City reserves the right to select another consultant from the on-call list and begin the process again.**

At this time, it is anticipated that contract awards to prequalified consultants on the list shall be for services in the range of **\$5,000 to \$50,000. All contracts at and/or above \$50,001 shall require City Council approval.**

Please note that other related work may be required as requested by the City's project manager.

EXHIBIT B
CONSULTANT'S PROPOSAL

FIRSTCARBON SOLUTIONS™

Statement of Qualifications for On-Call Environmental, Technical, and Staffing Consultant List (RFQ No. 19-02)

COST PROPOSAL

Prepared for:
City of Costa Mesa
Development Services Department
0080.0033.Q

July 1, 2019
REVISED March 10, 2020
REVISED January 12, 2023

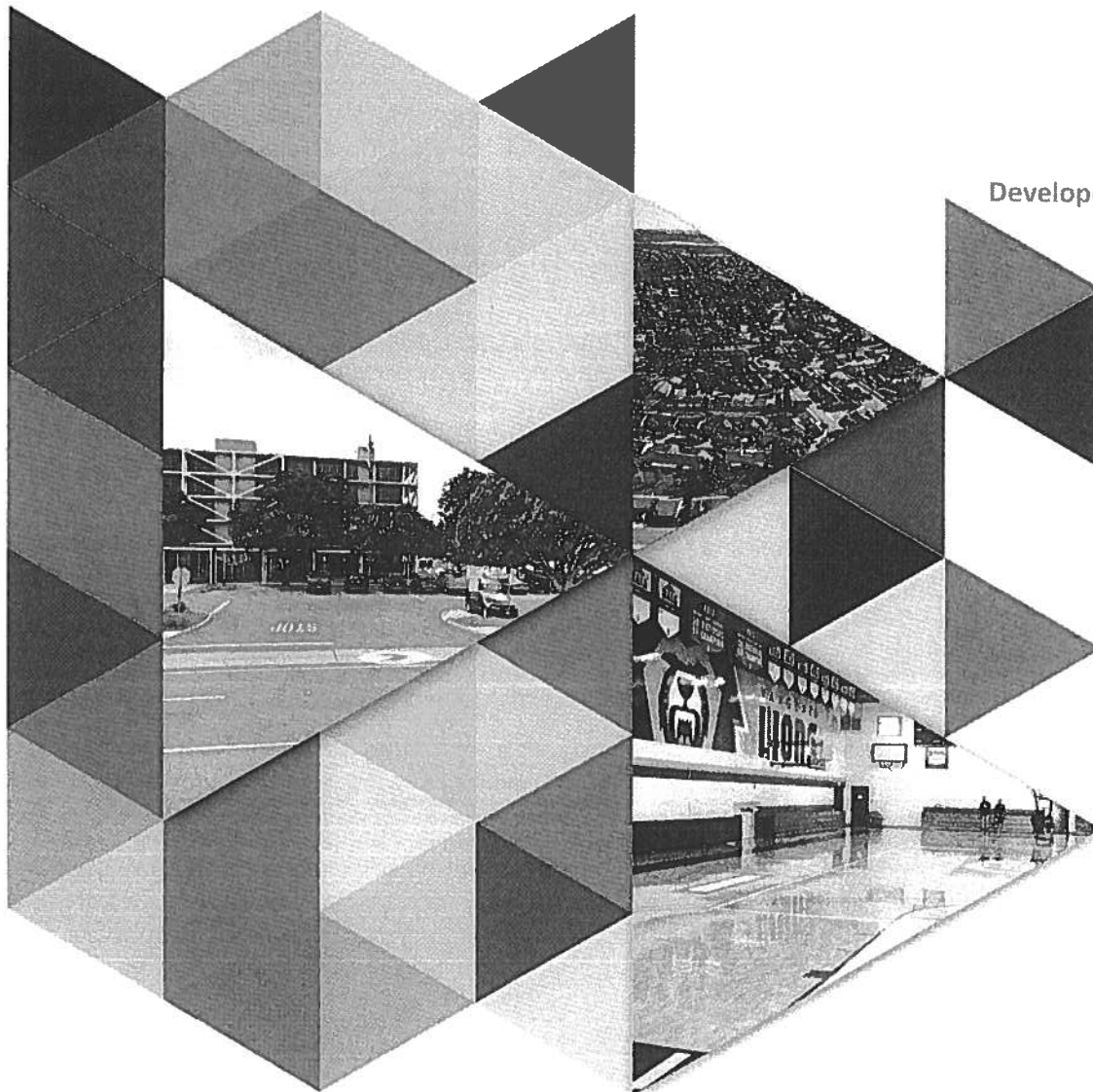


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COVER LETTER

July 1, 2019
Revised March 10, 2020
Revised January 12, 2023

Stephanie Urueta, Buyer
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92628-1200

**Subject: Cost Proposal for On-Call Environmental, Technical, and Staffing
Consultant List (RFQ No. 19-02)**

Dear Ms. Urueta:

FCS International, Inc., doing business as FirstCarbon Solutions (FCS), appreciates the opportunity to submit our Cost Proposal for the City of Costa Mesa's (City's) On-Call Environmental, Technical, and Staffing Consultant List. In accordance with the requirements stated in the City's Request for Statement of Qualifications, this Cost Proposal, valid for 180 days following the submission, contains a detailed fee schedule, a listing of any other costs to be charged in providing the services, and the subcontractors' hourly rates.

We look forward to continuing our successful relationship with the City. If you have any questions or would like to discuss specific items in more detail, please contact our Senior Director, Jason Brandman, at 714.508.4100 x1106, 925.200.1656, or jbrandman@fcs-intl.com.

Sincerely,



C. Patrick Schultz, Senior Vice President and Chief Operations Officer
FirstCarbon Solutions
250 Commerce, Suite 210
Irvine, CA 92602

UNITED STATES

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F +1 714 508 4110
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San Bernardino, CA 92407

Sacramento Valley
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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

APPROXIMATE COST OF SERVICES

Below are price ranges for common environmental documents that FCS prepares:

- Categorical Exemption: \$5,000 to \$7,000
- Technical Studies: \$8,000 to \$39,000
- Negative Declaration: \$12,000 to \$18,000
- Mitigated Negative Declaration: \$40,000 to \$75,000
- Environmental Impact Report: \$85,000 to \$185,000

FEE SCHEDULE

For the project tasks identified in the sample work plan (see Statement of Qualifications), we have identified the following hourly rates for services each staff would provide.

Key Personnel	Role	Hourly Rates
Jason Brandman	Project Director	\$295
Philip Ault, MS, LEED AP	Associate Director	\$225
Cecilia K. So	Senior Project Manager I	\$195
Angela C. Wolfe	Senior Project Manager I	\$180
Brittany Hagen	Assistant Project Manager	\$135
Stephanie Shepard, MPP	Associate I	\$125
Megan Starr, JD	Senior Attorney	\$210
Jessica Coria, MS	Senior Scientist II	\$190
Michael Tuma, PhD, CWB, RPA	Senior Biologist	\$195
Stefanie E. Griffin, MA	Scientist II	\$145
Karlee McCracken	GIS Scientist II	\$150

HOURLY RATES

FIRSTCARBON SOLUTIONS’S HOURLY RATES

FCS is a leading provider of environmental and regulatory compliance, planning and entitlement, air quality and greenhouse gas emissions, biological and cultural resources management, noise management, restoration planning and monitoring, and energy, sustainability, and carbon management services. Compensation is based on the following fee schedule and charges.

FCS Personnel	Hourly Labor Rate (\$USD)
President	\$310–\$340
Director/Vice President	\$260–\$310
Legal Counsel	\$220–\$250
Associate Director/Sr. Team Leader	\$220–\$250
Senior Project Manager/Senior Scientist/Senior Regulatory Scientist	\$190–\$220
Project Manager/Scientist/Regulatory Scientist	\$140–\$190
Assistant Project Manager/Assistant Scientist/Assistant Regulatory Scientist	\$115–\$140
Environmental Analyst/Technical Analyst/Regulatory Analyst	\$95–\$115
Senior Graphic Designer/GIS Manager	\$140–\$195
Graphic Designer/GIS/CADD Specialist	\$110–\$150
Publications Coordinator/Technical Editor	\$100–\$140
Word Processor	\$90–\$120
Archaeological/Paleontological Monitor I/II	\$80–\$110
Archaeological/Paleontological Monitor III	\$110–\$140
Biological Monitor I/II	\$80–\$130
Biological Monitor III	\$130–\$160
Reprographics Assistant/Intern	\$70–\$90
Administrative Assistant/Accounting/Clerical	\$70–\$110

Other Labor Rates

Labor rates for expert testimony, litigation support, and depositions/court appearances will be billed at a minimum of two times the above rates. If additional services are authorized during the performance of a contract, compensation will be based on the fee schedule in effect at the time the services are authorized.

Direct Expenses

Direct costs and out-of-pocket expenses are billed as follows:

1. Out-of-pocket expenses, including but not limited to, travel, messenger service, reprographics, lodging, meals, blueprint, reproduction, and photographic services: Cost, as charged to FCS, plus a 10% administrative fee.
2. Subcontractors’ fees: Cost, as charged to FCS, plus a 10% administrative fee.
3. Passenger Cars: \$0.625 per mile (effective July 1, 2022).

4. Four-wheel drive vehicles: \$90.00 per day plus \$0.625 per mile (effective July 1, 2022).
5. Reprographic/Printing Services
 - Black & White prints (8.5 x 11–11 x 17) \$0.09 to \$0.17/page
 - Color prints (8.5 x 11–11 x 17) \$0.43 to \$0.85/page
 - See Reprographics Fee Schedule for additional services/charges (provided upon request).
6. Records checks: Fees vary by facility and project.
7. Museum curation: Fees vary by city and project.
8. Cultural resources storage/curation of fossil and artifact collections: Cost, as charged to FCS, plus a 10% administrative fee.
9. Per Diem: Fees charged at the USA Federal (GSA) Rate. Lodging surcharge may apply in high-rate areas.
10. USFWS/CDFW impacts or mitigation fees: Cost, as charged to FCS, plus a 10% administrative fee.

Terms

Compensation and direct expenses are invoiced monthly and payable upon receipt or as codified in project specific contract.

SUBCONSULTANTS' HOURLY RATES

Linscott, Law & Greenspan Engineers

Staff Classification	Hourly Labor Rate (\$)
Principal Engineer	\$289
Associate Principal Engineer	\$260
Planning/Design Manager	\$242
Senior Transportation Engineer	\$219
Transportation Engineer III	\$194
Transportation Engineer II	\$164
Transportation Engineer I	\$141
Senior Transportation Planner	\$194
Transportation Planner III	\$164
Transportation Planner II	\$141
Transportation Planner I	\$125

Staff Classification	Hourly Labor Rate (\$)
Senior Signal System Specialist	\$205
Signal System Specialist III	\$175
Signal System Specialist II	\$149
Signal System Specialist I	\$133
Engineering Associate II	\$139
Engineering Associate I	\$135
Engineering Computer Analyst II	\$133
Engineering Computer Analyst I	\$105
Senior CADD Drafter	\$135
CADD Drafter III	\$125
CADD Drafter II	\$111
CADD Drafter I	\$95
Senior Engineering Technician	\$135
Engineering Technician II	\$125
Engineering Technician I	\$95
Word Processor/Secretary	\$89
Engineering Aide I	\$68

- Public Hearing and litigation support may be charged at 125% of the base rate. Consultation in connection with litigation and Court appearances will be quoted separately.
- Project-related mileage will be billed at the prevailing standard mileage rate as determined by the IRS. Subcontractors and other project-related expenses will be billed at cost plus 15%.
- The above schedule is for straight time. Overtime will be charged at 1.50 times the standard hourly rates. Interim and/or monthly statements will be presented for completed work. These will be due and payable upon presentation unless prior arrangements are made. A finance charge of 1.5% may be charged each month on the unpaid balance.

Ganddini Group, Inc.

Staff Classification	Hourly Labor Rate (\$)
Principal	\$180
Director/Vice President	\$165
Senior Engineer/Planner	\$145

Staff Classification	Hourly Labor Rate (\$)
Engineer/Planner	\$115
Junior Engineer/Planner	\$85
Senior Technician	\$80
Technician	\$50
Administrative Assistant	\$50

- Effective through December 31, 2023. Mileage shall be billed at the IRS standard mileage rate for business travel at the time the expense is incurred.

Terms and Conditions

- Hourly rates apply to work time as well as travel time and waiting time associated with meetings and public hearings. Meeting attendance after normal business hours (i.e., outside of Monday through Friday from 8:00 AM to 5:00 PM) may be billed at 125% of the standard hourly rate.
- Invoices are payable upon receipt and will be submitted monthly for work in progress based on percentage complete and/or upon completion of work. Any invoice unpaid after 30 days shall be subject to a service charge of the maximum interest rate allowed by law.
- Client agrees that the balance in a billing statement is correct and binding unless the Client notifies Ganddini Group, Inc. in writing within fifteen days of the date of billing of the alleged incorrect item.
- All documents and electronic files prepared by Ganddini Group, Inc. are Instruments of Service for use solely with respect to this project. Ganddini Group, Inc. shall be deemed author and owner of the Instruments of Service and shall retain all common law, statutory, and other reserved rights. Any unauthorized use of the Instruments of Service shall be at the Client’s sole risk and without liability to Ganddini Group, Inc.
- Ganddini Group, Inc. will provide services in an objective, professional manner, and may not arrive at the findings desired by the Client. Ganddini Group, Inc. will provide its services using the level of care and skill ordinarily exercised by reputable members of its profession practicing contemporaneously under similar conditions in the locality of the project. No other warranty, expressed or implied, is made or intended.
- The services rendered under this proposal may be terminated, with or without cause, by either party at any time by written notice. Upon termination, Ganddini Group will stop all work associated with this agreement and prepare an invoice for any partially completed work not already invoiced and submitted to the Client.

- Any controversy or claim arising out of or relating to this agreement, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitration may be entered in any court having jurisdiction thereof.
- Where Ganddini Group, Inc. initiates arbitration proceedings relating to this agreement, any resultant fees to process arbitration, such as filing fees and attorney fees, shall be borne by the Client.
- If any term, condition, or provision of this agreement is declared void, unenforceable, or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable.

Leighton Consulting, Inc.

Staff Classification	Hourly Labor Rate (\$)
Senior Principal	\$293
Principal	\$243
Associate	\$221
Senior Project Engineer/Geologist/Scientist/SMR	\$198
Project Engineer/Geologist/Scientist	\$180
Operations/Laboratory Manager	\$171
Senior Staff Engineer/Geologist/Scientist/ASMR	\$156
Staff Engineer/Geologist/Scientist	\$143
GIS Analyst	\$153
GIS Specialist	\$131
CAD Operator	\$131
Information Specialist	\$113
Project Administrator/Word Processor/Dispatcher	\$77
City of Los Angeles Deputy Building (including Grading) Inspector	\$149
Source Inspector	\$126
Field/Laboratory Supervisor	\$139
Deputy Inspector	\$110
Non-Destructive Testing (NDT)	\$146
System Operation & Maintenance (O&M) Specialist	\$139
Prevailing Wage (On site Source Inspector, NDT and soil remediation O&M)*	\$150
Prevailing Wage (Special Inspector)*	\$146

Staff Classification	Hourly Labor Rate (\$)
Prevailing Wage (Field Soils/Materials Tester)*	\$143
Senior Technician/Senior Special Inspector	\$110
Technician II/Special Inspector	\$94
Technician I	\$85
* See Prevailing Wages in Terms and Conditions	

Terms and Conditions

- **Expiration:** This fee schedule is effective through December 31, 2022 after which remaining work will be billed at then-current rates.
- **Proposal Expiration:** Proposals are valid for at least 30 days, subject to change after 30 days; unless otherwise stated in an attached proposal.
- **Prevailing Wages:** Our fees for prevailing wage work are based upon California prevailing wage laws and wage determinations. Unless specifically indicated in our proposal, costs for apprentice are not included. If we are required to have an apprentice on your project, additional fees will be charged.
- **Overtime:** Standard overtime rate is per California Labor Law and is billed at 1.5 or 2 times their hourly billing rate. Overtime rate for non-exempt field personnel working on a Leighton observed holiday is billed at 2 times their hourly billing rate. Overtime rate for Prevailing wage work is per the California Department of Industrial Relations (DIR) determination and is multiplied at 1.5 to 2 times their hourly billing rate for overtime and double-time, respectively.
- **Expert Witness Time:** Expert witness deposition and testimony will be charged at 2 times hourly rates listed on the previous pages, with a minimum charge of four hours per day.
- **Minimum Field Hourly Charges:** For Field Technicians, Special Inspectors, or any on-site (field) materials testing services:
 - 4 hours: four-hour minimum charge up to the first four hours of work.
 - 8 hours: eight-hour minimum charge for over four hours of work, up to eight hours.
 - Project time accrued includes portal to portal travel time.
- **Insurance and Limitation of Liability:** These rates are predicated on standard insurance coverage and a limit of Leighton’s liability equal to our total fees for a given project.
- **Outside Direct Costs:** Heavy equipment, subcontractor fees and expenses, project-specific permits and/or licenses, project-specific supplemental insurance, travel, subsistence,

project-specific parking charges, shipping, reproduction, and other reimbursable expenses will be invoiced at cost plus 20%, unless billed directly to and paid by client.

- **Invoicing:** Invoices are rendered monthly, payable upon receipt in United States dollars. A service charge of 1½-percent per month will be charged for late payment.
- **Client Disclosures:** Client agrees to provide all information in Client’s possession about actual or possible presence of buried utilities and hazardous materials on the project site, prior to fieldwork, and agrees to reimburse Leighton for all costs related to unanticipated discovery of utilities and/or hazardous materials. Client is also responsible for providing safe and legal access to the project site for all Leighton field personnel.
- **Earth Material Samples:** Quoted testing unit rates are for soil and/or rock (earth) samples free of hazardous materials. Additional costs will accrue beyond these standard testing unit rates for handling, testing and/or disposing of soil and/or rock containing hazardous materials. Hazardous materials will be returned to the site or the site owner’s designated representative at additional cost not included in listed unit rates. Standard turn-around time for geotechnical-laboratory test results is 10 working days. Samples will be stored for 2 months, after which they will be discarded. Prior documented notification is required if samples need to be stored for a longer time. A monthly storage fee of \$10 per bag and \$5 per sleeve or tube will be applied. Quoted unit rates are only for earth materials sampled in the United States. There may be additional cost for handling imported samples.
- **Construction Material Samples:** After all designated 28-day breaks for a given sample set meet specified compressive or other client-designated strength, all “hold” cylinders or specimens will be automatically disposed of, unless specified in writing prior to the 28-day break. All other construction materials will be disposed of after completion of testing and reporting.

KPFF Consulting Engineers, Inc.

Staff Classification	Hourly Labor Rate (\$)
Principal-In-Charge	\$290
Senior Project Manager	\$235
Project Manager	\$215
Project Engineer	\$180
Design Engineer	\$165
Chief CAD Operator	\$190
Drafter/CAD Operator	\$165
Administrative/Secretary	\$110

Staff Classification	Hourly Labor Rate (\$)
Note: Hourly rates will be updated on an annual basis throughout the duration of the project, and services will be billed at the hourly rates in place at the time the service is provided.	

EXHIBIT C
CITY COUNCIL POLICY 100-5

CITY OF COSTA MESA, CALIFORNIA

COUNCIL POLICY

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

- 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.