

**AGREEMENT  
CITY OF FRESNO, CALIFORNIA  
CONSULTANT SERVICES**

THIS AGREEMENT is made and entered into effective the 15th day of January, 2016, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and FirstCarbon Solutions, a California corporation (hereinafter referred to as "CONSULTANT").

**RECITALS**

WHEREAS, CITY desires to obtain professional Environmental Construction Monitoring services for the Fulton Mall Reconstruction Project, hereinafter referred to as the "Project;" and

WHEREAS, CONSULTANT is engaged in the business of furnishing services as a environmental planning consultant and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, CONSULTANT acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107 and Administrative Order No. 6-19; and

WHEREAS, this Agreement will be administered for CITY by its Public Works Director (hereinafter referred to as "Director") or his/her designee.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Services. CONSULTANT shall perform to the satisfaction of CITY the services described in **Exhibit A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**.

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above and shall continue in full force and effect through the earlier of complete rendition of the services hereunder or May 28, 2017, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Exhibit A** are to commence upon CITY'S issuance of a written "Notice to Proceed." Work shall be undertaken and completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed within 500 consecutive calendar days from such authorization to proceed.

3. Compensation.

(a) CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee not to exceed \$354,252.40, paid on a time and materials basis in accordance with the schedule of fees contained in **Exhibit A**, and a contingency amount not to exceed \$95,000.00 for any additional work rendered pursuant to Subsection (c) below and authorized in writing by the Director.

(b) Detailed statements shall be rendered monthly and will be payable in the normal course of CITY business. CITY shall not be obligated to reimburse any expense for

which it has not received a detailed invoice with applicable copies of representative and identifiable receipts or records substantiating such expense.

(c) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to CONSULTANT'S compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. CONSULTANT shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

#### 4. Termination, Remedies and Force Majeure.

(a) This Agreement shall terminate without any liability of CITY to CONSULTANT upon the earlier of: (i) CONSULTANT'S filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against CONSULTANT; (ii) 7 calendar days prior written notice with or without cause by CITY to CONSULTANT; (iii) CITY'S non-appropriation of funds sufficient to meet its obligations hereunder during any CITY fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.

(b) Immediately upon any termination or expiration of this Agreement, CONSULTANT shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to CITY any and all unearned payments and all properties and materials in the possession of CONSULTANT that are owned by CITY. Subject to the terms of this Agreement, CONSULTANT shall be paid compensation for services satisfactorily performed prior to the effective date of termination. CONSULTANT shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.

(c) In the event of termination due to failure of CONSULTANT to satisfactorily perform in accordance with the terms of this Agreement, CITY may withhold an amount that would otherwise be payable as an offset to, but not in excess of, CITY'S damages caused by such failure. In no event shall any payment by CITY pursuant to this Agreement constitute a waiver by CITY of any breach of this Agreement which may then exist on the part of CONSULTANT, nor shall such payment impair or prejudice any remedy available to CITY with respect to the breach.

(d) Upon any breach of this Agreement by CONSULTANT, CITY may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement. If it is determined that CITY improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(e) CONSULTANT shall provide CITY with adequate written assurances of future performance, upon Director's request, in the event CONSULTANT fails to comply with any terms or conditions of this Agreement.

(f) CONSULTANT shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of CONSULTANT and without its fault

or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. CONSULTANT shall notify Director in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Director of the cessation of such occurrence.

(g) Any notice of termination sent to Consultant shall include the reason(s) for such termination or state that it is without cause.

5. Confidential Information, Ownership of Documents and Copyright License.

(a) Any reports, information, or other data prepared or assembled by CONSULTANT pursuant to this Agreement shall not be made available to any individual or organization by CONSULTANT without the prior written approval of CITY. During the term of this Agreement, and thereafter, CONSULTANT shall not, without the prior written consent of CITY, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of CITY, including but not limited to business plans, marketing plans, financial information, designs, drawings, specifications, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in CITY.

- i. Permission granted to CONSULTANT to disclose information on one occasion shall not authorize CONSULTANT to further disclose such information or any other information or disseminate the same on any other occasion.
- ii. CONSULTANT shall not comment publicly to the press or any other media regarding the Agreement or CITY'S actions on the same, except to CITY'S personnel or CONSULTANT'S personnel involved in the performance of this Agreement at public hearings or in response to questions from a Legislative committee.
- iii. CONSULTANT shall not issue any news releases or any public relations item of any nature, whatsoever, regarding work performed or to be performed under this Agreement without prior review of the contents thereof by CITY and receipt of CITY'S written permission.

(b) Any and all original sketches, pencil tracings of working drawings, plans, computations, specifications, computer disk files, writings and other documents prepared or provided by CONSULTANT pursuant to this Agreement, in any form whatsoever, are the property of CITY at the time of preparation and shall be turned over to CITY upon expiration or termination of the Agreement or default by CONSULTANT. CONSULTANT grants CITY a copyright license to use such drawings and writings. CONSULTANT shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein. CITY may modify the design including any drawings or writings. Any use by CITY of the aforesaid sketches, tracings, plans, computations, specifications, computer disk files, writings and other documents in completed form as to other projects or extensions of this Project, or in uncompleted form, without specific written verification by CONSULTANT will be at CITY'S sole risk and without liability or legal exposure to CONSULTANT. CONSULTANT may keep a copy of all drawings and specifications for its sole and exclusive use.

- i. In the event of the copyright of any reports or other products prepared under this Agreement by CONSULTANT or any subcontractor, the Federal Highway Administration ("FHWA") shall have the royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for government purposes.

(c) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this Section 5.

(d) This Section 5 shall survive expiration or termination of this Agreement.

6. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as CONSULTANT represents to CITY that CONSULTANT and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, CITY relies upon the skill of CONSULTANT and any subcontractors to do and perform such services in a skillful manner and CONSULTANT agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by CITY shall not operate as a release of CONSULTANT or any subcontractors from said professional standards.

7. Indemnification. To the furthest extent allowed by law, CONSULTANT shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of CONSULTANT, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

8. Insurance.

(a) Throughout the life of this Agreement, CONSULTANT shall pay for and maintain in full force and effect all insurance as required in **Exhibit B**, which is incorporated into and part of this Agreement, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) or as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated in Exhibit B shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, CONSULTANT or any of its subcontractors/sub-consultants fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONSULTANT shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONSULTANT of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by CONSULTANT shall not be deemed to release or diminish the liability of CONSULTANT, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONSULTANT, its principals, officers, agents, employees, persons under the supervision of CONSULTANT, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor/sub-consultant to provide insurance protection, as an additional insured, to the CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with CONSULTANT and CITY prior to the commencement of any services by the subcontractor. CONSULTANT and any subcontractor/sub-consultant shall establish additional insured status for CITY, its officers, officials, employees, agents and volunteers by using Insurance Service Office (ISO) Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

#### 9. Conflict of Interest and Non-Solicitation.

(a) Prior to CITY'S execution of this Agreement, CONSULTANT shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, CONSULTANT shall have the obligation and duty to immediately notify CITY in writing of any change to the information provided by CONSULTANT in such statement.

(b) CONSULTANT shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, 23 U.S.C. § 112, FHWA regulations applicable to design and engineering consulting contracts found at 23 C.F.R. 172.1 *et seq.*, California Government Code Section 1090 *et. seq.*, the California Political Reform Act (California Government Code Section 87100 *et. seq.*), the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 *et. seq.*) and

Section 4-112 of the Fresno Municipal Code (Ineligibility to Compete). At any time, upon written request of CITY, CONSULTANT shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, CONSULTANT and the respective subcontractor(s) are in full compliance with all laws and regulations. CONSULTANT shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, CONSULTANT shall immediately notify CITY of these facts in writing.

(c) In performing the work or services to be provided hereunder, CONSULTANT shall not employ or retain the services of any person while such person either is employed by CITY or is a member of any CITY council, commission, board, committee, or similar CITY body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) CONSULTANT represents and warrants that it has not paid or agreed to pay any compensation, lawful or unlawful, contingent or otherwise, direct or indirect, to any party to solicit or procure this Agreement or any rights/benefits hereunder. CITY shall have the right, in its discretion, to deduct from any payment to CONSULTANT under this Agreement, or otherwise recover the full amount of, any rebate, kickback or other consideration paid by CONSULTANT in violation of any representation or warranty under this section.

(e) Neither CONSULTANT, nor any firm affiliated with CONSULTANT, nor any of CONSULTANT'S subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project with the exception of any subcontractor whose services are limited to providing surveying or materials testing information. CONSULTANT and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. An affiliated firm is one which is subject to the control of the same person(s) through joint-ownership or otherwise.

(f) CONSULTANT shall disclose any financial, business, or other relationship with CITY that may have an impact upon the outcome of this Agreement or any ensuing CITY construction project. CONSULTANT shall also disclose any current clients who may have a financial interest in the outcome of this Agreement or any ensuing CITY construction project, which will follow.

(g) CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

(h) If CONSULTANT should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, CONSULTANT shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

(i) This Section 9 shall survive expiration or termination of this Agreement.

10. Recycling Program. In the event CONSULTANT maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, CONSULTANT at its sole cost and expense shall:

- (i) Immediately establish and maintain a viable and ongoing recycling program, approved by CITY'S Solid Waste Management Division, for each office and facility. Literature describing CITY recycling programs is available from CITY'S Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
- (ii) Immediately contact CITY'S Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.
- (iii) Cooperate with and demonstrate to the satisfaction of CITY'S Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

11. General Terms, Federal and State Assurances and Requirements.

(a) Except as otherwise provided by law, all notices expressly required of CITY within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Director or his/her designee.

(b) Records of CONSULTANT'S expenses pertaining to the Project shall be kept on a generally recognized accounting basis. CONSULTANT and its subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement including, but not limited to, the costs of administering the Agreement. CONSULTANT and its subcontractors shall make such materials available at their respective offices at all reasonable times during the period of this Agreement and for 3 years, or longer if required by law, from the date of final payment under the Agreement. CITY, the State, the State Auditor, FHWA or any duly authorized representative of the federal government shall have access to any books, records, papers, accounting records and other documents of CONSULTANT and its subcontractors that are pertinent to the Agreement for audit, examinations, excerpts, and transcriptions. Copies thereof shall be furnished by CONSULTANT, if requested. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of the 3-year time period, all records shall be retained and made available until such action is resolved, or until the end of said time period whichever shall later occur. If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this section and in the event a subcontract is entered into for an amount in excess of \$25,000 the subcontract shall include this paragraph in its entirety. This Section 11(b) shall survive expiration or termination of this Agreement.

(c) Prior to execution of this Agreement by CITY, CONSULTANT shall have provided evidence to CITY that CONSULTANT is licensed to perform the services called for by this Agreement (or that no license is required). If CONSULTANT should subcontract all or any portion of the work or services to be performed under this Agreement, CONSULTANT shall require each subcontractor to provide evidence to CITY that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

(d) CONSULTANT'S services pursuant to this Agreement shall be provided under the supervision of Mary Bean, and he/she shall not assign another to supervise CONSULTANT'S performance of this Agreement without the prior written approval of the Director.

(e) CITY will carry out applicable federal requirements in the administration of this Agreement. Notwithstanding Section 25 herein, CONSULTANT agrees to comply with all applicable federal and state assurances and requirements identified in **Exhibit D along with its Appendix A** and require that each subcontract include the same assurances by each of its subcontractors.

12. Nondiscrimination. To the extent required by controlling federal, state and local law, CONSULTANT shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, CONSULTANT agrees as follows:

(a) CONSULTANT will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) CONSULTANT will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. CONSULTANT shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to CONSULTANT'S employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) CONSULTANT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of CONSULTANT'S commitment under

this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this Section 12.

13. Independent Contractor.

(a) In the furnishing of the services provided for herein, CONSULTANT is acting solely as an independent contractor. Neither CONSULTANT, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which CONSULTANT shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that CONSULTANT is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between CONSULTANT and CITY. CONSULTANT shall have no authority to bind CITY absent CITY'S express written consent. Except to the extent otherwise provided in this Agreement, CONSULTANT shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, CONSULTANT and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to CITY employees. CONSULTANT shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, CONSULTANT shall be solely responsible, indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for and payment of CONSULTANT'S employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in CITY employment benefits, entitlements, programs and/or funds offered employees of CITY whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, CONSULTANT may be providing services to others unrelated to CITY or to this Agreement.

14. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

15. Binding. Subject to Section 16, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

16. Assignment.

(a) This Agreement is personal to CONSULTANT and there shall be no assignment by CONSULTANT of its rights or obligations under this Agreement without the prior written approval of the City Manager or his/her designee. Any attempted assignment by CONSULTANT, its successors or assigns, shall be null and void unless approved in writing by the City Manager or his/her designee.

(b) CONSULTANT hereby agrees not to assign the payment of any monies due CONSULTANT from CITY under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). CITY retains the right to pay any and all monies due CONSULTANT directly to CONSULTANT.

17. Compliance With Law. In providing the services required under this Agreement, CONSULTANT shall at all times comply with all applicable laws of the United States, the State of California and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

18. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

19. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

20. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

21. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

22. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

23. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

24. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

25. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

26. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

27. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

28. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both CITY and CONSULTANT.

29. RFQ Document. Any Request for Qualifications and documents issued therewith (collectively referred to herein as "RFQ") by CITY that resulted in selection of CONSULTANT for entry into this Agreement are hereby incorporated into and made a part of this Agreement. In the event of a conflict between the RFQ and this Agreement (including any Exhibit hereto), this Agreement (including any Exhibit hereto) shall take precedence.

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IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,  
a California municipal corporation

FirstCarbon Solutions,  
a California corporation

By: \_\_\_\_\_  
Andrew Benelli, PE,  
Assistant Public Works Director  
Public Works Department

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_  
(if corporation or LLC, Board  
Chair, Pres. or Vice Pres.)

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

By: \_\_\_\_\_

By: \_\_\_\_\_  
Deputy

Name: \_\_\_\_\_

APPROVED AS TO FORM:  
City Attorney's Office

Title: \_\_\_\_\_  
(if corporation or LLC, CFO,  
Treasurer, Secretary or Assistant  
Secretary)

By: \_\_\_\_\_  
Brandon Collet     Date  
Deputy

Any Applicable Professional License:  
Number: \_\_\_\_\_

REVIEWED BY:

Name: \_\_\_\_\_

Date of Issuance: \_\_\_\_\_

\_\_\_\_\_  
Randall Morrison, PE, Deputy City Engineer  
Public Works Department

Addresses:  
CITY:  
City of Fresno  
Attention: Randall Morrison,  
Deputy City Engineer  
2600 Fresno Street, 4<sup>th</sup> Floor  
Fresno, CA 93721  
Phone: (559) 621-8703  
FAX: (559) 457-1277

CONSULTANT:  
FirstCarbon Solutions  
Attention: Mary Bean,  
Vice President  
7265 N First Street, Suite 101  
Fresno, CA 93720  
Phone: (925) 357-2562  
FAX: [area code and #]

Attachments:

1. Exhibit A - Scope of Services
2. Exhibit B - Insurance Requirements
3. Exhibit C - Conflict of Interest Disclosure Form
4. Exhibit D - Federal and State Assurances
5. Appendix A to Exhibit D

## Exhibit A

### SCOPE OF SERVICE

Consultant Service Agreement between City of Fresno (“City”)

And FirstCarbon Solutions (“Consultant”)

Environmental Construction Monitoring Services for the Fulton Mall Reconstruction Project

PROJECT TITLE

#### PROJECT OBJECTIVE:

The objective of the project is to provide environmental construction monitoring services during the construction phase of the Fulton Mall Reconstruction Project. FirstCarbon Solutions and the consultant team shall provide the expertise needed to meet the requirements set forth under the project’s environmental documents and as described herein. Services will include pre-construction and construction surveys and monitoring in order to meet the required environmental mitigation measures on the project. The Fulton Mall Reconstruction Project is subject to the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) for environmental mitigation.

#### SCOPE OF SERVICES:

##### **BIOLOGICAL RESOURCES SERVICES (FirstCarbon Solutions - FCS)**

The following tasks represent the scope of work for conducting the pre-construction nesting bird surveys and pre-construction roosting bat clearance surveys.

##### **Task 1: Pre-construction Nesting Bird Surveys**

Consistent with Migratory Bird Treaty Act (MBTA) and California Department of Fish and Wildlife (CDFW) requirements, nesting bird surveys are required if construction and/or activity/tree removal will occur during the nesting season (February 15<sup>th</sup> to August 31<sup>st</sup>). As a result, FirstCarbon Solutions (FCS) proposes to conduct a pre-construction nesting bird survey. Surveys of the project areas will be conducted by a qualified biologist and will include all areas within 200 feet of the project area, if feasible, as well as line of sight up to 500 feet where possible. Surveys will be conducted within 14 days prior to beginning ground disturbance and/or construction. Specific tasks to be conducted include pre-construction nesting bird survey and preparation of summary memo describing survey results. If active nests are located during preconstruction surveys, United States Fish and Wildlife Service (USFWS) and/or CDFW notification and consultation may be required to mitigate for presence of nesting birds, and will require additional scope of work.

- FCS will perform three pre-construction nesting bird surveys for the entire project area (separated into three individual survey areas located between Tuolumne Street and Fresno Street, Fresno Street and Tulare Street, and Tulare Street and Inyo Street, respectively), and will require a maximum of one day to conduct a field survey for each survey area (total of three) including mobilization. If necessary, an additional scope of work will be required for any subsequent surveys. As needed, any additional surveys shall be billed per the daily rate for each additional survey.

- If nesting birds are identified within the project area, additional monitoring of active nests may be required to conduct construction activities. Monitoring activities are not included in this scope of work. As needed monitoring activities shall be billed per the daily rate for monitoring.

### **Task 2: Pre-construction Bat Roosting Surveys**

If suitable roosting habitat (e.g., building, bridges, overhangs, large covered signs) for special-status bats will be affected by project construction/activity (e.g., removal of buildings, modification of bridges), and construction activities will occur within the potential maternity roosting period for resident bat species (March to September), a qualified biologist will conduct surveys for special-status bats during the appropriate time of day to maximize detectability to determine if bat species are roosting near the work area.

FCS shall conduct three preliminary bat surveys within the project to identify areas of high potential for bat roosts. Each survey area will require two biologists for one day of surveying to assess the project area for potential roost. Preliminary survey methodology will include visual surveys of the project area to identify potentially suitable habitat and/or indication of bat occupancy (e.g., guano). Any areas identified as having a high potential for roosting will require individual site-specific surveys if construction activity will occur during the maternity roosting period. Roost exclusion devices (netting, plywood, building repair) may be installed prior to the maternity roosting period, if feasible.

### **Task 3: Site-Specific Bat Roost Surveys**

Site-specific surveys will be conducted no less than 7 days and no more than 14 days prior to beginning ground disturbance and/or construction. Survey methodology may include visual surveys of bats (e.g., observation of bats during foraging period), inspection for suitable habitat, indication of bat occupancy (e.g., guano), or use of ultrasonic detectors (Anabat, Echo Meter Touch etc.), if necessary. Visual surveys will include visually scanning all trees and buildings within the project footprint, as necessary. If no bat roosts are found, then no further action will be required.

Any active roosts will be identified and a no-construction buffer will be flagged by the biologist and explained to construction supervisor. If avoidance is not possible, coordination with the CDFW and/or USFWS to address additional mitigation, exclusion methods, and/or roost removal procedures will be required, prior to any additional work or roost removal activities.

- Preliminary assessment will require 2 biologists for a total of 3 days to assess the entire project area.
- FCS shall coordinate the survey schedule with City to ensure that access to all required buildings is achieved. Extra site visits are not included in this scope of work.
- Visual site specific surveys may not be adequate to identify bat occurrence; the use of handheld Echo Meter Touch device has been included in the daily rate using a rental price of \$150 per day.

- Site-specific survey costs assume a maximum of four buildings per survey. As many as four buildings can usually be adequately surveyed in one day, and the cost estimate reflects this as well as individual MOB costs for each survey. Direct Costs Fees for travel may be adjusted according to the required survey intensity, if multiple surveys are scheduled on consecutive days.

### **PALEONTOLOGICAL MONITORING SERVICES (GrassRoots)**

GrassRoots Environmental will provide paleontological monitoring and reporting for the Fulton Mall project. GrassRoots will monitor construction activities on-site whenever excavation greater than 5 feet below ground surface is taking place. If paleontological resources are found, the paleontologist will divert earth-disturbing activities away from the site of the find and will salvage, prepare, identify, and curate any paleontological resources deemed significant. The significant resources shall be sent to a City-approved depository along with a summary report.

For a project located in an area where paleontological resources are likely to be present, professional standards of the Society of Vertebrate Paleontology specify that a Paleontological Identification Report (PIR), Paleontological Evaluation Report (PER), and Paleontological Mitigation Plan (PMP) should be prepared and a record search conducted at an appropriate facility. GrassRoots will prepare and implement a paleontological resources inventory and assessment by rock unit. This report shall include the following components:

- A report of any fossils observed during a reconnaissance-level field survey;
- The results of a records search of appropriate paleontological databases (such as the database at the University of California, Berkeley Museum of Paleontology [UCMP]) to determine whether any previously recorded fossil localities are located within or immediately adjacent to the proposed infrastructure facilities;
- A complete listing of all geologic formations within the alignment of the proposed infrastructure; and
- A determination as to whether the geologic formations are of high or low paleontological sensitivity, and a discussion supporting the reasons why the sensitivity determinations were made.

GrassRoots will also attend up to three worker environmental awareness training sessions (at 2 hours each) and will inform construction personnel of the laws and regulations regarding paleontological resources, the types of resources that might be found during construction, and the appropriate actions to take if such resources are found.

This scope of work covers Paleontological monitoring for up to 30 days of construction activity that occurs greater than 5 feet below ground surface.

GrassRoots will prepare a brief memo each week that on-site monitoring is required. The memo will summarize the location monitored and any notable events or activities that occurred during monitoring.

## **VIBRATION MONITORING SERVICES (Wilson Ihrig and FCS)**

### **Task 1: Pre-Construction: Coordination and Planning**

#### **Task 1a: Coordination with Contractor and Monitoring Team**

As soon as authorized Wilson Ihrig will begin coordinating with the contractor, monitoring team, and City concerning plans for monitoring and basic data to acquire during construction. This effort will include the following tasks:

- Review contractor phasing, schedule, staging areas, equipment list, vibration controls, and other relevant information provided by the contractor.
- Participate in kick-off meeting and conference calls to assist the City establish monitoring process and protocol.
- After the contractor information is available, conduct site reconnaissance to review and scope out vibration monitoring locations for each building and review logistical issues. This should be coordinated with the site visit(s) by the crack monitoring advisor to review locations for installing crack gauges prior to construction.

#### **Task 1b: Vibration Testing of Contractor Equipment**

At the outset of the project, Wilson Ihrig will perform vibration measurements of contractor equipment that poses a vibration concern (e.g., concrete breaker, vibratory roller, etc.) to develop site-specific vibration attenuation relationships with distance.

- Tests would be conducted at a non-vibration-sensitive area of the site.
- Vibration simulation tests of contractor equipment and operating conditions.
- Data will be analyzed and used to prepare a specific monitoring plan and protocol for building monitoring team and contractor.

#### **Task 1c: Vibration Monitoring Plan**

Wilson Ihrig will prepare a Vibration Monitoring Plan that will outline the monitoring methods and procedures to be used at the start of the project based on the framework of the NVMMMP and the results of the vibration tests. The plan will include:

- Location and number of vibration monitors for each work area.
- Monitor type and instrumentation specifications.
- Monitor power requirements and geophone mounting requirements.
- Vibration attenuation vs. distance curves based tests of actual contractor equipment.
- Vibration criteria and response thresholds.
- Visual and electronic alert settings for threshold exceedances.
- Vibration data archival reporting.

### **Task 1d: Guidelines for Construction Vibration Protocol**

Wilson Ihrig will assist the team develop guidelines to define monitoring protocols for construction.

- With input from the City, contractor, and monitoring team, outline vibration monitoring response protocols identifying actions in the event thresholds are exceeded.

### **Task 2: Start of Construction – Mobilization and Training**

At the start of construction, Wilson Ihrig will mobilize the vibration monitoring effort and train FCS staff to establish the working routine for the start of construction activities. Tasks include:

- Acquire initial set of vibration monitors to be used at closest buildings at the start of construction. Each vibration monitor will include a vibration sensor and digital vibration logger. The initial set is anticipated to include:
  - Ten vibration monitors capable of remote monitoring equipped with cellular wireless modems for automatic remote data transmission and electronic alerts via email or SMS text message upon threshold exceedance;
  - Two supplemental vibration monitors with visual light display which may be dedicated for as-needed attended monitoring by FCS at nearest locations between building and construction work. These monitors will be equipped with a light board display that will indicate threshold exceedances visually for FCS and the contractor.
- Install/deploy monitors in buildings close to the initial construction activity.
- If necessary for vibration monitor locations to be outdoors exposed to public right-of-way and foot traffic, provide protective enclosures to minimize the potential for tampering.
- Train FCS staff in the installation and operation of the vibration monitors for day-to-day handling and relocating. Wilson Ihrig will visit the site to work with FCS on installation and train the dedicated FCS staff responsible for overseeing the day-to-day vibration monitoring.
- Wilson Ihrig will be on-site at the start of construction to work with FCS and advise on monitoring techniques, placement and mounting of geophones, and protocols for moving monitors and for responding to threshold exceedances. Wilson Ihrig will be responsible for installing mounting plates or brackets where transducers are attached to walls.
- Wilson Ihrig will advise FCS staff on moving monitors as needed depending on construction progress.
- Wilson Ihrig will acquire additional monitors for the project as needed based on construction activity. This will depend on how the Construction progresses and how spread out the contractor work areas are.
- The total number of monitors could also be reduced later in the project after the vibration intensive work is completed.

### **Task 3: During Construction – Routine Vibration Monitoring**

Wilson Ihrig will provide oversight to and work with FCS throughout the project vibration monitoring effort. This will include the following tasks:

- Obtaining calibration certificates for monitors (Wilson Ihrig)
- Configuring vibration monitors parameters and unit settings (Wilson Ihrig)

- Configuring electronic alerts and notifications for team distribution (Wilson Ihrig)
- Daily compiling and organizing all monitoring data and tracking of locations, units, dates, and times (FCS)
- Moving monitors as needed based on construction activity (FCS)
- Routine maintenance to ensure proper operation (FCS)
- Troubleshooting remote monitoring issues (Wilson Ihrig and FCS)
- Regular reporting of data to provide permanent documentation of project vibration levels and can be relied upon in the event any damage or other vibration claims were made. In addition to providing an archival summary of the vibration data, the reports will include cursory descriptions of the work undertaken during the period, assuming such information is provided in a timely fashion by the contractor (Wilson Ihrig and FCS).

Specific locations will be finalized with FCS, Wilson Ihrig, and participating third parties pending review during the start of construction. Aspects to be considered are proximity to construction vibration sources, equipment security, and other factors such as availability of line power. Line power will be desirable at each monitoring location; however, some units may need to remain on battery power if line power is not available unless it can be provided by others.

FCS will deploy, move, and maintain monitors as necessary, swap out batteries for units not on line power, and keep units and spare batteries charged as needed when not in use. FCS will be responsible for making sure that all data from the monitoring stations are compiled and accessible on a daily basis.

Designated staff will be notified by email or text within a few minutes of when measured vibration levels exceed specific thresholds for vibration monitors equipped with the cellular wireless modem and data transmission. The supplemental monitors with light board display may be used for alerting the contractor and FCS in real-time when thresholds are exceeded. FCS will immediately alert the team about threshold exceedances so that the appropriate actions can be taken and obtain information from the contractor to document activity (equipment, location, time, etc.) occurring at the time of the threshold exceedance.

During construction, Wilson Ihrig will be available to consult with the City and the monitoring team on interpretation of criteria exceedances, means and methods to reduce vibration, and case-by-case review of vibration related issues as they arise. Consultation on vibration damage potential would be the role of the Structural Engineer and Architect.

#### **Task 4: County of Fresno Department of Health Mitigation Plan**

As discussed in the NVMMP, Section 4.4.4.1, 1221 Fulton Mall has vibration-sensitive operations in basement locations that encroach on the right-of-way. Wilson Ihrig understands that lab equipment of primary concern consists of two Biosafety Cabinets located in a Biosafety Level 3 (BSL-3) testing room. The equipment consists of Baker Model B60-112 and Lab Comco Model 36205-04. The equipment is freestanding and not bolted to the floor. The Baker hood is hard-ducted to the ventilation ducts. No quantitative vibration criteria have been provided by the Lab to the best of Wilson Ihrig's knowledge. Wilson Ihrig also understands that there are other freestanding biological testing equipment that the Lab plans to relocate away from the front area of Lab prior to construction.

The NVMMP outlined recommended steps. Wilson Ihrig can help develop a detailed scope after visiting the Lab and performing additional review. Wilson Ihrig recommends a nominal scope be developed to initiate the process as soon as authorized.

## **CRACK GAUGE START-UP AND CONSTRUCTION SUPPORT (WK)**

### **Task 1 - Start-Up Phase**

- In coordination with WIAI and Cornerstone Structural Engineering Group (CSEG), Wallace-Kuhl and Associates (WK) will provide onsite engineering consulting services to help select the appropriate locations to install crack monitoring gauges – at this early stage, we anticipate selecting three locations in each of the 56 buildings/properties identified in the NVMMP.
- Install crack monitor gauges at the selected locations.
- Help develop a protocol for periodic reading of the gauges, which will be performed by others during construction.

### **Task 2 - Construction Phase**

- Provide engineering consulting services as needed during construction.
- Review crack monitor gauge documentation and findings.

## **CRACK GAUGE MONITORING AND VIBRATION STRUCTURAL SUPPORT SERVICES (CSEG)**

### **Task 1 - Crack Monitoring**

Cornerstone will provide monitoring of crack gauges as required in Table 15 – Schedule of Crack Monitoring in the NVMMP. This task item includes the following scope of work:

- Review of locations of crack gauges for each building during the time of installation. It is assumed that the number of crack gauges and locations will be determined by others and that a minimum of three crack gauges will be installed per building (for a total of 162 gauges).
- Monitor installed crack gauges per Table 15 – Schedule of Crack Monitoring in the NVMMP. This task includes site visits to physically measure and record the crack widths at each of the properties listed in Appendix B (attached).
  - This task includes monitoring crack gauges prior to demolition and construction activities to establish initial readings. Monitoring will begin as soon as the crack gauges are installed by others. Cornerstone will visit the site and record crack gauge readings 3 times per week for a period of 60 days prior to commencement of work by the contractor, as required by the NVMMP
  - In accordance with the NVMMP, crack gauges will be monitored 3 times per week when demolition and construction work is within 600 ft. of the gauge and daily when work is within 200 ft. of a gauge as required by the NVMMP.
  - Per the NVMMP, crack gauges will need to be monitored after the completion of all construction activities. In accordance with the NVMMP, Cornerstone will monitor crack gauges 3 times a week for 60 days after the completion of construction activities around the gauge and will continue to monitor the gauges weekly for a period of 6 months after the completion of construction.
- Cornerstone will complete a weekly crack monitoring report documenting the measurements of the cracks. The reports will include the following information:
  - Day and time that measurements were taken
  - General construction activities occurring when measurements were taken
  - List of property addresses where measurements were taken
  - Location where measurements were taken

- Base reading for each gauge that was measured
- Name of individual taking the measurements

## **Task 2 - Vibration Monitoring Structural Support**

This task includes an allowance for work associated with providing structural support to WI and FCS in the event that the vibration thresholds contained within the NVMMP were determined to have been exceeded and building damage may have occurred. Cornerstone will provide structural advice on a case-by-case basis on whether it may be appropriate to make vibration threshold criteria modifications if it determined that the current criteria contained within the NVMMP is too stringent to accommodate the contractor's operations at certain locations.

When the vibration threshold has been exceeded, WI and FCS will notify Cornerstone, who will perform the following tasks:

- Perform an on-site observation of the building where the vibration threshold was exceeded. Observations will include documenting any visible damage, including cracks that may have been caused by the excessive vibration. Observations will be limited to readily visible areas of the exterior portion of the building facing the improvements at the street level. Any damage noted will be documented with photos. Cornerstone will also attempt to determine what caused the monitor to exceed the vibration threshold by discussing with the contractor the work that was in progress when the threshold was exceeded.
- Cornerstone will provide structural advice to WI and FCS on the acceptability of exceeding the lower vibration threshold on a case-by-case basis, based on the findings of the site observation.
- Prepare a field observation report discussing the findings of our on-site observation including the following:
  - Day and time that observation was made
  - Property addresses and location where the vibration threshold was exceeded
  - Location where measurements were taken
  - Observations of any damage, including photos
  - Recommendations for further action, including whether the vibration threshold may be exceeded
  - Name of individual making the observations

## **ARCHITECTURAL SUPPORT SERVICES (ARG)**

Architectural Resources Group (ARG) would be available on an as needed basis if questions arise regarding the effect of vibration on any of the buildings. ARG will provide architectural support in the event of vibration impacts or to provide input on vibration threshold changes.

SCHEDULE OF FEES

**AGREEMENT COMPENSATION BREAKDOWN**

The consultant fees to provide the scope of services herein are itemized as follows:

<u>Item</u>	<u>Task Description</u>	<u>Total Cost</u>
1.	Biological Resources (FCS)	\$13,412.40
2.	Paleontological Services (GrassRoots)	\$40,240.00
3.	Vibration Monitoring Services (WI & FCS)	\$203,600.00
4.	Crack Gauge Start-up and Construction Support (WK)	\$24,000.00
5.	Crack Gauge Monitoring and Vibration Structural Support (CSEG)	\$73,000.00
Total Cost		\$354,252.40

<b>BIOLOGICAL RESOURCES SERVICES (FCS)</b>			
<b>Task</b>	<b>Rate*</b>	<b>Quantity</b>	<b>Cost</b>
Task 1: Avian pre-construction field survey (1 day)	\$1,875	3	\$5,623.80
Task 2: Pre-Construction Bat Roosting Surveys	\$5,789	1	\$5,788.60
Task 3: Site-Specific Bat Roost Surveys (per four buildings)	\$2,000	1	\$2,000.00
<b>Total Cost</b>			<b>\$13,412.40</b>
* Includes any applicable direct costs (hotel, per diem, and mileage)			
<b>Billing Rates</b>			
<b>Title</b>	<b>Rate</b>		
FCS Associate	\$160/hour		
FCS Assistant	\$75/hour		

<b>PALEONTOLOGICAL MONITORING SERVICES (GrassRoots)</b>	
<b>Task</b>	<b>Cost</b>
Prepare PIR/ PER/PMP report and record search	\$13,000
Worker training (3 times @ 2 hours)	\$540
On-site monitoring (maximum 30 days)	\$21,600

Weekly memo (maximum 15)	\$3,580
Subtotal Labor	\$38,720
<b>Direct Costs</b>	
Record search (estimated)	\$200
Mileage (50 miles RT x 30) @ IRS rate	\$870
Meals (30 x \$15/day)	\$450
Subtotal Direct Costs	\$1,520
<b>Total Cost</b>	<b>\$40,240</b>

<b>VIBRATION MONITORING SERVICES (WI &amp; FCS)</b>	
<b>Task</b>	<b>Cost</b>
Task 1: Pre-Construction: Coordination and Planning	
1a: Coordination with Contractor and Monitoring Team	\$23,200
1b: Vibration Testing of Contractor Equipment	\$12,400
1c: Vibration Monitoring Plan	\$4,800
1d: Guidelines for Construction	\$2,400
Task 2: Start of Construction – Mobilization and Training	\$17,500
Task 3: During Construction – Routine Vibration Monitoring	\$139,300
Task 4: County of Fresno Department of Health Mitigation Plan	\$4,000
<b>Total Cost</b>	<b>\$203,600</b>
<b>Billing Rates</b>	
<b>Title</b>	<b>Rate</b>
Senior Principal	\$275/hour
Principal	\$250/hour
Associate Principal	\$200/hour
Senior Consultant	\$170/hour
Associate	\$145/hour
Assistant	\$120/hour
FCS Associate	\$160/hour
FCS Assistant	\$75/hour
ODCs (misc.)	Cost with no mark-up

<b>CRACK GAUGE START-UP AND CONSTRUCTION SUPPORT (WK)</b>	
<b>Task</b>	<b>Cost</b>
Task 1: Crack Gauge Start-Up Phase	\$16,000
Task 2: Construction Phase	\$8,000
<b>Total Cost</b>	<b>\$24,000</b>
<b>Billing Rates</b>	
<b>Title</b>	<b>Rate</b>
Principal Engineer / Geologist	\$160/hour
Senior Engineer / Geologist	\$160/hour
Senior Environmental Technician	\$95/hour
Administrative Assistant	\$70/hour

<b>CRACK GAUGE MONITORING AND STRUCTURAL SUPPORT (CSEG)</b>	
<b>Task</b>	<b>Cost</b>
Task 1: Crack Gauge Monitoring	\$63,000
Task 2: Vibration Monitoring Structural Support	\$10,000
<b>Total Cost</b>	<b>\$73,000</b>
<b>Billing Rates</b>	
<b>Title</b>	<b>Rate</b>
Principal	\$215/hour
Project Engineer	\$130/hour
Staff Engineer	\$115/hour
Administrative Assistant I	\$75/hour

<b>ARCHITECTURAL SUPPORT (ARG) (Optional)</b>	
<b>Billing Rates</b>	
<b>Title</b>	<b>Rate</b>
Principal	\$190/hour
Associate Principal	\$180/hour
Senior Architect 3	\$160/hour
Administrative Staff	\$85/hour

## Exhibit B

### INSURANCE REQUIREMENTS

#### Consultant Service Agreement between City of Fresno ("CITY") and FirstCarbon Solutions ("CONSULTANT")

Environmental Construction Monitoring Services for the Fulton Mall Reconstruction Project

PROJECT TITLE

### MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO \*Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to CONSULTANT'S profession. Architect's and engineer's coverage is to be endorsed to include contractual liability.

### MINIMUM LIMITS OF INSURANCE

CONSULTANT, or any party the CONSULTANT subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY:**
  - (i) \$1,000,000 per occurrence for bodily injury and property damage;
  - (ii) \$1,000,000 per occurrence for personal and advertising injury;
  - (iii) \$2,000,000 aggregate for products and completed operations; and,

- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY:**

\$1,000,000 per accident for bodily injury and property damage.

OR\*

**PERSONAL AUTOMOBILE LIABILITY** insurance with limits of liability not less than:

- (i) \$100,000 per person;
- (ii) \$300,000 per accident for bodily injury; and,
- (iii) \$50,000 per accident for property damage.

3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits.

4. **EMPLOYER'S LIABILITY:**

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

5. **PROFESSIONAL LIABILITY** (Errors and Omissions):

- (i) \$1,000,000 per claim/occurrence; and,
- (ii) \$2,000,000 policy aggregate.

**UMBRELLA OR EXCESS INSURANCE**

In the event CONSULTANT purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

**DEDUCTIBLES AND SELF-INSURED RETENTIONS**

CONSULTANT shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and CONSULTANT shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or

- (ii) CONSULTANT shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

### **OTHER INSURANCE PROVISIONS/ENDORSEMENTS**

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. CONSULTANT shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims related to this Agreement, CONSULTANT'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents and volunteers shall be excess of CONSULTANT'S insurance and shall not contribute with it. CONSULTANT shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: CONSULTANT and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by CONSULTANT.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by CONSULTANT, CONSULTANT

must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first.

4. A copy of the claims reporting requirements must be submitted to CITY for review.
5. These requirements shall survive expiration or termination of the Agreement.

*All policies of insurance* required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to CITY. CONSULTANT is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CONSULTANT shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, CONSULTANT shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

#### **VERIFICATION OF COVERAGE**

CONSULTANT shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, CONSULTANT shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

**Exhibit C**

**DISCLOSURE OF CONFLICT OF INTEREST**

Environmental Construction Monitoring Services for the Fulton Mall Reconstruction Project  
PROJECT TITLE

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input type="checkbox"/>
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: \_\_\_\_\_  
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\_\_\_\_\_  
Signature  
 \_\_\_\_\_  
Date  
 \_\_\_\_\_  
(name)  
 \_\_\_\_\_  
(company)  
 \_\_\_\_\_  
(address)  
 \_\_\_\_\_  
(city state zip)

Additional page(s) attached.

**Exhibit D**  
**FEDERAL AND STATE ASSURANCES**  
**Consultant Service Agreement between City of Fresno (“CITY”)**  
**and FirstCarbon Solutions (“CONSULTANT”)**

Environmental Construction Monitoring Services for the Fulton Mall Reconstruction Project

1. CONSULTANT shall comply with and require its Subcontractors to comply with the following:
  - a. 23 USC §112 regarding Highways and the letting of contracts to Architects and Engineers;
  - b. The provisions of the Fair Employment and Housing Act (Government Code Section 1290-0 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12900(a-f), set forth in Chapter of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Give a written notice of their obligations under this clause to any labor organizations with which they have a collective bargaining or any other agreements as appropriate. **INCLUDE THIS ENTIRE CLAUSE IN ANY AND ALL SUBCONTRACTS.**
  - c. **Appendix A** attached hereto and incorporated herein.
2. Cost Principles
  - a. CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1 Part 31.000 et seq., shall be used to determine the allowability of cost for individual items.
  - b. CONSULTANT also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
  - c. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to CITY.
3. Subcontracting
  - a. CONSULTANT shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by the CITY’S Contract Manager, except that, which is expressly identified in the approved Cost Proposal.
  - b. Any subcontract in excess of \$25,000 shall contain ALL the provisions stipulated in this Agreement to be applicable to subcontractors.
  - c. Any substitution of subconsultants/subcontractors must be approved in writing by the CITY’S Contract Manager.

4. Equipment Purchase

- a. Prior authorization in writing, by the CITY'S Contract Manager shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide a written request which includes an evaluation of the necessity or desirability of incurring such costs, three competitive quotations obtained in the manner prescribed in the CITY'S Municipal Code Section 4-101(d) or 4-102 as applicable or a sole source justification as provided in the CITY'S Administrative Order No. 3-3.
  - b. Any equipment purchased as a result of this Agreement is subject to the following: CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, CITY shall receive a proper refund or credit at the conclusion of the Agreement, or if the Agreement is terminated, CONSULTANT may either keep the equipment and credit CITY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established CITY procedures; and credit CITY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT'S expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to CITY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by CITY. 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000.00 is credited to the project.
  - c. The above provisions shall be included in all subcontracts in excess of \$25,000.
5. PROHIBITION OF EXPENDING CITY STATE OR FEDERAL FUNDS FOR LOBBYING  
*This section only applies to contracts where federal funding will exceed \$100,000.*

A. CONSULTANT certifies to the best of his or her knowledge and belief that:

1. No state, federal or CITY appropriated funds have been paid, or will be paid by-or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

C. CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

## 6. NON-DISCRIMINATION CLAUSE

During the performance of this Agreement, CONSULTANT and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. CONSULTANT and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. CONSULTANT and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. CONSULTANT and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

**APPENDIX A TO EXHIBIT D**  
**Consultant Service Agreement between City of Fresno (“CITY”)**  
**and FirstCarbon Solutions (“CONSULTANT”)**  
Environmental Construction Monitoring Services for the Fulton Mall Reconstruction Project

(1) CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this Agreement.

(2) CONSULTANT, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the Agreement covers a program set forth in Appendix B of the REGULATIONS.

(3) In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT'S obligations under this Agreement and the REGULATIONS relative to nondiscrimination on the grounds of race, color, or national origin.

(4) CONSULTANT shall provide all information and reports required by the REGULATIONS, or directives issued pursuant thereto, and shall permit access to CONSULTANT'S books, records, accounts, other sources of information, and its facilities as may be determined by STATE or Federal Highway Administration (“FHWA”) to be pertinent to ascertain compliance with such REGULATIONS or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to the State of California (“STATE”) or the FHWA as appropriate, and shall set forth what efforts CONSULTANT has made to obtain the information.

(5) In the event of CONSULTANT'S noncompliance with the nondiscrimination provisions of this Agreement, STATE shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

(a) withholding of payments to CITY under the Agreement within a reasonable period of time, not to exceed 90 days; and/or

(b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) CONSULTANT shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. CONSULTANT shall take such action with respect to any sub-agreement or procurement as STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONSULTANT may request STATE enter into

such litigation to protect the interests of STATE, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

(7) CONSULTANT shall execute the following CERTIFICATION OF CONSULTANT, COMMISSIONS & FEES

I HEREBY CERTIFY that I am \_\_\_\_\_, and duly authorized representative of the firm of \_\_\_\_\_ whose address is \_\_\_\_\_, and that, except as hereby expressly stated, neither I nor the above firm that I represent have:

(a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this Agreement; nor

(b) agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement; nor

(c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind, for or in connection with, procuring or carrying out this Agreement.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this Agreement involving participation of Federal-aid Highway funds, and is subject to applicable state and federal laws, both criminal and civil.

(Date) \_\_\_\_\_

(Signature) \_\_\_\_\_