

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

THIS AGREEMENT (Agreement) is made and entered into, effective on \_\_\_\_\_, 2024, by and between the CITY OF FRESNO, a California municipal corporation (City), and FCS International, Inc., a California stock corporation (Consultant).

**RECITALS**

WHEREAS, the City desires to obtain professional environmental planning and consulting services for Southeast Development Area (SEDA) Recirculate Program Environmental Impact Report (Project); and

WHEREAS, the Consultant is engaged in the business of furnishing services as a environmental 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, the 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, Consultant acknowledges that funds for compensation being provided under this Agreement will be derived from the City's allocation under the American Rescue Plan Act (Pub.L. 117-2) (hereinafter "ARPA"), and is subject to any constraints set forth therein including but not limited to, the Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) Final Rule (31 CFR Part 35); and

WHEREAS, this Agreement will be administered for the City by its Development and Planning Director (Administrator) or designee.

**AGREEMENT**

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

1. Scope of Services. The Consultant shall perform to the satisfaction of the 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 (Effective Date) and shall continue in full force and effect through June 30, 2025, subject to any earlier termination in accordance with this Agreement. The services of the Consultant as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.

3. Compensation.

- (a) The Consultant's sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall not exceed \$153,636.00, paid on the basis of the rates set forth in the schedule of fees and expenses contained in **Exhibit A**.
- (b) Detailed statements shall be rendered monthly for services performed in the preceding month and will be payable in the normal course of City business. The 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. Invoices shall be paid within 30 business days of receipt of the invoice.
- (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 the 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. The 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 the City to the Consultant upon the earlier of: (i) the Consultant's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against the Consultant; (ii) seven calendar days prior written notice with or without cause by the City to the Consultant; (iii) the 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, the Consultant shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to the City any and all unearned payments and all properties and materials in the possession of the Consultant that are owned by the City. Subject to the terms of this Agreement, the Consultant shall be paid compensation for services satisfactorily performed prior to the effective date of termination. The 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 the Consultant to satisfactorily perform in accordance with the terms of this Agreement, the City may withhold an amount that would otherwise be payable as an offset to, but not in excess of, the City's damages caused by such failure. In no event shall any payment by the City pursuant to this Agreement constitute a waiver by the City of any breach of this Agreement which may then exist on the part of the Consultant,

nor shall such payment impair or prejudice any remedy available to the City with respect to the breach.

- (d) Upon any breach of this Agreement by the Consultant, the 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 the City improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.
- (e) The Consultant shall provide the City with adequate written assurances of future performance, upon Administrator's request, in the event the Consultant fails to comply with any terms or conditions of this Agreement.
- (f) The Consultant shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Consultant and without its fault or negligence such as, acts of God or the public enemy, acts of the City in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Consultant shall notify Administrator 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 Administrator of the cessation of such occurrence.

5. Confidential Information and Ownership of Documents.

- (a) Any reports, information, or other data prepared or assembled by the Consultant pursuant to this Agreement shall not be made available to any individual or organization by the Consultant without the prior written approval of the Administrator. During the term of this Agreement, and thereafter, the Consultant shall not, without the prior written consent of the 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 the City, including but not limited to business plans, marketing plans, financial information, 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 the City.
- (b) Any and all writings and documents prepared or provided by the Consultant pursuant to this Agreement are the property of the City at the time of preparation and shall be turned over to the City upon expiration or termination of the Agreement. The Consultant shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(c) If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the 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 the Consultant represents to the City that the 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, the City relies upon the skill of the Consultant and any subcontractors to do and perform such services in a skillful manner and the Consultant agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by the City shall not operate as a release of the Consultant or any subcontractors from said professional standards.

7. Indemnification. To the furthest extent allowed by law, including California Civil Code section 2782, 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, litigation expenses and cost to enforce this Agreement) 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, the 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) as may be authorized in writing by the City's Risk Manager or designee at any time and in its 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 the 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, the Consultant or any of its subcontractors/sub-consultants fail to maintain any required insurance, all services and work under this Agreement shall be discontinued immediately, and all

payments due, or that become due, to the Consultant shall be withheld until insurance is in compliance with the requirements. Any failure to maintain the required insurance shall be sufficient cause for the City to terminate this Agreement. No action taken by the City pursuant to this section shall in any way relieve the Consultant of its responsibilities under this Agreement. The phrase “fail to maintain any required insurance” shall include, without limitation, notification received by the 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 the Consultant shall not be deemed to release or diminish the liability of the Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify the 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 the Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the Consultant, its principals, officers, agents, employees, persons under the supervision of the Consultant, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

9. Conflict of Interest and Non-Solicitation.

- (a) Prior to the City’s execution of this Agreement, the 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, the Consultant shall have the obligation and duty to immediately notify the City in writing of any change to the information provided by the Consultant in such statement.
- (b) The 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, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of the City, the Consultant shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, the Consultant and the respective subcontractor(s) are in full compliance with all laws and regulations. The 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, the Consultant shall immediately notify the City of these facts in writing.
- (c) Consultant’s duties and services under this Agreement shall not include preparing or assisting the City with any portion of the City’s preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the City. The City entering this Agreement shall at all times retain responsibility for public contracting,

including with respect to any subsequent phase of this Project. Consultant's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Consultant shall cooperate with the City to ensure that all bidders for a subsequent contract on any subsequent phase of this Project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by Consultant pursuant to this Agreement.

- (d) In performing the work or services to be provided hereunder, the Consultant shall not employ or retain the services of any person while such person either is employed by the 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.
  - (e) The Consultant represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit, or procure this Agreement or any rights/benefits hereunder.
  - (f) Neither the Consultant, nor any of the 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 unless fully disclosed to and approved by the City Manager, in advance and in writing. The 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. Notwithstanding any approval given by the City Manager under this provision, the Consultant shall remain responsible for complying with Section 9(b), above.
  - (g) If the Consultant should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, the Consultant shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.
  - (h) This Section 9 shall survive expiration or termination of this Agreement.
10. Recycling Program. In the event the 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, the Consultant at its sole cost and expense shall:
- (a) Immediately establish and maintain a viable and ongoing recycling program, approved by the City's Solid Waste Management Division, for each office and facility. Literature describing the City recycling programs is available from the City's Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
  - (b) Immediately contact the 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.

- (c) Cooperate with and demonstrate to the satisfaction of the City's Solid Waste Management Division the establishment of the recycling program in paragraph (a) above and the ongoing maintenance thereof.

11. General Terms.

- (a) Except as otherwise provided by law, all notices expressly required of the City within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Administrator or designee.
- (b) Records of the Consultant's expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the City or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of the Consultant pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records shall be retained and made available to the City until such action is resolved, or until the end of said time period whichever shall later occur. If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall cause each subcontractor to also comply with the requirements of this paragraph. This Section 11(b) shall survive expiration or termination of this Agreement.
- (c) Prior to execution of this Agreement by the City, the Consultant shall have provided evidence to the City that the Consultant is licensed to perform the services called for by this Agreement (or that no license is required). If the Consultant should subcontract all or any portion of the work or services to be performed under this Agreement, the Consultant shall require each subcontractor to provide evidence to the City that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

12. Nondiscrimination. To the extent required by controlling federal, state and local law, the 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, the Consultant agrees as follows:

- (a) The 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) The 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. The 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 the 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. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.
- (c) The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the 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) The 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 the 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 the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the 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, the Consultant is acting solely as an independent contractor. Neither the Consultant, nor any of its officers, agents, or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of the City for any purpose. The City shall have no right to control or supervise or direct the manner or method by which the Consultant shall perform its work and functions. However, the City shall retain the right to administer this Agreement so as to verify that the 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 the Consultant and the City. The Consultant shall have no authority to bind the City absent the City's express written consent. Except to the extent otherwise



provided in this Agreement, the Consultant shall bear its own costs and expenses in pursuit thereof.

- (c) Because of its status as an independent contractor, the Consultant and its officers, agents, and employees shall have absolutely no right to employment rights and benefits available to the City employees. The 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, the Consultant shall be solely responsible, indemnify, defend and save the City harmless from all matters relating to employment and tax withholding for and payment of the 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 the City employment benefits, entitlements, programs and/or funds offered employees of the 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, the Consultant may be providing services to others unrelated to the 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 the Consultant and there shall be no assignment by the Consultant of its rights or obligations under this Agreement without the prior written approval of the City Manager or designee. Any attempted assignment by the Consultant, its successors or assigns, shall be null and void unless approved in writing by the City Manager or designee.
  - (b) The Consultant hereby agrees not to assign the payment of any monies due the Consultant from the City under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). The City retains the right to pay any and all monies due the Consultant directly to the Consultant.

17. Compliance With Law. In providing the services required under this Agreement, the Consultant shall at all times comply with all applicable laws of the United States, including but not limited to, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), the State of California and the 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. In addition, the Contractor elects to receive funds from the Secretary under ARPA and will use the funds in a manner consistent with such section.
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. Accessible Information and Communication Technology (ICT) Requirements. The contractor/consultant/vendor of Information and Communication Technology (ICT) content/products/services is required to provide deliverables that satisfy the accessibility requirements of the ADA, Section 508, and conform to Web Content Accessibility Guidelines 2.0 Level AA Success Criteria (WCAG 2.0 AA), or the most recent WCAG version. Prior to execution and renewal (if applicable) of contract, contractor/consultant/vendor is required to utilize a Voluntary Product Accessibility Template (VPAT) 2.0, or the most recent VPAT version to submit an Accessibility Conformance Report. Using the report the City will make a determination if the content/product/service substantially meets applicable accessible standards or best meets the standards and is consistent with the business need. In such instances in which the content/product/service is non-conforming the contract may be denied, or the contractor/consultant/vendor may be asked to provide a reasonable timeline for remediation of areas of non-conformance.
29. Definitions. Information and Communication Technology (ICT) is information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content. Examples of ICT include but are not limited to computers and peripheral equipment; information kiosks and transaction machines; telecommunications equipment; customer premises equipment; multifunction office machines; software; applications; websites; videos; and electronic documents. Web Content Accessibility Guidelines 2.0 standards (WCAG 2.0), or the most recent WCAG version, created by the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI), define how to make web content more accessible to people with disabilities. Testable success criteria are provided to allow WCAG 2.0 to be used where requirements and conformance testing are necessary; Level AA is the median level of conformance and the minimum acceptable level for accessibility. WCAG 2.0 is written to be technology neutral, and the success criteria and conformance requirements can be applied to all electronic content. Section 508 of the Rehabilitation Act of 1973 (Section 508) requires federal agencies and entities receiving federal funds to meet specific accessibility standards for electronic information and technology; the City of Fresno is an entity that receives federal funds. Section 508 of the Rehabilitation Act of 1973 (Section 508) requires federal agencies and entities receiving federal funds to meet specific accessibility standards for electronic information and technology; the City of Fresno is an entity that receives federal funds.

30. ARPA Compliance. As applicable, the Consultant and City shall comply with all applicable requirements of 2 CFR Part 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, including the provisions contained in Subpart D – Post Federal Award Requirements, and Subpart E – Cost Principles. The City shall be responsible for determining the applicability of the foregoing and intends to utilize cost recovery under the American Rescue Plan Act (ARPA) for this project.
31. 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 the City and the Consultant.
32. The City Manager, or designee, is hereby authorized and directed to execute and implement this Agreement. The previous sentence is not intended to delegate any authority to the City Manager to administer the Agreement, any delegation of authority must be expressly included in the Agreement.

[SIGNATURES FOLLOW ON THE NEXT PAGE.]

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

By: \_\_\_\_\_  
Georgeanne A. White                      Date  
City Manager

APPROVED AS TO FORM:  
ANDREW JANZ

City Attorney  
Signed by:  
By: Sukhman Sukhon      11/6/2024  
6917A7D9D8364A9...                      Date  
Sukhman Sukhon  
Deputy City Attorney

ATTEST:  
TODD STERMER, CMC  
City Clerk

By: \_\_\_\_\_  
Deputy    Date

Addresses:

CITY:  
City of Fresno  
Attention: Nadia Salinas, Project Manager  
2600 Fresno Street, Room 3065  
Fresno, CA 93721  
Phone: (559) 621-8150  
E-mail: Nadia.Salinas@fresno.gov

FCS INTERNATIONAL,  
INC.

Signed by:  
By: May Bean  
F9584AB32BBA47E...                      \_\_\_\_\_  
Name: May Bean

Title: Director  
(If corporation or LLC., Board Chair, Pres.  
or Vice Pres.)

Signed by:  
By: C. Patrick Schultz  
B3AC5BF245884D5...                      \_\_\_\_\_  
Name: C. Patrick schultz

Title: COO  
(If corporation or LLC., CFO, Treasurer,  
Secretary or Assistant Secretary)

Any Applicable Professional License:  
Number: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date of Issuance: \_\_\_\_\_

CONSULTANT:  
FCS International, Inc.  
Attention: Phillip Ault, Project Director  
7726 North Fresno Street, #413  
Fresno, CA 93720  
Phone: (559) 930-6191  
E-mail: pault@fcs-intl.com

Attachments:

- 1. Exhibit A - Scope of Services
- 2. Exhibit B - Insurance Requirements
- 3. Exhibit C - Conflict of Interest Disclosure Form

**EXHIBIT A**

**SCOPE OF SERVICES**

**Consultant Service Agreement between City of Fresno (City)  
and FCS International, Inc (Consultant)**  
SEDA Recirculate PEIR

See attached.

**SCHEDULE OF FEES AND EXPENSES**

See attached.

## EXHIBIT B

### INSURANCE REQUIREMENTS Consultant Service Agreement between City of Fresno (City) And FCS International, Inc. (Consultant) SEDA Recirculate PEIR

#### 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 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).
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.

#### MINIMUM LIMITS OF INSURANCE

The 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 the 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.

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 the 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

The Consultant shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and the Consultant shall also be responsible for payment of any 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. The City, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds. Consultant shall establish additional insured status for the City under the General Liability policy for all ongoing and completed operations by use of endorsements providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85 or CG 20 10 04 13.
2. The coverage shall contain no special limitations on the scope of protection afforded to the 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. 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 the Consultant's insurance and shall not contribute with it. The Consultant shall establish primary and non-contributory status on the General Liability policy by use of ISO Form CG 20 01 04 13, or by an executed endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.



4. All policies of insurance shall contain, or be endorsed to contain, the following provision: the Consultant and its insurer shall waive any right of subrogation against the City, its officers, officials, employees, agents, and volunteers.
5. 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 30 calendar days written notice by certified mail, return receipt requested, has been given to the City. The 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, the Consultant shall furnish the 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 the City, the Consultant shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.
6. Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.
7. The fact that insurance is obtained by the Consultant shall not be deemed to release or diminish the liability of the Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the Consultant, its principals, officers, agents, employees, persons under the supervision of the Consultant, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

#### CLAIMS-MADE POLICIES

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 the 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-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 the Consultant, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years 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 the City for review.
5. These requirements shall survive expiration or termination of the Agreement.

### VERIFICATION OF COVERAGE

the 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 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, the 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.

### SUBCONTRACTORS

If the Consultant subcontracts any or all of the services to be performed under this Agreement, the Consultant shall require, at the discretion of the City Risk Manager or designee, subcontractor(s) to enter into a separate side agreement with the City to provide required indemnification and insurance protection. Any required side agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by City Risk Manager or designee. If no side agreement is required, the Consultant shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein and the Consultant shall ensure that City, its officers, officials, employees, agents, and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file

**Exhibit C**

**DISCLOSURE OF CONFLICT OF INTEREST**

SEDA Recirculate PEIR

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" 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 checked="" 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 checked="" 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 checked="" 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 checked="" type="checkbox"/>

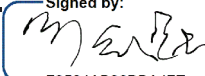
\* If the answer to any question is yes, please explain in full below.

Explanation: \_\_\_\_\_

N/A

\_\_\_\_\_  
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 \_\_\_\_\_

Additional page(s) attached.

Signed by:   
 F9584AB32BBA47E...  
 Signature

11/5/2024

Date

May Bean  
 (name)

FirstCarbon solutions  
 (company)

2999 oak Road suite 250  
 (address)

walnut Creek, CA 94596  
 (city state zip)



Planning & Development Department

2600 Fresno Street, Third Floor, Room 3065  
Fresno, California 93721-3604  
(559) 621-8003

Jennifer K. Clark, AICP  
Director

**MEMORANDUM**

**DATE:** OCTOBER 8, 2024

**TO:** GEORGEANNE A. WHITE, City Manager  
Office of the Mayor and City Manager

**FROM:** JENNIFER K. CLARK, Director  
Planning & Development Department

**SUBJECT: FINDING FIRSTCARBON SOLUTIONS UNIQUELY QUALIFIED TO PROVIDE ENVIRONMENTAL SERVICES TO PREPARE, RECIRCULATE, AND FINALIZE THE PROGRAM ENVIRONMENTAL IMPACT REPORT FOR SOUTHEAST DEVELOPMENT AREA.**

The purpose of this Memorandum is to request a uniquely qualified status for FirstCarbon Solutions International, Inc. (FCS, International, Inc.) to prepare, recirculate, and finalize the Program Environmental Impact Report (PEIR) for the Southeast Development Area (SEDA).

The Fresno Municipal Code Section 4-107(h) states that the City shall follow an objective process in the selection of consultants "unless the City Manager determines in writing the emergency or exigent circumstances exist, or the consultant is uniquely qualified."

FCS International, Inc., is uniquely qualified because of their knowledge, technical ability, and direct familiarity of the SEDA. Specifically, FCS International, Inc holds unique experience as they created the PEIR for the proposed project in 2023 and they hold direct knowledge of the program's status, remaining scope of work, and have proposed a clear plan to address areas that were shown to be deficient in the General Plan PEIR.

FCS International, Inc has more than 40 years of experience and has a proven history of preparing technically sound, legally defensible, and cost-effective environmental compliance documents for projects throughout California. They have provided services to the City since 2006 on over 160 projects and they possess the following notable qualities and skills:

- FCS retains technical experts including air quality scientists, biologists and regulatory specialists, archaeologists/paleontologists, noise specialists, and GIS specialists
- Their technical capabilities and understanding of environmental regulations and industry trends ensure the success of compliance and management efforts. FCS provides a one-

October 8, 2024

Page 2 of 2

stop solution for strategizing multi-faceted projects while remaining cost-competitive and effective

- FCS manages all the appropriate scheduling and mobilizing of teams
- FCS ensures the creation of defensible and legally adequate environmental document for important projects
- FCS has a proven record of responding to project needs in a prompt and cost-effective manner

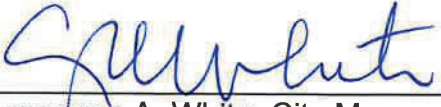
FCS International, Inc. possesses a unique and specialized knowledge of the Plan Area and properties within it and proposes to prepare and recirculate the draft PEIR and will prepare the revised Administrative Final PEIR with related reporting and noticing. The following tasks comprise the scope of work which identifies the necessary tasks for the preparation of a revised Draft PEIR that removes applicable references to the General Plan EIR and General Plan Amendment, develops mitigation measures independent of the General Plan PEIR without reference to the General Plan Amendment, incorporates errata and information from the previous preparation of response to comments on the previously prepared PEIR, and addresses the deficiencies identified by the court in the General Plan PEIR.

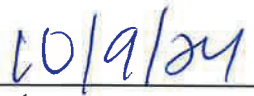
Note- It is assumed that the Revised Draft PEIR will be recirculated under the current Notice of Preparation (NOP) prepared for the previously prepared Draft PEIR and Partial Recirculated Draft PEIR. Therefore, this scope does not include a task for NOP noticing or scoping.

The proposed cost is \$153,636, which includes a 10% contingency for the total contract amount. Tasks are estimated to follow a 27-week schedule and will perform the following tasks:

- Task 1: Project Initiation, Kick-off Meeting, & Preparation of the Revised Project Description
- Task 2: Preparation of the Revised Administrative Draft PEIR
- Task 3: Preparation of the Recirculated Public Review Draft PEIR
- Task 4: Preparation of Revised Administrative Final PEIR
- Task 5: Preparation of Final PEIR
- Task 6: Preparation of Mitigation Monitoring and Reporting Program
- Task 7: Attend Public Hearings
- Task 8: Preparation of Notice of Determination
- Task 9: Project Management and Coordination

Approved  Denied

  
 \_\_\_\_\_  
 Georgeanne A. White, City Manager

  
 \_\_\_\_\_  
 Date



**COVER LETTER**

September 26, 2024

Sophia Pagoulatos, Planning Manager  
Long Range Planning, Planning & Development  
City of Fresno  
2600 Fresno Street  
Fresno, CA 93721

**Subject: Proposal to Prepare a Revised Program Environmental Impact Report for the Fresno Southeast Development Area Specific Plan**

Dear Sophia:

FCS International, Inc., doing business as FirstCarbon Solutions (FCS) is pleased to submit this Scope of Work, schedule, and fee for the preparation of a revised Program Environmental Impact Report (Revised PEIR) for the proposed Southeast Development Area Specific Plan (proposed project), located in the City of Fresno (City), California.

FCS has been providing environmental consulting services for more than 40 years to public and private sector clients throughout Central California, including for the City. We previously prepared the PEIR for the proposed project in 2023.

FCS prides itself not only on the quality of our technical work, but also on our highly responsive and proactive problem-solving approach. To that end, we will ensure a defensible and legally adequate environmental document for this project. We also have extensive experience in preparing California Environmental Quality Act (CEQA) documentation and supporting technical studies for projects throughout across Fresno County. FCS has provided services to the City of Fresno since 2006 on over 160 projects.

FCS welcomes the opportunity to continue our successful relationship with the City and provide environmental review for the proposed project. FCS is committed to responding to project needs in a timely and cost-effective manner. Should you have any questions regarding this proposal, please contact me at 599.930.6191 or pault@fcs-intl.com.

Sincerely,

Phil Ault, Project Director  
FirstCarbon Solutions  
7726 North First Street, #413  
Fresno, CA 93720

**UNITED STATES**

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T +1 714 508 4100  
F +1 714 508 4110  
E info@fcs-intl.com

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Irvine, CA 92602

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Suite 250  
Walnut Creek, CA 94597

**Central Valley**  
7726 N. First Street  
#413  
Fresno, CA 93720

**Inland Empire**  
967 Kendall Drive  
#A-537  
San Bernardino, CA 92407

**Sacramento Valley**  
2351 Sunset Boulevard  
Suite 170-301  
Rocklin, CA 95765

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

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

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

56 Broome Corporate Parkway  
Conklin, NY 13748

**CANADA**

**UNITED KINGDOM**

**PORTUGAL**

**FRANCE**

**KENYA**

**AUSTRALIA**

**PHILIPPINES**

**CHINA**

**MALAYSIA**

**SINGAPORE**



## PROJECT UNDERSTANDING

FCS understands that the proposed project is a Specific Plan for the Southeast Development Area (SEDA) that would provide for increased density and accelerate housing production throughout the Plan Area. The proposed project would offer flexibility in meeting the evolving needs of households in the region through a multimodal transportation network and diverse housing types and affordability levels. It has the potential to accommodate approximately 45,000 homes and 37,000 jobs within the nearly 9,000-acre planning area by the year 2050. The proposed project is framed with three interrelated goals: fiscal responsibility, social equity, and environmental sustainability. The proposed project would link a series of complete communities and mixed-use centers with a multimodal transportation network. Additionally, the proposed project would include major transit lines, mixed-use centers, diverse residential districts, employment districts, open space, agriculture, and green infrastructure.

Comments on the Draft PEIR were received from July 14, 2023, to August 28, 2023. A Partial Recirculation Draft PEIR, was then prepared and published which was limited to Geology and Soils and Transportation section. Comments on the Partial Recirculated Draft PEIR were received via written comment letters from October 3, 2023, to November 17, 2023. FCS and the City were in process of finalizing the Final PEIR for the proposed project in August 2024.

However, on August 6, 2024, the Court of Appeal, Fifth Appellate District Court entered an order setting aside City resolution Nos. 2021-269 and 2021-270, decertifying the City's General Plan Program Environmental Impact Report (General Plan PEIR) and rescinding the adoption of the General Plan Amendment. FCS understands that this court order established the following parameters for preparation of environmental documents:

- The City can no longer tier from the General Plan PEIR or rely of the programs or policies in the General Plan Amendment
- The City can no longer incorporate the General Plan PEIR or the General Plan Amendment by reference
- The City can no longer approve proposed projects pursuant to an addenda to the General Plan PEIR (or any document tiered from it)

As such, the following Scope of Work identifies the necessary tasks for the preparation of a revised Draft PEIR that removes applicable references to the General Plan EIR and General Plan Amendment, develops mitigation measures independent of the General Plan PEIR without reference to the General Plan Amendment, incorporates errata and information from the previous preparation of response to comments on the previously prepared PEIR, and addresses the deficiencies identified by the court in the General Plan PEIR.

It is assumed that the Revised Draft PEIR will be recirculated under the current Notice of Preparation (NOP) prepared for the previously prepared Draft PEIR and Partial Recirculated Draft PEIR. Therefore, this scope does not include a task for NOP noticing or scoping.



## SCOPE OF WORK

The following tasks are proposed to complete the identified Scope of Work for the revised PEIR.

### **Task 1: Project Initiation, Kick-off Meeting, and Preparation of the Revised Project Description**

FCS will coordinate with the City, and applicable subconsultants if needed, to schedule a kick-off meeting, via teleconference, to go over the Scope of Work, schedule, and set-up check in meetings (it is anticipated that these meetings will all be via teleconference). Additionally, the kick-off meeting will also be utilized to discuss strategy for the document and identify any outstanding information that is required. After the kick-off meeting, FCS will revise the existing Project Description for the City's review as the Project Description will serve as the basis for the entire document. This task assumes one round of City comments on the revised Project Description. Changes to the Project Description made after approval may require a Change Order and may extend the project schedule.

This scope assumes that any changes subsequently made to the Project Description will not be to an extent that would require revisions to any previous modeling or impact analysis discussions. If it is determined that proposed changes would require revisions to modeling or impact analyses, those tasks would be performed under a separate scope and fee.

This task also includes coordination with City staff to create the wording to be used in the revised PEIR addressing the need for recirculation based on the court ruling the required decertification of the General Plan PEIR. This task includes an additional coordination meeting for this effort as well as one round of review of the draft language.

#### *Deliverable*

- Electronic copy (via email/Dropbox in Microsoft Word and PDF) of the revised Project Description to the City.

### **Task 2: Preparation of the Revised Administrative Draft PEIR**

Under this task, FCS will utilize the previously prepared Draft PEIR for the proposed project and will prepare a new Revised Administrative Draft PEIR (Revised ADPEIR) that removes references and mitigation taken from the General Plan PEIR. The Revised ADPEIR document will also incorporate the errata and responses to comments prepared by FCS for the previously prepared Draft PEIR and Partial Recirculated Draft PEIR. The Revised ADPEIR will also strengthen, as needed, the following areas that were identified to be deficient in the General Plan PEIR:

- Insufficient groundwater mitigation
- Insufficient air quality and GHG mitigation
- Use of State significance thresholds rather than local thresholds for GHG analysis





- Insufficient mitigation for VMT impacts
- Insufficient discussion of pedestrian and traffic safety impacts of future projects.

Due to the nature of the task, the level of effort needed to complete the revised Administrative Draft PEIR is somewhat speculative. This task, including the subtasks, assumes that 165 hours of FCS staff time will be required to revise the document; however, should hours spent on this task exceed the cost identified herein, FCS will coordinate with the City regarding the need for additional funds. To this end, this Scope of Work incorporates a contingency of approximately 10 percent of the total contract amount that can be utilized for out-of-scope work that may come up through the preparation of the Draft PEIR.

Additionally, preparation of the Revised ADPEIR would require revisions to some of the technical analyses of the proposed project. As the overall Plan Area would not change, FCS does not anticipate that the Biological Resources Analysis or Cultural Resources Analysis will need to be revised or re-analyzed.

However, revisions to the Air Quality, GHG, and Energy analysis and the hydrology analysis would need to be re-analyzed and revised to support the preparation of the Revised ADPEIR. In addition, TJKM, the previous preparer of the Transportation Impact Analysis (TIA) and Transportation PEIR sections, has determined that remodeling would not be required; however, TJKM would need to revise the mitigation VMT impacts and discussion of the pedestrian and draft impacts for future projects, which were deficiencies identified in the General Plan PEIR.

The scopes for these additional revised technical analyses are provided below.

### **Subtask 2.1: Revised Air Quality, Greenhouse Gas Emissions, and Energy Analysis**

FCS reviewed the recent court ruling and proposes to perform the following tasks for the updated air quality, GHG emissions, and energy analysis.

Additionally, FCS will review the Errata of the previously prepared Draft PEIR and Partial Recirculated Draft PEIR for the proposed project and fold in any additional analysis from the Errata as necessary. There are no other specific comments raised in the Draft PEIR and Partial Recirculated Draft PEIR public comment periods that warrant additional analysis beyond what is scoped herein.

#### **Subtask 2.1.1: Revisions to the Air Quality Analysis**

The court ruling rejected the GP PEIR air quality mitigation measures 2.1, 2.2, and 3.1 due to the lack of mandated reduction at a specific level (i.e., below Air District thresholds). FCS will revise the mitigation measures to require emissions to be reduced to below Air District thresholds.

Given the passage of time, and that a newer version of CalEEMod was released in 2023, FCS will re-model the air quality and greenhouse gas (GHG) emissions associated with the implementation of the Specific Plan. FCS will estimate criteria pollutant and GHG emissions based on the projected land uses, including, but not limited to land use types, building square feet, estimated floor area ratios (FAR), trip generation estimates, and vehicle miles traveled (VMT). It is anticipated that re-modeling will also result in lower emissions given increased operational efficiencies (e.g., the State's increased vehicle fuel



efficiency standards). All modeling and analyses contained in this analysis will be updated based on the most recently approved models and the Guidance for Assessing and Mitigating Air Quality Impacts (2015) from the San Joaquin Valley Air Pollution Control District.

### **Subtask 2.1.2: Revisions to the Greenhouse Gas Emissions Analysis**

For GHG, the court rejected the City's GHG Reduction Plan because it did not substantiate its analytical assumption that the State's GHG emission targets were appropriate for Fresno itself. FCS will work with the City to derive a new approach for a project-specific GHG analysis that is consistent with the Newhall Ranch and recent rulings. FCS assumes two 1-hour meetings will be sufficient for this task, if additional meetings are needed, FCS can attend those meetings under a separate scope and fee.

In addition, FCS will provide a revised GHG analysis in the EIR that evaluates consistency of the Specific Plan with the GHG Reduction Plan adopted in 2014. As the 2014 GHG Reduction Plan is the only officially adopted GHG reduction strategy for the City of Fresno and is based on compliance with legislative GHG reduction targets for 2020, as supported by Assembly Bill 32, FCS will also analyze the Specific Plan for consistency with the 2017 ARB Scoping Plan, which establishes GHG reduction targets for 2030, as codified by Senate Bill 32.

### **Subtask 2.1.3: Revisions to the Energy Analysis**

For energy, FCS provide a revised energy analysis that removes references and mitigation from the General Plan PEIR. The analysis will also incorporate any errata and responses to comments prepared by FCS for the previously prepared PEIR. The Energy Analysis will consider all applicable Specific Plan polices and design requirements that may affect the energy efficiency of infrastructure and development projects that could occur under buildout of the Specific Plan.

### **Assumptions**

The revised Air Quality, GHG Emissions, and Energy analyses will be prepared as three distinct sections within the EIR document. This scope does not include preparation of stand-alone technical reports. Supporting technical data including modeling assumptions, outputs, and calculations will be provided in an appendix to the environmental document.

### **Subtask 2.2: Revised Hydrology and Water Utilities Analysis**

As a subconsultant to FCS, Blair Church & Flynn (BCF) will review the previously prepared SEDA technical studies (Recycled Water, Wastewater, Storm Drain, and Water) to determine if any of the analyses completed relied on or referenced the City's General Plan Update PEIR and revise the analyses and/or text as needed. BCF will also review the SEDA PEIR Hydrology and Utilities Sections in a similar manner to revise the text to remove any reference to the City's General Plan Update PEIR. Within the SEDA PEIR sections, BCF will review the mitigation measures that were drafted and revise them as needed to ensure they do not reference or otherwise incorporate the General Plan Update PEIR. If the City requests changes to the SEDA technical studies or PEIR Hydrology and Utilities Sections beyond the scope included, BCF can complete such work under a separate scope and fee.



A specific concern identified by the court regarding the General Plan Update PEIR related to groundwater mitigation. BCF will review the information included in the SEDA PEIR Hydrology and Utilities Sections for information and mitigation measures relating to groundwater mitigation, and work with the City of Fresno to determine if additional information and/or mitigation measures need to be included in the SEDA PEIR. BCF assumes the City will provide input and information to be incorporated into the SEDA PEIR documents. If the City requests substantial changes or contributions to the groundwater mitigation materials to be included in the SEDA PEIR documents, BCF can complete such work under a separate scope and fee.

BCF will attend one meeting with FCS and the City of Fresno to discuss specific concerns to be addressed with the revisions to the SEDA technical studies and PEIR sections. After preparing and submitting the revised documents, BCF will attend one (1) additional review meeting to discuss any review comments or questions that FCS and/or the City may have for the revised documents. Final revised versions of the technical studies and SEDA PEIR sections will be prepared and submitted, as needed.

The specific services included in this scope for this task are summarized as follows:

- Attend Meeting with FirstCarbon and City of Fresno to Review Project Scope
- Review SEDA Technical Studies (Recycled Water, Wastewater, Storm Drain & Water)
- Review SEDA PEIR Sections (Hydrology & Utilities)
- Revise SEDA Technical Studies, As Required
- Revise SEDA PEIR Sections (Hydrology & Utilities)
- Revise SEDA PEIR Mitigation Measures (Hydrology & Utilities)
- Review Groundwater Mitigation Information within SEDA PEIR Sections (Hydrology & Utilities) with City of Fresno
- Submit Revised Technical Studies and PEIR Sections to FCS for Review
- Attend Review Meeting with FCS and/or City of Fresno to Discuss Revised Technical Studies and PEIR Sections and Review Comments
- Address SEDA Technical Studies and PEIR Section Review Comments
- Revise SEDA Technical Studies, As Required
- Revise SEDA PEIR Sections (Hydrology & Utilities), As Required
- Revise SEDA PEIR Mitigation Measures (Hydrology & Utilities), As Required
- Submit Revised Technical Studies and PEIR Sections to FCS

#### **Services Outside of Scope**

Services not included under this scope of work, but that may be provided upon request under a separate scope and fee, include the following:



- Environmental studies and investigations
- Attendance at public meetings
- Payment of fees
- Hydraulic modeling
- Design of utility facilities

### **Subtask 2.3: Revised Transportation Analysis**

As a subconsultant to FCS, TJKM would revise the TIA and the Transportation PEIR section in the Revised ADPEIR to address the deficiencies identified in the General Plan PEIR, remove references to the General Plan PEIR in the TIA and Draft PEIR sections, as well as incorporate the errata identified for the previously prepared Draft PEIR and Partial Recirculated PEIR.

Specifically, TJKM will incorporate the mitigation that was prepared in coordination with the California Department of Transportation (Caltrans) and revise VMT mitigation based on the Court findings for the General Plan PEIR. Additionally, TJKM will expand on pedestrian and traffic safety impacts in their analysis.

TJKM will attend a meeting with FCS and the City to discuss specific concerns and needs to be addressed with the revisions to the TIA and Revised ADPEIR transportation section.

After preparing and submitting the revised documents, TJKM will attend one (1) additional review meeting to discuss any review comments or questions that FCS and/or the City may have for the revised documents.

Final revised versions of the TIA and SEDA PEIR sections will be prepared and submitted, as needed.

#### *Deliverables*

- Electronic copy (via email/Dropbox in Microsoft Word and PDF) of the Revised TIA to FCS and the City
- Electronic copy (via email/Dropbox in Microsoft Word and PDF) of the Revised Transportation EIR section to FCS and the City

### **Task 3: Preparation of the Recirculated Public Review Draft PEIR**

This Scope of Work assumes the City will provide one set of consolidated, vetted comments (with tracked changes in the Word document) on the Revised ADPEIR. Following receipt of any comments on the Revised ADPEIR, FCS will complete revisions and prepare the Recirculated Public Review Draft PEIR.

This Scope of Work assumes the City will distribute copies of the Recirculated Public Review Draft PEIR to responsible agencies and the public for a 45-day public review period. FCS will post the Recirculated Public Review Draft PEIR, NOC, and Summary Form to the State Clearinghouse's online portal, CEQAnet,



to formally commence the 45-day review period. This task includes staff time for all of the project documents to go through accessibility remediation that meets the standards of the State Clearinghouse.

This Scope of Work assumes that the City will be responsible for local distribution and noticing, including, but not limited to, newspaper noticing or radius mailing. This task assumes 66 hours of staff time. Should hours spent on this task exceed the cost identified herein, FCS shall coordinate with the City regarding the need for additional funds to ensure the release of the Recirculated Public Review Draft PEIR. To this end, this Scope of Work incorporates a contingency of approximately 10 percent of the total contract amount that can be utilized for out-of-scope work that may come up through the preparation of the PEIR.

*Deliverables*

- Electronic copy (via email/Dropbox in PDF) of the Recirculated Public Review Draft PEIR to the City.
- Electronic copy (in PDF) of the Draft PEIR (including appendices), Summary Form, and NOC to the State Clearinghouse via CEQAnet that meets accessibility standards.

#### **Task 4: Preparation of Revised Administrative Final PEIR**

FCS will prepare formal Response to Comments (RTCs) to all public comments received by the City on the Recirculated Public Review Draft PEIR. This Scope of Work assumes 80 hours of staff time to prepare the RTCs and Errata portion of the Administrative Final PEIR document. Given the high level of uncertainty with respect to the volume and complexity of such comments, an initial budget allocation has been established for this task; however, this may need to be adjusted based on the volume and complexity of comments received. Should hours spent on this task exceed the cost identified herein, FCS shall coordinate with the City regarding the need for additional funds. To this end, this Scope of Work incorporates a contingency of approximately 10 percent of the total contract amount that can be utilized for out-of-scope work that may come up through the preparation of the PEIR.

*Deliverable*

- Electronic copy (via email/Dropbox in Microsoft Word and PDF) of the Administrative Final PEIR to the City.

#### **Task 5: Preparation of Final PEIR**

Upon approval of the Screencheck Final PEIR, FCS will finalize the Final PEIR (which will include RTCs and Errata). FCS will reproduce the Final PEIR electronically for City use and distribution. This Scope of Work assumes that City staff will be responsible for distribution of copies of the Final PEIR to agencies, organizations, and individuals who submitted comments.

*Deliverable*

- Electronic copy (via email/Dropbox in PDF) of the Final PEIR to the City.

## Task 6: Preparation of Mitigation Monitoring and Reporting Program

FCS will prepare a comprehensive Mitigation Monitoring and Reporting Program (MMRP), pursuant to CEQA Guidelines Section 15097. The MMRP will contain all mitigation measures identified in the Recirculated Draft PEIR. This comprehensive MMRP will provide the City with a single source of reference to the full range of mitigation measures to be implemented. For each measure or group of similar measures, the agency responsible for ensuring proper implementation will be identified, along with the timing and method of verification.

Once FCS receives consolidated, vetted comments (with tracked changes in the Word document) on the MMRP, FCS will complete revisions and provide the City with a MMRP.

### *Deliverables*

- Electronic copy (via email/Dropbox in Microsoft Word and PDF) of the draft MMRP to the City.
- Electronic copy (via email/Dropbox in PDF) of the MMRP to the City.

## Task 7: Attend Public Hearings

This Scope of Work assumes that FCS's Project Manager will attend up to two public hearings at the Planning Commission and/or City Council (it is assumed these meetings can be attended virtually). A time budget of 4 hours per meeting (including time for preparation and coordination) is assumed. If the City staff requests additional meeting attendance by FCS staff, or if the amount of time involved in these meetings exceeds the initial budget allocation, FCS will notify the City of the additional costs and obtain authorization for the extra meeting time. To this end, this Scope of Work incorporates a contingency of approximately 10 percent of the total contract amount that can be utilized for out-of-scope work that may come up through the preparation of the Recirculated PEIR.

## Task 8: Preparation of Notice of Determination

FCS will prepare the Notice of Determination (NOD). Pursuant to CEQA Guidelines Sections 15075 and 15094, City staff would be responsible for filing the NOD with the Fresno County Clerk's Office within 5 business days of PEIR adoption. The City will be responsible for paying the associated filing fees.

### *Deliverable*

- Electronic copy (via email in PDF) of the Notice of Determination to the City.

## Task 9: Project Management and Coordination

In addition to the research, analysis, communications, and report writing tasks described above, FCS will perform a variety of project management duties to ensure that the CEQA document meets the City's standards of quality and that it is delivered on time and within budget. These duties will include team supervision and coordination, oral and written communications with City, project accounting, and quality assurance review of all deliverable products by FCS's Project Director and Technical Editor. These services



will also include ongoing support to City staff, such as regular schedule updates and discussions of technical issues.

FCS’s Project Director or Project Manager will attend bi-weekly coordination meetings with City staff; therefore, this Scope of Work assumes 14 half hour coordination meetings. A not-to-exceed budget of 40-hours of staff time has been established to cover this task. If the City staff requests additional meeting attendance by FCS staff, or if the amount of time involved in these meetings exceeds the initial budget allocation, FCS will notify the City of the additional costs and obtain authorization for the extra meeting time. To this end, this Scope of Work incorporates a contingency of approximately 10 percent of the total contract amount that can be utilized for out-of-scope work that may come up through the preparation of the Recirculated PEIR.

**Tasks Outside the Scope of Work**

The following are tasks FCS has identified as falling outside its Scope of Work for the proposed project.

**Newspaper Noticing/Local Noticing**

FCS assumes that City will prepare the Notice of Availability for the Recirculated PEIR and the Notice of Public Hearing for the public meeting(s) at which the PEIR will be considered for certification. These notices are typically published as a legal advertisement in a local newspaper or mailed directly to surrounding property owners and interested parties.

**SCHEDULE**

FCS has prepared the following schedule outlining the anticipated timing of each task for a Recirculated Draft PEIR.

Task	Week
Task 1: Project Initiation, Kick-off Meeting, and Preparation of the Revised Project Description	1-2
Task 2: Preparation of the Revised Administrative Draft PEIR	10
Subtask 2.1: Revised Air Quality, GHG, and Energy Analysis	8
Subtask 2.2: Revised Hydrology and Utilities Analyses	8
Subtask 2.3: Revised Transportation Analysis	8
– City review of Administrative Draft PEIR	12
Task 3: Preparation of Public Review Draft PEIR	15
– 45-day review period	15-21
Task 4: Preparation of Administrative Final PEIR <sup>1</sup>	23
– City review of Administrative Final PEIR	25
Task 5: Preparation of Final PEIR	27

Task	Week
Task 6: Preparation of Mitigation Monitoring and Reporting Program	27
Task 7: Attend Public Hearings	To Be Determined
Task 8: Preparation of Notice of Determination	within 5 days of PEIR certification
Task 9: Project Management and Coordination	Ongoing
File NOD by City Staff	To Be Determined
Note: <sup>1</sup> Dependent on volume and complexity of comments.	

## BUDGET

FCS has prepared the following budget identifying the costs of each task to prepare a Recirculated PEIR.

Task	Fees
Task 1: Project Initiation, Kick-off Meeting, and Preparation of a Revised Project Description	\$7,330
Task 2: Preparation of the Revised Administrative Draft PEIR (including all Subtasks)	\$92,984
Task 3: Preparation of the Recirculated Public Review Draft PEIR	\$9,140
Task 4: Preparation of Revised Administrative Final PEIR	\$11,940
Task 5: Preparation of Final PEIR	\$3,260
Task 6: Preparation of Mitigation Monitoring and Reporting Program	\$2,550
Task 7: Attend Public Hearings	\$3,360
Task 8: Preparation of Notice of Determination	\$1,180
Task 9: Project Management and Coordination	\$7,320
<b>Total FCS Professional Labor</b>	<b>\$139,064</b>
<b>Direct Costs (mileage/meals for attendance at hearings)</b>	<b>\$605</b>
<b>Contingency (10 %)</b>	<b>\$13,967</b>
<b>Total FCS Professional Fee</b>	<b>\$153,636</b>

## Assumptions

The assumptions used in calculating the above fees are:

- Reimbursable expenses have been included in the table above. These direct costs, including, but not limited to those items presented below, will be reimbursable upon provision of proper documentation:





- Purchases of project materials
  - Reproduction, reprographics, document production, printing, and photographic
  - Postage, messenger, delivery, and overnight mailing
  - Mileage, noticing, and record searches
  - Other miscellaneous costs directly related to the project
- The fee is valid for up to 30 days from the date of this scope, after which it may be subject to revision.
  - This price is based on completion of the work within the proposed schedule. If delays occur, an update to the schedule and amendment of the budget would be warranted to accommodate additional project management and other costs and to reflect the adjustments.
  - Costs have been allocated to tasks based upon FCS's proposed approach. During the work, FCS may, on its sole authority, re-allocate costs among tasks and/or direct costs, as circumstances warrant, so long as the adjustments maintain the total price within its authorized amount.
  - The FCS Project Manager will be the primary representative at the project meeting and public hearing.
  - Documents will be prepared in FCS style format in accordance with the FCS style guide. Should a different format or style be requested, an amendment of the budget would be warranted.
  - This Scope of Work assumes no hard copies of deliverables will be provided, except as indicated above. If hard copies are requested, a change order may be required to cover costs of producing the copies. Printing costs are based on the method of printing and binding proposed, numbers of copies proposed as work products, and estimated page lengths. On further clarification of the documents and City's (paper and/or digital CD) that City staff will need during the preparation effort, FCS will specifically identify a detailed reproduction work plan with specific costs.

## Invoice Billing

Invoices will be submitted monthly and will identify project progress on a percent complete basis.