

FIRST AMENDMENT TO STANDARD CONTRACT BETWEEN COUNTY OF SOLANO and FIRST CARBON SOLUTIONS dba MICHAEL BRANDMAN ASSOCIATES

This First Amendment ("First Amendment") is entered into as of the 25th day of November, 2014, between the COUNTY OF SOLANO, a political subdivision of the State of California ("County") and FIRST CARBON SOLUTIONS dba MICHAEL BRANDMAN ASSOCIATES ("Consultant").

1. Recitals

A. The parties entered into a contract dated November 26, 2013 (the "Contract"), in which Consultant agreed to provide pre-construction regulatory compliance services for the Solano360 Specific Plan Project.

B. The parties now desire to extend the term of the Contract and to add additional regulatory permitting services.

C. This First Amendment represents a one year extension and \$71,900 increase to the Contract.

D. The parties agree to amend the Contract as set forth below.

2. Agreement.

A. Term of Contract

Section 2 is deleted in its entirety and replaced with:

The term of this Contract is: November 26, 2014 – December 31, 2014

B. Amount of Contract

Section 3 is deleted in its entirety and replaced with \$118,295.

C. Scope of Work

Exhibit A is amended to add the scope set forth in the attached Exhibit A-1.

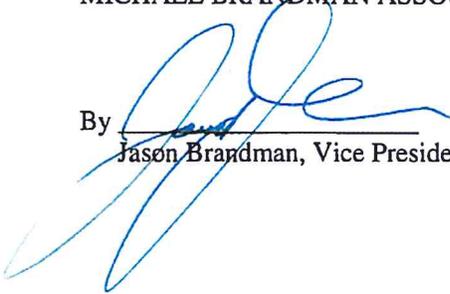
3. Effectiveness of Contract.

Except as set forth in this Amendment, all other terms and conditions in the Contract remain in full force and effect.

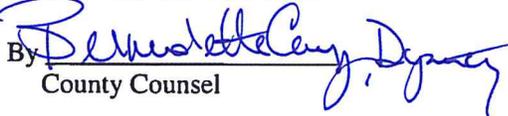
COUNTY OF SOLANO, a Political
Subdivision of the State of California

MICHAEL BRANDMAN ASSOCIATES

By _____
Birgitta E. Corsello
County Administrator

By 
Jason Brandman, Vice President

APPROVED AS TO FORM

By 
County Counsel

REGULATORY PERMITTING SERVICES FOR THE SOLANO360 SPECIFIC PLAN PROJECT

Project Understanding

The 149.11-acre Solano County Fairgrounds site is located immediately southwest of the Interstate 80 (I-80) and State Route 37 (SR-37) interchange in the City of Vallejo, California, immediately south of the Six Flags Discovery Kingdom theme park and Lake Chabot. The proposed project site consists of the existing Solano County fairgrounds, which includes administration and exposition buildings, a horse track, grandstands, equestrian buildings, horse barns, and several parking areas. Four existing creeks – including North, Center, and South Rindler Creeks, and Blue Rock Springs – have been diverted into a combination of underground pipes and open channels at the site.

Through the visioning process, as articulated in the approved Solano360 Vision Report, the County and City identified that the Solano360 project is intended to be a regional destination for entertainment, with supporting retail, hotel, office, and other uses compatible with, and complementary to surrounding land uses, such as the adjacent Six Flags Discovery Kingdom. Key project components include a dedicated Entertainment Area and Fairground.

The land use concept of the Entertainment Area is intended to facilitate the upgrade and expansion of the existing Fairgrounds, development of “Entertainment-Mixed Use” venues and facilities that may be feasible in the near term, and creation of a larger parcel for future “Entertainment-Commercial” use as a new, major anchor, or entertainment “gate.” The entertainment project area would authorize up to 327,571 square feet of retail, commercial, entertainment, and open space on 48.8 acres at the time of full build-out. Within the 48.8 acres, the Entertainment Area would include 30 acres of theme park-type uses, as well as three parking structures.

The fairgrounds portion of the site would include up to 149,500 square feet of new building space at the time of full build-out, including a new exposition hall and new concert arena/grandstand cover. All existing fair facilities would be demolished with the exception of several buildings.

Primary drainage infrastructure improvements for the project site include removing the site from the flood plain. Stormwater enters the site from central and South Rindler Creek as well as Blue Rock Springs. The existing drainage channel on the site that connects to Lake Chabot is not sufficient to contain the offsite flows; accordingly, in order to remove the site from the flood plain, the existing Fairgrounds channel would be widened and deepened in addition to improving the existing culvert under Fairgrounds Drive.

Based on FCS’s understanding of the project plans and knowledge of the project vicinity, the reaches of Rindler Creek and Blue Rock Spring support suitable habitat for California red-legged frog. In addition, project plans may call for work within federal and state-jurisdictional waters. As such, a scope of work for the completion of regulatory permitting is presented below.

Scope of Work

Phase 1

Because the US Army Corps of Engineers and the Regional Water Quality Control Board will request that the entire project is reviewed and permitted as one project, the County will need to demonstrate to the resource agencies that Phase 1 has independent utility from Phase 2. Independent utility can be demonstrated by separate functions and independent justifications; for example, Phase 1 does not require the construction or implementation of Phase 2, and Phase 2 does not require the construction and implementation of Phase 1.

If it is successfully demonstrated that Phase 1 is an independent project, then the following scope of work would be required to obtain permits from the resource agencies:

Task 1: Project Initiation, Project Management, and Coordination

FCS shall provide project management for each Task described in this Scope of Work.

FCS's Project Manager will proactively manage the project development process, assure that the key submittal milestone events are met, and that County staff is kept informed on Project issues. Management activities will consist of meeting attendance, routine communication including phone conversations and emails, scheduling, coordination, quality assurance and quality control (QA/QC) and project administration including budget management and invoicing.

QA/QC methods will be employed by FCS/MBA to ensure the quality and content of deliverables meet the professional standards of care.

Task 2: Service's Section 7 Coordination for Federal Emergency Management Agency (FEMA)

At the request of Solano County, FCS prepared a letter report to obtain U.S. Fish and Wildlife Service's Section 7 consultation clearance for Federal Emergency Management Agency (FEMA) Conditional Letter of Map Revision (CLOMR) letter of request. For CLOMR requests involving floodplain activities, private individuals and local and state jurisdictions are required to comply with the Endangered Species Act (ESA) independently of FEMA's process.

This report prepared demonstrates that Phase 1 of the Solano360 Specific Plan Project (project) is in compliance with the ESA; Phase 1 of the project will have no effect on federally listed species or their habitats.

The letter report was sent to United States Fish and Wildlife Service (USFWS; Ryan Olah) on April 25, 2014. USFWS responded with a concurrence email on April 28, 2014. USFWS determined that no listed species or their habitats would be affected by the proposed project since the project site is already developed. Further, no species would disperse into this area since the surrounding parcels are also developed.

Task 3: Federal and State Regulatory Permitting

FCS has developed the following preliminary scope of work defining the process required to complete the biological resources permitting process, based on its understanding of and work completed for the project to date and its experience with other, similar projects. This scope of work assumes that a Section 404 Nationwide Permit (NWP) will be required for the project since Phase 1 has less than 0.5 acre of federally jurisdictional features to be impacted.

Task 3.1: Section 404 Permit Pre-Application Meeting

FCS shall initiate a pre-application meeting with the U.S. Army Corps of Engineers (USACE) for the project. The purpose of this meeting is to introduce the proposed project to the USACE, processing timelines, and mitigation options. Other agencies that would have regulatory authority over the project, such as the Regional Water Quality Control Board (RWQCB), U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW), will be invited to attend the pre-application meeting. In addition to its typical function, the pre-application meeting will provide the opportunity to describe on-going regulatory compliance efforts related to Section 404 permitting, such as California Environmental Quality Act (CEQA), and Section 106 of the National Historic Preservation Act (NHPA) and Section 7 Endangered Species Act (ESA) compliance. The USACE recommends that a project's completed wetland delineation and preliminary impact assessment be brought to the meeting. FCS additionally recommends that a representative of the design consultant and a representative from the County attend the meeting as the agency representatives may have questions or suggestions for design modifications that could be simultaneously addressed by such a representative.

Task 3.2: Prepare and Submit Section 404 Clean Water Act Permit Application

FCS proposes to prepare a permit application binder and submit an IP application to the USACE. The binder will include all available information need to establish compliance with the Clean Water Act (CWA) and will need to include:

- Project Plans/Exhibits
 - Location and extent of temporary and permanent impacts to waters of the U.S. and waters of the State; acreage, linear feet of channel, cubic yards of fill within ordinary high water
 - Type(s) of material to be placed in waters of the U.S. and waters of the State and amount (cubic yards) of each
 - Required drawings include a Site Plan showing the proposed project with regard to existing waters of the U.S. and waters of the State and a scaleable cross-section(s) depicting proposed work within channels (e.g., effluent outfall)
- Description of avoidance and minimization of impacts to waters of the U.S. and waters of the State by the project and specific components
- Preliminary/Approved Jurisdictional Determination
- Hydrological Support Data

- Biological Resources Assessments (if required by USFWS based on the California red-legged frog Survey Results Report)
- Cultural/Historic Properties Compliance (Section 106 Compliance)
- Stormwater Control Plan
- A conceptual mitigation proposal to offset loss of permanent impacts to waters
- Copies of permit applications submitted to other resource agencies (RWQC, CDFW)
- CEQA Compliance documentation

Task 3.3: Endangered Species Act

Although protocol level surveys were conducted for the presence of the California red-legged resulting in a negative finding of the species, Endangered Species Act Section 7 Formal Consultation between the USACE and USFWS may be required. FCS will work with County staff to best address USFWS requirements for Section 7 consultation, while providing the County with a schedule and budget that meets the County's goals. FCS will prepare a Biological Assessment for the USACE to document the project's potential for impacts to federally listed species which may be affected by the project. The Biological Assessment will be sent to the by the USACE to initiate Section 7 consultation with USFWS. After completion of the formal consultation, the USFWS will issue a Biological Opinion regarding the project's potential to impact federally listed species or their habitat.

Task 3.4. Alternatives Analysis

Because the project occurs within the San Francisco Bay Region, the RWQCB will require a stand-alone Alternatives Analysis will be prepared for the project.

Utilizing the baseline data and resource agency input obtained in other tasks, FCS will prepare an Alternatives Analysis consistent with RWQCB guidelines. The purpose of Alternatives Analysis is to clearly identify the least environmentally damaging practicable alternative (LEDPA). The Alternatives Analysis also requires evaluation of both on- and off-site development options and preparation of a detailed Conceptual Mitigation Plan (Task 3.5). The intent of these Guidelines is to "restore and maintain the chemical, physical, and biological integrity of waters of the United States through the control of discharges of dredged or fill material." The Guidelines provide the substantive criteria used in evaluating whether or not proposed discharges of dredged or fill materials into waters are in compliance CWA. Discharges of dredged or fill material are automatically restricted in the following circumstances:

- If there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences;
- If discharges cause or contribute to violations of any applicable state water quality or toxic effluence standard or jeopardize the continued existence of species listed as endangered or threatened under the Endangered Species Act of 1973, as amended;

- If discharges will cause or contribute to significant degradation of waters of the United States; or
- If appropriate and practicable steps have not been taken which will minimize the potential adverse impacts of the discharge on the aquatic ecosystem.

FCS will prepare a Alternatives Analysis consistent with RWQCB Guidelines. A final report will be prepared following one round of review by the County and the pre-application consultation with the agencies, with comments and revisions made where applicable.

Task 3.5: Coordination of Conceptual Mitigation Plan

USACE policy requires that: (1) onsite mitigation be given full consideration even though it may require changes in project design, (2) mitigation be like-in-kind (to the maximum extent possible), and (3) habitat be replaced at no less than 1 to 1 by area (even if mitigation is designed so as to result in higher value habitat). FCS will evaluate and quantify mitigation options to aid the County in selecting the option most feasible in light of resource agency requirements and mitigation costs.

FCS shall assist the County and the County's Engineers to develop a conceptual mitigation proposal for inclusion in the permit application package. We understand that the Fairgrounds Channel will be widened to support a mosaic of riparian and wetland habitats and will be proposed to satisfy requirements for compensatory mitigation. The final document will need to follow guidance established by the USACE San Francisco District and as promulgated in the final rule for "Compensatory Mitigation for Losses of Aquatic Resources" (Federal Register: April 10, 2008) (40 CFR Part 230).

FCS biologists will coordinate with the Project Engineers to provide recommendations regarding plant species and design improvements that will enhance the ecological value of the Fairgrounds Channel to satisfy the permitting agencies.

Task 3.6: Prepare and Submit Section 401 Clean Water Act Certification

FCS shall prepare and submit a Section 401 Water Quality Certification application to the RWQCB. Section 401 certification is a required condition of approval from USACE Section 404 permits. The Section 401 application will require a permit filing fee to be paid by County (based on the RWQCB Dredge Fee Calculator). As part of the permit application package, the San Francisco RWQCB requires documentation of avoidance of potential impacts including the development of an alternatives analysis that is consistent with the U.S. Environmental Protection Agency's Guidelines for the Specification of Disposal Sites for Dredge or Fill Material (EPA Guidelines). The mitigation proposal must include the San Francisco RWQCB Wetland and Riparian Project Form and Habitat Maps. It is assumed that the development of the Fairgrounds Channel will satisfy the San Francisco RWQCB compensatory mitigation requirements for approval of the project.

Task 3.7: Prepare and Submit CDFW Notification of Streambed Alteration

FCS shall prepare and submit a notification package for a CDFW Streambed Alteration Agreement as required under the California Fish and Game Code Sections 1600-1616 for activities associated with the Project that would obstruct the flow of, or alter the bed, channel, or bank of a river or stream in which there is a fish or wildlife resource. Submittal requirements for a 1600-1616 application include a fee payment (paid by County), project description and drawings, and a CDFW questionnaire regarding potential aquatic resource impacts. The applications will be prepared concurrently with the preparation of the Section 404 application.

Task 3.8: Regulatory Agency Coordination

FCS shall provide ongoing coordination of interrelated content, processing, and communication with regulatory agency staff for the regulatory permits and supporting documentation described in Tasks 3.1 – 3.7. FCS shall work directly with County and design consultant on an on-call basis including up to twelve 1-hour team meetings to discuss project regulatory issues and updates. This task also includes preparation of technical memos, e-mail and/or verbal communication on an on-call basis with County related to status and progress of the regulatory permits. Coordination includes up to two on-site meetings with regulatory agency personnel to review the proposed project and resources of interest. This task includes up to 36 hours.

Deliverables: *Technical Memorandum summarizing anticipated impacts to wetlands/waterways based on project design information (one (1) hard copy and one (1) copy on CD/ PDF);*

Presentation of the proposed project at the USACE pre-application meeting;

Administrative Draft - Section 404 IP (two (2) hard copies and one (1) copy on CD/ PDF);

Submittal of Final Section 404 Permit Application Package to the USACE (one hard copy submittal and five (5) hard copies and one (1) copy on CD/ PDF)

Biological Assessment for California red-legged frogs (three (3) hard copies and one (1) copy on CD/ PDF);

One Response Letter to USFWS addressing questions on construction methodology or conservation measures.

Administrative Draft Conceptual Mitigation Plan (one (1) hard copy and one (1) copy on CD/ PDF)

Final Conceptual Mitigation Plan (one (1) hard copy and one (1) copy on CD/ PDF)

Administrative Draft Section 401 Water Quality Certification (two (2) hard copies and one (1) copy on CD/ PDF)

Submittal of the Final Section 401 Water Quality Certification to RWQCB (one (1) hard copy submittal and five (5) hard copies and one (1) copy on CD/ PDF)

Administrative Draft Notification Streambed Alteration Agreement (one (1) hard copy and one (1) copy on CD/ PDF)

Submittal of Final Streambed Alteration Agreement applications to CDFW (one (1) hard copy submittal and five (5) hard copies and one (1) copy on CD/ PDF)

Twelve (1-hour) Project Regulatory Issues and Update Meeting Agendas and Minutes

Two (2) Project Site Visits

Phase 2

If it is not possible to demonstrate that Phase 1 is an independent project from Phase 2, then the project will require an Individual Permit (IP) from the USACE since impacts will be greater than 0.5 acre for the project as a whole.

To obtain permits from the resource agencies, the same tasks as detailed and described above will all need to be conducted. The Section 404 CWA permit application to the USACE will require that the Alternatives Analysis discussed in Task 3.4 will need to follow the U.S. Environmental Protection Agency (EPA) guidelines.

Supplemental Tasks

The County may require FCS to perform any or all of the following Supplemental Tasks. If FCS's services are required for any of these Supplemental Task, the County will issue separate written Notices to Proceed for FCS to perform these tasks. Each Notice will indicate a specific date on which FCS shall begin and complete the required Supplemental Task and shall include specific deliverables and a not-to-exceed cost for the work.

Task 4.0: National Historic Preservation Act - Section 106 Compliance

Pursuant to Section 106 of the National Historic Preservation Act (NHPA), any federal agency that proposes an action that may affect a property that is listed or eligible for listing on the National Register must consult with the State Historic Preservation Officer (SHPO). The Draft Environmental Impact Report (DEIR) identified both historic and prehistoric resources within and adjacent to the project area. Consequently, in order to secure the USACE Section 404 permit, the USACE will require documentation formally determining the eligibility of the resources and determining the potential effects. If the project will affect an eligible property, mitigation must be provided.

A cultural resource evaluation will be prepared to document the presence/absence of any potentially significant cultural resources located within the project's Area of Potential Effect (APE), and, if significant resources would be affected by the proposed project, to propose recommendations to mitigate the effects, which might include a Memorandum of Agreement (MOA) or other protective measures.

USACE regulations state that a record search cannot be over a year old and that resources identified in field surveys cannot be more than two years old. Since the original record search was conducted in April 2011 and the field survey was conducted in May 2011, both the record search and the field survey must be conducted again to comply with the USACE regulations. In addition, to ensure that interested Native Americans have been provided every opportunity to consult, a second request for a search of the Sacred Lands file and information request letters will be sent to the Native American Heritage Commission (NAHC).

Task 4.1: NWIC and NAHC Record Searches

FCS will request a records search at the Northwest Information Center (NWIC) located in Rohnert Park. The record search will include a review of the National Register of Historic Places (NRHP), the California Register of Historical Resources, the California Inventory of Historic Resources, the California Historical Landmarks, the California Points of Historical Interest listings, the Historic Property Data File (OHP current computer list, 2013), historic maps, and previous studies that include the proposed project area and a 0.50-mile radius.

Task 4.2: Cultural Resource Field Survey

The proposed project area will be surveyed utilizing 15 meter transects walked in a zigzag pattern to provide optimal coverage and to comply with USACE regulations.

Although considered unlikely, if prehistoric resources are found within the project area, additional analysis, evaluation, and recordation of the resources may be required. The cost for recording individual sites is highly dependent on what is found, but \$300 is the minimum charge for recording previously unrecorded prehistoric resources.

Task 4.3: Building Evaluations and Recordation

Results of the 2011 field survey indicated that out of the approximately 45 buildings within the project area, 25-30 buildings will require evaluation for historic significance and recordation on Department of Parks and Recreation (DPR) forms.

Included in this task will be archival research by an FCS architectural historian at various repositories including local libraries, historical societies, and the resources housed at the Fairgrounds.

Following the archival research efforts, a field survey will be conducted by an FCS architectural historian and senior archaeologist to evaluate the buildings and structures within the project area for historic significance. The buildings and structures will be evaluated to determine if they meet any of the criteria for listing on the National Register of Historic Resources (NR), the California Register of Historical Resources (CR), or any local registers or listings.

In addition, during the course of the field survey, the buildings and structures will be recorded on appropriate DPR forms. At a minimum, each building/structure will be recorded on a DPR Primary form following OHP protocol.

Task 4.4: Cultural Resource Report

A comprehensive report written to USACE and Section 106 standards will be completed following the archival research and field investigation and at a minimum will contain:

- A complete and specific project description;
- Although USACE will define the APE, FCS will provide a description of the horizontal and vertical area of direct and indirect effects, as well as a discussion of viewshed issues, if applicable;
- Detailed description of the field survey including dates of the survey, transect interval, percent of ground visibility, site recording procedures as well as a vicinity and large-scale maps;

- An introduction and section on the setting of the project area;
- Prehistoric and historic background of the region investigated;
- Eligibility recommendations for each prehistoric or historic resource found within the APE including an historic context statement and whether a resource is or is not eligible for the listing on the National Register of Historic Places (NRHP);
- Methods used in the investigation, including dates and results for the records searches.

If required, recommendations for a Memorandum of Agreement (MOA), Historic Properties Treatment Plan (HPTP) or other treatments would be provided.

Once the Final Report is completed, it will be sent to the USACE for review and comments. Once USACE has completed their review, the report will be sent to the State Historic Preservation Officer (SHPO) for concurrence with the Findings of Effect for the project.

Project Schedule

FCS has prepared the following schedule outlining the anticipated timing of each task.

TASK	TIMING
Notice to Proceed	Week 1
USFWS coordination regarding FEMA	Completed
Federal and State Permitting*	
Section 404 Permit Pre-Application Meeting	Weeks 1-4
Prepare and Submit Section 404 Clean Water Act Permit Application	Week 1-8
Prepare and Submit Biological Assessment to the County	Week 4
USACE Alternatives Analysis, CWA §404(b)(1)	Week 4-8
Conceptual Mitigation Plan	Week 4-8
Prepare and Submit Section 401 Clean Water Act Certification	Week 4-8
Prepare and Submit CDFW Notification of Streambed Alteration	Week 4-8
Regulatory Agency Coordination	Throughout project
*Submittal contingent on 65% design plans.	

Adjustments to the Project Schedule can be made with written approval of the County, provided that any extension of time does not exceed the expiration date of the Agreement.

Budget

FCS has prepared the following budget identifying the costs of each task.

TASK	Phase 1 FEE	Phase 1 & Phase 2 FEE
Task 1: Project Initiation, Project Management and Coordination	\$3,800	\$3,800

TASK	Phase 1 FEE	Phase 1 & Phase 2 FEE
Task 2: Service's Section 7 Coordination FEMA	\$6,000	\$6,000
Task 3: Federal and State Permitting		
Task 3.1: Section 404 Permit Pre-Application Meeting	\$5,500	\$5,500
Task 3.2: Prepare and Submit Section 404 Clean Water Act Permit Application	\$5,300	\$5,300
Task 3.3: Endangered Species Act	\$4,600	\$9,000
Task 3.4: USACE Alternatives Analysis, CWA §404(b)(1)	\$6,500	\$13,500
Task 3.5: Conceptual Mitigation Plan	\$4,500	\$8,800
Task 3.6: Prepare and Submit Section 401 Clean Water Act Certification	\$5,600	\$5,600
Task 3.7: Prepare and Submit CDFW Notification of Streambed Alteration	\$4,500	\$4,500
Task 3.8: Regulatory Agency Coordination	\$7,500	\$7,500
Other Direct Costs (travel, photocopies, GPS unit rental)	\$2,400	\$2,400
TOTAL	\$56,200	\$71,900

Assumptions

The assumptions used in calculating the above fees are:

- 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 upon completion of the work within the proposed schedule. If delays occur, an amendment of the price would be warranted to accommodate additional project management and other costs, and to reflect adjustments for updated billing rates.
- Conceptual Mitigation Plan will be primarily based on the County's engineering designs to relocate the existing on-site drainage features. If off-site mitigation is required, this task will need to be re-scoped.
- 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.
- Printing costs are based on the method of printing and binding proposed, numbers of copies proposed as work products, and estimated page lengths. Document printing costs are estimated and will be finalized at the time of printing. On further clarification of the documents and reports (paper and/or digital CD) that the applicant team or County staff will need during the preparation effort, FCS will specifically identify a detailed reproduction work plan with more specific costs.