



## **Request for Proposals and Qualifications for Professional Services - Commercial Linkage Fee Nexus Study**

Proposals Due: April 28, 2021

### Project Overview

The City of Rancho Cucamonga is seeking the services of a qualified, experienced firm to prepare a study for the creation of a Commercial Linkage Fee to support the development of affordable housing.

As significant non-residential development and redevelopment continues throughout the City, it is recognized that many of these uses create additional jobs in the community, some or many of which place individuals and families in the low to moderate income brackets. This in turn drives demand for the creation of additional affordable housing.

To mitigate these impacts, the City is pursuing the creation of its first Commercial Linkage fee to be charged to new non-residential development.

We are asking interested consulting firms to submit a letter outlining their qualifications for this work and providing cost proposals. The City is interested in hearing the proposer's suggested work plan, timeframe for completion, and costs for:

- A. Nexus Study to form the basis for the amount and imposition of the fee; and
- B. As an add-alternate, the completion of a Market Feasibility analysis to determine the impacts of a commercial linkage fee on the costs of different types of development, and how those impacts may or may not impact the financial viability of future projects from the developer prospective, based on pro forma analyses.
- C. Cost for in-person attendance at meetings(s) as required to present the study results, as may be requested by the City.

Proposers should assume that no on-site visits with staff will be required for the preparation of the study; meetings can be held virtually in order to eliminate travel and meeting costs.

### Proposal Process and Format:

The proposal should include, at a minimum, the following:

- Narrative outlining the firm experience on similar projects.
- Information regarding the qualifications of members of the team to be assigned to this project. The person who will handle the day-to-day work with the City on the search must be named.
- A work plan for the project, including details regarding the proposed project approach, tasks, and specific timelines, and some narrative explaining the rationale behind the recommended work plan.
- Project budget for the firm's work (the cost proposal for both the nexus study and the add-alternate viability analysis).
- References, including contact information, for similar work for other public agencies.

Proposers should submit one complete copy of the proposal via email by Thursday, April 28, at 5:00 pm to:

Jennifer Nakamura  
Planning Department  
Jennifer.Nakamura@cityofrc.us

Please do not provide a hard copy proposal; a simple proposal format is welcomed.

### Pre-Proposal Questions

Interested proposers are invited to contact Jennifer Nakamura via email at [Jennifer.Nakamura@cityofrc.us](mailto:Jennifer.Nakamura@cityofrc.us) with any questions. Answers to common questions or issues will be posted in an FAQ format on the Planning Department website at <https://www.cityofrc.us/community-development/planning> up until the proposal submittal date.

### Selection Process

Proposals will be evaluated by City staff based on the following criteria:

- General background and experience in preparing commercial linkage fee studies, including references from other client public agencies in California
- Proposed approach to the project
- Ability to complete the project on an accelerated time frame; ideally, the City would like to complete the studies by July 1, 2021.
- Proposal pricing and overall value

### Business License

The selected firm will be required to obtain a Rancho Cucamonga Business License prior to any services or work being rendered.

### Professional Service Agreement

The selected firm will be required to enter into a Professional Services Agreement (“PSA”) with the City; a sample is attached. Please note the City’s insurance requirements are different from many other public agencies. All requirements of said PSA must be completed by the successful vendor, signed by both parties, and issuance of a Purchase Order, prior to any services being rendered. This RFP sets forth some of the general provisions which may be included in the final PSA. In submitting a response to this RFP, vendor will be deemed to have agreed to each clause unless the RFP response identifies an objection and the City agrees to a change of language in writing. Failure to raise any objections at the time of submittal of a response to this RFP will result in a waiver of objection to any of the contract language included in the PSA.

### Other Terms and Conditions

No verbal modification will be binding. The City shall not, in any event, be liable for any pre-contractual expenses incurred by the proposing vendor. Vendors shall not include any such expenses as part of the price as proposed in response to this RFP.

The City reserves the right, unless otherwise stated, to accept or reject all or any RFP response, any part thereof, either separately or as a whole, to waive any informality in a RFP response and to split or make the award in any manner determined to be in the best interest of the City. The City recognizes that price is only one of several criteria to be used in judging a product or service, and the City is not legally bound to accept the lowest RFP response.

## AGREEMENT FOR PROFESSIONAL SERVICES

**THIS AGREEMENT is made and entered into this            day of  
, 20            , by and between the City of Rancho Cucamonga, a municipal  
corporation (“City”) and            , a            (“Consultant”).**

### RECITALS

A. City has heretofore issued its request for proposals to perform the following professional services:            (“the Project”).

B. Consultant has submitted a proposal to perform the professional services described in Recital “A”, above, necessary to complete the Project.

C. City desires to engage Consultant to complete the Project in the manner set forth and more fully described herein.

D. Consultant represents that it is fully qualified and licensed under the laws of the State of California to perform the services contemplated by this Agreement in a good and professional manner.

### AGREEMENT

NOW, THEREFORE, in consideration of performance by the parties of the mutual promises, covenants, and conditions herein contained, the parties hereto agree as follows:

#### **1. Consultant’s Services.**

**1.1 Scope and Level of Services.** Subject to the terms and conditions set forth in this Agreement, City hereby engages Consultant to perform all technical and professional services described in Recitals “A” and “B” above, including, but not limited to            , all as more fully set forth in the Consultant’s proposal, dated            and entitled “Scope of Work”, attached hereto as Exhibit “A”, and incorporated by reference herein. The nature, scope, and level of the services required to be performed by Consultant are set forth in the Scope of Work and are referred to herein as “the Services.” In the event of any inconsistencies between the Scope of Work and this Agreement, the terms and provisions of this Agreement shall control.

**1.2 Revisions to Scope of Work.** Upon request of the City, the Consultant will promptly meet with City staff to discuss any revisions to the Project desired by the City. Consultant agrees that the Scope of Work may be amended based upon said meetings, and, by amendment to this Agreement, the parties may agree on a revision or revisions to Consultant’s compensation based thereon. A revision pursuant to this Section that does not increase the total cost payable to Consultant by more than ten

percent (10%) of the total compensation specified in Section 3, may be approved in writing by City's City Manager without amendment.

**1.3** Time for Performance. Consultant shall perform all services under this Agreement in a timely, regular basis consistent with industry standards for professional skill and care, and in accordance with any schedule of performance set forth in the Scope of Work, or as set forth in a "Schedule of Performance", if such Schedule is attached hereto as Exhibit "\_\_\_\_\_".

**1.4** Standard of Care. As a material inducement to City to enter into this Agreement, Consultant hereby represents that it has the experience necessary to undertake the services to be provided. In light of such status and experience, Consultant hereby covenants that it shall follow the customary professional standards in performing the Services.

**1.5** Familiarity with Services. By executing this Agreement, Consultant represents that, to the extent required by the standard of practice, Consultant (a) has investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. Consultant represents that Consultant, to the extent required by the standard of practice, has investigated any areas of work, as applicable, and is reasonably acquainted with the conditions therein. Should Consultant discover any latent or unknown conditions, which will materially affect the performance of services, Consultant shall immediately inform City of such fact and shall not proceed except at Consultant's risk until written instructions are received from the City Representative.

**2. Term of Agreement.** The term of this Agreement shall be one (1) year and shall become effective as of the date of the mutual execution by way of both parties signature (the "Effective Date"). No work shall be conducted; service or goods will not be provided until this Agreement has been executed and above requirements have been fulfilled.

Parties to this Agreement shall have the option to renew in one (1) year increments to a total of three (3) years, unless sooner terminated as provided in Section 14 herein. Options to renew are contingent upon the City Manager's approval, subject to pricing review, and in accordance with all Terms and Conditions stated herein unless otherwise provided in writing by the City.

### **3. Compensation.**

**3.1** Compensation. City shall compensate Consultant as set forth in Exhibit A, provided, however, that full, total and complete amount payable to Consultant shall not exceed \$ \_\_\_\_\_ (\_\_\_\_\_ ), including all out of pocket expenses, unless additional compensation is approved by the City Council. City shall not withhold any federal, state or other taxes, or other deductions. However, City shall withhold not more than ten

percent (10%) of any invoice amount pending receipt of any deliverables reflected in such invoice. Under no circumstance shall Consultant be entitled to compensation for services not yet satisfactorily performed.

The parties further agree that compensation may be adjusted in accordance with Section 1.2 to reflect subsequent changes to the Scope of Services. City shall compensate Consultant for any authorized extra services as set forth in Exhibit A.

#### **4. Method of Payment.**

**4.1 Invoices.** Consultant shall submit to City monthly invoices for the Services performed pursuant to this Agreement. The invoices shall describe in detail the Services rendered during the period and shall separately describe any authorized extra services. Any invoice claiming compensation for extra services shall include appropriate documentation of prior authorization of such services. All invoices shall be remitted to the City of Rancho Cucamonga, California.

**4.2** City shall review such invoices and notify Consultant in writing within ten (10) business days of any disputed amounts.

**4.3** City shall pay all undisputed portions of the invoice within thirty (30) calendar days after receipt of the invoice up to the not-to-exceed amounts set forth in Section 3.

**4.4** All records, invoices, time cards, cost control sheets and other records maintained by Consultant relating to services hereunder shall be available for review and audit by the City.

#### **5. Representatives.**

**5.1 City Representative.** For the purposes of this Agreement, the contract administrator and City's representative shall be \_\_\_\_\_, or such other person as designated in writing by the City ("City Representative"). It shall be Consultant's responsibility to assure that the City Representative is kept informed of the progress of the performance of the services, and Consultant shall refer any decisions that must be made by City to the City Representative. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the City Representative.

**5.2 Consultant Representative.** For the purposes of this Agreement, \_\_\_\_\_ is hereby designated as the principal and representative of Consultant authorized to act in its behalf with respect to the services specified herein and make all decisions in connection therewith ("Consultant's Representative"). It is expressly understood that the experience, knowledge, capability and reputation of the Consultant's Representative were a substantial inducement for City to enter into this Agreement. Therefore, the Consultant's Representative shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. Consultant may not change the Responsible Principal without the prior written approval of City.

## **6. Consultant's Personnel.**

**6.1** All Services shall be performed by Consultant or under Consultant's direct supervision, and all personnel shall possess the qualifications, permits, and licenses required by State and local law to perform such Services, including, without limitation, a City business license as required by the City's Municipal Code.

**6.2** Consultant shall be solely responsible for the satisfactory work performance of all personnel engaged in performing the Services and compliance with the standard of care set forth in Section 1.4.

**6.3** Consultant shall be responsible for payment of all employees' and subcontractors' wages and benefits, and shall comply with all requirements pertaining to employer's liability, workers' compensation, unemployment insurance, and Social Security. By its execution of this Agreement, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code that require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

**6.4** Consultant shall indemnify, defend and hold harmless City and its elected officials, officers and employees, servants, designated volunteers, and agents serving as independent contractors in the role of city or agency officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from Consultant's violations of personnel practices and/or any violation of the California Labor Code. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Section 6.

## **7. Ownership of Work Product.**

**7.1 Ownership.** All documents, ideas, concepts, electronic files, drawings, photographs and any and all other writings, including drafts thereof, prepared, created or provided by Consultant in the course of performing the Services, including any and all intellectual and proprietary rights arising from the creation of the same (collectively, "Work Product"), are considered to be "works made for hire" for the benefit of the City. Upon payment being made, and provided Consultant is not in breach of this Agreement, all Work Product shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. Basic survey notes, sketches, charts, computations and similar data prepared or obtained by Consultant under this Agreement shall, upon request, be made available to City. None of the Work Product shall be the subject of any common law or statutory copyright or copyright application by Consultant. In the event of the return of any of the Work Product to Consultant or its representative, Consultant shall be responsible for its safe return to City. Under no circumstances shall Consultant fail to deliver any draft or final designs, plans, drawings, reports or specifications to City upon written demand by City for their delivery,

notwithstanding any disputes between Consultant and City concerning payment, performance of the contract, or otherwise. This covenant shall survive the termination of this Agreement. City's reuse of the Work Product for any purpose other than the Project, shall be at City's sole risk.

**7.2. Assignment of Intellectual Property Interests:** Upon execution of this Agreement and to the extent not otherwise conveyed to City by Section 7.1, above, the Consultant shall be deemed to grant and assign to City, and shall require all of its subcontractors to assign to City, all ownership rights, and all common law and statutory copyrights, trademarks, and other intellectual and proprietary property rights relating to the Work Product and the Project itself, and Consultant shall disclaim and retain no rights whatsoever as to any of the Work Product, to the maximum extent permitted by law. City shall be entitled to utilize the Work Product for any and all purposes, including but not limited to constructing, using, maintaining, altering, adding to, restoring, rebuilding and publicizing the Project or any aspect of the Project.

**7.3 Title to Intellectual Property.** Consultant warrants and represents that it has secured all necessary licenses, consents or approvals to use any instrumentality, thing or component as to which any intellectual property right exists, including computer software, used in the rendering of the Services and the production of the Work Product and/or materials produced under this Agreement, and that City has full legal title to and the right to reproduce any of the Work Product. Consultant shall defend, indemnify and hold City, and its elected officials, officers, employees, servants, attorneys, designated volunteers, and agents serving as independent contractors in the role of city officials, harmless from any loss, claim or liability in any way related to a claim that City's use is violating federal, state or local laws, or any contractual provisions, relating to trade names, licenses, franchises, patents or other means of protecting intellectual property rights and/or interests in products or inventions. Consultant shall bear all costs arising from the use of patented, copyrighted, trade secret or trademarked documents, materials, software, equipment, devices or processes used or incorporated in the Services and materials produced under this Agreement. In the event City's use of any of the Work Product is held to constitute an infringement and any use thereof is enjoined, Consultant, at its expense, shall: (a) secure for City the right to continue using the Work Product by suspension of any injunction or by procuring a license or licenses for City; or (b) modify the Work Product so that it becomes non-infringing. This covenant shall survive the termination of this Agreement.

**8. Status as Independent Contractor.** Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act as an agent of City. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of City. Consultant shall pay all required taxes on amounts paid to Consultant under this Agreement, and to defend, indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against



City by reason of the independent contractor relationship created by this Agreement. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees.

**9. Confidentiality.** Consultant may have access to financial, accounting, statistical, and personnel data of individuals and City employees. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are confidential and shall not be disclosed by Consultant without prior written authorization by City. City shall grant such authorization if applicable law requires disclosure. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this section shall survive the termination of this Agreement. This provision shall not apply to information in whatever form that is in the public domain, nor shall it restrict the Consultant from giving notices required by law or complying with an order to provide information or data when such an order is issued by a court, administrative agency or other legitimate authority, or if disclosure is otherwise permitted by law and reasonably necessary for the Consultant to defend itself from any legal action or claim.

**10. Conflict of Interest.**

**10.1** Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the Services, or which would conflict in any manner with the performance of the Services. Consultant further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Consultant shall avoid the appearance of having any interest, which would conflict in any manner with the performance of the Services. Consultant shall not accept any employment or representation during the term of this Agreement which is or may likely make Consultant "financially interested" (as provided in California Government Code §§1090 and 87100) in any decision made by City on any matter in connection with which Consultant has been retained. Consultant or its employees may be required to disclose financial interests that may foreseeably be materially affected by the work performed under this Agreement pursuant to California Government Code § 87100 et seq and regulations promulgated by the Fair Political Practices Commission.

**10.2** Consultant further represents that it has not employed or retained any person or entity, other than a *bona fide* employee working exclusively for Consultant, to solicit or obtain this Agreement. Consultant has not paid or agreed to pay any person or entity, other than a *bona fide* employee working exclusively for Consultant, any fee, commission, gift, percentage, or any other consideration contingent upon the execution of this Agreement. Upon any breach or violation of this warranty, City shall have the right, at its sole and absolute discretion, to terminate this Agreement without further liability, or to deduct from any sums payable to Consultant hereunder the full amount or value of any such fee, commission, percentage or gift.

**10.3** Consultant has no knowledge that any officer or employee of City has any interest, whether contractual, noncontractual, financial, proprietary, or otherwise, in this transaction or in the business of Consultant, and that if any such interest comes to the knowledge of Consultant at any time during the term of this Agreement, Consultant shall immediately make a complete, written disclosure of such interest to City, even if such interest would not be deemed a prohibited “conflict of interest” under applicable laws as described in subsection 10.1.

## **11. Indemnification.**

**11.1 Professional Services.** In connection with its professional services, the Consultant shall defend, hold harmless and indemnify City, and its elected officials, officers, employees, servants, volunteers, and agents serving as independent contractors in the role of city or agency officials, (collectively, “Indemnitees”), with respect to any and all damages, liabilities, losses, reasonable defense costs or expenses (collectively, “Claims”), including but not limited to liability for death or injury to any person and injury to any property, to the extent the same out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant or any of its officers, employees, subcontractors, consultants, or agents in the performance of its professional services under this Agreement. Consultant shall reimburse all reasonable defense costs and expenses, including actual attorney’s fees and experts’ costs incurred in connection with such defense.

**11.2 Other Indemnities.** In connection with all Claims not covered by Section 11.1, the Consultant shall defend, hold harmless and indemnify the Indemnitees with respect to any and all Claims including but not limited to Claims relating to death or injury to any person and injury to any property, which arise out of, pertain to, or relate to the non-professional acts, omissions, activities or operations of Consultant or any of its officers, employees, subcontractors, consultants, or agents in the performance of this Agreement. Consultant shall defend Indemnitees in any action or actions filed in connection with any such Claims with counsel of City’s choice, and shall pay all costs and expenses, including actual attorney’s fees and experts’ costs incurred in connection with such defense.

**11.3 Nonwaiver of Rights.** Indemnitees do not, and shall not, waive any rights that they may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement.

**11.4 Waiver of Right of Subrogation.** Except as otherwise expressly provided in this Agreement, Consultant, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation against the Indemnitees, while acting within the scope of their duties, from all claims, losses and liabilities arising out of or incident to activities or operations performed by or on behalf of the Consultant.

**11.5 Survival.** The provisions of this Section 11 shall survive the termination of the Agreement and are in addition to any other rights or remedies which

Indemnitees may have under the law. Payment is not required as a condition precedent to an Indemnitee's right to recover under this indemnity provision, and an entry of judgment against Consultant shall be conclusive in favor of the Indemnitee's right to recover under this indemnity provision.

## **12. Insurance.**

**12.1 Liability Insurance.** Consultant shall procure and maintain in full force and effect for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by Consultant, and/or its agents, representatives, employees and subcontractors.

**12.2 Minimum Scope of Insurance.** Unless otherwise approved by City, coverage shall be at least as broad as:

- (1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- (2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
- (3) Worker's Compensation insurance as required by the State of California, and Employer's Liability Insurance.
- (4) Professional Liability insurance in a form approved by the City, having an extended reporting period of not less than three (3) years; or Professional Liability insurance shall be maintained for a period of three (3) years after completion of the Services which shall, during the entire three (3) year period, provide protection against claims of professional negligence arising out of Consultant's performance of the Services and otherwise complying with all applicable provisions of this Section 13. Either policy shall be endorsed to include contractual liability to the extent insurable.

**12.3 Minimum Limits of Insurance.** Consultant shall maintain limits no less than:

- (1) Commercial General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. Commercial General Liability Insurance with a general aggregate limit shall apply separately to this Agreement or the general limit shall be twice the required occurrence limit.

- (2) Automobile Liability: \$2,000,000 per accident for bodily injury and property damage.
- (3) Employer's Liability: \$1,000,000 per accident and in the aggregate for bodily injury or disease and Workers' Compensation Insurance in the amount required by law.
- (4) Professional Liability: \$1,000,000 per claim/aggregate.

**12.4 Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City.

**12.5 Other Insurance Provisions.**

- (1) The commercial general liability and automobile liability policies are to contain the following provisions on a separate additionally insured endorsement naming the City, its officers, officials, employees, designated volunteers and agents serving as independent contractors in the role of city or agency officials, are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; and/or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no limitations on the scope of protection afforded to City, its officers, officials, employees, designated volunteers or agents serving as independent contractors in the role of City or agency officials which are not also limitations applicable to the named insured.
- (2) For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance as respects City, its officers, officials, employees, designated volunteers and agents serving as independent contractors in the role of city or agency officials. Any insurance or self-insurance maintained by City, their officers, officials, employees, designated volunteers or agents serving as independent contractors in the role of city or agency officials shall be excess of Consultant's insurance and shall not contribute with it.
- (3) Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled except

after 30 days prior written notice by first class mail has been given to City (ten (10) days prior written notice for non-payment of premium). Consultant shall provide thirty (30) days written notice to City prior to implementation of a reduction of limits or material change of insurance coverage as specified herein.

- (5) Each insurance policy, required by this clause shall expressly waive the insurer's right of subrogation against City and its elected officials, officers, employees, servants, attorneys, designated volunteers, and agents serving as independent contractors in the role of city or agency officials.
- (6) Be issued by an insurance company approved in writing by City, which is admitted and licensed to do business in the State of California and which is rated A:VII or better according to the most recent A.M. Best Co. Rating Guide.
- (7) Specify that any failure to comply with reporting or other provisions of the required policy, including breaches of warranty, shall not affect the coverage required to be provided.
- (8) Specify that any and all costs of adjusting and/or defending any claim against any insured, including court costs and attorneys' fees, shall be paid in addition to and shall not deplete any policy limits.
- (9) Other required insurance, endorsements, or exclusions as required by the City in any request for proposals applicable to this Agreement.

**12.6 Evidence of coverage.** Prior to commencing performance under this Agreement, the Consultant shall furnish the City with certificates and original endorsements, or copies of each required policy, effecting and evidencing the insurance coverage required by this Agreement. The endorsements shall be signed by a person authorized by the insurer(s) to bind coverage on its behalf. All endorsements or policies shall be received and approved by the City before Consultant commences performance. If performance of this Agreement shall extend beyond one year, Consultant shall provide City with the required policies or endorsements evidencing renewal of the required policies of insurance prior to the expiration of any required policies of insurance.

**13. Cooperation.** In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation that City might

require. City shall compensate Consultant for any litigation support services in an amount to be agreed upon by the parties.

**14. Termination.** City shall have the right to terminate this Agreement at any time for any or no reason on not less than ten (10) days prior written notice to Consultant. In the event City exercises its right to terminate this Agreement, City shall pay Consultant for any services satisfactorily rendered prior to the effective date of the termination, provided Consultant is not then in breach of this Agreement. Consultant shall have no other claim against City by reason of such termination, including any claim for compensation. City may terminate for cause following a default remaining uncured more than five (5) business days after service of a notice to cure on the breaching party.

Consultant may terminate this Agreement for cause upon giving the City ten (10) business days prior written notice for any of the following: (1) uncured breach by the City of any material term of this Agreement, including but not limited to Payment Terms; (2) material changes in the conditions under which this Agreement was entered into, coupled with the failure of the parties to reach accord on the fees and charges for any Additional Services required because of such changes.

**15. Notices.** Any notices, bills, invoices, or reports authorized or required by this Agreement shall be in writing and shall be deemed received on (a) the day of delivery if delivered by hand or overnight courier service during Consultant's and City's regular business hours; or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses set forth in this section, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this section.

All notices shall be addressed as follows:

If to City:

If to Consultant: \_\_\_\_\_, Principal

**16. Non-Discrimination and Equal Employment Opportunity.** In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation. Consultant will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

**17. Assignment and Subcontracting.** Consultant shall not assign or transfer any interest in this Agreement or subcontract the performance of any of Consultant's obligations hereunder without City's prior written consent. Except as provided herein, any attempt by Consultant to so assign, transfer, or subcontract any rights, duties, or obligations arising hereunder shall be null, void and of no effect.

**18 Compliance with Laws.** Consultant shall comply with all applicable federal, state and local laws, ordinances, codes and regulations in force at the time Consultant performs the Services.

**19. Non-Waiver of Terms, Rights and Remedies.** Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by City of any payment to Consultant constitute or be construed as a waiver by City of any breach of covenant, or any default which may then exist on the part of Consultant, and the making of any such payment by City shall in no way impair or prejudice any right or remedy available to City with regard to such breach or default.

**20. Attorney's Fees.** In the event that either party to this Agreement shall commence any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorney's fees and costs of experts.

**21. Exhibits; Precedence.** All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

**22. Applicable Law and Venue.** The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California. Venue for any action relating to this Agreement shall be in the San Bernardino County Superior Court.

**23. Construction.** In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of this Agreement shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the party who drafted the Agreement or who drafted that portion of the Agreement.

**24. Entire Agreement.** This Agreement consists of this document, and any other documents, attachments and/or exhibits referenced herein and attached hereto, each of which is incorporated herein by such reference, and the same represents the entire and integrated agreement between Consultant and City. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the parties which expressly refers to this Agreement.

IN WITNESS WHEREOF, the parties, through their respective authorized representatives, have executed this Agreement as of the date first written above.

Consultant Name:

City of Rancho Cucamonga

By: \_\_\_\_\_  
Name Date

By: \_\_\_\_\_  
Name Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

City of Rancho Cucamonga

By: \_\_\_\_\_  
Name Date

By: \_\_\_\_\_  
Name Date

\_\_\_\_\_  
Title  
(two signatures required if corporation)

\_\_\_\_\_  
Title

Approval \_\_\_\_\_ Buyer II, Purchasing  
\_\_\_\_\_ Alternate, Risk Management Coordinator



**EXHIBIT A**  
**SCOPE OF SERVICES**

**EXHIBIT B**  
**SCHEDULE OF PERFORMANCE**

ADDENDUM NO.  
to  
Professional Services Agreement

Whereas;

and the City of Rancho Cucamonga (hereinafter the "City") intend to enter into a Professional Services Agreement (hereinafter "Agreement"), and

Whereas;

has identified the following exceptions to the Agreement;

Now therefore:

and the City desire to incorporate the above exceptions to the attached Professional Services Agreement.

Please indicate your agreement by way of signature to this Addendum No. and the attached Professional Services Agreement. Please return two (2) original signed copies to the City no later than . The City will process for signature and provide with one (1) fully executed copy of the Professional Services Agreement and Addendum No. .

Consultant Name:

City of Rancho Cucamonga

By: \_\_\_\_\_  
Name Date

By: \_\_\_\_\_  
Name Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

City of Rancho Cucamonga

By: \_\_\_\_\_  
Name Date

By: \_\_\_\_\_  
Name Date

\_\_\_\_\_  
Title  
(two signatures required if corporation)

\_\_\_\_\_  
Title



**A Public Document**

State and local government agencies may use this form to identify consultants that will make or participate in making governmental decisions on behalf of the agency. A consultant must file a Statement of Economic Interests (Form 700) within 30 days of assuming office.

This form identifies the Statement of Economic Interests, Form 700, disclosure requirements for individuals serving in these positions. This form is for the agency's internal use and should be maintained by the agency in the same manner as the agency's conflict of interest code. For more information, refer to the FPPC website [www.fppc.ca.gov](http://www.fppc.ca.gov) and Regulation 18700.3 and 18734.

**Disclosure Requirements**

- y Disclosure requirements should conform to the range of duties.
- y Alternatively, the agency must require an individual to file under the broadest disclosure category in the agency's conflict of interest code or, if the agency does not have a conflict of interest code, full disclosure.

Full disclosure includes reporting all investments, business positions, and interests in real property held on the date of assuming office and income received during the 12 months immediately preceding assuming office.

*Examples:*

*An agency hired a law firm to act as its general counsel. An individual will make recommendations to the agency's board and provide general legal services. The individual qualifies as a consultant and based on the indefinable duties will be assigned the broadest or full disclosure under the agency's conflict of interest code.*

Not all outside contractors meet the consultant definition in FPPC Regulation 18700.3 requiring of the Form 700. When an agency determines that an individual is a consultant with limited duties, tailored disclosure should be used.

*An agency hired a firm to prepare an environmental impact report ("EIR") on airport expansion. The individual at the firm who will prepare the EIR should be assigned a disclosure requirement that reflects the contract's scope of authority. An example might include real property, investments and business positions in business entities, and income from only those sources engaging in air traffic or aviation goods or services. Note: The agency can assign an existing disclosure category, if applicable.*

**Instructions**

An individual must file the Form 700 within 30 days of assuming office and an annual statement for each calendar year of the contract. At the conclusion of services a leaving office statement is required.

**Part 1**

Identify the agency, contact information, and provide the amendment explanation in the comment section when applicable.

**Part 2**

Identify the consultant's firm name and address. Briefly describe the general purpose of the contract.

**Part 3**

Identify the name of those individuals that qualify as consultants and will file the Form 700. Identify the disclosure by:

- Assigning an existing category(s) in the agency's code, or
- Writing a disclosure requirement.

Provide the start and end dates of service if known.

**Part 4**

The Agency's conflict of interest code should identify the position that is responsible for the verification.

**Example of Part 2 & 3**

1. Firm Information

Firm Name ABC Company		
Firm Address 1010 Capitol St., Sacramento, CA 95814	Email (optional) abc@company.com	Phone (optional)
Describe General Purpose of Contract Design an EIR on airport expansion		

2. Consultant Information

Consultant Name	Assigned Category OR Disclosure Requirement	Assessing/Verifying Agency/Post Date (Optional)
Hector Rodriguez	3	Start: 7/1/2019 End: 12/31/2019 WF 7/8 10

Attachment A – Sample Waiver of Subrogation  
(Sample Only – Not all forms will look identical to this Sample)



WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY  
ENDORSEMENT WC 00 03 13 (00) -01

POLICY NUMBER:

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

**SCHEDULE**

**DESIGNATED PERSON:**

**DESIGNATED ORGANIZATION:**

**DATE OF ISSUE:**

# Attachment B – Sample Additional Insured for On-going Projects

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY  
CG 20 10 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.