

REQUEST FOR PROPOSALS (RFP) 1-3494

SALES TAX AUDIT AND RECOVERY SERVICES



**ORANGE COUNTY TRANSPORTATION AUTHORITY
550 South Main Street
P.O. Box 14184
Orange, CA 92863-1584
(714) 560-6282**

Key RFP Dates

Issue Date:	May 20, 2021
Question Submittal Date:	May 25, 2021
Proposal Submittal Date:	June 10, 2021
Interview Date:	June 29, 2021

TABLE OF CONTENTS

SECTION I: INSTRUCTIONS TO OFFERORS	1
SECTION II: PROPOSAL CONTENT	6
SECTION III: EVALUATION AND AWARD	13
EXHIBIT A: SCOPE OF WORK.....	16
EXHIBIT B: RECOVERY RATE PERCENTAGE FORM	17
EXHIBIT C: PROPOSED AGREEMENT	19
EXHIBIT D: STATUS OF PAST AND PRESENT CONTRACTS FORM	20
EXHIBIT E: SAFETY SPECIFICATIONS	22
EXHIBIT F: PROPOSAL EXCEPTIONS AND/OR DEVIATIONS.....	23



May 20, 2021

NOTICE OF REQUEST FOR PROPOSALS (RFP)

RFP 1-3494: "SALES TAX AUDIT AND RECOVERY SERVICES"

TO: ALL OFFERORS

FROM: ORANGE COUNTY TRANSPORTATION AUTHORITY

The Orange County Transportation Authority (Authority) invites proposals from qualified consultants to conduct transaction and use tax audits to ensure correct and appropriate collection and allocation of revenue on behalf of the Authority for a five-year term.

Proposals must be submitted electronically through the following URL link: <https://www.octa.net/Proposal Upload Link> at or before 2:00 p.m. on June 10, 2021. Select "RFP 1-3494" from the drop-down menu and follow the instructions as prompted.

PLEASE NOTE:

Hard copy proposal submission will not be accepted for this RFP. Proposals must be submitted electronically at the link stated above and by the date and time as indicated.

Proposals and amendments to proposals received after the date and time specified above will not be accepted.

Firms interested in obtaining a copy of this RFP may do so by downloading the RFP from CAMM NET at <https://cammnet.octa.net>.

All firms interested in doing business with the Authority are required to register their business on-line at CAMM NET. The website can be found at <https://cammnet.octa.net>.

To receive all further information regarding this RFP 1-3494, firms and subconsultants must be registered on CAMM NET with at least one of the following commodity codes for this solicitation selected as part of the vendor's on-line registration profile:

Category:

Professional Consulting

Professional Services

Commodity:

Consultant Services - General

Financial - Consulting

Accounting Services

Auditing

The Authority has established June 29, 2021 as the date to conduct interviews. All prospective Offerors will be asked to keep this date available.

Offerors are encouraged to subcontract with small businesses to the maximum extent possible.

All Offerors will be required to comply with all applicable equal opportunity laws and regulations.

The award of this contract is subject to receipt of federal, state, and/or local funds adequate to carry out the provisions of the proposed agreement including the identified Scope of Work.

SECTION I: INSTRUCTIONS TO OFFERORS

SECTION I. INSTRUCTIONS TO OFFERORS**A. EXAMINATION OF PROPOSAL DOCUMENTS**

By submitting a proposal, Offeror represents that it has thoroughly examined and become familiar with the work required under this RFP and that it is capable of performing quality work to achieve the Authority's objectives.

B. ADDENDA

The Authority reserves the right to revise the RFP documents. Any Authority changes to the requirements will be made by written addendum to this RFP. Any written addenda issued pertaining to this RFP shall be incorporated into the terms and conditions of any resulting Agreement. The Authority will not be bound to any modifications to or deviations from the requirements set forth in this RFP as the result of oral instructions. Offerors shall acknowledge receipt of addenda in their proposals. Failure to acknowledge receipt of Addenda may cause the proposal to be deemed non-responsive to this RFP and be rejected.

C. AUTHORITY CONTACT

All communication and/or contacts with Authority staff regarding this RFP are to be directed to the following Contract Administrator:

Iris Deneau, Senior Contract Administrator
Contracts Administration and Materials Management Department
Email: ideneau@octa.net

Commencing on the date of the issuance of this RFP and continuing until award of the contract or cancellation of this RFP, no proposer, subcontractor, lobbyist, or agent hired by the proposer shall have any contact or communications regarding this RFP with any Authority's staff; member of the evaluation committee for this RFP; or any contractor or consultant involved with the procurement, other than the Contract Administrator named above or unless expressly permitted by this RFP. Contact includes face-to-face, telephone, electronic mail (email), or formal written communication. Any proposer, subcontractor, lobbyist, or agent hired by the proposer that engages in such prohibited communications may result in disqualification of the proposer at the sole discretion of the Authority.

D. CLARIFICATIONS**1. Examination of Documents**

Should an Offeror require clarifications of this RFP, the Offeror shall notify the Authority in writing in accordance with Section D.2. below. Should it be found that the point in question is not clearly and fully set forth, the Authority will issue a written addendum clarifying the matter which will be sent to all

firms registered on CAMM NET under the commodity codes specified in this RFP.

2. Submitting Requests

- a. All questions must be put in writing and must be received by via email to ideneau@octa.net no later than 5:00 p.m., on May 25, 2021.
- b. Requests for clarifications, questions, and comments must be clearly labeled, "RFP 1-3494 Sales Tax Audit and Recovery Services, Written Questions." The Authority is not responsible for failure to respond to a request that has not been labeled as such.

3. Authority Responses

Responses from the Authority will be posted on CAMM NET no later than May 27, 2021. Offerors may download responses from CAMM NET at <https://cammnet.octa.net>, or request responses be sent via U.S. Mail by emailing or faxing the request to Iris Deneau, Senior Contract Administrator.

To receive email notification of Authority responses when they are posted on CAMM NET, firms and subconsultants must be registered on CAMM NET with at least one of the following commodity codes for this solicitation selected as part of the vendor's on-line registration profile:

<u>Category:</u>	<u>Commodity:</u>
Professional Consulting	Consultant Services - General
	Financial - Consulting
Professional Services	Accounting Services
	Auditing

Inquiries received after 5:00 p.m. on May 25, 2021 will not be responded to.

E. SUBMISSION OF PROPOSALS

1. Date and Time

Proposals must be submitted electronically through the following URL link: <https://www.octa.net/Proposal Upload Link> at or before 2:00 p.m. on June 10, 2021. Select "RFP 1-3494" from the drop-down menu and follow the instructions as prompted.

PLEASE NOTE:

Hard copy proposal submission will not be accepted for this RFP. Proposals must be submitted electronically at the link stated above and by the date and time as indicated.

2. Acceptance of Proposals

- a. The Authority reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in proposals.
- b. The Authority reserves the right to withdraw or cancel this RFP at any time without prior notice and the Authority makes no representations that any contract will be awarded to any Offeror responding to this RFP.
- c. The Authority reserves the right to issue a new RFP for the project.
- d. The Authority reserves the right to postpone proposal openings for its own convenience.
- e. Each proposal will be received with the understanding that acceptance by the Authority of the proposal to provide the services described herein shall constitute a contract between the Offeror and Authority which shall bind the Offeror on its part to furnish and deliver at the prices given and in accordance with conditions of said accepted proposal and specifications.
- f. The Authority reserves the right to investigate the qualifications of any Offeror, and/or require additional evidence of qualifications to perform the work.
- g. Submitted proposals are not to be copyrighted.

F. PRE-CONTRACTUAL EXPENSES

The Authority shall not, in any event, be liable for any pre-contractual expenses incurred by Offeror in the preparation of its proposal. Offeror shall not include any such expenses as part of its proposal.

Pre-contractual expenses are defined as expenses incurred by Offeror in:

- 1. Preparing its proposal in response to this RFP;
- 2. Submitting that proposal to the Authority;
- 3. Negotiating with the Authority any matter related to this proposal; or
- 4. Any other expenses incurred by Offeror prior to date of award, if any, of the Agreement.

G. JOINT OFFERS

Where two or more firms desire to submit a single proposal in response to this RFP, they should do so on a prime-subcontractor basis rather than as a joint venture. The Authority intends to contract with a single firm and not with multiple firms doing business as a joint venture.

H. TAXES

Offerors' proposals are subject to State and Local sales taxes. However, the Authority is exempt from the payment of Federal Excise and Transportation Taxes. Offeror is responsible for payment of all taxes for any goods, services, processes, and operations incidental to or involved in the contract.

I. PROTEST PROCEDURES

The Authority has on file a set of written protest procedures applicable to this solicitation that may be obtained by contacting the Contract Administrator responsible for this procurement. Any protests filed by an Offeror in connection with this RFP must be submitted in accordance with the Authority's written procedures.

J. CONTRACT TYPE

Offeror's compensation will be based on a percentage of any recovered unrealized sales tax revenue remitted by the California Department of Tax and Fee Administration (CDTFA). Offerors are to indicate percentages in Exhibit B, "Price Summary Sheet," to perform all work specified in the Scope of Work, included in this RFP as Exhibit A.

K. CONFLICT OF INTEREST

All Offerors responding to this RFP must avoid organizational conflicts of interest which would restrict full and open competition in this procurement. An organizational conflict of interest means that due to other activities, relationships, or contracts, an Offeror is unable, or potentially unable, to render impartial assistance or advice to the Authority; an Offeror's objectivity in performing the work identified in the Scope of Work is or might be otherwise impaired; or an Offeror has an unfair competitive advantage. Conflict of Interest issues must be fully disclosed in the Offeror's proposal.

All Offerors must disclose in their proposal and immediately throughout the course of the evaluation process if they have hired or retained an advocate to lobby Authority staff or the Board of Directors on their behalf.

Offerors hired to perform services for the Authority are prohibited from concurrently acting as an advocate for another firm who is competing for a contract with the Authority, either as a prime or subcontractor.

L. CODE OF CONDUCT

All Offerors agree to comply with the Authority's Code of Conduct as it relates to Third-Party contracts which is hereby referenced and by this reference is incorporated herein. All Offerors agree to include these requirements in all of its subcontracts.

SECTION II: PROPOSAL CONTENT

SECTION II. PROPOSAL CONTENT

A. PROPOSAL FORMAT AND CONTENT

1. Format

Proposals should be typed with a standard 12-point font, double-spaced. Proposals should not include any unnecessarily elaborate or promotional materials. Proposals should not exceed fifty (50) pages in length, excluding any appendices, cover letters, resumes, or forms.

2. Letter of Transmittal

The Letter of Transmittal shall be addressed to Iris Deneau, Senior Contract Administrator, and must, at a minimum, contain the following:

- a. Identification of Offeror that will have contractual responsibility with the Authority. Identification shall include legal name of company, corporate address, telephone and fax number, and email address. Include name, title, address, email address, and telephone number of the contact person identified during period of proposal evaluation.
- b. Identification of all proposed subcontractors including legal name of company, contact person's name and address, telephone and fax number, and email address; relationship between Offeror and subcontractors, if applicable.
- c. Acknowledgement of receipt of all RFP addenda, if any.
- d. A statement to the effect that the proposal shall remain valid for a period of not less than 120 days from the date of submittal.
- e. Signature of a person authorized to bind Offeror to the terms of the proposal.
- f. Signed statement attesting that all information submitted with the proposal is true and correct.

3. Technical Proposal

a. Qualifications, Related Experience, and References of Offeror

This section of the proposal should establish the ability of Offeror to satisfactorily perform the required work by reasons of: experience in performing work of a similar nature; demonstrated competence in the services to be provided; strength and stability of the firm; staffing

capability; work load; record of meeting schedules on similar projects; and supportive client references.

Offeror to:

- (1) Provide a brief profile of the firm, including the types of services offered; the year founded; form of the organization (corporation, partnership, sole proprietorship); number, size, and location of offices; and number of employees.
- (2) Provide a general description of the firm's financial condition and identify any conditions (e.g., bankruptcy, pending litigation, planned office closures, impending merger) that may impede Offeror's ability to complete the project.
- (3) Describe the firm's experience in performing work of a similar nature to that solicited in this RFP, and highlight the participation in such work by the key personnel proposed for assignment to this project. Experience should include providing sales and use tax auditing services. Experience should also illustrate the firm's thorough understanding of the dynamics of transaction and use tax, specifically how they relate to the Authority and Measure M2.
- (4) Describe experience working with the CDTFA.
- (5) Identify subcontractors by company name, address, contact person, telephone number, email, and project function. Describe Offeror's experience working with each subcontractor.
- (6) Identify all firms hired or retained to provide lobbying or advocating services on behalf of the Offeror by company name, address, contact person, telephone number and email address. This information is required to be provided by the Offeror immediately during the evaluation process, if a lobbyist or advocate is hired or retained.
- (7) Provide as a minimum three (3) references for the projects cited as related experience, and furnish the name, title, address, telephone number, and email address of the person(s) at the client organization who is most knowledgeable about the work performed. Offeror may also supply references from other work not cited in this section as related experience.

b. Proposed Staffing and Project Organization

This section of the proposal should establish the method, which will be used by the Offeror to manage the project, as well as identify key personnel assigned.

Offeror to:

- (1) Identify key personnel proposed to perform the work in the specified tasks and include major areas of subcontract work. Include the person's name, current location, proposed position for this project, current assignment, level of commitment to that assignment, availability for this assignment, and how long each person has been with the firm.
- (2) Furnish brief resumes (not more than two [2] pages each) for the proposed Project Manager and other key personnel that includes education, experience, and applicable professional credentials.
- (3) Indicate adequacy of labor resources utilizing a table projecting the labor-hour allocation to the project by individual task.
- (4) Include a project organization chart, which clearly delineates communication/reporting relationships among the project staff.
- (5) Include a statement that key personnel will be available to the extent proposed for the duration of the project acknowledging that no person designated as "key" to the project shall be removed or replaced without the prior written concurrence of the Authority.

c. Work Plan

Offeror should provide a narrative, which addresses the Scope of Work, and shows Offeror's understanding of Authority's needs and requirements.

Offeror to:

- (1) Describe the approach to completing the tasks specified in the Scope of Work to include, but not be limited to, knowledge of statute of limitations as it relates to transaction and use taxes and the process of submitting discrepancies to the CDTFA for review. The approach to the work plan shall be of such detail to demonstrate the Offeror's ability to accomplish the project objectives and overall schedule.

- (2) Outline sequentially the activities that would be undertaken from the initial stages of the audit to the on-going recovery services and specify who would perform them.
- (3) Furnish a project schedule for completing the tasks in terms of elapsed weeks.
- (4) Identify methods that Offeror will use to ensure quality control, as well as budget and schedule control for the project.
- (5) Identify any special issues or problems that are likely to be encountered in this project and how the Offeror would propose to address them.
- (6) Offeror is encouraged to propose enhancements or procedural or technical innovations to the Scope of Work that do not materially deviate from the objectives or required content of the project.

d. Exceptions/Deviations

State any technical and/or contractual exceptions and/or deviations from the requirements of this RFP, including the Authority's technical requirements and contractual terms and conditions set forth in the Scope of Work (Exhibit A) and Proposed Agreement (Exhibit C), using the form entitled "Proposal Exceptions and/or Deviations" included in this RFP. This Proposal Exceptions and/or Deviations form must be included in the original proposal submitted by the Offeror. If no technical or contractual exceptions and/or deviations are submitted as part of the original proposal, Offerors are deemed to have accepted the Authority's technical requirements and contractual terms and conditions set forth in the Scope of Work (Exhibit A) and Proposed Agreement (Exhibit C). Offerors will not be allowed to submit the Proposal Exceptions and/or Deviations form or any technical and/or contractual exceptions after the proposal submittal date identified in the RFP. Exceptions and/or deviations submitted after the proposal submittal date will not be reviewed by Authority.

All exceptions and/or deviations will be reviewed by the Authority and will be assigned a "pass" or "fail" status. Exceptions and deviations that "pass" do not mean that the Authority has accepted the change but that it is a potential negotiable issue. Exceptions and deviations that receive a "fail" status means that the requested change is not something that the Authority would consider a potential negotiable issue. Offerors that receive a "fail" status on their exceptions and/or deviations will be notified by the Authority and will be allowed to

retract the exception and/or deviation and continue in the evaluation process. Any exceptions and/or deviation that receive a “fail” status and the Offeror cannot or does not retract the requested change may result in the firm being eliminated from further evaluation.

4. Recovery Rate Percentage Proposal

As part of the Recovery Rate Percentage proposal, the Offeror shall submit proposed percentages upon which compensation shall be based to provide the services for each work task described in Exhibit A, Scope of Work.

The Offeror shall complete the "Price Summary Sheet" form included with this RFP (Exhibit B), and furnish any narrative required to explain the percentages quoted in the schedules. Offeror's compensation will be based on a percentage of any recovered unrealized sales tax revenue.

5. Appendices

Information considered by Offeror to be pertinent to this project and which has not been specifically solicited in any of the aforementioned sections may be placed in a separate appendix section. Offerors are cautioned, however, that this does not constitute an invitation to submit large amounts of extraneous materials. Appendices should be relevant and brief.

B. FORMS

1. Status of Past and Present Contracts Form

Offeror shall complete and sign the form entitled “Status of Past and Present Contracts” provided in this RFP and submit as part of its proposal. Offeror shall identify the status of past and present contracts where the firm has either provided services as a prime vendor or a subcontractor during the past five (5) years in which the contract has been the subject of or may be involved in litigation with the contracting authority. This includes, but is not limited to, claims, settlement agreements, arbitrations, administrative proceedings, and investigations arising out of the contract. Offeror shall have an ongoing obligation to update the Authority with any changes to the identified contracts and any new litigation, claims, settlement agreements, arbitrations, administrative proceedings, or investigations that arise subsequent to the submission of Offeror's proposal.

A separate form must be completed for each identified contract. Each form must be signed by the Offeror confirming that the information provided is true and accurate. Offeror is required to submit one copy of the completed form(s) as part of its proposal.

2. Proposal Exceptions and/or Deviations Form

Offerors shall complete the form entitled “Proposal Exceptions and/or Deviations” provided in this RFP and submit it as part of the original proposal. For each exception and/or deviation, a new form should be used, identifying the exception and/or deviation and the rationale for requesting the change. Exceptions and/or deviations submitted after the proposal submittal date will not be reviewed nor considered by the Authority.

SECTION III: EVALUATION AND AWARD

SECTION III. EVALUATION AND AWARD

A. EVALUATION CRITERIA

The Authority will evaluate the offers received based on the following criteria:

- 1. Qualifications of the Firm 25%**

Technical experience in performing work of a closely similar nature; experience working with the CDTFA; strength and stability of the firm; strength, stability, experience, and technical competence of subcontractors; assessment by client references.
- 2. Staffing and Project Organization 25%**

Qualifications of project staff, particularly key personnel and especially the Project Manager; key personnel's level of involvement in performing related work cited in "Qualifications of the Firm" section; logic of project organization; adequacy of labor commitment; concurrence in the restrictions on changes in key personnel.
- 3. Work Plan 30%**

Depth of Offeror's understanding of Authority's requirements and overall quality of work plan; logic, clarity, and specificity of work plan; appropriateness of resource allocation among the tasks; reasonableness of proposed schedule; utility of suggested technical or procedural innovations.
- 4. Recovery Rate Percentage 20%**

Reasonableness of the percentages; competitiveness with other offers received; adequacy of data in support of figures quoted.

B. EVALUATION PROCEDURE

An evaluation committee will be appointed to review all proposals received for this RFP. The committee is comprised of Authority staff and may include outside personnel. The committee members will evaluate the written proposals using criteria identified in Section III A. A list of top-ranked proposals, firms within a competitive range, will be developed based upon the totals of each committee members' score for each proposal.

During the evaluation period, the Authority may interview some or all of the proposing firms. The Authority has established June 29, 2021 as the date to conduct interviews. All prospective Offerors are asked to keep this date available. No other interview dates will be provided, therefore, if an Offeror is unable to attend the interview on this date, its proposal may be eliminated from further discussion.

The interview may consist of a short presentation by the Offeror after which the evaluation committee will ask questions related to the firm's proposal and qualifications.

At the conclusion of the proposal evaluations, Offerors remaining within the competitive range may be asked to submit a Best and Final Offer (BAFO). In the BAFO request, the firms may be asked to provide additional information, confirm or clarify issues, and submit a final cost/price offer. A deadline for submission will be stipulated.

At the conclusion of the evaluation process, the evaluation committee will recommend to Authority's management the Offeror whose proposal is most advantageous to the Authority.

C. AWARD

The Authority may also negotiate contract terms with the selected Offeror prior to award, and expressly reserves the right to negotiate with several Offerors simultaneously and, thereafter, to award a contract to the Offeror offering the most favorable terms to the Authority.

The Authority reserves the right to award its total requirements to one Offeror or to apportion those requirements among several Offerors as the Authority may deem to be in its best interest. In addition, negotiations may or may not be conducted with Offerors; therefore, the proposal submitted should contain Offeror's most favorable terms and conditions, since the selection and award may be made without discussion with any Offeror.

The selected Offeror will be required to submit to the Authority's Accounting department a current IRS W-9 form prior to commencing work.

D. NOTIFICATION OF AWARD AND DEBRIEFING

Offerors who submit a proposal in response to this RFP shall be notified via CAMM NET of the contract award. Such notification shall be made within three (3) business days of the date the contract is awarded.

Offerors who were not awarded the contract may obtain a debriefing concerning the strengths and weaknesses of their proposal. Unsuccessful Offerors, who wish to be debriefed, must request the debriefing in writing or electronic mail and the Authority must receive it within three (3) business days of notification of the contract award.

EXHIBIT A: SCOPE OF WORK

**SCOPE OF WORK
SALES TAX AUDIT AND RECOVERY SERVICES**

Background

Revenue enhancement audits have found that a number of California special taxing jurisdictions, such as counties, cities, and special districts are not receiving the transactions and use tax revenue that they are entitled under the California Transactions and Use Tax Law (Revenue and Taxation Code Sections 7251 et seq.) due to point-of-use and other types of reporting errors. When businesses fail to properly report their transactions tax, it is distributed in error to other jurisdictions or not collected at all.

The Orange County Transportation Authority (OCTA) is seeking professional audit services to perform a review of transaction and use tax distributions by the California Department of Tax and Fee Administration (CDTFA), as well as to provide on-going audit services that will detect and correct taxpayer reporting errors. The collection of transactions and use tax is administered by CDTFA.

Objective

The Consultant shall conduct transaction and use tax audits to ensure correct and appropriate collection and allocation of revenues on behalf of OCTA. Compensation shall be contingent upon the recovery of any unrealized sales tax revenue.

Revenue Collection and Payment Process

The process begins with the Consultant auditing for deficiencies and misallocations in the collection of sales tax. The Consultant shall then submit discrepancies or claims to the CDTFA. The CDTFA will then research to establish the validity of the claim. If the CDTFA in fact agrees with the claim, the state will remit the appropriate allocation along with the regularly scheduled monthly payment to OCTA. The Consultant shall monitor the monthly allocations and shall invoice OCTA on a quarterly basis for its share of the recovered amount.

The following tasks shall be performed by the Consultant:

Task No. 1

The Consultant shall conduct initial and on-going transaction and use tax reviews to identify and correct collection, allocation, distribution, or any other types of errors found and thereby generate previously unrealized tax revenue for OCTA. The initial review should extend back as the CDTFA records may be reasonably recovered. The Consultant shall establish a master file.

Task No. 2

The Consultant shall computerize data from OCTA's transactions tax distribution reports provided by CDTFA for eight (8) previous quarters, the current quarter, and each future quarter.

Task No. 3

The Consultant shall develop a target list of potential point-of-sale/delivery/use taxpayer reporting errors of transactions and use tax generating businesses and contact personnel in sales, operations, and/or tax accounting at each target business to determine whether a point-of-sale/delivery/use reporting error exists.

Task No. 4

The Consultant shall research, prepare, and submit to the CDTFA all documents, reports, or forms necessary to identify and correct any transaction and use tax allocation or processing errors. The Consultant shall actively monitor and pursue all outstanding corrections being processed by the CDTFA and provide monthly status reports on all outstanding claims.

Task No. 5

The Consultant shall meet with designated District official(s) to review service objectives and scope, workplan schedule, public relations, and logistical matters. The Consultant shall establish a consistent liaison with OCTA's coordinator and define logical checkpoints for reviewing the project's progress.

Task No. 6

The Consultant shall respond to negative findings (correction denials) by CDTFA with timely reconfirmation documentation to preserve validity of OCTA's original dates of knowledge.

Task No. 7

The Consultant shall receive and process transactions and use tax quarterly distribution reports (QDRs) provided to OCTA by CDTFA.

Task No. 8

The Consultant shall identify those accounts receiving deficiency assessments to ensure that OCTA receives the transactions tax.

Task No. 9

The Consultant shall pursue corrections with CDTFA to recover all the revenue OCTA is entitled, including following the formal appeals process.

Task No. 10

The Consultant shall review the annual CDTFA administering fee proposal to ensure that the fee allocation is consistent with relevant legislation.

Task No. 11

The Consultant shall provide OCTA with a method of validating all claims prior to payment for proposed audit services. The Consultant shall perform all these tasks with minimal disruption to OCTA, staff, and the business community.

Deliverables

The Consultant shall produce the following:

A software database, that may be viewed and manipulated in Excel or Access (97 or newer), of all businesses generating transaction and use tax within OCTA's one-half cent (Measures M2) sales tax jurisdiction. At a minimum, this database shall track individual business locations and the amount of transactions and use taxes generated quarterly. The database shall be designed to allow OCTA maximum flexibility for sorting the data. This could include data sorts by vendor, zip code, street address, dollar amount, type of business, etc. This database shall be continually maintained and updated by the Consultant and updates shall be provided to OCTA within thirty (30) days after the end of each quarter.

- A. Updated quarterly reports identifying changes in sales by category, growth, and decline comparisons, and shall utilize charts, tables, add top revenue producer listings, quarterly aberrations due to State audits, fund transfers, and receivables along with late or double payments shall also be identified.
- B. Quarterly status presentations with reports, which contain reconciliation worksheets to assist OCTA with budget projections and receipt monitoring. Such reports shall also contain a separate quarterly analysis of all fund adjustments and reporting aberrations impacting said projections. At a minimum, these reports shall include:
 - a. Copies of reports provided to the CDTFA addressing each point-of-sale/delivery/use taxpayer reporting error individually, including the business name, address, telephone number, California sales tax permit number, individuals contacted, date(s) of contact, nature of business reason for error, and recommended corrective procedure.
 - b. Copies of misallocation or underreporting reconfirmation documentation, in response to negative findings by the CDTFA (in order to preserve original dates of knowledge).
 - c. Actual transactions and use tax produced for OCTA by audit services on a quarterly and cumulative basis.
 - d. Projected transactions and use tax revenue forthcoming to OCTA because of audits, delineated according to source, timing, and one-time versus on-going.
 - e. Alphabetical listing of all misallocated or underreported accounts detected for OCTA including, for each, the permit number, correction status, payment amount

received by OCTA, quarter to which payment is related, and payment source (e.g., fund transfer, deficiency assessment, etc.).

- C. All deliverables shall be submitted to OCTA's project manager according to the following schedule:
 - a. Annual: Within thirty (30) days following the close of OCTA's fiscal year, which commences July 1st and ends June 30th.
 - b. Quarterly: Within thirty (30) days following the close of each quarter.

EXHIBIT B: RECOVERY RATE PERCENTAGE FORM

PRICE SUMMARY SHEET**REQUEST FOR PROPOSALS (RFP) 1-3494**

Enter below the proposed percentages of any recovered unrealized sales tax revenue remitted by the California Department of Tax and Fee Administration (CDTFA). These percentages shall include direct costs, indirect costs, and profits to perform all work described in the Scope of Work, Exhibit A. The Authority's intention is to award a firm-fixed price contract based on percentages of any recovered amount of unrealized sales tax revenue remitted by the CDTFA.

Effective through July 31, 2026

Recovery Amount	Rates (%)
\$1 - \$3,000,0000	_____ %
\$3,000,001 - \$10,000,000	_____ %
Over \$10,000,000	_____ %

-
1. I acknowledge receipt of RFP 1-3494 and Addenda No.(s) _____
 2. This offer shall remain firm for _____ days from the date of proposal
(Minimum 120)

COMPANY NAME _____

ADDRESS _____

TELEPHONE _____

FACSIMILE # _____

EMAIL ADDRESS _____

SIGNATURE OF PERSON
AUTHORIZED TO BIND OFFEROR _____

NAME AND TITLE OF PERSON
AUTHORIZED TO BIND OFFEROR _____

DATE SIGNED _____

EXHIBIT C: PROPOSED AGREEMENT

1 **PROPOSED AGREEMENT NO. C-1-3494**

2 **BETWEEN**

3 **ORANGE COUNTY TRANSPORTATION AUTHORITY**

4 **AND**

5 _____
6 **THIS AGREEMENT** is effective this ____ day of _____, 2021
7 ("Effective Date"), by and between the Orange County Transportation Authority, 550 South Main Street,
8 P.O. Box 14184, Orange, California 92863-1584, a public corporation of the State of California
9 (hereinafter referred to as "AUTHORITY"), and , , , (hereinafter referred to as "CONSULTANT").

10 **WITNESSETH:**

11 **WHEREAS**, AUTHORITY requires assistance from CONSULTANT to conduct transaction and
12 use tax audits to ensure correct and appropriate collection and allocation of revenues on behalf of
13 AUTHORITY; and

14 **WHEREAS**, said work cannot be performed by the regular employees of AUTHORITY; and

15 **WHEREAS**, CONSULTANT has represented that it has the requisite personnel and experience,
16 and is capable of performing such services; and

17 **WHEREAS**, CONSULTANT wishes to perform these services;

18 **NOW, THEREFORE**, it is mutually understood and agreed by AUTHORITY and CONSULTANT
19 as follows:

20 **ARTICLE 1. COMPLETE AGREEMENT**

21 A. This Agreement, including all exhibits and documents incorporated herein and made
22 applicable by reference, constitutes the complete and exclusive statement of the terms and conditions
23 of this Agreement between AUTHORITY and CONSULTANT and it supersedes all prior
24 representations, understandings and communications. The invalidity in whole or in part of any term or
25 condition of this Agreement shall not affect the validity of other terms or conditions.

26 B. AUTHORITY's failure to insist in any one or more instances upon CONSULTANT's

EXHIBIT C

performance of any terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of AUTHORITY's right to such performance or to future performance of such terms or conditions and CONSULTANT's obligation in respect thereto shall continue in full force and effect. Changes to any portion of this Agreement shall not be binding upon AUTHORITY except when specifically confirmed in writing by an authorized representative of AUTHORITY by way of a written amendment to this Agreement and issued in accordance with the provisions of this Agreement.

ARTICLE 2. AUTHORITY DESIGNEE

The Chief Executive Officer of AUTHORITY, or designee, shall have the authority to act for and exercise any of the rights of AUTHORITY as set forth in this Agreement.

ARTICLE 3. SCOPE OF WORK

A. CONSULTANT shall perform the work necessary to complete in a manner satisfactory to AUTHORITY the services set forth in Exhibit A, entitled "Scope of Work," attached to and, by this reference, incorporated in and made a part of this Agreement. All services shall be provided at the times and places designated by AUTHORITY.

B. CONSULTANT shall provide the personnel listed below to perform the above-specified services, which persons are hereby designated as key personnel under this Agreement.

Names**Functions**

C. No person named in paragraph B of this Article, or his/her successor approved by AUTHORITY, shall be removed or replaced by CONSULTANT, nor shall his/her agreed-upon function or level of commitment hereunder be changed, without the prior written consent of AUTHORITY. Should the services of any key person become no longer available to CONSULTANT, the resume and qualifications of the proposed replacement shall be submitted to AUTHORITY for approval as soon as

EXHIBIT C

possible, but in no event later than seven (7) calendar days prior to the departure of the incumbent key person, unless CONSULTANT is not provided with such notice by the departing employee. AUTHORITY shall respond to CONSULTANT within seven (7) calendar days following receipt of these qualifications concerning acceptance of the candidate for replacement.

ARTICLE 4. TERM OF AGREEMENT

This Agreement shall commence upon execution by both parties, and shall continue in full force and effect through July 31, 2026, unless earlier terminated or extended as provided in this Agreement.

ARTICLE 5. PAYMENT

A. For CONSULTANT's full and complete performance of its obligations under this Agreement, AUTHORITY shall pay CONSULTANT based on the percentages of any unrealized sales tax revenue remitted by the California Department of Tax and Fee Administration (CDTFA) to AUTHORITY. This fee applies to revenue received by AUTHORITY from CONSULTANT identified and corrected accounts for up to eight (8) go-forward quarters starting with the quarter that correction is made and all eligible prior quarters.

B. Compensation shall be based upon the following schedule:

<u>RECOVERIES</u>	<u>RATES (%)</u>
\$0 - \$3,000,000	____%
\$3,000,001 - \$10,000,000	____%
Over \$10,000,000	____%

Percentage shall remain fixed for the entire term of this Agreement and is acknowledged to include CONSULTANT's direct labor costs, other direct costs, indirect costs and profit.

C. CONSULTANT shall invoice AUTHORITY on a quarterly basis for a percentage of funds remitted in accordance with Paragraphs A and B. Work performed shall be documented in a quarterly report prepared by CONSULTANT, which shall accompany each invoice submitted by CONSULTANT. CONSULTANT shall also furnish such other information as may be requested by AUTHORITY to substantiate the validity of an invoice. At its sole discretion, AUTHORITY may decline to make full

EXHIBIT C

1 payment until such time as CONSULTANT has documented to AUTHORITY's satisfaction, that
2 CONSULTANT has fully completed all work required. AUTHORITY's payment in full shall constitute
3 AUTHORITY's final acceptance of CONSULTANT's work.

4 D. Invoices shall be submitted by CONSULTANT on a quarterly basis and shall be submitted in
5 duplicate to AUTHORITY's Accounts Payable office. CONSULTANT may also submit invoices
6 electronically to AUTHORITY's Accounts Payable Department at vendorinvoices@octa.net. Each
7 invoice shall be accompanied by the quarterly report specified in paragraph C of this Article.
8 AUTHORITY shall remit payment within thirty (30) calendar days of the receipt and approval of each
9 invoice. Each invoice shall include the following information:

- 10 1. Agreement No. C-1-3494;
- 11 2. The funds remitted from the CDTFA during the quarter;
- 12 3. The percentage of remitted funds sought by CONSULTANT;
- 13 4. The time period (quarter) covered by the invoice;
- 14 5. Total quarterly invoice (including to-date cumulative invoice amount);
- 15 6. Quarterly Report;
- 16 7. Certification signed by the CONSULTANT or his/her designated alternate that a)
17 The invoice is a true, complete and correct statement of reimbursable costs and progress; b) The
18 backup information included with the invoice is true, complete and correct in all material respects; c) All
19 payments due and owing to subcontractors and suppliers have been made; d) Timely payments will
20 be made to subcontractors and suppliers from the proceeds of the payments covered by the
21 certification and; e) The invoice does not include any amount which CONSULTANT intends to withhold
22 or retain from a subcontractor or supplier unless so identified on the invoice.
- 23 8. Any other information as agreed or requested by AUTHORITY to substantiate
24 the validity of an invoice.

25 **ARTICLE 6. NOTICES**

26 All notices hereunder and communications regarding the interpretation of the terms of this

Agreement, or changes thereto, shall be effected by delivery of said notices in person or by depositing said notices in the U.S. mail, registered or certified mail, returned receipt requested, postage prepaid and addressed as follows:

To CONSULTANT:

To AUTHORITY:

Orange County Transportation Authority

550 South Main Street

P.O. Box 14184

Orange, CA 92863-1584

ATTENTION:

ATTENTION: Iris Deneau

Title:

Title: Senior Contract Administrator

Phone:

Phone: (714) 560 - 5786

Email:

Email: ideneau@octa.net

ARTICLE 7. INDEPENDENT CONTRACTOR

A. CONSULTANT's relationship to AUTHORITY in the performance of this Agreement is that of an independent contractor. CONSULTANT's personnel performing services under this Agreement shall at all times be under CONSULTANT's exclusive direction and control and shall be employees of CONSULTANT and not employees of AUTHORITY. CONSULTANT shall pay all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

B. Should CONSULTANT's personnel or a state or federal agency allege claims against AUTHORITY involving the status of AUTHORITY as employer, joint or otherwise, of said personnel, or allegations involving any other independent contractor misclassification issues, CONSULTANT shall defend and indemnify AUTHORITY in relation to any allegations made.

ARTICLE 8. INSURANCE

A. CONSULTANT shall procure and maintain insurance coverage during the entire term of this

EXHIBIT C

1 Agreement. Coverage shall be full coverage and not subject to self-insurance provisions.
2 CONSULTANT shall provide the following insurance coverage:

3 1. Commercial General Liability, to include Products/Completed Operations,
4 Independent Contractors', Contractual Liability, and Personal Injury Liability, and Property Damage with
5 a minimum limit of \$1,000,000 per occurrence and \$2,000,000 general aggregate;

6 2. Automobile Liability Insurance to include owned, hired and non-owned autos
7 with a combined single limit of \$1,000,000 each accident;

8 3. Workers' Compensation with limits as required by the State of California
9 including a waiver of subrogation in favor of AUTHORITY, its officers, directors, employees or agents;

10 4. Employers' Liability with minimum limits of \$1,000,000; and

11 5. Professional Liability with minimum limits of \$1,000,000 per claim.

12 B. Proof of such coverage, in the form of a certificate of insurance, with AUTHORITY, its
13 officers, directors, employees and agents, designated as additional insureds as required by contract. In
14 addition, provide an insurance policy blanket additional insured endorsement. Both documents must be
15 received by AUTHORITY prior to commencement of any work. Proof of insurance coverage must be
16 received by AUTHORITY within ten (10) calendar days from the effective date of this Agreement. Such
17 insurance shall be primary and non-contributive to any insurance or self-insurance maintained by the
18 AUTHORITY. Furthermore, AUTHORITY reserves the right to request certified copies of all related
19 insurance policies.

20 C. CONSULTANT shall include on the face of the certificate of insurance the
21 Agreement No. C-1-3494; and, the Senior Contract Administrator's Name, Iris Deneau.

22 D. CONSULTANT shall also include in each subcontract the stipulation that subcontractors
23 shall maintain insurance coverage in the amounts required from CONSULTANT as provided in this
24 Agreement.

25 E. CONSULTANT shall be required to immediately notify AUTHORITY of any modifications or
26 cancellation of any required insurance policies.

ARTICLE 9. ORDER OF PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, including all exhibits; (2) the provisions of RFP 1-3494; (3) CONSULTANT's proposal dated _____; (4) all other documents, if any, cited herein or incorporated by reference.

ARTICLE 10. CHANGES

By written notice or order, AUTHORITY may, from time to time, order work suspension and/or make changes in the general scope of this Agreement, including, but not limited to, the services furnished to AUTHORITY by CONSULTANT as described in the Scope of Work. If any such work suspension or change causes an increase or decrease in the price of this Agreement, or in the time required for its performance, CONSULTANT shall promptly notify AUTHORITY thereof and assert its claim for adjustment within ten (10) calendar days after the change or work suspension is ordered, and an equitable adjustment shall be negotiated. However, nothing in this clause shall excuse CONSULTANT from proceeding immediately with the Agreement as changed.

ARTICLE 11. DISPUTES

A. Except as otherwise provided in this Agreement, when a dispute arises between CONSULTANT and AUTHORITY, the project managers shall meet to resolve the issue. If project managers do not reach a resolution, the dispute will be decided by AUTHORITY's Director of Contracts Administration and Materials Management (CAMM), who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to CONSULTANT. The decision of the Director, CAMM, shall be the final and conclusive administrative decision.

B. Pending final decision of a dispute hereunder, CONSULTANT shall proceed diligently with the performance of this Agreement and in accordance with the decision of AUTHORITY's Director, CAMM. Nothing in this Agreement, however, shall be construed as making final the decision of any AUTHORITY official or representative on a question of law, which questions shall be settled in accordance with the laws of the State of California.

ARTICLE 12. TERMINATION

A. AUTHORITY may terminate this Agreement for its convenience at any time, in whole or part, by giving CONSULTANT written notice thereof. Upon said notice, AUTHORITY shall pay CONSULTANT its allowable costs incurred to date of termination and those allowable costs determined by AUTHORITY to be reasonably necessary to effect such termination. Thereafter, CONSULTANT shall have no further claims against AUTHORITY under this Agreement.

B. In the event either Party defaults in the performance of any of their obligations under this Agreement or breaches any of the provisions of this Agreement, the non-defaulting Party shall have the option to terminate this Agreement upon thirty (30) days' prior written notice to the other Party. Upon receipt of such notice, CONSULTANT shall immediately cease work, unless the notice from AUTHORITY provides otherwise. Upon receipt of the notice from AUTHORITY, CONSULTANT shall submit an invoice for work and/or services performed prior to the date of termination. AUTHORITY shall pay CONSULTANT for work and/or services satisfactorily provided to the date of termination in compliance with this Agreement. Thereafter, CONSULTANT shall have no further claims against AUTHORITY under this Agreement. AUTHORITY shall not be liable for any claim of lost profits or damages for such termination.

ARTICLE 13. INDEMNIFICATION

CONSULTANT shall indemnify, defend, and hold harmless AUTHORITY, its officers, directors, employees and agents from and against any and all claims (including attorneys' fees and reasonable expenses for litigation or settlement) for any loss, costs, penalties, fines, damages, bodily injuries, including death, damage to or loss of use of property, arising out of, resulting from, or in connection with the performance of CONSULTANT, its officers, directors, employees, agents, subconsultants or suppliers under the Agreement. Notwithstanding the foregoing, such obligation to defend, hold harmless, and indemnify AUTHORITY, its officers, directors, employees and agents shall not apply to such claims or liabilities arising from the sole or active negligence or willful misconduct of AUTHORITY.

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ARTICLE 14. ASSIGNMENTS AND SUBCONTRACTS

A. Neither this Agreement nor any interest herein nor claim hereunder may be assigned by CONSULTANT either voluntarily or by operation of law, nor may all or any part of this Agreement be subcontracted by CONSULTANT, without the prior written consent of AUTHORITY. Consent by AUTHORITY shall not be deemed to relieve CONSULTANT of its obligations to comply fully with all terms and conditions of this Agreement.

B. AUTHORITY hereby consents to CONSULTANT's subcontracting portions of the Scope of Work to the parties identified below for the functions described in CONSULTANT's proposal. CONSULTANT shall include in the subcontract agreement the stipulation that CONSULTANT, not AUTHORITY, is solely responsible for payment to the subcontractor for the amounts owing and that the subcontractor shall have no claim, and shall take no action, against AUTHORITY, its officers, directors, employees or sureties for nonpayment by CONSULTANT.

Subcontractor Name/Addresses**Subcontractor Amounts**

.00

.00

ARTICLE 15. AUDIT AND INSPECTION OF RECORDS

CONSULTANT shall provide AUTHORITY, or other agents of AUTHORITY, such access to CONSULTANT's accounting books, records, payroll documents and facilities, as AUTHORITY deems necessary. CONSULTANT shall maintain such books, records, data and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during CONSULTANT's performance hereunder and for a period of four (4) years from the date of final payment by AUTHORITY. AUTHORITY's right to audit books and records directly related to this Agreement shall also extend to all first-tier subcontractors identified in Article 14 of this Agreement. CONSULTANT shall permit any of the foregoing parties to reproduce documents by any means whatsoever or to copy excerpts and transcriptions as reasonably necessary.

ARTICLE 16. CONFLICT OF INTEREST

CONSULTANT agrees to avoid organizational conflicts of interest. An organizational conflict of interest means that due to other activities, relationships or contracts, CONSULTANT is unable, or potentially unable, to render impartial assistance or advice to AUTHORITY; CONSULTANT's objectivity in performing the work identified in the Scope of Work is or might be otherwise impaired; or CONSULTANT has an unfair competitive advantage. CONSULTANT is obligated to fully disclose to AUTHORITY in writing Conflict of Interest issues as soon as they are known to CONSULTANT. All disclosures must be submitted in writing to AUTHORITY pursuant to the Notice provision herein. This disclosure requirement is for the entire term of this Agreement.

ARTICLE 17. CODE OF CONDUCT

CONSULTANT agrees to comply with AUTHORITY's Code of Conduct as it relates to Third-Party contracts which is hereby referenced and by this reference is incorporated herein. CONSULTANT agrees to include these requirements in all of its subcontracts.

ARTICLE 18. PROHIBITION ON PROVIDING ADVOCACY SERVICES

CONSULTANT and all subconsultants performing work under this Agreement, shall be prohibited from concurrently representing or lobbying for any other party competing for a contract with AUTHORITY, either as a prime consultant or subconsultant. Failure to refrain from such representation may result in termination of this Agreement.

ARTICLE 19. FEDERAL, STATE AND LOCAL LAWS

CONSULTANT warrants that in the performance of this Agreement, it shall comply with all applicable federal, state and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated thereunder.

ARTICLE 20. EQUAL EMPLOYMENT OPPORTUNITY

In connection with its performance under this Agreement, CONSULTANT shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. CONSULTANT shall take affirmative action to ensure that applicants are employed, and that

employees are treated during their employment, without regard to their race, religion, color, sex, age or national origin. Such actions shall include, 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.

ARTICLE 21. PROHIBITED INTERESTS

CONSULTANT covenants that, for the term of this Agreement, no director, member, officer or employee of AUTHORITY during his/her tenure in office or for one (1) year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE 22. OWNERSHIP OF REPORTS AND DOCUMENTS

A. The originals of all letters, documents, reports and other products and data produced under this Agreement shall be delivered to, and become the property of AUTHORITY. Copies may be made for CONSULTANT's records but shall not be furnished to others without written authorization from AUTHORITY. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by AUTHORITY.

B. All ideas, memoranda, specifications, plans, manufacturing, procedures, drawings, descriptions, and all other written information submitted to CONSULTANT in connection with the performance of this Agreement shall not, without prior written approval of AUTHORITY, be used for any purposes other than the performance under this Agreement, nor be disclosed to an entity not connected with the performance of the project. CONSULTANT shall comply with AUTHORITY's policies regarding such material. Nothing furnished to CONSULTANT, which is otherwise known to CONSULTANT or is or becomes generally known to the related industry shall be deemed confidential. CONSULTANT shall not use AUTHORITY's name, photographs of the project, or any other publicity pertaining to the project in any professional publication, magazine, trade paper, newspaper, seminar or other medium without the express written consent of AUTHORITY.

C. No copies, sketches, computer graphics or graphs, including graphic artwork, are to be released by CONSULTANT to any other person or agency except after prior written approval by

1 AUTHORITY, except as necessary for the performance of services under this Agreement. All press
2 releases, including graphic display information to be published in newspapers, magazines, etc., are to
3 be handled only by AUTHORITY unless otherwise agreed to by CONSULTANT and AUTHORITY.

4 **ARTICLE 23. PATENT AND COPYRIGHT INFRINGEMENT**

5 A. In lieu of any other warranty by AUTHORITY or CONSULTANT against patent or copyright
6 infringement, statutory or otherwise, it is agreed that CONSULTANT shall defend at its expense any
7 claim or suit against AUTHORITY on account of any allegation that any item furnished under this
8 Agreement or the normal use or sale thereof arising out of the performance of this Agreement, infringes
9 upon any presently existing U.S. letters patent or copyright and CONSULTANT shall pay all costs and
10 damages finally awarded in any such suit or claim, provided that CONSULTANT is promptly notified in
11 writing of the suit or claim and given authority, information and assistance at CONSULTANT's expense
12 for the defense of same. However, CONSULTANT will not indemnify AUTHORITY if the suit or claim
13 results from: (1) AUTHORITY's alteration of a deliverable, such that said deliverable in its altered form
14 infringes upon any presently existing U.S. letters patent or copyright; or (2) the use of a deliverable in
15 combination with other material not provided by CONSULTANT when such use in combination infringes
16 upon an existing U.S. letters patent or copyright.

17 B. CONSULTANT shall have sole control of the defense of any such claim or suit and all
18 negotiations for settlement thereof. CONSULTANT shall not be obligated to indemnify AUTHORITY
19 under any settlement made without CONSULTANT's consent or in the event AUTHORITY fails to
20 cooperate fully in the defense of any suit or claim, provided, however, that said defense shall be at
21 CONSULTANT's expense. If the use or sale of said item is enjoined as a result of such suit or claim,
22 CONSULTANT, at no expense to AUTHORITY, shall obtain for AUTHORITY the right to use and sell
23 said item, or shall substitute an equivalent item acceptable to AUTHORITY and extend this patent and
24 copyright indemnity thereto.

25 **ARTICLE 24. FINISHED AND PRELIMINARY DATA**

26 A. All of CONSULTANT's finished technical data, including but not limited to illustrations,

EXHIBIT C

1 photographs, tapes, software, software design documents, including without limitation source code,
2 binary code, all media, technical documentation and user documentation, photoprints and other graphic
3 information required to be furnished under this Agreement, shall be AUTHORITY's property upon
4 payment and shall be furnished with unlimited rights and, as such, shall be free from proprietary
5 restriction except as elsewhere authorized in this Agreement. CONSULTANT further agrees that it
6 shall have no interest or claim to such finished, AUTHORITY-owned, technical data; furthermore, said
7 data is subject to the provisions of the Freedom of Information Act, 5 USC 552.

8 B. It is expressly understood that any title to preliminary technical data is not passed to
9 AUTHORITY but is retained by CONSULTANT. Preliminary data includes roughs, visualizations,
10 software design documents, layouts and comprehensives prepared by CONSULTANT solely for the
11 purpose of demonstrating an idea or message for AUTHORITY's acceptance before approval is given
12 for preparation of finished artwork. Preliminary data title and right thereto shall be made available to
13 AUTHORITY if CONSULTANT causes AUTHORITY to exercise Article 10, and a price shall be
14 negotiated for all preliminary data.

ARTICLE 25. FORCE MAJEURE

16 Either party shall be excused from performing its obligations under this Agreement during the
17 time and to the extent that it is prevented from performing by an unforeseeable cause beyond its
18 control, including but not limited to: any incidence of fire, flood; acts of God; commandeering of material,
19 products, plants or facilities by the federal, state or local government; national fuel shortage; or a
20 material act or omission by the other party; when satisfactory evidence of such cause is presented to
21 the other party, and provided further that such nonperformance is unforeseeable, beyond the control
22 and is not due to the fault or negligence of the party not performing.

ARTICLE 26. HEALTH AND SAFETY REQUIREMENT

24 CONSULTANT shall comply with all the requirements set forth in Exhibit __, Level 1 Safety
25 Specifications.

26 /

ORANGE COUNTY TRANSPORTATION AUTHORITY

By: _____

Georgia Martinez
Department Manager, Contracts and Procurement

APPROVED AS TO FORM:

By: _____

James M. Donich
General Counsel

EXHIBIT D: STATUS OF PAST AND PRESENT FORM

STATUS OF PAST AND PRESENT CONTRACTS FORM

On the form provided below, Offeror/Bidder shall list the status of past and present contracts where the firm has either provided services as a prime vendor or a subcontractor during the past five (5) years in which the contract has been the subject of or may be involved in litigation with the contracting authority. This includes, but is not limited to, claims, settlement agreements, arbitrations, administrative proceedings, and investigations arising out of the contract.

A separate form must be completed for each contract. Offeror/Bidder shall provide an accurate contact name and telephone number for each contract and indicate the term of the contract and the original contract value. Offeror/Bidder shall also provide a brief summary and the current status of the litigation, claims, settlement agreements, arbitrations, administrative proceedings, or investigations. If the contract was terminated, list the reason for termination.

Offeror/Bidder shall have an ongoing obligation to update the Authority with any changes to the identified contracts and any new litigation, claims, settlement agreements, arbitrations, administrative proceedings, or investigations that arise subsequent to the submission of the bid. Each form must be signed by an officer of the Offeror/Bidder confirming that the information provided is true and accurate.

Project city/agency/other:	
Contact Name:	Phone:
Project Award Date:	Original Contract Value:
Term of Contract:	
(1) Litigation, claims, settlements, arbitrations, or investigations associated with contract:	
(2) Summary and Status of contract:	
(3) Summary and Status of action identified in (1):	
(4) Reason for termination, if applicable:	

By signing this Form entitled "Status of Past and Present Contracts," I am affirming that all of the information provided is true and accurate.

Name

Signature

Title

Date

EXHIBIT E: SAFETY SPECIFICATIONS

LEVEL 1 HEALTH, SAFETY AND ENVIRONMENTAL SPECIFICATIONS

PART I – GENERAL

1.1 GENERAL HEALTH, SAFETY & ENVIRONMENTAL REQUIREMENTS

- A. The Contractor, its subcontractors, suppliers, and employees have the obligation to comply with all Authority health, safety and environmental compliance department (HSEC) requirements of this safety specification, project site requirements, bus yard safety rules, as well as all federal, state, and local regulations pertaining to scope of work, contracts or agreements with the Authority. Additionally, manufacturer requirements are considered incorporated by reference as applicable to this scope of work.
- B. Observance of repeated unsafe acts or conditions, serious violation of safety standards, non-conformance of Authority health, safety and environmental compliance department (HSEC) requirements, or disregard for the intent of these safety specifications to protect people and property, by Contractor or its subcontractors may be cause for termination of scope or agreements with the Authority, at the sole discretion of the Authority.
- C. The health, safety, and environmental requirements, and references contained within this scope of work shall not be considered all-inclusive as to the hazards that might be encountered. Safe work practices shall be planned and performed, and safe conditions shall be maintained during this work scope.
- D. The Authority Project Manager shall be responsible to ensure a safety orientation is conducted of known potential hazards and emergency procedures for all Contractor personnel, subcontractors, suppliers, vendors, and new employees assigned to the project prior to commencement of the project.
- E. The Contractor shall ensure that all Contractor vehicles, including those of its subcontractors, suppliers, vendors and employees are parked in designated parking areas, and comply with traffic routes, and posted traffic signs in areas other than the employee parking lots.
- F. California Code of Regulations (CCR) Title 8 Standards are minimum requirements; each Contractor is encouraged to exceed minimum requirements. When the Contractor's safety requirements exceed statutory standards, the more stringent requirements shall be applied for the safeguard of public and employees.

1.2 REGULATORY

- A. Injury/Illness Prevention Program
The Contractor shall comply with CCR Title 8, Section with California Code of Regulations (CCR) Title 8, Section 3203. The intent and elements of the IIPP shall be implemented and enforced by the Contractor and its sub-tier contractors, suppliers, and vendors. The program shall be provided to the Authority's Project Manager, upon request, within 72 hours.

LEVEL 1 HEALTH, SAFETY AND ENVIRONMENTAL SPECIFICATIONS

B. Substance Abuse Prevention Program

Contractor shall comply with the Policy or Program of the Company's Substance Abuse Prevention Policy that complies with the most recent Drug Free Workplace Act. The program shall be provided to the Authority's Project Manager, upon request, within 72 hours.

C. Heat Illness Prevention Program

Contractor shall comply with CCR Title 8, Section, Section 3395, Heat Illness Prevention. The program shall be provided to the Authority's Project Manager, upon request, within 72 hours.

D. Hazard Communication Program

Contractor shall comply with CCR Title 8, Section 5194 Hazard Communication Standard. Prior to use on Authority property and/or project work areas Contractor shall provide the Authority Project Manager copies of SDS for all applicable chemical products used, if any. The program shall be provided to the Authority's Project Manager, upon request, within 72 hours.

- a. All chemicals including paint, solvents, detergents and similar substances shall comply with South Coast Air Quality Management District (SCAQMD) rules 103, 1113, and 1171.

E. Storm Water Pollution Prevention Plan

The Contractor shall protect property and water resources from fuels and similar products throughout the duration of the contract. Contractor shall comply with Storm Water Pollution Prevention Plan (SWPPP) requirements. The program or plan if required by scope shall be provided to the Authority's Project Manager, upon request, within 72 hours.

1.3 INCIDENT NOTIFICATION AND INVESTIGATION

- A.** The Authority shall be promptly notified of any of the following types of incidents including but not limited to:

1. Damage incidents of property (incidents involving third party, contractor or Authority property damage);
2. Reportable and/or Recordable injuries (as defined by the U. S. Occupational Safety and Health Administration), a minor injury, and near miss incidents;
3. Incidents impacting the environment, i.e. spills or releases on Authority projects or property.
4. Outside Agency Inspections; agencies such as Cal/OSHA, DTSC, SCAQMD, State Water Resources Control Board, FTA, CPUC, EPA, USACE and similar agencies.

- B.** Notifications shall be made to Authority representatives, employees and/or agents. This includes incidents occurring to contractors, vendors, visitors, or members of the public

LEVEL 1 HEALTH, SAFETY AND ENVIRONMENTAL SPECIFICATIONS

that arise from the performance of Authority contract work. An immediate verbal notice followed by an initial written incident investigation report shall be submitted to the Authority's Project Manager within 24 hours of the incident.

- C. A final written incident investigative report shall be submitted within seven (7) calendar days and include the following information. The Current Status of anyone injured, photos of the incident area, detailed description of what happened, Photos of the existing conditions and area of the injury/incident, the contributing factors that lead to the incident occurrence, a copy of the company policy or procedure associated with the incident and evaluation of effectiveness, copy of task planning documentation, copy of the Physician's first report of injury, copy of Cal/OSHA 300 log of work related injuries and illnesses, the Cal/OSHA 301 Injury Illness Incident Report, and corrective actions initiated to prevent recurrence. This information shall be considered the minimum elements required for a comprehensive incident report provided to OCTA.
- D. A Serious Injury, Serious Incident, OSHA Recordable Injury/Illness, or a Significant Near Miss shall require a formal incident review at the discretion of the Authority's Project Manager. The incident review shall be conducted within seven (7) calendar days of the incident. This review shall require a company senior executive, company program or project manager from the Contractors' organization to participate and present the incident review as determined by the OCTA Project Manager. The serious incident presentation shall include action taken for the welfare of the injured, a status report of the injured, causation factors that lead to the incident, a root cause analysis (using 5 whys and fishbone methods), and a detailed recovery plan that identifies corrective actions to prevent a similar incident, and actions to enhance safety awareness.
 - 1. Serious Injury: includes an injury or illness to one or more employees, occurring in a place of employment or in connection with any employment, which requires inpatient hospitalization for a period in excess of twenty-four hours for other than medical observation, or in which an employee suffers the loss of any member of the body, or suffers any serious degree of physical disfigurement. A serious injury also includes a lost workday or reassignment or restricted injury case as determined by the Physician's first report of injury or Cal/OSHA definitions.
 - 2. Serious Incident: includes but not limited to property damage of \$500.00 or more, an incident requiring emergency services (local fire, paramedics and ambulance response), news media or OCTA media relations response, and/or incidents involving other agencies (Cal/OSHA, EPA, AQMD, DTSC, Metrolink, FTA, FRA etc.) notification or representation.
 - 3. OSHA Recordable Injury / Illness: includes and injury / illness resulting in medical treatment beyond First Aid, an injury / illness which requires restricted duty, or an injury / illness resulting in days away from work.
 - 4. Significant Near Miss Incident: includes incidents where no property was damaged and no personal injury sustained, but where, given a slight shift in time or position, damage and/or injury easily could have occurred.

LEVEL 1 HEALTH, SAFETY AND ENVIRONMENTAL SPECIFICATIONS

1.4 DESIGNATED HEALTH AND SAFETY REPRESENTATIVE

- A. Upon contract award, the contractor within 10 business days shall designate a health and safety representative and provide a resume and qualifications to the Authority project manager, upon request, within 72 hours.
- B. This person shall be a competent or qualified individual as defined by the Occupational, Safety, and Health Administration (OSHA), familiar with applicable CCR Title 8 Standards (Cal/OSHA) and has the authority to affect changes in work procedures that may have associated cost, schedule and budget impacts.

1.5 PERSONAL PROTECTIVE EQUIPMENT

- A. The Contractor, its subcontractors, suppliers, and employees are required to comply with applicable personal protective equipment (PPE) requirements while performing work at any Authority project or property. Generally minimum PPE requirements include eye protection; hearing protection, head protection, class 2 or 3 safety reflective vests, and appropriate footwear.
- B. The Contractor, its subcontractors, suppliers, and employees are required to provide their own PPE, including eye, head, foot, and hand protection, safety vests, or other PPE required to perform their work safely on Authority projects or property. The Authority requires eye protection on construction projects and work areas that meet ANSI Z-87.1 Standards.

1.6 REFERENCES

- A. CCR Title 8 Standards (Cal/OSHA)
- B. FCR Including 1910 and 1926 Standards
- C. NFPA, NEC, ANSI, NIOSH Standards
- D. Construction Industry Institute (CII)
- E. OCTA Yard Safety Rules

END OF SECTION

EXHIBIT F: PROPOSAL EXCEPTIONS AND/OR DEVIATIONS

PROPOSAL EXCEPTIONS AND/OR DEVIATIONS

The following form shall be completed for each technical and/or contractual exception or deviation that is submitted by Offeror for review and consideration by Authority. The exception and/or deviation must be clearly stated along with the rationale for requesting the exception and/or deviation. If no technical or contractual exceptions or deviations are submitted as part of the original proposal, Offerors are deemed to have accepted Authority’s technical requirements and contractual terms and conditions set forth in the Scope of Work (Exhibit A) and Proposed Agreement (Exhibit C). Offerors will not be allowed to submit this form or any contractual exceptions and/or deviation after the proposal submittal date identified in the RFP. Exceptions and/or deviations submitted after the proposal submittal date will not be reviewed by Authority.

Offeror:_____

RFP No.:_____ RFP Title: _____

Deviation or Exception No. : _____

Check one:

- Scope of Work (Technical) _____
- Proposed Agreement (Contractual) _____

Reference Section/Exhibit: _____ Page/Article No._____

Complete Description of Deviation or Exception:

Rationale for Requesting Deviation or Exception:

Area Below Reserved for Authority Use Only:
