

**Consultant Services Agreement**

This Consultant Services Agreement (the "Agreement") is made as of this 19th day of January, 2021 by and between Avenu Insights and Analytics, LLC, a Delaware limited liability company ("CONSULTANT") and the City of Santa Ana, a charter city and municipal corporation of the State of California ("CITY"). In consideration of the mutual promises herein contained and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the parties agree as follows:

**RECITALS**

A. The CITY desires to retain a consultant having special skill and knowledge in the field of professional services for Utility Users' Tax (including Prepaid Mobile Services Telephony Service Taxes) Revenue Auditing, Recovery, Reporting, Analysis, and Legislative/State Agency Liaison and Implementation Monitoring Services as specified herein.

B. In undertaking the performance of this Agreement, CONSULTANT represents that it possesses the necessary knowledge, qualifications, skills and personnel to provide such services. CONSULTANT warrants that any services performed by CONSULTANT under this Agreement will be performed in compliance with such standards as may reasonably be expected from a professional consulting firm in the field.

NOW THEREFORE, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the parties agree as follows:

CITY hereby retains CONSULTANT, and CONSULTANT hereby agrees to provide such services as are set forth hereinbelow, in accordance with the terms and conditions of this Agreement, and represents and warrants to CITY that CONSULTANT accepts such assignment to perform those services, subject to those terms and conditions.

**1. SCOPE OF SERVICES**

- a. CONSULTANT will provide CITY with the Utility Users' Tax Revenue Auditing, Recovery, Reporting, Analysis, and Legislative/State Agency Liaison and Implementation Monitoring services described in EXHIBIT A and EXHIBIT B, which are attached hereto and incorporated by reference. CONSULTANT shall provide said services at the time, place, and manner specified in EXHIBIT A and EXHIBIT B. In the event that the description of services, their time, place, and manner specified in EXHIBIT A is in conflict with the provisions of EXHIBIT B then the provisions of EXHIBIT B shall prevail. In the event the provisions of either EXHIBIT A or B is in conflict with the terms of these Recitals then the terms of these Recitals will prevail.
- b. CONSULTANT, or CONSULTANT'S subcontractor(s), may provide CITY with additional consulting services described in EXHIBIT B and set out in Exhibit C (CONSIDERATION), which are attached hereto and incorporated by reference. Such additional consulting services include, but are not be limited to: audit recovery of potential hotel visitors' taxes, provision of hotel visitors' tax administration services, audit recovery of potential tourist marketing district assessment fees, provision of tourist marketing district assessment fees administration services, audit recovery of potential business license taxes and associated business improvement district charges, and/or potential medical marijuana and/or cannabis taxes, or cannabis related operating agreement fees (as applicable), selection process assistance for adult-use retail cannabis business permitting, cannabis testing facility or testing laboratory permitting, miscellaneous commercial cannabis business (cultivation, manufacture, distribution) permitting and may also include Comprehensive Annual Financial Reporting statistical services as may be set forth in any Change Order(s) mutually agreed to by and between the parties pursuant to Section 3, subsection 3-22, of said Agreement. EXHIBIT C contingency option Items #2 through #7 may be elected by CITY without a Change Order.

- c. CONSULTANT shall furnish at its own expense all labor, materials, equipment and other items necessary to carry out the terms of this Agreement.

## 2. COMPENSATION

Upon execution of this Agreement, CITY will pay CONSULTANT as outlined in EXHIBIT C (CONSIDERATION), which is attached hereto and incorporated by reference. CONSULTANT shall invoice CITY quarterly on a City fiscal year basis for all charges for services performed pursuant to this Agreement. Except however, that pursuant to a duly executed Change Order mutually agreed to by the parties in accordance with Section 3-22 of this Agreement, a different invoicing period may be specified for the particular services provided in accordance with the terms of such Change Order. Payment by City shall be made within forty-five (45) days following receipt of proper invoice evidencing work performed, subject to CITY accounting procedures and proof of insurance as set forth in section 3-9 (Insurance). Payment need not be made for work that fails to meet the standards of performance set forth in the Recitals that may reasonably be expected by CITY.

### 2.1 Annual Compensation Cap

Compensation for each yearly period (February 1 through January 31) of services provided under this Agreement, including optional contract extension periods, shall be capped by City fiscal year period (July 1 through June 30) as follows:

Fiscal Year	Amount	Contingency	Total Amount
2020-21	\$42,500	\$90,000	\$132,500
2021-22	\$85,000	\$47,000	\$132,000
2022-23	\$85,000	\$47,000	\$132,000
2023-24	\$85,000	\$47,000	\$132,000
2024-25	\$85,000	\$47,000	\$132,000
2025-26	\$42,500	\$47,000	\$ 89,500

\$750,000

Provided however, that pursuant to a duly executed Change Order mutually agreed to by the parties in accordance with Section 3-22 of this Agreement, unspent contingency amounts authorized for a preceding City fiscal year period may be carried forward by written order of the Executive Director of Finance and Management Services to cover expenses for work or services agreed to by the parties but exceeding the annual CITY fiscal year compensation amount cap initially specified for such subsequent period under the provisions of this section.

### 2.2 Maximum Contract Compensation

Maximum compensation payable to CONSULTANT for all services rendered by CONSULTANT to CITY, inclusive of all amounts payable for optional and contingency services shall not exceed \$750,000 unless an increase in maximum contract compensation shall be agreed to by the parties pursuant to duly executed amendment to this Agreement.

### 3. GENERAL PROVISIONS

**3-1. Term of the Agreement:** The initial term for the provision of services as set forth in section 1 of this Agreement shall be for a period of three (3) years commencing February 1, 2021 and ending January 31, 2024, with 2 one (1) one-year extension options exercisable in the sole discretion of the City, by a writing executed by the City Manager and the City Attorney, if neither party has terminated said Agreement in accordance with section 3-2.

**3-2. Termination:** Either party shall have the right to terminate this Agreement in the event of a material breach by the other party. Any such termination may be made only by providing sixty (60) days written notice to the other party, specifically identifying the breach or breaches on which termination is based. Following receipt of such notice, the party in breach shall have thirty (30) days to cure such breach or breaches. In the event that such cure is not made, this Agreement shall terminate in accordance with the initial sixty (60) days' notice. Notwithstanding the foregoing, either party may terminate the Agreement at any time and for any reason by providing thirty-days (30) written notice to the other party; provided however, that if CONSULTANT has not breached the Agreement and has commenced services identified in EXHIBIT A prior to the date of termination, CONSULTANT shall be entitled to payment as described in EXHIBIT B; provided, however, that payment need not be made for work which fails to meet the standard of performance specified in the Recitals of this Agreement.

**3-3. Effect of Termination:** Notwithstanding non-renewal or termination of this Agreement, CITY shall be obligated to pay CONSULTANT for services performed through the effective date of termination for which CONSULTANT has not been previously paid. In addition, because the services performed by CONSULTANT prior to termination or non-renewal of this Agreement may result in the CITY's receipt of revenue after termination which are subject to CONSULTANTS' fee, the CITY shall remain obligated after termination or non-renewal to provide to CONSULTANT such information as is necessary for CONSULTANT to calculate compensation due as a result of the receipt of revenue by the CITY.

**3-4. Independent Contractor:** It is understood that CONSULTANT and its subcontractors, if any, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the CITY. CITY understands that CONSULTANT may perform similar services for others during the term of this Agreement and agrees that CONSULTANT representation of other government sector clients is not a conflict of interest. CONSULTANT shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights.

**3-5. Subcontractors:** CONSULTANT shall have the right to hire subcontractors to provide the services described herein. CONSULTANT, in rendering performance under this Agreement shall be deemed an independent contractor and nothing contained herein shall constitute this arrangement to be employment, a joint venture, or a partnership. CONSULTANT shall be solely responsible for and shall hold CITY harmless from any and all claims for any employee related fees and costs including without limitation employee insurance, employment taxes, workman's compensation, withholding taxes or income taxes.

**3-6. Notice:** Any notice required to be given under this Agreement shall be in writing and either served personally, sent prepaid first class mail, or by express mail courier (i.e. FedEx, UPS, etc.). Any such notice shall be addressed to the other party at the address set forth below. All notices, including notices of address changes, provided under this Agreement are deemed received on the third day after mailing if sent by regular mail, or the next day if sent overnight delivery.

If to CITY:

City of Santa Ana  
Executive Director, Finance and  
Management Services Agency  
City of Santa Ana  
20 Civic Center Plaza (M-17)  
Santa Ana, CA 92702  
Phone: (714) 647-6960  
Facsimile: (714) 647-5414

If to CONSULTANT:

Avenu Insights and Analytics, LLC  
Attn: Contract Department  
7625 N. Palm Ave., Ste. 108  
Fresno, CA 93711  
Phone: (559) 271-6852  
Facsimile: (559) 312-2852  
Email: [legal@avenuinsights.com](mailto:legal@avenuinsights.com)

Representative or designees: CONSULTANT Primary Representative/Project Manager shall be:

Management Contact  
Name: Jonathan Gerth  
Title: Vice President, Tax and Audit  
Phone: (205) 616-1140  
E-Mail: [Jonathan.Gerth@avenuinsights.com](mailto:Jonathan.Gerth@avenuinsights.com)

Representative or designees: City of Santa Ana's Primary Representative/Project Manager shall be:

Willard Holt, Treasury and Customer Services Manager  
20 Civic Center Plaza, Room 1105, Santa Ana, CA 92701  
Phone: (714) 647-5456 / Email: [wholt@santa-ana.org](mailto:wholt@santa-ana.org)

**3-7. Indemnity:** CONSULTANT shall indemnify, defend, and hold harmless the CITY, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) to extent occurring or resulting from CONSULTANT'S negligent or unlawful performance of its obligations under or breach of the terms of this Agreement, unless such claims, liabilities, or losses arise out of, or are caused at least in part by the sole negligence or willful misconduct of the CITY. "CONSULTANT'S performance" includes CONSULTANT'S action or inaction and the action or inaction of CONSULTANT'S officers, employees, agents and subcontractors.

**3-8. Limitation of Liability:** In no event shall CONSULTANT, its employees, contractors, directors, affiliates and/or agents be liable for any special, incidental, or consequential damages, such as, but not limited to, delay, lost data, disruption, and loss of anticipated profits or revenue arising from or related to the services, whether liability is asserted in contract or tort, and whether or not CONSULTANT has been advised of the possibility of any such loss or damage. In addition, CONSULTANT'S total liability hereunder, including reasonable attorneys' fees and costs, shall in no event exceed an amount equal to the fees described in EXHIBIT B. The foregoing sets forth the CITY'S exclusive remedy for claims arising from or out of this Agreement. The provisions of this section allocate the risks between CONSULTANT and the CITY and CONSULTANT'S pricing reflects the allocation of risk and limitation of liability specified herein.

**3-9. Insurance:**

Prior to undertaking performance of work under this Agreement, Consultant shall maintain and shall require its Subcontractors, if any, to obtain and maintain insurance as described below:

- a. **Commercial General Liability Insurance.** Consultant shall maintain commercial general liability insurance naming the City, its officers, employees, agents, volunteers and representatives as



additional insured(s) and shall include, but not be limited to protection against claims arising from bodily and personal injury, including death resulting therefrom and damage to property, resulting from any act or occurrence arising out of Consultant's operations in the performance of this Agreement, including, without limitation, acts involving vehicles. The amounts of insurance shall be not less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom, and property damage, in the total amount of \$2,000,000 per occurrence, with \$2,000,000 in the aggregate. Such insurance shall (a) name the City, its officers, employees, agents, and representatives as additional insured(s); (b) be primary and not contributory with respect to insurance or self-insurance programs maintained by the City; and (c) contain standard separation of insureds provisions.

- b. Business automobile liability insurance, or equivalent form, with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles. Due to the nature of the services under this Agreement not contemplating use of owned autos, coverage for owned autos shall not be required.
- c. Worker's Compensation Insurance. In accordance with the provisions of Section 3700 of the Labor Code, Consultant, if Consultant has any employees, is required to be insured against liability for worker's compensation or to undertake self-insurance. Prior to commencing the performance of the work under this Agreement, Consultant agrees to obtain and maintain any employer's liability insurance with limits not less than \$1,000,000 per accident.
- d. Errors and omissions insurance, with a combined single limit of not less than \$1,000,000 per claim with \$2,000,000 in the aggregate.
- e. Cyber/Technology liability insurance, together with Crime, and Fiduciary liability insurance with a limit of not less than \$1,000,000.00 per claim with \$2,000,000 in the aggregate.
- f. The following requirements apply to the insurance to be provided by Consultant pursuant to this section:
  - i. Consultant shall maintain all insurance required above in full force and effect for the entire period covered by this Agreement.
  - ii. Certificates of insurance shall be furnished to the City upon execution of this Agreement and shall be approved by the City.
  - iii. City of Santa Ana, its officers, employees, agents and representatives shall be Additional Insureds with respect to General Liability and Auto Liability Insurance is Primary and Non-Contributory.
  - iv. Certificates and policies shall state that the policies shall not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the City of cancellation with ten (10) days prior notice for non-payment of premium in accordance with policy provisions.
  - v. Consultant shall supply City with a fully executed additional insured endorsement.
  - vi. Certificates of insurance endorsements shall show the City as a certificate holder as follows:

City of Santa Ana  
Risk Management Division, 4<sup>th</sup> Floor  
20 Civic Center Plaza  
Santa Ana, CA 92701

- vii. Where the amounts or coverage provided by the certificates of insurance provides coverage greater than those listed by this Agreement, the amounts provided by the certificates of insurance shall be incorporated by reference into the Agreement.

**3-10. Equal Opportunity to Draft:** The parties have participated and had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any party upon a claim that that party drafted the ambiguous language.

**3-11. Assignment:** This Agreement shall be binding upon and inure to the benefit of the parties, their successors, representatives and assigns. CONSULTANT shall not assign this Agreement, or delegate its duties or obligations under this Agreement, without the prior written consent of CITY, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, CONSULTANT may assign this Agreement, in whole or in part, without the consent of CITY to any corporation or entity into which or with which CONSULTANT has merged or consolidated; any parent, subsidiary, successor or affiliated corporation of CONSULTANT; or any corporation or entity which acquires all or substantially all of the assets of CONSULTANT. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their successors or assigns.

**3-12. Ownership of Documents:** Except for CONSULTANT's preexisting proprietary information and processes, any and all documents, including draft documents where completed documents are unavailable, or materials prepared or caused to be prepared by CONSULTANT pursuant to this agreement shall be the property of the CITY at the moment of their completed preparation.

**3-13. Intellectual Property Rights:** The entire right, title and interest in and to CONSULTANT's database and all copyrights, patents, trade secrets, trademarks, trade names, and all other intellectual property rights associated with any and all ideas, concepts, techniques, inventions, processes, or works of authorship including, but not limited to, all materials in written or other tangible form developed or created in the course of this Agreement (collectively, the "Work Product") shall vest exclusively in CONSULTANT or its subcontractors. The foregoing notwithstanding, in no event shall any CITY-owned data provided to CONSULTANT be deemed included within the Work Product.

**3-14. Discrimination:** CONSULTANT shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. CONSULTANT affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

**3-15. Jurisdiction – Venue:** This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

**3-16. Professional Licenses:** CONSULTANT shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the State of California, the CITY of Santa Ana and all other governmental agencies. CONSULTANT shall notify the CITY

immediately and in writing of its inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

**3-17. Public Release and Statements:** Neither party or its representatives or agents shall disseminate any oral or written advertisement, endorsement or other marketing material relating to each other's activities under this Agreement without the prior written approval of the other party. Neither party shall make any public release or statement concerning the subject matter of this Agreement without the express written consent and approval of the other party. No party or its agent will use the name, mark or logo of the other party in any advertisement or printed solicitation without first having prior written approval of the other party. The parties shall take reasonable efforts to ensure that its subcontractors shall not disseminate any oral or written advertisement, endorsement or other marketing materials referencing or relating to the other party without that party's prior written approval. In addition, the parties agree that their contracts with all subcontractors will include appropriate provisions to ensure compliance with the restrictions of this Section.

**3-18. Confidentiality.** If Consultant receives from the City information which due to the nature of such information is reasonably understood to be confidential and/or proprietary, Consultant agrees that it shall not use or disclose such information except in the performance of this Agreement, and further agrees to exercise the same degree of care it uses to protect its own information of like importance, but in no event less than reasonable care. "Confidential Information" shall include all nonpublic information. Confidential information includes not only written information, but also information transferred orally, visually, electronically, or by other means. Confidential information disclosed to either party by any subsidiary and/or agent of the other party is covered by this Agreement. The foregoing obligations of non-use and nondisclosure shall not apply to any information that (a) has been disclosed in publicly available sources; (b) is, through no fault of the Consultant disclosed in a publicly available source; (c) is in rightful possession of the Consultant without an obligation of confidentiality; (d) is required to be disclosed by operation of law; or (e) is independently developed by the Consultant without reference to information disclosed by the City.

**3-19. Force Majeure:** CONSULTANT shall not be in default of its obligations hereunder to the extent that its performance is delayed or prevented by causes beyond its control, including but not limited to acts of God, government, weather, fire, power or telecommunications failures, inability to obtain supplies, breakdown of equipment or interruption in vendor services or communications.

**3-20. Litigation Fees.** If litigation arises out of this Agreement for the performance thereof, then the court shall award costs and expenses, including reasonable attorney's fees, to the prevailing party. In awarding attorney's fees, the court shall not be bound by any court fee schedule but shall award the full amount of costs, expenses and attorney's fees paid or incurred in good faith.

**3-21. Entire Agreement:** This Agreement constitutes the entire agreement between the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter contained herein. Said Agreement shall not be amended, altered, or changed, except by a written amendment signed by both parties unless a Change Order Contingency is mutually agreed to by the parties.

**3-22. Change Order Contingency:** From time-to-time, at CITY's option, CITY may request optional services of CONSULTANT at mutually agreed upon scope and fees.

**3-22.1 Change Order**

No extra work may be undertaken unless a written "Change Order" is first given by the

Contract Officer or his/her designee, to CONSULTANT, incorporating therein any material change in the scope, fees and/or administration of this Agreement proposed by CITY.

### **3-22.2 Additional Work Or Services**

#### **(a) Extra Work or Services**

CITY shall have the right at any time during the performance of the work or services set forth in this Agreement, without invalidating said Agreement or any amendments thereto, to elect to exercise any existing option specified in the Scope of Services for extra work or services or to order extra work or services pursuant to a duly executed Change Order or to expend previously appropriated but unspent contingency funds authorized to be carried forward by the Executive Director of Finance and Management Services to cover expenses for work or services agreed to by the parties but exceeding any annual CITY fiscal year compensation amount cap initially specified under the Compensation provisions of this Agreement or thereby make changes by altering, adding to or deducting from said work or services.

#### **(b) Maximum Contract Compensation Cap**

Net total compensation to CONSULTANT shall not, as the result of any Change Order, exceed the maximum contract compensation amount set forth under Section 2-2 of this Agreement, unless an increase in maximum contract compensation shall be agreed to by the parties pursuant to duly executed amendment of this Agreement.

### **3-22.3 Coordination of Work or Services**

#### **(a) Representative of CONSULTANT**

The following officer of CONSULTANT is hereby designated as being the representative of CONSULTANT authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

Avenu Insights and Analytics, LLC  
Officer & Representative

Jonathan Gerth  
Vice President, Tax and Audit

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing officer & representative is a substantial inducement for CITY to enter into this Agreement. Therefore, the foregoing officer & 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. For purposes of this Agreement, the foregoing officer & representative may not be replaced nor may their responsibilities be substantially reduced by CONSULTANT without the express written approval of CITY.

### **3-22.4 Contract Officer**

The Contract Officer shall be the person designated hereunder by CITY. It shall be CONSULTANT's responsibility to assure that CITY's Contract Officer is kept informed of the progress of the performance of the consulting services set forth in this Agreement and CONSULTANT shall refer any decisions which must be made by CITY to the Contract Officer. The Contract Officer shall have authority to enter into Change Orders with CONSULTANT pursuant to this Agreement. The Contract Officer shall have authority to sign all documents on

behalf of CITY required hereunder to carry out the terms of this Agreement. Unless otherwise specified herein, any approval of CITY required hereunder shall mean the approval of the Contract Officer.

City of SANTA ANA  
Contract Officer

Kristine Ridge, City Manager  
or designee

**3-23. Invalidity:** If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**3-24. Implementation:** Implementation of services should begin as soon as possible from the Effective Date for the performance of services under the terms of this Agreement.

**3-25. Counterpart Signature and Delivery:** This Agreement must be signed below and may be signed in separate counterparts including facsimile copies and delivered by fax, email as a PDF (Portable Document Format) file attachment, or by other means that displays the original or a copy of the signatures. Each counterpart (including facsimile copies) is deemed an original and all counterparts are deemed on and the same instrument and legally binding on the parties. Any subsequent amendments to this Agreement may be signed and delivered in the same manner.

**3-26. Miscellaneous Provisions:**

- a. CONSULTANT shall perform all services with the necessary knowledge and skills required to perform the tasks. CONSULTANT or personnel of CONSULTANT engaged in the performance of such services shall not represent themselves to be, nor shall they be deemed to be, employees of CITY for any purpose whatsoever.

CITY agrees that its employees will cooperate with and assist representatives of CONSULTANT in every reasonable way to enable CONSULTANT to secure all information and data required to perform the services herein provided for. CONSULTANT shall have no liability for defects in the services attributable to CONSULTANT's reliance upon or use of data, design criteria, drawings, specifications, or other information furnished by CITY or third parties retained by CITY.

- b. Each undersigned represents and warrants that its signature hereinbelow has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify CITY fully, including reasonable costs and attorney's fees, for any injuries or damages to CITY in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.
- c. CONSULTANT agrees any alterations, variations, modifications, or waivers of the provisions of the Agreement, shall be valid only when reduced to writing, executed and attached to the original Agreement and approved by the required signatories.
- d. If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorneys' fees, regardless of who is the prevailing party.

- e. All exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.
- f. In the event of any conflict between the provisions of this Agreement and those set forth in any Exhibit referenced and incorporated herein, the provisions of the Consultant Services Agreement shall prevail.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the date and year first above written.

ATTEST:

CITY OF SANTA ANA

\_\_\_\_\_  
Daisy Gomez  
Clerk of the Council

\_\_\_\_\_  
Kristen Ridge  
City Manager

APPROVED AS TO FORM:

SONIA R. CARVALHO  
CITY Attorney

By: John M. Funk  
John M. Funk  
Sr. Assistant City Attorney

**RECOMMENDED FOR APPROVAL:**

KD  
Kathryn Downs (Jan 6, 2021 12:18 PST)

\_\_\_\_\_  
Kathryn Downs, Executive Director  
Finance & Management Services Agency  
City of Santa Ana

**CONSULTANT**

ME

\_\_\_\_\_  
Mike Melka  
Chief Financial Officer  
Avenu Insights and Analytics, LLC

# EXHIBIT A

**City of Santa Ana  
Finance & Management Services Agency  
Treasury & Customer Services Division**



## **REQUEST FOR PROPOSALS**

**RFP #20-137**

**Utility Users' Tax Revenue Auditing,  
Recovery, Reporting, Analysis, and  
Legislative/State Agency Liaison and  
Implementation Monitoring Services**

**Issued:** October 26, 2020  
**Due Date:** November 30, 2020 at 4:00 PM (PST)  
**Submit to:** City of Santa Ana Finance & Management  
Services Agency  
RFP # 20-137  
20 Civic Center Plaza, 1<sup>st</sup> Floor  
Santa Ana, CA 92701  
Attn: Management Analyst, Alex Gutierrez

**Project Coordinators:**

*Willard V. Holt, Treasury & Customer Services Manager*  
*Waldo Barela, Budget Supervisor*

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**REQUEST FOR PROPOSALS**  
**Professional Consultant Services**  
**For**  
**Utility Users' Tax – Electric, Gas, & Telecommunications Tax Revenue**  
**Auditing, Recovery, Reporting, Analysis, and Legislative/State Agency**  
**Liaison and Implementation Monitoring Services**

**I. INTRODUCTION**

- A. Purpose.** The City of Santa Ana's Finance & Management Services Agency, Treasury & Customer Service Division is soliciting responses from qualified firms with extensive experience in revenue auditing, recovery, reporting and analyses services. The goal of the professional consultant services is to: (1) assist in collecting additional general tax revenues due to the City, as determined from auditing, recovery, reporting and associated compliance activities to include the following Utility Users' Tax ("UUT") categories: Electric, Gas, & Telecommunications; (2) assist in development of UUT revenue forecast models for Electric, Gas, & Telecommunications UUT; (3) provide legislative and state agency liaison and implementation monitoring including coordination with City's state and federal lobbyists in connection with legislation/regulation relating to City's UUT (all categories - Electric, Gas, Telecommunications & Water, including aggregators, plus California Department of Tax and Fee Administration ("CDTFA") collected pre-paid telecommunications UUT). Please structure your proposal to include **Section III, Scope of Services subsections A through C and Term of Contract, subsection D** and one or more of the response items numbered (1) through (3) above. Please be specific in your proposal as to which response item(s) the proposal is addressing.

**(Note: Attachment 6 – Cost/BID Proposal Form must be completed and submitted as part of your proposal response, additional explanatory pages may be appended as needed but may not replace form. All proposals must be submitted in accordance with the format and information listed in Section V, Proposal Submittal Requirements.)**

- B. Deadline.** Proposals are to be received by **4:00 p.m. (PST) on November 30, 2020** as described in **Section V, Proposal Submittal Requirements** of this Request for Proposals (RFP).
- C. Background.** The Finance & Management Services Agency, Treasury & Customer Services Division is responsible for overseeing and providing revenue collection for a variety of City revenues, including but not limited to taxes, charges, fees, fines, deposits and reimbursements. In support of this mission, the Division uses external professional consultants/vendors to ensure that the City recovers all revenues that are due, including but not limited to: utility users' taxes, sales, transaction & use taxes' property taxes' hotel visitors' taxes' business license taxes, medical marijuana and commercial cannabis taxes.

**II. SELECTION PROCESS**

- A. Selection Process.** After the submittal deadline has passed, a selection committee comprised of staff from pertinent City agencies/departments will review each proposal received and make a selection.

A selection may be made based solely on review of the proposals and references.

Interviews may or may not be conducted with the top ranked firms and considered in the selection. The City will enter into a Professional Services Agreement (Attachment 11) with the top ranked firm(s) after City Council authorization. The City will enter into an

agreement with the qualified professional consultant for the source of revenue listed in **Section III [Scope of Services Term of Contract]** below, and for the different response items numbered (1) through (3) as described in **Section I [Introduction], subsection A [Purpose]**, above. (**Attachments 1 through 10** must be submitted by each firm proposing in combination); all subsidiary entities and subcontractors must be identified.

The proposals will be evaluated and ranked based upon the criteria provided in **Attachment 13 – Proposal Rating Form** which includes: (1) Qualifications - expertise and knowledge of the Professional Consultant/Vendor in the field of UUT, (2) Experience - Professional Consultant/Vendor's experience in revenue auditing, revenue recovery, revenue reporting, revenue analyses, knowledge of municipal revenue operations generally, in the area of UUT, especially with regards to electric, gas, and telecommunications (3) Client References; (4) Proposed Scope of Services and Term of Contract - proposal quality and completeness, interview and demonstration(s) (as applicable); and (5) Cost of Providing Services. Interview evaluation factors, if held, will include an overall demonstration of the Professional Consultant/Vendor's ability to provide revenue recovery, revenue reporting, revenue analyses and legislative & state agency liaison and implementation monitoring services.

The criteria for evaluating the proposals submitted will take the following items into consideration:

• Professional Consultant/Contractor Qualifications	20%
• Professional Consultant/Contractor Experience	20%
• Client References	15%
• Proposed Scope of Services	30%
• Cost of Providing Service	15%

A final score will be calculated for each submitted proposal and used to rank the Proposers. The City shall not be obligated to accept the lowest priced proposal, but will make an award in the best interests of the City of Santa Ana after all factors have been evaluated.

The issuance of this RFP shall not be interpreted as, and does not constitute, a representation by the City that any specific firm or firms will be retained to perform any of the services described herein, and a firm shall not acquire any right or entitlement to be retained for such purpose by virtue of submitting a proposal in response to this RFP. The City reserves the right to issue additional RFP(s) for the performance of these services during the service period specified below. The City may select qualified firms that submit proposals in response to this RFP, and/or any subsequent RFP, to perform all, some or any of the professional services required by the City. The City also reserves the option to cancel or modify this RFP and the selection process at any time.

## B. Selection Schedule.

*Note: This schedule is subject to change*

Activity	Estimated Date
RFP Issue Date	October 26, 2020
Deadline for Receipt of Written Questions	November 3, 2020 @ Time 5:00 p.m. (PST)
Pre-Proposal Teleconference (Possible)	November 9, 2020 (Time/Place TBD)
RFP Addenda to be Issued Addressing Questions	November 12, 2020
RFP Submissions Due	November 30, 2020 – 4:00 p.m. (PST)

Interviews (Demonstrations if desired by City) and Evaluations	Week of December 1 <sup>st</sup> , 2020 – If possible and if panel has reviewed proposals
Present Recommended Proposal to City Council	On or about January 19, 2021
Begin New Contract	February 1, 2021

### III. SCOPE OF SERVICES AND TERM OF CONTRACT

#### A. Source of Revenue

- Utility Users' Tax ("UUT") - Rate 5.5% - UUT Service Provider Categories: Electric, Gas, & Telecommunications Service Providers (to include electric and gas aggregators, and California Department of Tax and Fee Administration ("CDTFA") collected pre-paid telecommunications UUT)
- Goal of professional consultant services provider: (1) assist in collecting additional general tax revenues due to the City, as determined from auditing, recovery, reporting and associated compliance activities to include the following UUT categories: Electric, Gas, & Telecommunications; (2) assist in development of UUT revenue forecast models for Electric, Gas, & Telecommunications UUT; (3) provide legislative and state agency liaison and implementation monitoring including coordination with City's state and federal lobbyists in connection with legislation/regulation relating to City's UUT (all categories - Electric, Gas, Telecommunications & Water, including aggregators, plus CDTFA collected pre-paid telecommunications UUT).

#### B. Related Services

Related to the above audit services, the Professional Consultant/Vendor would:

- Represent the City for purposes of examining records related to the above revenue sources to identify and confirm any errors/omissions leading to deficient payments to the City.
- For each error/omission identified and confirmed, prepare the appropriate documentation to facilitate recovery of revenue due to the City including any applicable penalties and interest.
- Prepare and forward to the appropriate parties requests for corrective action and revenue recovery.
- Meet with designated City officials as necessary (but not less than quarterly) to review consultant's findings and recommendations.
- Provide any additional assistance as necessary to support the City in recovering and preventing tax delinquencies.
- Utility Users' Tax: Prepare annual UUT report that includes legal and legislative issues that could potentially affect UUT revenues and a five year forecast or each utility industry type; assist in development of multi-year UUT budget revenue forecast model.
- Legislative/State Agency Liaison and Implementation Monitoring: Provide federal, state, and local legislative and state agency liaison and program implementation monitoring (including coordination with City's state and federal lobbyists in connection with legislation/regulation relating to City's UUT).

## **C. Utility Users' Tax – Additional Requirements**

### **1. General Strategy**

- a. Describe the general strategy for UUT and economic analysis.
- b. Define the role of City staff and City records as it relates to your efforts.
- c. Identify what sources of information will be needed and the means with which they will be acquired.

### **2. Objectives and Methodology**

- a. Identify the specific procedures you will use to detect, correct, and recover misallocated UUT for the City.
- b. Detect, document, and correct UUT tax reports errors and omissions in order to generate new, previously unrealized revenue for the City.
- c. Determine if UUT service providers had prior knowledge of the error(s), which could entitle the City to collect revenue from additional reporting periods.
- d. Track and report on all misallocations that have been corrected as a result of the Consultant's efforts and remitted to the City by Utility Users' Tax service providers.
- f. Monitor and analyze the City's monthly UUT reporting and collection reports with focus on major accounts 90% or more of the City's total service providers (electric, gas, & telecommunications) to identify any irregularities or unusual deviations from the normal pattern, and ensure that the City is not receiving less revenue than it is entitled to receive.
- g. Assist the City with strategies to preserve and enhance UUT generated by the existing service providers operating within the City of Santa Ana.

### **3. Utility Users' Tax Reporting Services**

The successful Proposer shall:

- a. Generate reports to identify service provider errors and omissions and analyze City Utility Users' Tax rate. Provide printouts, graphs, and comparative data on a quarterly basis.
- b. Provide written quarterly UUT reports and attend quarterly meetings with the City to discuss activity in the reports. The reports will include the following:
  - i. Quarterly reporting. Prepare a quarterly report on the City's UUT revenues and service providers generating these revenues. The report should identify and analyze revenue performance, trends, gains, declines, projections, and pertinent issues. The report should capture UUT performance Citywide, by service provider (including aggregators), and by utility type (electric, gas, and telecommunications to include pre-paid UUT collected and reported by telecommunications service providers as well as pre-paid UUT paid to retailers and collected by CDTFA). Quarterly report data should also be made available in Word formatted documents and PDFs with graphs and charts available in Excel format and tables available in Excel or Access data table format, allowing for easy query of the data by authorized City staff. The

consultant should also be available to City staff to answer periodic questions regarding UUT issues and performance.

- ii. Contingency option. Provide electronic reporting research database application for City UUT (client/server or web-based portal application). The application should allow authorized City staff to search, query, filter/sort and export UUT reporting and payment data (in common data formats; e.g. Access, Excel, etc.) for staff presentation and analysis based on service provider and utility type.

#### **4. Specialty UUT Audits**

- i. Successful proposer will provide strategy, mechanism, and audit cost formulas for comprehensive audits of principal electric and gas utility providers together with large-scale utility service aggregators. Audits may include corresponding franchise fees where advisable.
  - Specialty audits shall be proposed as contractually severable "contingency options" which the City in its sole discretion may elect.
  - Specialty audit terms must address the effect on costs of multiple contracted local jurisdictions electing to participate in said audit(s) concurrently or after the fact.
  - The specific terms of specialty audits, when not fully detailed in the original agreement between the parties or under the terms of a subsequent amendment to said agreement, will be set out through a mutually agreed to change order process.
- ii. Successful proposer will provide contingency options for similar audits of principal telecommunications providers.

#### **5. Ancillary UUT Services**

- i. Provide quarterly information regarding federal and state legislative issues, including an analysis of their potential impact on the City.
- ii. Comparisons to other local, county, and state jurisdictions as applicable.
- iii. Provide other ad hoc reports identifying other pertinent issues as mutually agreed upon.
- iv. Assist in development of UUT budget revenue forecast model.
- iv. Provide a reconciliation of UUT by utility type (electric, gas, and telecommunications, to include pre-paid UUT collected and reported by telecommunications service providers as well as pre-paid UUT paid to retailers and collected by CDTFA), which will be used to project annual UUT figures for the City's use in revenue forecasting.

#### **D. Term of Contract**

The services described herein shall be provided for a three (3) year period, from February 1, 2021 to January 31, 2024, with an option exercisable by the City for two (2) one (1) year extensions unless either party provides written notice of its intention not to renew ninety (90) days prior to the end of the then current term. All terms and conditions of the Agreement shall remain effective during any additional renewal term.

#### **IV. COST/BID PROPOSAL FORM**

- Proposers should provide a cost breakdown for the proposed source of revenue bid under **Section III [Scope of Services - Term of Contract], subsection A [Source of Revenue]** and for each desired response item bid - numbered (1) through (3) - as described in **Section I [Introduction], subsection A [Purpose]** and also in the format as shown in **Attachment 6 COST/BID PROPOSAL FORM**.
- **COST/BID PROPOSAL FORM** sections relating to:
  - **Section III, C-3, b-ii. Contingency option; and**
  - **Section III, C-4, i. Specialty UUT Audits**

#### **V. PROPOSAL SUBMITTAL REQUIREMENTS**

Firms interested in responding are required to submit both a complete proposal electronically to the City's online proposal management and publication system called PlanetBids, and also submit a signed original proposal, plus five (5) additional printed copies (all bound), and one (1) electronic copy on a flash drive must be delivered to Santa Ana City Hall no later than **4:00 p.m. (PST) on NOVEMBER 30, 2020**. Proposals will not be accepted after this deadline. Faxed or e-mailed Proposals will not be accepted. *The City will only receive and consider those proposals that were electronically transmitted via soft upload to PlanetBids successfully by the submittal deadline.*

- Six (6) bound copies of the submittal
- Flash Drive with Word-formatted documents and PDFs – **must** contain the following:
  - Scope of Services (**Section III**)
  - Proposer's Cover Sheet (**Attachment 1**)
  - Proposer's Statement (**Attachment 2**)
  - Company Information Form (**Attachment 3**)
  - Summary Sheet (**Attachment 4**)
  - Five (5) Client Reference Forms (**Attachments 5**)
  - Cost/Bid Proposal Form(s) (**Attachment 6**)
  - Proposer's Certification Form (**Attachment 7**)
  - Non-Collusion Affidavit (**Attachment 8**)
  - Non-Lobbying Certification (**Attachment 9**)
  - Non-Discrimination Certification (**Attachment 10**)

**PlanetBids:** Proposal Document – Soft copy uploaded to PlanetBids by **NOVEMBER 30, 2020 at 4:00 p.m. (PST)**.

**Mail/Delivery to City Hall:** A signed original proposal, plus five (5) additional printed copies (all bound), and one (1) electronic copy on a flash drive must be delivered to Santa Ana City Hall by **November 30, 2020 at 4:00 p.m. (PST)**.

City of Santa Ana  
Finance & Management Services Agency  
Treasury & Customer Service  
20 Civic Center, 1<sup>st</sup> Floor  
Santa Ana, CA 92701  
**Attn: Alex Gutierrez, Management Analyst**  
Phone: (714) 647-5497

RE: Utility User Tax – Electric, Gas, & Telecommunications Revenue Auditing, Recovery, Reporting, Analysis, and Legislative/State Agency Liaison and Implementation Monitoring Services  
RFP No. **20-137**

**Note:** If your proposal is mailed, email the delivery tracking number to [agutierrez@santa-ana.org](mailto:agutierrez@santa-ana.org). This will provide proof of delivery by the submittal deadline.

## **VI. PROCEDURE FOR SUBMITTING PROJECT PROPOSALS**

Responses to the Request for Proposals will be accepted via soft upload to PlanetBids until **NOVEMBER 30, 2020 at 4:00 p.m.** Oral presentations interviews / demonstrations are scheduled as required. The City intends to award a three (3) year agreement (with two (2) one (1) year options to renew) to the bidder(s) selected as the most responsible and whose response adheres to the RFP and meets the City's requirements by DECEMBER 7, 2020\*.

*\* The City expects, but does not guarantee, that the decision on selection of a firm will be made by the City on the date indicated above.*

It is the responsibility of the Proposer to ensure that any proposals submitted have been uploaded to PlanetBids prior to this proposal due date and time. Proposals, including all required sections and forms, shall be submitted electronically via the City's Bid Management System, PlanetBids.

PlanetBids will not accept late bids and no exceptions shall be made. Proposers will receive an e-bid confirmation number with a time stamp from PlanetBids indicating that their proposal was submitted successfully. The City will only receive and consider those proposals that were transmitted successfully. Submit proposal online at:  
<http://www.planetbids.com/portal/portal.cfm?CompanyID=20137>.

Proposer shall be solely responsible for informing itself with respect to the proper utilization of the bid management system, for ensuring the capability of their computer system to upload the required documents, and for the stability of their internet service. Failure of the Proposer to successfully submit an electronic proposal shall be at the Proposer's sole risk and no relief will be given for late and/or improperly submitted proposals. Proposers experiencing any technical difficulties with the bid submission process may contact PlanetBids at (818) 992-1771. Questions of an operational nature may be directed to the City's assigned Project Manager. Neither the City, nor PlanetBids, makes any guarantee as to the timely availability of assistance, or assurance that any given problem will be resolved by the bid submission deadline.

A signed original proposal, plus five (5) hard copies (bound), and one (1) electronic copy on a flash drive must be delivered to the City of Santa Ana no later than the due date and time.



Proposals must be date and time stamped by the City of Santa Ana on time by the 4:00 P.M. (PST) Submission Due Date in order to be considered.

**Proposals shall NOT be emailed or sent via telegraphic, electronic or facsimile means.**

All notifications, updates and addenda will be posted on the City's current RFP Bid webpage at <http://www.planetbids.com/portal/portal.cfm?CompanyID=20137>. Proposers shall be responsible for monitoring the site to obtain information regarding this solicitation. Failure to respond to required updates may result in a determination of a nonresponsive proposal.

It is the responsibility of the Proposer to ensure that any proposals submitted shall have sufficient time to be received by the City of Santa Ana prior to the proposal due date and time.

**ONLY SEALED RFP RESPONSES ARE ACCEPTABLE**

Professional Consultants/Vendors electing to submit a response to this RFP must prepare and submit an exhaustive response to **all requested information**. By submitting a proposal, the Professional Consultant/Vendor understands and agrees that the City of Santa Ana has the right to withhold all information regarding this procurement, including but not limited to:

- (1) the number of proposals received,
- (2) competitive technical information,
- (3) competing price information; and
- (4) City of Santa Ana evaluation concerns regarding competing proposals, until after the agreement is awarded.

Upon receipt of offerings by the City of Santa Ana, each responding Professional Consultant/Vendor shall be presumed to be thoroughly familiar with all requirements of this offering. The failure or omission to examine any form, instrument or document shall in no way relieve professional consultants/vendors from any obligation with respect to its offering.

**VII. INSURANCE REQUIREMENTS & W-9 REQUIREMENTS**

Upon recommendation of contract award, Contractor will be required to submit the following documents with ten (10) days of City notification, unless otherwise specified in the solicitation:

**Insurance** – City requires that licensees, lessees, and vendors have an approved Certificate of Insurance (not a declaration or policy) or proof of legal self-insurance on file with the City for the issuance of a permit or contract.

**W-9** – Current signed form W-9 (Taxpayer Identification Number & Certification) which includes Contractor's legal business name(s).

**VIII. ADDENDA & UNDERSTANDING THE PROPOSAL**

Questions regarding this RFP shall be submitted via PlanetBids, by **5:00 P.M. (PST) on NOVEMBER 3, 2020**. Responses to all questions will be posted on PlanetBids, no later than the date and time shown at the schedule of key RFP dates above. All prospective Proposers are advised to visit PlanetBids on a regular basis as the responses may be posted earlier than the date above.

It is the responsibility of each Proposer to inquire about any criteria, condition, term, provision, or requirement of the RFP that the Proposer does not understand. Responses to inquiries, if they significantly change or clarify the RFP requirements or any aspect of the procurement process, will be forwarded by addenda to all Proposers. The City will not be bound by any oral responses to inquiries. By submitting bid proposals, Proposers assert that they have fully read

the RFP and any addenda issued by the City, the proposed Contract and any other Contract Documents, and affirm that the terms and conditions stated therein are fully understood and are acceptable to the Proposer. Each Proposer accepts the terms and conditions of the Contract Documents and indicates their ability and willingness to perform the requested services under such terms and conditions. Any exceptions to the terms and conditions set forth in the Contract Document should be clearly noticed in each Proposer's proposal.

**Please direct all questions regarding the procurement process to:**

City of Santa Ana  
Finance & Management Services – Purchasing  
Eva Pierce, Buyer  
Email: [epierce@santa-ana.org](mailto:epierce@santa-ana.org)  
Phone: (714) 647-6584

The City of Santa Ana reserves the right to cancel, postpone, extend or revise this RFP or the RFP process at any time. If it becomes necessary to revise any part of this RFP, an Addendum to the RFP will be provided on the City's PlanetBids system:

<http://www.planetbids.com/portal/portal.cfm?CompanyID=20137>.

## **IX. PROPOSAL FORMAT GUIDELINES**

Interested firms are to provide the City a thorough Proposal using the following guidelines: Proposal should be typed using a 12-point font size, and should contain no more than 100 typed pages (include all the items in **Section V - [PROPOSAL SUBMITTAL REQUIREMENTS]**, Index/Table of Contents, dividers, tables, charts, graphic exhibits, and costs proposal). Each Proposal will adhere to the following order and content of sections: proposal should be straightforward, concise and provide "layman" explanations of technical terms that are used; emphasis should be concentrated on conforming to the RFP instructions, responding to the RFP requirements, and on providing a complete and clear description of the offer. Proposals, which appear unrealistic in terms of technical commitments, lack of technical competence or are indicative of failure to comprehend the complexity and risk of this contract may be rejected.

Colored displays, promotional materials, etc., are not necessary or desired. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content. Dividers and clear organization of content and material are encouraged.

## **X. COMMUNICATION/CONTACT WITH CITY STAFF:**

Unless otherwise authorized herein, Proposers who are considering submitting a proposal in response to this RFP, or who submit a proposal in response to this RFP, are only to communicate with the assigned City Buyer, and no other City staff about this RFP from the date this RFP is issued until a proposal is submitted. The assigned City Buyer will provide all official communication concerning this RFP in writing via the City's Bid Management System, PlanetBids.

General questions regarding this RFP may be directed to the following designated City personnel **via the City's assigned Buyer utilizing the City's PlanetBids system.**

## **XI. CONTRACT ADMINISTRATION**

The Executive Director of Finance & Management Services of the City of Santa Ana, or his or her designee, shall be the authorized representative in all matters pertaining to the RFP



process. The contract awarded pursuant to this RFP for the provision of revenue auditing, recovery, reporting, analysis, and legislative/State agency liaison, and implementation-monitoring services shall be administered by the Executive Director of Finance & Management Services of the City, or his or her designee.

## **XII. CONTRACT MODIFICATION AND AMENDMENTS**

Once a contract has been awarded and executed, the parties may adjust the specific terms and the Contract Documents from time-to-time where circumstances beyond the control of either party require modification or amendment. Any modification or amendment proposed by the Consultant/Vendor must be submitted in writing to the City. Any agreed modifications and/or amendments must be done in writing, approved by all parties.

## **XIII. CONSULTANT/VENDOR SELECTION AND AWARD**

The award of contract under this RFP will be made by the City of Santa Ana. All Proposers will be notified in writing at the conclusion of the procurement process as to the results of the bid proposal evaluation process and the final award recommendation. Proposers will receive mailed award/non-award notifications, which will include the name of the Proposer awarded the contract.

### **A. Request for Council Action:**

Following evaluation and rating by the proposal review committee, the Executive Director will recommend award of an agreement to the Proposer providing the best quality and value to the City. Any contract resulting from this RFP shall not be effective unless and until approved by the City Council/City Manager, as applicable.

### **B. Execution of Agreement:**

A sample standard agreement is included as Attachment 11: Professional Service Agreement in this RFP, but may be modified to suit the specific services and needs of the City. "Proposer" will hereinafter be referred to as "Consultant" in the standard agreement. The term of the agreement will begin after the agreement is fully executed, and all required bonds, insurance documents and contents of the payment information packet have been received and approved. **If the Proposer has any exceptions or conditions to the Agreement, these must be submitted for consideration with the Proposal. Otherwise, the Proposer will be deemed to have accepted the form of Agreement.**

## **XIV. GENERAL TERMS & CONDITIONS**

By submitting a Proposal, the Proposer acknowledges that it has thoroughly examined and accepts the Terms and Conditions of this RFP as described below:

### **Conflict of Interest**

Consultant/Vendor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the City. This obligation shall apply to the Consultant/Vendor; the Consultant/Vendor's employees, agents, and Subcontractors associated with accomplishing work and services hereunder. The Consultant/Vendor's efforts shall include, but not be limited to, establishing precautions to prevent its employees, agents, and Subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence City staff or elected officers from acting in the best interests of the City.

Each Proposer must disclose any existing or potential conflict of interest relative to the performance of the contractual services resulting from this RFP. Any such relationship that might be perceived or represented as a conflict should be disclosed. The City reserves the right to disqualify any Proposer on the grounds of actual or apparent conflict of interest.

No person, firm, or subsidiary thereof who has been awarded this Contract may be awarded a Contract for the provision of services, the delivery of supplies, or the provision of any other related action, which is required, suggested, or otherwise deemed appropriate as an end product of this Contract. Therefore, Consultant/Vendor is precluded from contracting for any work recommended as a result of this Contract. This RFP does not commit the City to award a contract or to pay any costs incurred for any services. The City, at its sole discretion, reserves the right to accept or reject any or all Proposals received as a result of this RFP, to negotiate with any qualified source(s), or to cancel this RFP in part or in its entirety. The City may waive any irregularity in any Proposal. All Proposals will become the property of the City of Santa Ana. If any proprietary information is contained in the Proposal, it should be clearly identified.

#### Modifications to the RFP

1. Changes to this RFP shall be made only by formal written amendment(s) issued by the City of Santa Ana which shall be labeled "Addenda" and which shall be numbered sequentially and dated.
2. Any and all addenda issued by the City shall be considered a part of the specifications submitted to the Professional Consultant/Vendors for preparation of their proposals and should be addressed by the Professional Consultant/Vendor in its response.

#### Cost of Preparation of Offering

**Pre-Contractual Expenses:** The City is not liable for any costs incurred by Proposers prior to entering into a formal contract. Costs for developing a response to this RFP are entirely the responsibility of the Proposer, and shall not be reimbursed in any manner by the City. Pre-contractual expenses are not to be included in the cost proposal. Pre-contractual expenses include, but are not limited to, preparation of the proposal, submission of the proposal and additional information, attendance at pre-proposal conference, negotiating any matter related to this RFP with City, and/or any other expenses incurred by the Proposer prior to the date of award and execution, if any, of the contract.

**Other Expenses:** The Consultant/Vendor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on City sites during the performance of work and services under this Contract.

#### Confidentiality of Documents

All documents submitted as part of the Professional Consultant/Vendor's offering will be deemed confidential during the evaluation process. Professional Consultant/Vendor offerings will not be available for review by anyone other than the assigned evaluators. Subsequent to the awarding of the agreement, all offerings become public documents and are available for public viewing upon written request.

#### Independent Contractor

Consultant/Vendor is considered an Independent Contractor and neither Contractor or its employees, nor anyone working under Contractor will be considered an agent or an employee of the City. Neither Contractor, its employees, nor anyone working under Contractor, will qualify for Workers' Compensation or other fringe benefits of any kind through the City.

### Notification of Withdrawal of Proposal

Proposals may be modified or withdrawn prior to the date and time specified for proposal submission by an authorized representative of the Professional Consultant/Vendor by formal written notice. Proposals submitted will become the property of the City after the proposal submission deadline.

### Contractual Obligations

The City of Santa Ana will require certain contractual obligations, regardless of any agreements between the Professional Consultant/Vendor and the City of Santa Ana. These terms will include, but are not limited to:

1. *Requirements to Meet All Provisions* - Each individual or firm submitting an offer shall meet all the terms and conditions of the RFP. By virtue of its offering submittal, the Professional Consultant/Vendor acknowledges agreement with and acceptance of all provisions of the RFP specifications.
2. *Inclusion of Offering* - The offering submitted in response to this RFP will be required to be included as part of the final agreement with the selected Professional Consultant/Vendor.
3. *Accountability* - The selected Professional Consultant/Vendor will be required to provide status meetings and submit status reports covering such items as progress of work being performed, milestones attained, resources expended, problems encountered and corrective action taken.
4. *Costs* - All costs must be detailed specifically in the project cost planning section of the offering; no additional charges (i.e., for transportation, out-of-pocket expenses, etc.) will be allowed unless so specified in the offering.
5. *Ability to Perform* - The selected Professional Consultant/Vendor warrants that it possesses, or has arranged through subcontractors, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all federal, state, county, City, and special district laws, ordinances, and regulations.
6. *Laws to be Observed* - The selected Professional Consultant/Vendor shall keep itself fully informed of and shall observe and comply with all applicable state and federal laws and City of Santa Ana ordinances, regulations, and adopted codes during its performance of the work.
7. *Payment of Taxes* - The offering costs shall include full compensation for all taxes that the selected Professional Consultant/Vendor is required to pay, including City business license taxes.
8. *Permits and Licenses* - The selected Professional Consultant/Vendor shall procure all permits and licenses, pay all charges, fees, and taxes, and give all necessary notices.
9. *Selection* - The final award of an agreement or agreements is subject to approval by the elected officials governing the awarding body.
10. *Subcontractors* - The City reserves the right to reject, replace, and approve any and all subcontractors. All subcontractors shall be identified in the response to the RFP and the City reserves the right to reject any subcontractor(s). If the City approves,

the primary Professional Consultant/Vendor will be responsible for subcontractors and the City shall assume no liability of such subcontractors.

11. *Rules for Proposals* - The signer of the RFP must declare in writing that the only person, persons, company, or parties interested in the proposal as principals are named therein; the signer must also declare in writing that the proposal is made without colluding with any other person, persons, company, or parties submitting a proposal; lastly, the signer must declare in writing that it is in all respects fair and in good faith without collusion or fraud, and that the signer of the proposal has full authority to bind the proposer.
12. *Payment Schedules* - The City of Santa Ana and the selected Professional Consultant/Vendor(s) will negotiate the payment schedule(s) based on defined and measurable milestones and deliverables. Under no circumstances will payments be made in advance of work performed.
13. *Project completion Holdback* - Where the City of Santa Ana and the selected Professional Consultant/Vendor(s) negotiate for the future completion and delivery of a specified project/response item, the City will require a 10% holdback of Agreement monies until project/response item completion, delivery, and project approval.

#### Coordination of Work or Services / Contract Officer / Extra Work / Change Order Authority

Where the City of Santa Ana and the selected Professional Consultant/Vendor(s) agree to exercise a contingency option included in the proposed scope of work, a change order will be drawn-up by the City's designated contract officer authorizing such extra work. To become effective, the proposed change order must be agreed to in writing by an authorized representative of the Professional Consultant/Vendor(s). Exceptions to this requirement may occur where a contingency option is developed as part of the original agreement between the parties or pursuant to an amendment to such agreement and the scope of the extra work, costs, and time frame for delivery of services or work product are fixed and the City merely decides to elect to exercise its option.

#### Errors and Omissions

The Professional Consultant/Vendor shall notify the City, and not be allowed to take advantage of any obvious errors and/or omissions within this offering or the Professional Consultant/Vendor's response.

#### Litigation Status

Each Proposer must include in its proposal a complete disclosure of any alleged significant prior or ongoing contract failures, any civil or criminal litigation or investigations pending which involve the Proposer or in which the Proposer has been judged guilty or liable. Failure to comply with the terms of this provision will disqualify any proposal. The City reserves the right to reject any proposal based upon the Proposer's prior history with the City or with any other party, which documents, without limitation, unsatisfactory performance, adversarial or contentious demeanor, significant failure(s) to meet contract milestones or other contractual failures.

#### Rights to Pertinent Materials

All responses, inquiries, and correspondence relating to this RFP and all reports, charts, displays, schedules, exhibits, and other documentation produced by the Professional Consultant/Vendor that are submitted as part of the proposal shall become the property of the City upon receipt.

Government Code Sections 6250 et. Seq., the "Public Records Act" defines public records as any writing containing information relating to the conduct of the public's business. The Public Records

Act provides that public records shall be disclosed upon written request, and that any citizen has a right to inspect any public record, unless the document is exempted from the disclosure requirements. The City cannot assure that any information submitted in response to the RFP will be confidential. If the City receives a request for any document submitted in response to this RFP, it will not assert any privileges that may exist on behalf of the person or business submitting the proposal. It is the responsibility of the person or business entity submitting the proposal to assert any applicable privileges or reasons why the document should not be produced.

#### News Releases / Publications

News releases or publications by any selected Professional Consultant/Vendor or any permitted subcontractors and all other related information (i.e., recommendations, etc.) pertaining to this engagement shall not be made available to anyone without prior approval by the City.

#### Right to Reject Offerings

The City of Santa Ana reserves the right to reject any and all offerings or any part of any offering, to waive minor defects or technicalities, or to solicit new offerings on the same project or on a modified project, which may include portions of the originally proposed project, as the City may deem necessary in its interest. The City reserves the right to reject any or all proposals submitted and no assurance is made hereby that any Agreement will be awarded pursuant to this RFP. The City reserves the right to waive minor inconsistencies in submitted proposals.

#### Protests

Proposers may file a "protest" to a Request for Proposal (RFP) with the City's Purchasing Department. In order for a protest to be considered valid it must:

1. Be filed in writing within five (5) business days of either the RFP issued date or before 5:00 p.m. of the 5th business day following the posting of RFP Results/Notice of Intent to Award Agreement on the City's website;
2. Clearly identify the specific irregularity or accusation;
3. Clearly identify the specific City staff determination or recommendation being protested;
4. Specify, in detail, the grounds of the protest and the facts supporting the protest; and
5. Include all relevant, supporting documentation with the protest at time of filing.

If the protest does not comply with each of these requirements, it will be rejected as invalid. If the protest is valid, the City's Purchasing Supervisor, or other designated City staff member, shall review the basis of the protest and all relevant information. The Purchasing Supervisor or designee will provide a written decision to the protestor within ten (10) business days from receipt of protest. The decision of the Purchasing Supervisor, or designee, is final and no further appeals will be considered.

#### Negotiations

Negotiations for a binding estimate of cost structure will begin with the recommended top-ranked firm(s). If an Agreement acceptable to the City cannot be negotiated at a price considered fair and reasonable, negotiations shall be terminated with the top-ranked firm(s) and negotiation will then proceed with the next highest ranked firm(s) until an Agreement is reached or withdraw the RFP. The evaluation team will conduct all subsequent negotiations and will make a recommendation to the City.

The City reserves the right to negotiate final contract terms with any Proposer selected. Negotiations shall be confidential and not subject to disclosure to competing Consultant/Vendors unless and until an agreement is reached. The contract between the parties will consist of the RFP together with any modifications thereto, and the awarded Consultant/Vendor's proposal, together with any modifications and clarifications thereto that are submitted at the request of the City during the evaluation and negotiation process. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the final executed contract, the RFP, any modifications and clarifications to the awarded Consultant/Vendor's proposal, and the awarded Consultant/Vendor's proposal. Specific exceptions to this general rule may be noted in the final executed contract.

#### Exceptions to the RFP

The format of the RFP must be followed and all requested information must be submitted as indicated for continued consideration. However, the City of Santa Ana is receptive to any additional information and/or suggestions pertaining to the required services and additional related capabilities of the proposer. Exceptions raised during Agreement negotiations that have not been previously declared in the proposal may be grounds for disqualification as deemed appropriate by the City of Santa Ana.

#### Other General Conditions

- Unavailability of Funds - If funds are not available to the City of Santa Ana, this award will be postponed, canceled, or phased. The City makes no guarantee by release of this RFP that any offering will be selected and/or funded.
- Notice to Proceed - A Notice to Proceed will be issued after the City receives the fully executed Agreement.

## **XV. MISCELLANEOUS**

All materials submitted which have not been clearly designated as proprietary information become the property of the City and may be returned only at the City's option. Proposals submitted become the property of the City and may be reviewed and evaluated by any persons at the discretion of the City.



**PROPOSER'S COVER SHEET**

**For**

**UTILITY USERS' TAX REVENUE AUDITING, RECOVERY, REPORTING,  
ANALYSIS, AND LEGISLATIVE/STATE AGENCY LIAISON AND  
IMPLEMENTATION MONITORING SERVICES**

**REQUEST FOR PROPOSAL (RFP #20-137)**

**CITY OF SANTA ANA**

**FINANCE & MANAGEMENT SERVICES AGENCY  
TREASURY AND CUSTOMER SERVICES DIVISION**

***\*\*Information Must Be Received Prior to 4:00 p.m. Pacific Standard Time  
on NOVEMBER 30, 2020***

**Submit Proposal Information To:**

City of Santa Ana  
Finance & Management Services Agency  
Treasury & Customer Service  
RFP # **20-137**  
20 Civic Center Plaza, 1<sup>st</sup> Floor  
Santa Ana, CA 92701  
Attn: Alex Gutierrez

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**NAME AND ADDRESS OF PROFESSIONAL CONSULTANT/VENDOR SUBMITTING  
THIS INFORMATION:**

Name of Professional Consultant/Vendor: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: (Direct) \_\_\_\_\_ (Cell) \_\_\_\_\_

FAX: \_\_\_\_\_

Email: \_\_\_\_\_

**PROPOSER'S STATEMENT**

Proposer understands and agrees that this written RFP (or any part thereof specifically designated and accepted by the City of Santa Ana, (hereinafter City) shall constitute the entire agreement between Proposer and the City only after it has been accepted by the City Council, endorsed by the Clerk of the Council with his/her signature and official seal noting hereon the action of approval of the Council, signed by the Executive Director or his duly authorized agent, and signed by the City Attorney, denoting his approval of the form of this document, and its execution, and when it or an exact copy of it has been either delivered to Proposer or deposited with the United States Postal Service properly addressed to the Proposer with the correct postage affixed thereto.

Proposer further agrees that upon delivery (as defined above) of the accepted agreement he/she will furnish City all required bonds and certificate of liability insurance within ten (10) days (excluding Saturdays, Sundays and City's legal holidays), or the funds, check, draft, or Proposer's bond substituted in lieu thereof accompanying this proposal shall become the property of the City and shall be considered as payment of damages due to the delay and other causes suffered by City because of the failure to furnish the necessary bonds and because it is distinctly agreed that the proof of damages actually suffered by City is difficult to ascertain; otherwise said funds, check drafts, or Proposer's bond substituted in lieu thereof shall be returned to the undersigned.

Proposer understands that a proposal is required for the entire work, that the estimated quantities set forth in the RFP schedule are solely for the purpose of comparing proposals, and that final compensation under the contract will be based upon the actual quantities of work satisfactorily completed.

All terms contained in the specifications, the certification of nondiscrimination by contractors, and the required insurance certificates are to be incorporated by reference into this agreement and are made specifically as part of this RFP.

Firm/Entity: \_\_\_\_\_

Signed and Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**THIS FORM MUST BE COMPLETED AND INCLUDED WITH THE PROPOSAL.  
PROPOSALS THAT DO NOT CONTAIN THIS FORM WILL BE CONSIDERED  
NONRESPONSIVE.**

**COMPANY INFORMATION****COMPANY** \_\_\_\_\_

The Proposer will provide a profile of its organization. The Proposer may attach any additional literature and product brochures. At a minimum, the Proposer shall provide the following information:

1. **Year established:** \_\_\_\_\_
2. **Business Organization Name:** \_\_\_\_\_
3. **Parent Company:** \_\_\_\_\_
4. **Subsidiary or Subcontractor Actually Offering/Performing Service(s):**  
\_\_\_\_\_  
\_\_\_\_\_
5. **Office Locations:** \_\_\_\_\_  
\_\_\_\_\_
6. **Serving Office for this Project:** \_\_\_\_\_
7. **Services Available:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
8. **Total Number of Employees:** \_\_\_\_\_
9. **Product and Service History directly applicable to this RFP:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
10. **Number of Employees Focused on the Service Offering(s):** \_\_\_\_\_
11. **Number of Currently Active Signed Client Agreements directly applicable to services proposed for this RFP:** \_\_\_\_\_

**SUMMARY SHEET**

**Firm Name:** \_\_\_\_\_

**Firm Parent or Ownership:** \_\_\_\_\_

**Firm Address:** \_\_\_\_\_

**Firm Telephone Number:** \_\_\_\_\_

**Firm Fax Number:** \_\_\_\_\_

**Number of Years in Existence:** \_\_\_\_\_

**Management Contact** (person responsible for direct contact with the City of Santa Ana and services required for this RFP):

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Fax:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**Project Manager** (Person responsible for day-to-day servicing of the account):

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Fax:** \_\_\_\_\_

**Email:** \_\_\_\_\_

## CLIENT REFERENCE FORM

Using the following format, please provide at five (5) client references for the directly applicable services that you are proposing to supply.

### A. PROFESSIONAL CONSULTANT/VENDOR INFORMATION

Name \_\_\_\_\_

Contact Name: \_\_\_\_\_ Email: \_\_\_\_\_

## B. CLIENT INFORMATION

Name of Organization: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_

Agreement Manager: \_\_\_\_\_ Email: \_\_\_\_\_

Service Dates: \_\_\_\_\_

Summary of Work Organization Engaged In: \_\_\_\_\_

Amount of Agreement: \$\_\_\_\_\_ Term of Agreement \_\_\_\_\_

Number of Client Staff Engaged: \_\_\_\_\_ Number of Locations \_\_\_\_\_

### C. TYPES OF SERVICES PROVIDED

Indicate services that were provided:

[illegible]

**COST/BID PROPOSAL FORM - RFP No. 20-137**

**NOTE 1:** Submit and label a separate COST/BID Proposal Form for each proposed source of revenue bid under **Section III [Scope of Services and Time of Performance], subsection (A) [Sources of Revenue]** and/or for each desired response item bid - numbered (1) through (3) - as described in **Section I [Introduction], subsection (A) [Purpose]**.

In compliance with the Agreement Documents, the undersigned hereby proposes to furnish all required labor, materials, supervision, transportation, equipment, services, taxes and incidentals required for **(Items – Check each applicable item) #1 \_\_\_\_ #2 \_\_\_\_ #3 \_\_\_\_**.

The Work is to be done in strict conformity with the Agreement Documents now on file in the Finance & Management Services Agency, Treasury & Customer Service Division, for the following sum:

- **Utility Users' Tax Revenue Auditing, Recovery, Reporting, Analysis, and Legislative/State Agency Liaison and Implementation Monitoring Services - Cost/Bid Proposal**

All Fiscal Years below must be bid in order for the quote to be considered responsive except where bidder specifies a future commencement date of performance.

	<b>Fiscal Year (February 1 through January 31)</b>	<b>Option 1 Fixed Flat Fee</b>	<b>Option 2 Percentage of Revenue Source</b>	<b>Option 3 Percentage of Recovered Revenues</b>	<b>Option 4 Time and Expenses</b>
1.	<b>FY 2021-2022</b>				
2.	<b>FY 2022-2023</b>				
3.	<b>FY 2023-2024</b>				
4.	<b>FY 2024-2025</b>				
5.	<b>FY 2025-2026</b>				
	<b>Total Cost:</b>				

**Be advised:** At Proposer's discretion from 1 to 4 Options may be bid in alternative or in combination to one another.

*Notes or additional detail regarding Cost/Bid Proposal Option selected above or regarding bids made in the alternative or in combination to one another:*

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*Additional explanatory pages may be appended here to your principal Cost/Bid Proposal explanation as necessary.*



**Section III, C-4, i. Specialty UUT Audits – see page 5 above.**

All Fiscal Years below must be bid in order for the quote to be considered responsive except where bidder specifies a future commencement date of performance.

Fiscal Year (February 1 through January 31)		Option 1 Fixed Flat Fee	Option 2 Percentage of Revenue Source	Option 3 Percentage of Recovered Revenues	Option 4 Time and Expenses
1.	FY 2021-2022				
2.	FY 2022-2023				
3.	FY 2023-2024				
4.	FY 2024-2025				
5.	FY 2025-2026				
	<b>Total Cost:</b>				

Notes or additional detail regarding Cost/Bid Proposal Option selected above or regarding bids made in the alternative or in combination to one another:

[illegible]

Additional explanatory pages may be appended here to your "Specialty UUT Audits" Cost/Bid Proposal explanation as needed.



**COST/BID PROPOSAL FORM - RFP No. 20-137 - (Continued)**

If awarded the Agreement, the undersigned agrees to sign said Agreement and furnish the necessary surety bonds and/or insurance certificates within thirty (30) days after receipt of the notice of award of Agreement, and to begin work when directed by the City.

It is understood that this Cost/Bid Proposal is based upon completion of Work commencing on the date set forth in the Agreement issued by the City to the Professional Consultant/Vendor.

In determining the amount bid by each bidder, the City shall disregard mathematical errors in addition, subtraction, multiplication, and division that appear obvious on the face of the Proposal. When such a mathematical error appears on the face of the Proposal, the City shall have the right to correct such error and to compute the total amount bid by said bidder on the basis of the corrected figure or figures.

When an item price is required to be set forth in the Proposal, and the total for the item set forth separately does not agree with a figure which is derived by multiplying the item price times the Project Coordinators' estimate of the quantity of work to be performed for said item, the item price shall prevail over the sum set forth as the total for the item unless, in the sole discretion of the City such a procedure would be inconsistent with the policy of the bidding procedure. The total paid for each such item of work shall be based upon the item price and not the total price. Should the Proposal contain only total price for the item and the item price is omitted, the City shall determine the item price by dividing the total price for the item by the Project Manager's estimate of the estimated quantities of work to be performed as items of work.

If the Proposal contains neither the source of revenue price nor the total response item price item, then it shall be deemed incomplete and the Proposal shall be disregarded. The undersigned has examined or is otherwise familiar with the location of the proposed Work and the local conditions at the place where the Work is to be done.

The undersigned has checked carefully all of the foregoing figures and understands that the City of Santa Ana will not be responsible for any errors or omissions on the part of the undersigned in making up this Cost/Bid Proposal.

The undersigned agrees that all addenda received and acknowledged herein shall become a part of and be included in this Cost/Bid Proposal. This Cost/Bid Proposal includes the following addenda:

Addenda # \_\_\_\_\_ Date \_\_\_\_\_

Addenda # \_\_\_\_\_ Date \_\_\_\_\_

Addenda # \_\_\_\_\_ Date \_\_\_\_\_

If the bidder is a corporation, the Cost/Bid Proposal must be executed in the name of the corporation and must be signed by a duly authorized officer of the corporation.

If the bidder is a limited liability company, the Cost/Bid Proposal must be executed in the name of the company and must be signed by a duly authorized managing member of the company.

If the bidder is a partnership or co-partnership, the Cost/Bid Proposal must be executed in the name of the partnership / co-partnership and one of the partners / co-partners must subscribe their signature thereto as the authorized representative of the partnership or co-partnership.

If the bidder is a joint venture, the Cost/Bid Proposal must be executed in the name of the joint venture and must be signed by a duly authorized representative of the joint venture.

PROPOSER: \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Print Name \_\_\_\_\_ Title \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ Email \_\_\_\_\_

Tax ID Numbers - Federal \_\_\_\_\_ State \_\_\_\_\_

City of Santa Ana Business License Tax Certificate Number \_\_\_\_\_

[Business License Tax Certificate No. must be provided prior to final issuance of Professional Consultant Agreement]

**PROPOSER'S CERTIFICATION FORM**

**CERTIFICATION OF RESPONSE TO REQUEST FOR PROPOSALS**

**TO THE CITY OF SANTA ANA**

**RFP No. 20-137**

1. The undersigned hereby submits its Response to Request for Proposals quotation and, by doing so, agrees to furnish services to the City in accordance with the Request for Proposals (RFP), dated October 1, 2020 and to be bound by the terms and conditions of the RFP and any subsequent Addenda to said RFP.

2. This firm has carefully reviewed its response and understands and agrees that the City is not responsible for any errors or omissions on the part of the proposer and that the proposer is responsible for them.

3. It is understood and agreed that the City reserves the right to accept or reject any or all responses and to waive any informality or irregularity in any quotation received by the City.

4. The response includes all of the commentary, figures and data required by the Request for Proposal, dated NOVEMBER 30, 2020 together with any Addenda subsequently issued thereto.

5. This firm has carefully read and fully understands all of the items contained in the **Section XIV [General Terms & Conditions]**. This firm agrees to all of the general requirements except for those disclosed by the firm in its Response to Request for Proposals quotation(s) - RFP No. **20-137**

6. The quotations shown on this firm's **Cost/Bid Proposal Form(s)** (**Attachment 6**) shall be valid for minimum (180) days following submission.

Name of Firm: \_\_\_\_\_

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

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

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**THIS FORM MUST BE COMPLETED AND INCLUDED WITH THE PROPOSAL.  
PROPOSALS THAT DO NOT CONTAIN THIS FORM WILL BE CONSIDERED  
NONRESPONSIVE.**

**NON-COLLUSION AFFIDAVIT**

(Title 23 United States Code Section 112 and Public Contract Code Section 7106)

In conformance with Title 23 United States Code Section 112 and Public Contract Code 7106 the BIDDER declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the BIDDER has not directly or indirectly induced or solicited any other BIDDER to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any BIDDER or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the BIDDER has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the BIDDER or any other BIDDER, or to fix any overhead, profit, or cost element of the bid price, or of that of any other BIDDER, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the BIDDER has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Note: The above Non-Collusion Affidavit is part of the Proposal. BIDDERS are cautioned that making a false certification may subject the certifier to criminal prosecution.

Signed \_\_\_\_\_

State of California  
County of \_\_\_\_\_

Subscribed and sworn to (or affirmed) before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

\_\_\_\_\_  
Notary Public Signature

Notary Public Seal

**THIS FORM MUST BE COMPLETED AND INCLUDED WITH THE PROPOSAL.  
PROPOSALS THAT DO NOT CONTAIN THIS FORM WILL BE CONSIDERED  
NONRESPONSIVE.**

**NON-LOBBYING CERTIFICATION**

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in conformance with its instructions.

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

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Firm: \_\_\_\_\_

Date: \_\_\_\_\_

**THIS FORM MUST BE COMPLETED AND INCLUDED WITH THE PROPOSAL.  
PROPOSALS THAT DO NOT CONTAIN THIS FORM WILL BE CONSIDERED  
NONRESPONSIVE.**

**NON-DISCRIMINATION CERTIFICATION**

The undersigned consultant or corporate officer, during the performance of this contract, certifies as follows:

1. The Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Consultant shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action 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. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The Consultant shall, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The Consultant shall send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Consultant shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Consultant shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation, to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Consultant's non-compliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, the contract may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulations, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Consultant shall include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontract or purchase order as the administering agency may direct as means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Consultant becomes involved in, or is threatened with, litigation with a sub-consultant or vendor as a result of such direction by the administering agency, the Consultant may request that the United States enter into such litigation to protect the interests of the United States.

8. Pursuant to California Labor Code Section 1735, as added by Chapter 643 Stats. 1939, and as amended, no discrimination shall be made in the employment of persons upon public works because of race, religious creed, color, national origin, ancestry, physical handicaps, mental condition, marital status, or sex of such persons, except as provided in Section 1420, and any consultant of public works violating this Section is subject to all the penalties imposed for a violation of the Chapter.

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Firm: \_\_\_\_\_

Date: \_\_\_\_\_

**THIS FORM MUST BE COMPLETED AND INCLUDED WITH THE PROPOSAL.  
PROPOSALS THAT DO NOT CONTAIN THIS FORM WILL BE CONSIDERED  
NONRESPONSIVE.**

**SAMPLE PROFESSIONAL SERVICE AGREEMENT**

THIS AGREEMENT is made and entered into this 1<sup>st</sup> day of February 1, 2020 by and between \_\_\_\_\_, ("Consultant"), and the City of Santa Ana, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California ("City").

**RECITALS**

- A. The City desires to retain a Consultant having special skill in providing Utility Users' Tax - Electric, Gas, & Telecommunications revenue auditing, recovery, reporting, analyses, and legislative and state agency liaison and implementation monitoring (including coordination with City's state and federal lobbyist in connection with legislation/regulation to City's general tax resources) services.
- B. Consultant represents that Consultant is able and willing to provide such services to the City.
- C. In undertaking the performance of this Agreement, Consultant represents that it is knowledgeable in its field and that any services performed by Consultant under this Agreement will be performed in compliance with such standards as may reasonably be expected from a professional consulting firm in the field.

**NOW THEREFORE**, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the parties agree as follows:

**1. SCOPE OF SERVICES**

Consultant shall perform during the term of this Agreement, the tasks and obligations including all labor, materials, tools, equipment, and incidental customary work required to fully and adequately complete the services described and set forth in **Scope of Services - Section III**, attached hereto and incorporated by reference.

**2. COORDINATION OF WORK OR SERVICES**

**A. Change Order Required**

No extra work or adjustment in the time to perform this Agreement may be undertaken unless a written "Change Order" is first given by the Contract Officer or his/her designee, to Consultant, incorporating therein any material and administration of this Agreement for CITY and have authority to enter into Change Orders with Consultant pursuant to this Agreement. It shall be Consultant's responsibility to assure that CITY's Contract Officer is kept informed of the progress of the performance of the consulting services set forth in this Agreement and Consultant shall refer any decisions which must be made by CITY to the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of CITY required hereunder to carry out the terms of this Agreement. Unless otherwise specified herein, any approval of CITY required hereunder shall mean the approval of the Contract Officer. All notices regarding consulting services or requested changes in said Agreement shall represent adjustments in the contract and/or in the time to perform this Agreement, which said adjustments are subject to the written approval of Consultant.



B. Contract Officer

City will appoint a Contract Officer who will be in charge of the contract maintenance. The City's appointed Contract Officer shall be the City Manager, or designee of the City Manager.

3. **ADDITIONAL WORK OR SERVICES**

A. Extra Work or Services

CITY shall have the right at any time during the performance of the work or services set forth in this Master Renewal Agreement, without invalidating said Master Renewal Agreement or any amendments thereto, to elect to exercise any existing option specified in the Scope of Services for extra work or services or to order extra work or services pursuant to a duly executed Change Order or to expend previously authorized contingent funds to cover expenses for work or services agreed to by the PARTIES but exceeding the amounts initially specified under the Compensation provisions of this Master Renewal Agreement or thereby make changes by altering, adding to or deducting from said work or services.

B. Change Order

No extra work or services as set forth in subsection (a) above may be undertaken unless a written "Change Order" is first given by the Contract Officer to the Consultant, incorporating therein any material adjustment in the contract and/or the time to perform this Master Renewal Agreement, which said adjustments are subject to the written approval of the Consultant.

4. **COMPENSATION**

- A. City agrees to pay, and Consultant/Vendor agrees to accept as total payment for its services for City, the rates and charges identified in the **Cost/BID Proposal Form – Attachment 6**. The total amount to be expended under this Agreement shall not exceed **\$XXX,XXX** during the term of this Agreement, including any extension periods exercised under **Section 5 – Term**.
- B. Payment by City shall be made within 45 days (forty-five) days following receipt of proper invoice evidencing work performed, subject to City accounting procedures. Payment need not be made for work that fails to meet the standards of performance set forth in the Recitals that may reasonably be expected by City.

5. **TERM**

This Agreement shall be for three (3) years commencing February 1, 2020 and terminating January 31, 2024, with an option exercisable by the City for two (2) one (1) year extensions, exercisable in writing by the City Manager and the City Attorney, unless terminated earlier in accordance with Section 16, below. All terms and conditions of the Agreement shall remain effective during any additional renewal term.

6. **PREVAILING WAGES**

Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the

services being performed are part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

## **7. INDEPENDENT CONTRACTOR**

Consultant shall, during the entire term of this Agreement, be construed to be an independent contractor and not an employee of the City. This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the professional manner in which Consultant performs the services which are the subject matter of this Agreement; however, the services to be provided by Consultant shall be provided in a manner consistent with all applicable standards and regulations governing such services. Consultant shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

## **8. OWNERSHIP OF MATERIALS**

This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data, which were provided to Consultant by the City. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

## **9. INSURANCE**

Prior to undertaking performance of work under this Agreement, Consultant shall maintain and shall require its Subcontractors, if any, to obtain and maintain insurance as described below:

- a. **Commercial General Liability Insurance.** Consultant shall maintain commercial general liability insurance naming the City, its officers, employees, agents, volunteers and representatives as additional insured(s) and shall include, but not be limited to protection against claims arising from bodily and personal injury, including death resulting therefrom and damage to property, resulting from any act or occurrence arising out of Consultant's operations in the performance of this Agreement, including, without limitation, acts involving vehicles. The amounts of insurance shall be not less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom, and property damage, in the total amount of \$2,000,000 per occurrence, with \$2,000,000 in the aggregate. Such insurance shall (a) name the City, its officers, employees, agents, and

representatives as additional insured(s); (b) be primary and not contributory with respect to insurance or self-insurance programs maintained by the City; and (c) contain standard separation of insureds provisions.

- b. Business automobile liability insurance, or equivalent form, with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles. Due to the nature of the services contemplated under this agreement.
- c. Worker's Compensation Insurance. In accordance with the provisions of Section 3700 of the Labor Code, Consultant, if Consultant has any employees, is required to be insured against liability for worker's compensation or to undertake self-insurance. Prior to commencing the performance of the work under this Agreement, Consultant agrees to obtain and maintain any employer's liability insurance with limits not less than \$1,000,000 per accident.
- d. Errors and omissions insurance, with a combined single limit of not less than \$1,000,000 per claim with \$2,000,000 in the aggregate.
- e. Cyber/Technology liability insurance, together with Crime, and Fiduciary liability insurance with a limit of not less than \$1,000,000.00 per claim with \$2,000,000 in the aggregate.
- f. The following requirements apply to the insurance to be provided by Consultant pursuant to this section:
  - i. Consultant shall maintain all insurance required above in full force and effect for the entire period covered by this Agreement.
  - ii. Certificates of insurance shall be furnished to the City upon execution of this Agreement and shall be approved by the City.
  - iii. City of Santa Ana, its officers, employees, agents and representatives shall be Additional Insureds with respect to General Liability and Auto Liability Insurance is Primary and Non-Contributory.
  - iv. Certificates and policies shall state that the policies shall not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the City of cancellation with ten (10) days prior notice for non-payment of premium in accordance with policy provisions.
  - v. Consultant shall supply City with a fully executed additional insured endorsement.
  - vi. Certificates of insurance endorsements shall show the City as a certificate holder as follows:

City of Santa Ana  
Risk Management Division, 4<sup>th</sup> Floor  
20 Civic Center Plaza  
Santa Ana, CA 92701
  - vii. Where the amounts or coverage provided by the certificates of insurance provides coverage greater than those listed by this Agreement, the amounts provided by the certificates of insurance shall be incorporated by reference into the Agreement.

- viii. Consultant shall supply City with a fully executed additional insured endorsement.
- g. If Consultant fails or refuses to produce or maintain the insurance required by this section or fails or refuses to furnish the City with required proof that insurance has been procured and is in force and paid for, the City shall have the right, at the City's election, to forthwith terminate this Agreement. Such termination shall not affect Consultant's right to be paid for its time and materials expended prior to notification of termination. Consultant waives the right to receive compensation and agrees to indemnify the City for any work performed prior to approval of insurance by the City.

## **10. INDEMNIFICATION**

Consultant agrees to defend, and shall indemnify and hold harmless the City, its officers, agents, employees, contractors, special counsel, and representatives from liability: (1) for personal injury, damages, just compensation, restitution, judicial or equitable relief arising out of claims for personal injury, including death, and claims for property damage, which may arise from the negligent operations of the Contractor, its subcontractors, agents, employees, or other persons acting on its behalf which relates to the services described in section 1 of this Agreement; and (2) from any claim that personal injury, damages, just compensation, restitution, judicial or equitable relief is due by reason of the terms of or effects arising from this Agreement. This indemnity and hold harmless agreement applies to all claims for damages, just compensation, restitution, judicial or equitable relief suffered, or alleged to have been suffered, by reason of the events referred to in this Section or by reason of the terms of, or effects, arising from this Agreement. The Consultant further agrees to indemnify, hold harmless, and pay all costs for the defense of the City, including fees and costs for special counsel to be selected by the City, regarding any action by a third party challenging the validity of this Agreement, or asserting that personal injury, damages, just compensation, restitution, judicial or equitable relief due to personal or property rights arises by reason of the terms of, or effects arising from this Agreement. City may make all reasonable decisions with respect to its representation in any legal proceeding. Notwithstanding the foregoing, to the extent Consultant's services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

## **11. INTELLECTUAL PROPERTY INDEMINIFICATION**

Consultant shall defend and indemnify the City, its officers, agents, representatives, and employees against any and all liability, including costs, for infringement of any United States' letters patent, trademark, or copyright infringement, including costs, contained in the work product or documents provided by Consultant to the City pursuant to this Agreement.

## **12. RECORDS**

Consultant shall keep records and invoices in connection with the work to be performed under this Agreement. Consultant shall maintain complete and accurate records with respects to the costs incurred under this Agreement and any services, expenditures, and disbursements charged to the City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such records and invoices shall be clearly identifiable. Consultant shall allow a representative of the City to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement during regular

business hours. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

### **13. CONFIDENTIALITY**

If Consultant receives from the City information which due to the nature of such information is reasonably understood to be confidential and/or proprietary, Consultant agrees that it shall not use or disclose such information except in the performance of this Agreement, and further agrees to exercise the same degree of care it uses to protect its own information of like importance, but in no event less than reasonable care. "Confidential Information" shall include all nonpublic information. Confidential information includes not only written information, but also information transferred orally, visually, electronically, or by other means. Confidential information disclosed to either party by any subsidiary and/or agent of the other party is covered by this Agreement. The foregoing obligations of non-use and nondisclosure shall not apply to any information that (a) has been disclosed in publicly available sources; (b) is, through no fault of the Consultant disclosed in a publicly available source; (c) is in rightful possession of the Consultant without an obligation of confidentiality; (d) is required to be disclosed by operation of law; or (e) is independently developed by the Consultant without reference to information disclosed by the City.

### **14. CONFLICT OF INTEREST CLAUSE**

Consultant covenants that it presently has no interests and shall not have interests, direct or indirect, which would conflict in any manner with performance of services specified under this Agreement.

### **15. DISCRIMINATION**

Consultant shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. Consultant affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

### **16. EXCLUSIVITY AND AMENDMENT**

This Agreement represents the complete and exclusive statement between the City and Consultant, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of Consultant. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate Consultant or the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein.

### **17. ASSIGNMENT**

Inasmuch as this Agreement is intended to secure the specialized services of Consultant, Consultant may not assign, transfer, delegate, or subcontract any interest

herein without the prior written consent of the City and any such assignment, transfer, delegation or subcontract without the City's prior written consent shall be considered null and void. Nothing in this Agreement shall be construed to limit the City's ability to have any of the services which are the subject to this Agreement performed by City personnel or by other Consultants retained by City.

#### **18. TERMINATION**

This Agreement may be terminated by the City upon ninety (90) days written notice of termination. In such event, Consultant shall be entitled to receive and the City shall pay Consultant compensation for all services performed by Consultant prior to effective date of such notice of termination, subject to the following conditions:

- b. As a condition of such payment, the Executive Director may require Consultant to deliver to the City all work product(s) completed as of such date, and in such case such work product shall be the property of the City unless prohibited by law, and Consultant consents to the City's use thereof for such purposes as the City deems appropriate.
- b. Payment need not be made for work which fails to meet the standard of performance specified in the Recitals of this Agreement.

#### **19. WAIVER**

No waiver of breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure or right, or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

#### **20. JURISDICTION - VENUE**

This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

#### **21. PROFESSIONAL LICENSES**

Consultant shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the State of California, the City of Santa Ana and all other governmental agencies. Consultant shall notify the City immediately and in writing of its inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

#### **22. MISCELLANEOUS PROVISIONS**

- a. Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this



Agreement, and shall indemnify City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

- b. All Exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.
- c. Whenever the terms of these Recitals conflict with terms of any Exhibit incorporated herein by reference, then the terms and intent of these Recitals shall prevail and be controlling.
- d. The said Agreement must be signed below and may be signed in counterpart and delivered by fax, emailed as a PDF (Portable Document Format) file attachment, or by other means that displays the original or a copy of the signatures. Any subsequent amendments may be signed and delivered in the same manner.

### 23. NOTICE

Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by fax or other telegraphic communication in the manner provided in this Section, to the following persons:

To City:

Clerk of the City Council  
City of Santa Ana  
20 Civic Center Plaza (M-30)  
P.O. Box 1988  
Santa Ana, CA 92702-1988  
Fax: 714-647-6956

With courtesy copies to:

Kathryn Downs, CPA  
Finance & Management Services Agency  
City of Santa Ana  
20 Civic Center Plaza (M-17)  
P.O. Box 1988  
Santa Ana, California 92702  
Fax: (714) 647-5304

Willard V. Holt  
Treasury & Customer Services Manager  
City of Santa Ana  
20 Civic Center Plaza (M-15)  
P.O. Box 1964  
Santa Ana, California 92702  
Fax: (714) 647-5304

Sonia R. Carvalho  
City Attorney  
City of Santa Ana  
20 Civic Center Plaza (M-29)  
P.O. Box 1988  
Santa Ana, California 92702  
Fax: (714) 647-6515

To Consultant:

First & Last Name – Title

Consultant Firm Name

Address

City, State, Zip

Fax:

A party may change its address by giving notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by fax, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

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//

{Signatures on following page}



IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

**ATTEST:**

**CITY OF SANTA ANA**

\_\_\_\_\_  
Daisy Gomez  
Clerk of the Council

\_\_\_\_\_  
Kristine Ridge  
City Manager

**APPROVED AS TO FORM:**

SONIA R. CARVALHO  
City Attorney

**CONSULTANT:**

By: \_\_\_\_\_  
Lisa Storck  
Assistant City Attorney

\_\_\_\_\_  
(Company Name  
(Name & Title of Signatory)

**RECOMMENDED FOR APPROVAL:**

\_\_\_\_\_  
Kathryn Downs, CPA  
Executive Director  
Finance and Management Service Agency

**PROPOSAL EVALUATIONS***Evaluations*

An evaluation team composed of representatives from pertinent agencies/departments of the City of Santa Ana will evaluate proposals on a variety of qualitative and quantitative criteria. The selected proposal (or proposals) will be one(s) that provide the most effective approach that best meets the City's requirements. The lowest price proposal(s) will not necessarily be selected.

Selected Professional Consultant/Vendors may be invited to interviews and to make oral presentations/demonstrations to City representatives. The Professional Consultant/Vendor representative(s) attending the interview/oral presentation shall be technically qualified to respond to questions related to the proposed assessment and work plan.

The evaluation criteria of the proposals will include, but are not limited to the following aspects:

<b>1.</b>	Professional Consultant/Vendor Qualifications
<b>2.</b>	Professional Consultant/Vendor Experience
<b>3.</b>	Client References
<b>4.</b>	Proposed Scope of Services and Term of Contract
<b>5.</b>	Cost of Providing Service

Each proposal will be carefully reviewed by the evaluation team based on these criteria. A score will be assigned to each proposal based on a scale of 100 – see sample **Proposal Rating Form (Attachment 13)**. The City reserves full discretion to determine the competence and responsibility, professionalism, technical expertise, and/or financial position of proposers. Proposers will provide, in a timely manner, any and all information which the City deems necessary to make such a decision.

The evaluation team may conduct interviews with the top ranked firms (based on the evaluation weighting above). During the interview process, non-binding price proposals and costing data can be discussed. Once these interviews and discussions are completed, including the non-binding estimates of cost, the team will finalize the rankings.

**(SAMPLE)****PROPOSAL RATING FORM****Utility Users' Tax Revenue Auditing, Recovery, Reporting, Analysis, and  
Legislative/State Agency Liaison and Implementation Monitoring Services**

**Proposer(s):** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Selection Committee Member:**

**Name** \_\_\_\_\_ **Title** \_\_\_\_\_

**Member's Signature** \_\_\_\_\_

**Date of Rating Review:** \_\_\_\_\_

<b>Proposal Criteria</b>		<b>Available Points</b>	<b>Score</b>
<b>1.</b>	Professional Consultant/Vendor Qualifications	20	_____
<b>2.</b>	Professional Consultant/Vendor Experience	20	_____
<b>3.</b>	Client References	15	_____
<b>4.</b>	Proposed Scope of Services and Term of Contract	30	_____
<b>5.</b>	Cost of Providing Service	15	_____
	<b>Total</b>	<b>100</b>	_____

**DATA REQUIRED**

*The Response to the City of Santa Ana's Request for Proposal*

The content and sequence of the information contained in each copy of the proposal shall be as follows:

A. Letter of Transmittal

Include your firm's understanding of the work to be performed. Additionally, state why your firm believes it is the best qualified to perform the services requested. Include the Management Contact (*Representative authorized to sign an agreement for your firm*) and the Project Manager (*person responsible for the day-to-day management of the project*).

B. Table of Contents

Include a clear identification of the material by section and by page number.

C. Summary Sheet

1. This section of the proposal must include a fully-completed copy of the **Summary Sheet** included with this RFP (**Attachment 4**).
2. Provide the name, title, experience and qualifications of the personnel who will be assigned to the project.
3. Provide the résumés of the Management Contact with the City and the Project Manager.

D. Allocation of Resources

Provide a conceptual plan for services to the City that your firm believes are appropriate for the City. Indicate features, skills and/or services which distinguish your firm and make it the better choice for the City. Indicate how the resources of your firm (e.g., number and type of personnel allocated by hours) will be allotted for this project. Submittal of a project schedule is required as part of the Allocation of Resources.

E. Scope of Work and Term of Contract

Proposals must address all items set forth in **Section III [Scope of Work and Term of Contract]**. If you wish to decline to bid the Source of Revenue on a Response Item, you must so state. Additional information that your firm wishes to include must be clearly identified. The items must be addressed in the order in which they appear in **Section III** of this RFP.

F. Client References

Each firm must include the following references:

1. Complete **Client Reference Form (Attachment 5)** listing five (5) client references.
2. List similar services performed for all similar organizations/entities in the last five years and when performed. Please include names of organizations, and names and telephone numbers of persons who can be contacted with regard to the services your firm has provided.
3. List all public agencies for which Agreements were terminated in the last three years. Please include names of organizations, and names and telephone numbers of persons who can be contacted. Firms may provide a brief explanation of the reason(s) for termination(s).

G. Proposer Statement

Return a copy of the entire completed statement properly executed as provided for in **Proposer' Statement Form (Attachment 2)**.

H. Company Information Form

Return a copy of the entire completed company information as provided for in **Company Information Form (Attachment 3)**.

I. Cost/Bid Proposal Form(s)

Return a copy of the entire completed cost/bid proposal executed as provided for in **Cost/Bid Proposal Form(s) (Attachment 6)**. *Supplemental explanatory pages may be appended to each Cost/Bid Proposal Form section as needed.*

J. Certification of Proposals

Return a copy of the entire completed certification properly executed as provided for in **Proposer's Certification Form (Attachment 7)**.

K. Non-Collusion Affidavit

Return a copy of the entire completed affidavit properly executed as provided for in **Non-Collusion Affidavit Form (Attachment 8)**.

L. Non-Lobbying Certification

Return a copy of the entire completed certification properly executed as provided for in **Non-Lobbying Certification (Attachment 9)**.

M. Non-Discrimination Certification

Return a copy of the entire completed certification properly executed as provided for in **Non-Discrimination Certification (Attachment 10)**.





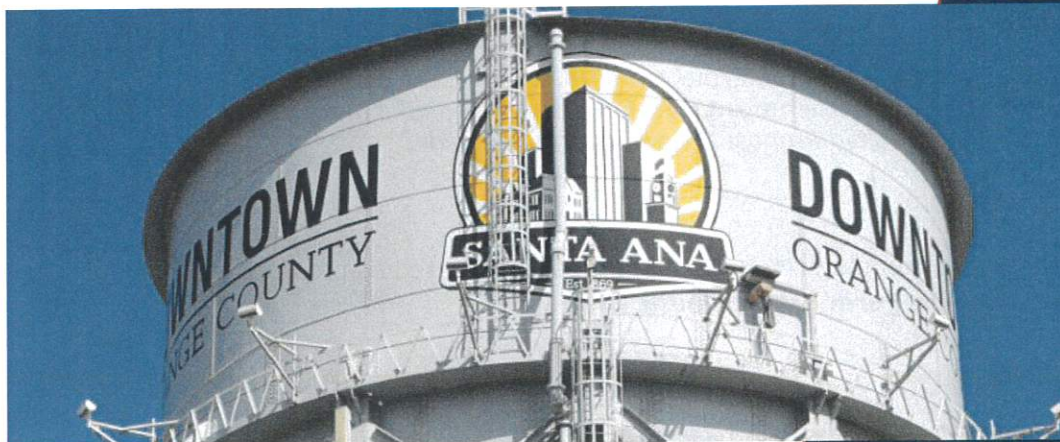
**A V E N U**  
INSIGHTS & ANALYTICS

## EXHIBIT B

# City of Santa Ana

REQUEST FOR PROPOSALS FOR

**UTILITY USERS' TAX REVENUE  
AUDITING, RECOVERY, REPORTING,  
ANALYSIS, AND LEGISLATIVE/STATE  
AGENCY LIAISON AND  
IMPLEMENTATION MONITORING  
SERVICES**



Submitted By:

Avenu Insights and Analytics, LLC  
5716 Corsa Ave. Suite 203  
Westlake Village, CA 91362  
Attn: Laura Burnett, Client Success Manager  
Phone: (805) 990-2348  
E-Mail: [proposals@avenuinsights.com](mailto:proposals@avenuinsights.com)

November 30, 2020

[WWW.AVENUINSIGHTS.COM](http://WWW.AVENUINSIGHTS.COM)

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November 30, 2020

City of Santa Ana  
Attn: Alex Gutierrez, Management Analyst  
Finance & Management Services Agency  
Treasury & Customer Service  
20 Civic Center Plaza, 1st Floor  
Santa Ana, CA 92701

**RE: Proposal for Property Tax Consultant**

Dear Alex Gutierrez,

Avenu Insights & Analytics, LLC ("Avenu"), is pleased to provide the City of Santa Ana ("the City") with the following response to the City's Request for Proposals (RFP) for Utility Users' Tax Revenue Auditing, Recovery, Reporting, Analysis, and Legislative/State Agency Liaison and Implementation Monitoring Services. As experts in these services and the current provider, we are confident that we have the required skills, expertise, capabilities, and knowledge to successfully continue to provide the City with these services.

Avenu believes we are best qualified to support the City in this project because we are a leader in assisting local governments in implementing, administering, and managing multiple tax types – we service more than 1,000 government partners throughout the Country.  
We offer the City the following:



**A Team of Experts.** Avenu has a distinguished team of experts that support our customers. Our Executive and Senior Management team are easily accessed and are deeply involved in day-to-day operations.

Avenu's goal is to ensure the City has unparalleled customer support. Should the City have any questions, Avenu is providing the City with the following points of contact:

**Management Contact**

Name: Jonathan Gerth

Title: VP, Tax and Audit

Phone: (205) 616-1140

E-Mail: [Jonathan.Gerth@avenuinsights.com](mailto:Jonathan.Gerth@avenuinsights.com)**Project Management Contact**

Name: Laura Burnett

Title: Client Success Manager

Phone: (805) 990-2348


E-Mail: [Laura.Burnett@avenuinsights.com](mailto:Laura.Burnett@avenuinsights.com)

On behalf of Avenu, I welcome the opportunity to renew these services that we have been providing the City of Santa Ana for the past 3 years. I represent that the information contained in this proposal is true and correct, and we can perform the commitments contained in this proposal.

As Chief Financial Officer, I am authorized to commit Avenu to a contract and represent the firm in all oral presentations and negotiations.

This offer will remain valid for 180 days from the due date of this proposal.

Sincerely,



Mike Melka

Chief Financial Officer

Avenu Insights and Analytics, LLC

E-Mail: [proposals@avenuinsights.com](mailto:proposals@avenuinsights.com)



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## Table of Contents

## 1 Scope of Services

As the nation's leading provider of Utility User Tax consultant services, with decades of extensive experience, Avenu fully understands the City's objectives and has the requisite capabilities and experience to successfully: 1) Assist the City in the collection of Utility User Tax revenues, due to the City, as determined by Avenu's auditing, recovering, reporting, and other general compliance activities; 2) support the City in the development of UUT revenue forecast models; and 3) provide to the City legislative and state agency liaison and implementation monitoring.

Avenu offers herein below an itemized response to Section III of the City's "SCOPE OF SERVICES AND TERM OF CONTRACT."

### 1.1 SOURCE OF REVENUE [RFP III.A]

- Utility Users' Tax ("UUT") - Rate 5.5% - UUT Service Provider Categories: Electric, Gas, & Telecommunications Service Providers (to include electric and gas aggregators, and California Department of Tax and Fee Administration's ("CDTFA") collected pursuant to the Local Prepaid Mobile Telephony Services Collection Act.

Avenu has been the industry pioneer and leader in CA UUT for nearly thirty (30) years. Avenu is the only entity which: (1) maintains the state's only website, [uutinfo.org](http://uutinfo.org), which nationwide utility service suppliers rely upon for current UUT tax rates and levies throughout the state; (2) were the first to provide ordinance optimization services under legal expertise to ensure and maintain the modernization of terminologies applicable to various industries that remain both all-inclusive and time-enduring to provide municipalities and counties with the most encompassing levies legally permissible; and (3) are the only entity that solely utilizes degreed and/or licensed accounting and legal professionals to provide consultation services, tax compliance auditing, and legal defense and support for any and all tax findings and navigate the extreme legal opposition commonly applicable to the ever-evolving industries in this arena of taxation. Avenu has an in-depth understanding of the City's ordinances, and indeed those statewide, for Electric, Gas, & Telecommunications UUTs, (" ") § 35-156 .

In addition, Avenu's expertise extends to both identifying and enforcing compliance upon electric and gas aggregators, particularly Clean Power Alliances and other local service suppliers, that utilize gas and electric delivery infrastructure owned by those franchisees who maintain such infrastructures within the City. Finally, Avenu co-sponsored and drove the legislative efforts to pass both S.B. 344 (2019) and S.B. 1441 (2020), in partnership with Sen. Mike McGuire, to gain legislative extensions of the Local Mobile Prepaid Telephony Services Collection Act, CAL. REV. & TAX. CODE § 42100 . via administration by the California Department of Tax and Fee Administration (CDTFA) collected on the retail sale of prepaid wireless telecommunications services sold to prepaid customers.

Avenu monitors both the payments and the charges for administration thereof by the CDTFA for nearly seventy percent (70%) of the state market. While contingency fee auditing is prohibited under the legislation, Avenu has the necessary expertise to identify these revenues through audits of service suppliers who have subsidiaries who provide such services and have extensive experience in conducting direct audits on the prepaid wireless entities pursuant other pricing.



- Goal of professional consultant services provider: (1) assist in collecting additional general tax revenues due to the City, as determined from auditing, recovery, reporting and associated compliance activities to include the following UUT categories: Electric, Gas, & Telecommunications; (2) assist in development of UUT revenue forecast models for Electric, Gas, & Telecommunications UUT; (3) provide legislative and state agency liaison and implementation monitoring including coordination with City's state and federal lobbyists in connection with legislation/regulation relating to City's UUT (all categories - Electric, Gas, Telecommunications & Water, including aggregators, plus CDTFA collected pre-paid telecommunications UUT).

Avenu has assessed the goals sought pursuant to Section III.A and are confident that we have the unique and unmatched experience and capabilities to meet and/or exceed the City's goals stated therein. Avenu will:

1. Assist the City in collecting additional general tax revenues due to the City, as determined from auditing, identification of entities which are not reporting, recovery of revenues from existing and newly identified entities, reporting and associated compliance activities to include the following UUT categories: Electric, Gas, & Telecommunications.
2. Provide the City with UUT revenue forecast models for Electric, Gas, & Telecommunications UUT and Franchise Fees. Our forecasts will include optimistic, most like and pessimistic scenarios, including short, mid and long-range forecast by service type category, and will also have included detailed individual provider payment information. We will provide quarterly updated forecasts during the fiscal year.
3. Provide legislative and state agency liaison and implementation monitoring including coordination with City's state and federal lobbyists in connection with legislation/regulation relating to City's UUT (all categories - Electric, Gas, Telecommunications & Water, including aggregators, plus CDTFA collected pre-paid telecommunications UUT). Avenu will provide written policy updates throughout the year and will provide recommended actions that the city may choose to take and as appropriate. We will also provide detailed information on legislative and regulatory issues specific to the city during our in person quarterly meetings.

## **1.2 RELATED SERVICES [RFP III.B]**

Related to the above audit services, the Professional Consultant/Vendor would:

- Represent the City for purposes of examining records related to the above revenue sources to identify and confirm any errors/omissions leading to deficient payments to the City.
- For each error/omission identified and confirmed, prepare the appropriate documentation to facilitate recovery of revenue due to the City including any applicable penalties and interest.
- Prepare and forward to the appropriate entities requests for corrective action and induce voluntary revenue recovery.
- Meet with designated City officials as necessary (but not less than quarterly) to review consultant's findings and recommendations.
- Provide any additional assistance as necessary to support the City in recovering and preventing tax delinquencies.
- Utility Users' Tax: Prepare annual UUT report that includes legal and legislative issues that could potentially affect UUT revenues and a five-year forecast or each utility industry type; assist in development of multi-year UUT budget revenue forecast model.
- Legislative/State Agency Liaison and Implementation Monitoring: Provide federal, state, and local legislative and state agency liaison and program implementation monitoring (including coordination with City's state and federal lobbyists in connection with legislation/regulation relating to City's UUT).

Avenu has reviewed Section III.B, Related Services, and Avenu will provide all services outlined therein:

Avenu will represent the City for purposes of examining records related to the above revenue sources to identify and confirm any errors/omissions leading to deficient payments to the City. For each error/omission identified and confirmed, Avenu will prepare the appropriate documentation to facilitate recovery of revenue due to the City including any applicable penalties and interest.

Avenu's experts will prepare and forward to the appropriate parties' requests for corrective action and revenue recovery.

Avenu will meet with designated City officials as necessary (but not less than quarterly) to review consultant's findings and recommendations.

Avenu will provide any additional assistance as necessary to support the City in recovering and preventing tax delinquencies.

Avenu's Government Relations Team will prepare annual UUT report that includes legal and legislative issues that could potentially affect UUT revenues and a five-year forecast or each utility industry type; assist in development of multi-year UUT budget revenue forecast model.

## 1.3 UTILITY USERS' TAX – ADDITIONAL REQUIREMENTS <sup>[RFP III.C]</sup>

### 1.3.1 General Strategy <sup>[RFP III.C.1]</sup>

- a. Describe the general strategy for UUT and economic analysis.

Avenu's Utility Users Tax (UUT) service client base covers more than 70 percent of UUT revenues in California. As a result, we are uniquely positioned to monitor and review UUT revenues across the state and, as a result and too date, our compliance and monitoring services have recovered more than \$300 million in revenues for UUT clients. Our monitoring service covers the utilities of gas, electricity and telecommunications, (wired, wireless and Prepaid Wireless).

We accomplish this through our team of analysts, auditors, attorneys, and project managers who analyze, manage, and protect UUT revenues. Our discovery methods and enforcement tools assure that utilities comply with tax regulations and remit the correct amounts, whether they are for natural gas, electricity, or telecommunications and video utilities. We further protect future revenue by remaining current on pending legislation, new technologies and recommending ordinance changes. Any statutory requirement for third-party review of UUT payments is met through Avenu.

The UUT Compliance Program's services will protect the City's existing UUT revenues from erosion due to new legislation, new technologies, outdated ordinance language and inaccurate information, focusing on these areas:

- Compliance
- Administrative
- Legislative Review and Implementation Strategy
- Ordinance Review, Administrative Rulings, and Tax Inquiries



Avenu will provide the following Compliance Activities:

1. **UUT Tax Application Review.** Avenu will conduct a “focused” compliance review of the major service providers on behalf of one or more cities to assure that the provider’s “tax application” matrix reflecting all of the provider’s current products and service, is being taxed properly, for the benefit of City and other client cities.
  2. **UUT Payment Review.** Identification of possible gaps in payments, irregularities, calculation mistakes ( wrong tax rate), and other payment errors to the City, provided that the City provides Avenu with regular UUT payment history. MuniServices will assist the City with the appropriate compliance correspondence and enforcement actions.
  3. **Comparative Analysis of UUT Payments.** Avenu will periodically perform a comparative analysis of a service provider’s UUT payments to the City with other neighboring or comparable client cities, after adjusting for rate, population, and median household income. Avenu will also perform a comparative analysis of the franchise and UUT payments for gas and electricity.
  4. **Detection.**
    - a. Avenu will annually update its proprietary database of “new telecom service providers” and send out a PUC 799 notice letter to such new providers on City’s behalf. The current list exceeds 1,500 providers.
    - b. Avenu will annually update its proprietary database of new “video service providers” and send out a notice letter to such new providers on City’s behalf.
    - c. Avenu will annually review the SB 278 lists of the major gas and electric companies to identify new non-core gas and direct access electric customers, as well as new third-party providers, and take appropriate steps to assure that the UUT is being applied to “commodity” purchases.
  5. **Exemption Review.** Avenu will periodically review the exemption lists of the major service providers regarding non-residential customers.
  6. **Optional City Specific Compliance Reviews.** At City’s option, Avenu will offer “City-Specific” reviews on a performance fee or other negotiated basis, if the above activities or other factors (e.g., non-response by utility provider) would suggest that there is a reasonable need to do so.
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1. **UUT Payment History.** Avenu will provide the City, on a monthly or otherwise mutually agreed upon basis, with a spreadsheet reflecting the City’s UUT payments by provider and utility category (based on remittance data provided by City to Avenu).

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2. **Prepaid Wireless Monitoring and Analysis.** For direct sellers, Avenu will monitor the monthly prepaid wireless payments and perform a comparative analysis with similar cities to determine accuracy and identify any potential discrepancies. For major direct sellers, Avenu will perform a tax application review under Item 1 above. We will identify online prepaid wireless sellers and send an annual notice letter to ensure compliance with local and state laws and regulations. Avenu will engage and follow-up with the California Department of Tax & Fee Administration (CDTFA) on any issues, problems and discrepancies affecting your City's prepaid wireless revenue collections by retail sellers, including online sellers, to the extent that MuniServices has access to CDTFA documents through a City resolution authorizing Avenu to have such access.
  3. **UUT Website.** Prepare and maintain an accurate copy of the City's UUT ordinance and its administrative rules and interpretations on the uutinfo.org website, including a link to the City's web page (if desired). Model forms for exemptions and remittances, administrative rulings, and other tax compliance documents will be maintained on the [www.uutinfo.org](http://www.uutinfo.org) website.
  4. **Revenue Forecasts and Management Reports.** Avenu will provide an annual report that outlines the year's activities in review, revenue forecasts, year-over-year (YOY) comparison charts and revenue generated from compliance activities. This report contains an analysis of UUT revenues, and a five-year revenue forecast on each of the utility business segments (electric, gas, CATV, wired telecom, wireless telecom, etc.).
  5. **Tax Application and Geocode Inquiries.** Avenu will provide technical assistance to City staff and provide timely analysis and draft responses to tax application inquiries from utility companies and will assist in responding to citizens regarding their utility bills and the computation of the UUT. Avenu will assist City and the utility service providers in correcting geocoding errors in response to taxpayer complaints.

Avenu provides the following Revenue Protection and Enhancement Activities:

1. **Legislative and Regulatory Review Services.** Avenu will monitor proposed state and federal legislation and regulatory activity to identify issues affecting the City's UUT or utility franchise revenues and, make recommendations to client cities, their lobbyists, and other potential stakeholders or municipal advocates and otherwise assist in developing effective consensus positions and coordinated advocacy.
2. **Technology and Marketing Analysis.** Avenu will identify, monitor and anticipate changes in technology, services, or marketing of services, which may have an impact on future UUT revenues.

Avenu will provide the following advisory services related to your City's UUT Ordinance:



Analysis and recommendation (including drafting amendment language) on proposed state and federal legislation.

Assistance with tax application issues, including taxation of new technologies or services; including preparation of Administrative Rulings.

Assistance on issues involving "bundling rule" and tax allocation/apportionment.

Assistance on nexus issues (re: tax application and collection).

Review of city's tax info/forms on uutinfo.org.

Assistance on Voluntary Disclosure Agreements (offers to compromise owed taxes).

On request, review of exemption status of individual utility user.

Avenu monitors proposed state and federal legislation to identify issues affecting the City's UUT or utility franchise revenues, and, if justified, make recommendations to the City and its lobbyists. Avenu uses its own in-house counsel on matters requiring legislative and legal analysis. Our Government Relations team works in collaboration with counsel and other stakeholders including representatives from the League of California Cities, the California Society of Municipal Finance Officers, the California Municipal Revenue Tax Association, Special Districts Association, City advocates, utility providers, the Public Utilities Commission, CDTFA, BOE, and others.

Our team will work with the City for the further protection of revenues including advocacy efforts on state and federal bills, including by not limited to, affecting taxation of broadband telecommunication networks; taxation of wireless services; and taxation of on-line sales and certain digital goods. Our Government Relations team manages its communication with clients through a strong public relations program and provides crisis assistance on policy matters. We also maintain a website and posts published works on policy issues including an industry respected publication, "Policy Update."

- b. Define the role of City staff and City records as it relates to your efforts.

To conduct any UUT/Franchise Fee City Specific Reviews, Avenu would require the same amount of City support as provided in the past, including items such as copies of payment information, annual copy of SB 278 data, etc.

- c. Identify what sources of information will be needed and the means with which they will be acquired.

Avenu will need to obtain copies of ordinances and agreements that govern each utility. Information from the City on any known compliance issues or previous compliance activity and any other important factors, for example, any recent boundary changes, annexations, or rate changes that may have an impact on compliance. Additionally, any payment records available from the City.

### 1.3.2 Objectives and Methodology <sup>[RFP III.C.2]</sup>

- a. Identify the specific procedures you will use to detect, correct, and recover misallocated UUT for the City.

Avenu will generally use the following procedures:

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**Pre-Audit Planning**

To initiate the project, once a contract is in place, we recommend scheduling an introductory meeting with designated City management, to:

1. identify the population of utilities to be considered for examination,
2. obtain copies of the ordinances and agreements governing each utility,
3. review with the City any known compliance issues or previous compliance activity, and any other factors, for example, any recent boundary changes, annexations, or rate changes, that might impact compliance,
4. identify relevant payment records available from the City,

**Schedule and Complete Audit Engagements**

Based on the list of approved engagements, we will proceed to contact those utilities for which the City has approved audits. In preparing for and conducting its review of each utility, Avenu will employ the following procedures:

1. Obtain a letter of authorization from the City, copies of franchise agreements and any correspondence with the providers, and a history of franchise payments.
2. Obtain and review available documents, reports, work papers, and any prior reports prepared by the internal or external auditors, which concern the computation or methodologies for computing the franchise fee paid.  
Review franchise agreements and all ordinances and governing regulations relating to taxes to ensure compliance with all Federal, State and Local laws, and correspondence relating to the City's franchise fees.
4. Submit a Request for Information to each utility to obtain the information needed to complete our review and negotiate any necessary confidentiality and non-disclosure agreement related to the audit.
5. Review the work papers and supporting documentation used in the computation of the franchise fee payments.
6. Review and analyze each utility's general ledger and financial statements. Compare and analyze the data for reasonableness, completeness, and accuracy as related to the franchise fee.
7. Identify any revenues excluded from the franchise fee calculation.
8. Review and analyze all the utility's revenue accounts in detail to: determine revenues that are to be included or excluded from the franchise fee computations; review the revenues excluded from the computations, if any, and determine if they are permitted by the City's franchise agreement, or relevant state law.
9. Determine if utility or any of its subsidiaries receives any revenues from customers or third parties for the use of utility's facilities located on City's right of way authorized by the franchise agreement that are not included in the franchise fee calculation used to determine the payment to the City.
10. Review the process used to compute franchise fees on meter diversion revenue for gas, electric, water or other providers.



11. Determine how gas, electric, water or other deregulation has impacted the franchise fee calculation, especially with regard to managed services (storage, distribution, etc.), if applicable.
  12. Evaluate the utility's treatment of natural gas, electricity or other utility services consumed by the utility provider within its facilities located within the City's jurisdiction, if applicable.
  13. Analyze the number of customers reported in the City's jurisdiction by rate classification and obtain and review the utility's procedures to code new customers to the proper jurisdictions and the procedures used to address annexations.
  14. Obtain and review the list of exempted customers, if any, from the franchise fee computation.
  15. Compare customer address data for each utility with address data to be provided by the City to determine whether any residents and businesses currently within the boundaries of the City have been or are being serviced/invoiced without remittance of the appropriate tax or payment to the City.
  16. Sample test the utility's billings for completeness and accuracy of franchise fee from customers and verify that all monies collected are submitted to the City.
  17. Compare the utility's payments, exclusions, and other computations as related to the franchise agreement, or relevant state law. Compare the actual payments made to the City for timeliness and accuracy.
- b. Detect, document, and correct UUT tax reports errors and omissions in order to generate new, previously unrealized revenue for the City.

Avenu's tenured reputation statewide, along with proprietary information provided from remittances to regional metropolitan areas, as well as statewide, provides Avenu with information about newly formed and new generation service suppliers that arise and are either operating, or likely operating within the City, all of which helps to enhance our abilities to detect those who are either not report or omitting various revenues subject to the City's UUTs and/or Franchise Fees.

- c. Determine if UUT service providers had prior knowledge of the error(s), which could entitle the City to collect revenue from additional reporting periods.

Avenu's UUT experts will determine if the service provider had prior knowledge of the error. The determination could entitle the City to collect revenue from additional reporting periods.

- d. Track and report on all misallocations that have been corrected as a result of the Consultant's efforts and remitted to the City by Utility Users' Tax service providers.

Avenu's UUT experts will track and report on all corrected misallocations as a result of Avenu's efforts and remitted to the City by Utility User Tax service providers.

- e. Monitor and analyze the City's monthly UUT reporting and collection reports with focus on major accounts 90% or more of the City's total service providers (electric, gas, & telecommunications) to identify any irregularities or unusual deviations from the normal pattern, and ensure that the City is not receiving less revenue than it is entitled to receive.

Avenu will monitor and analyze the City's monthly UUT reporting and collection reports, and will focus on major account, 90% or more of the City's total service providers, to identify any irregularities or unusual deviations from normal patterns, and ensure that the City is receiving the revenue to which it



is entitled. Avenu will identify possible gaps in payments, irregularities, calculation mistakes (wrong tax rate), and other payment errors to the City, provided that the City provides Avenu with regular UUT payment history. Avenu will assist the City with the appropriate compliance correspondence and enforcement actions.

- f. Assist the City with strategies to preserve and enhance UUT generated by the existing service providers operating within the City of Santa Ana.

Avenu is recognized statewide and throughout the country as an entity that consistently remains on the cutting edge of technological advancements and governing laws related thereto, both federal and state, and retains professionals with industry-leading expertise in this respect who routinely draft articles which are published in national governmental periodicals and forums and regularly lecture at California and nationwide tax forums on updates within the utility industry. Avenu's experience and the revolutionary aspects related to the national implementation of 5G wireless networks, the Permanent Internet Tax Freedom Act, evolving technological industries which are constantly spawning through creative usage of faster internet protocol, new technologies, and Avenu's vast experience in exercising enforcement upon these issues in order to maximize revenue by expanding the City's tax base are unparalleled.

Avenu's UUT experts will, without question, assist and supplement the City's resources with strategies to preserve and enhance UUT revenues generated by the existing service, existing service providers who are operating and serving end users in the City absent physical locations, and newly developed and developing providers which are or will be operating within the City in the future.

### **1.3.3 Utility Users' Tax Reporting Services** [RFP III.C.3]

- a. Generate reports to identify service provider errors and omissions and analyze City Utility Users' Tax rate. Provide printouts, graphs, and comparative data on a quarterly basis or other recurring basis that meets the specific needs or desires of the City.
- b. Provide written quarterly UUT reports and attend quarterly meetings with the City to discuss activity in the reports. The reports will include the following:
  - i. Quarterly reporting. Prepare a quarterly report on the City's UUT revenues and service providers generating these revenues. The report should identify and analyze revenue performance, trends, gains, declines, projections, and pertinent issues. The report should capture UUT performance Citywide, by service provider (including aggregators and evolving, new entities providing new technological utility services that are within the scope of the City's levies), and by utility type (electric, gas, and telecommunications to include pre-paid UUT collected and reported by telecommunications service providers as well as pre-paid UUT paid to retailers and collected by CDTFA). Quarterly report data should also be made available in Word formatted documents and PDFs with graphs and charts available in Excel format and tables available in Excel or Access data table format, allowing for easy query of the data by authorized City staff. The consultant should also be available to City staff to answer periodic questions regarding UUT issues and performance.
  - ii. Contingency option. Provide electronic reporting research database application for City UUT (client/server or web-based portal application). The application should allow authorized City staff to search, query, filter/sort and export UUT reporting and payment data (in common data formats; e.g. Access, Excel, etc.) for staff presentation and analysis based on service provider and utility type.



Avenu's UUT experts will generate for the City reports that will identify services provider errors and omission and the report will analyze the City's Utility Users Tax Rate. Avenu will provide printouts, graphs, and comparative data on a quarterly basis, at a minimum, or other reoccurring basis that meets the needs of the City. Avenu is committed to the City of Santa Ana and will ensure the City is fully supported. Additionally, Avenu will provide written quarterly UUT reports and will attend quarterly meetings with the City to discuss the activities outlined in the reports.

### **1.3.4 Specialty UUT Audits** [RFP III.C.4]

i. Successful proposer will provide strategy, mechanism, and audit cost formulas for comprehensive audits of principal electric and gas utility providers together with large-scale utility service aggregators. Audits may include corresponding franchise fees where advisable.

Specialty audits shall be included within contractually offered "contingency options" which the City, in its sole discretion, may elect to confront.

Specialty audits, as such a broad term, may address a wide array of various issues which have been and will soon become the centerfold of compliance with local UUTs.

The specific terms of specialty audits, when not fully detailed in the original agreement between the parties or under the terms of a subsequent amendment to said agreement, will be set out through a mutually agreed to change order process.

Such audits could range from known issues arising from CPUC climate credits, the misapplication of tax exemptions related to clean energy use, developments of entities and technologies that Avenu has proprietary insight into and the legal and professional expertise to tackle and successfully bring into compliance absent litigation, or countless other measures.

For example, Avenu has existing, proprietary, highly-advanced, and customizable software capable of providing enhanced services to the City for revenue administration for UUTs, Franchise Fees, and even 5G-related right-Of-Way ("ROW") annual renewal fees. While the 5G ROW fees remain in certain forms of litigation, Avenu's systems can remove the burden of monitoring annual compliance with the flood of applications, placements, and renewals for those entities involved to ensure compliance. These services provide for an expansive array of new, federally regulated fees which are ever-growing, existing administration of taxes which are currently processed through legacy systems within the City thus eluding the substantial costs and encumbrances involved with the development of new systems through external vendors; a process which can be both tremendously painstaking and extremely costly.

Avenu currently processes and distributes, and even offers "Lockbox Services" for thousands of clients and distributes governmental funds in excess of \$1 billion annually for local governments. As the provider of such services, Avenu is required to have the internal controls for its software systems and procedures subjected to an annual SSAE 16, SOC I, Type II audit of internal controls by an independent certified public accounting firm to ensure accuracy and compliance. Such annual reports are always provided to clients which elect to utilize these services.

ii. Successful proposer will provide contingency options for similar audits of principal telecommunications providers.

Avenu will provide contingency options for similar audits of the City's principal telecommunications providers



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### 1.3.5 Ancillary UUT Services [RFP III.C.5]

- i. Provide quarterly information regarding federal and state legislative issues, including an analysis of their potential impact on the City.
- ii. Comparisons to other local, county, and state jurisdictions as applicable.
- iii. Provide other ad hoc reports identifying other pertinent issues as mutually agreed upon.
- iv. Assist in development of UUT budget revenue forecast model.
- v. Provide a reconciliation of UUT by utility type (electric, gas, and telecommunications, to include pre-paid UUT collected and reported by telecommunications service providers as well as pre-paid UUT paid to retailers and collected by CDTFA), which will be used to project annual UUT figures for the City's use in revenue forecasting.

Avenu's experts have decades of experience in Analysis, Forecasting, Budgeting, and Regulatory Monitoring Services with respect to Utility User Tax services. Avenu will prepare at a minimum, quarterly analysis of utility users tax revenues, projections, and adjustments on the City's UUT trends in relation to the surrounding market region, by individual business type and geographic areas specified by the City; Avenu's experts can provide UUT analysis reports benchmarked to previous years.

Our Government Relations team works in collaboration with counsel and other stakeholders including representatives from the League of California Cities, the California Society of Municipal Finance Officers, the California Municipal Revenue and Tax Association, Special Districts Association, City advocates, utility providers, the Public Utilities Commission, CDTFA, BOE, and others. Avenu's analysis includes information on the top revenue producers, indication of revenue changes by business and economic category, identification of major utilities that influence change in the City's tax revenue, and analysis of key utilities that grew or declined during the reporting period.

Avenu will provide UUT revenue and cash flow forecasting reports on a quarterly basis and provide reports by industry area and Avenu can tailor reports to the City's needs if needed. Additionally, Avenu will provide a monthly, or at least quarterly, summary of economic news for the City's use in making projections. Avenu will conduct quarterly meetings with the City to discuss the reports and provide illustrations of the data as needed. To ensure the City is supported, Avenu is providing Laura Burnett, Avenu's Client Success Manager to the City of Santa Ana and the City's point of contact. She has first-hand experience with the City and will act as the liaison between Avenu and the City. Additionally, Avenu will provide on-going and ad-hoc analysis, reports, legislative support, and unlimited access to Consultant's team members for UUT related questions, as well as training and support for City staff. Avenu has a government relations team that remain attentive to any future proposed changes to regulatory language in national, state, and federal laws and regulations related to the allocation of UUT revenues.

## 1.4 TERM OF CONTRACT [RFP III.D]

Avenu understands and agrees that the services described herein shall be provided for a three (3) year period, from February 1, 2021 to January 31, 2024, with an option exercisable by the City for two (2) one (1) year extensions unless either party provides written notice of its intention not to renew ninety (90) days prior to the end of the then current term. All terms and conditions of the Agreement shall remain effective during any additional renewal term.

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## **2 Attachments 1 - 10**

Avenu has included the following Attachments in this section.

- Proposer's Cover Sheet (Attachment 1)
- Proposer's Statement (Attachment 2)
- Company Information Form (Attachment 3)
- Summary Sheet (Attachment 4)
- Five (5) Client Reference Forms (Attachments 5)
- Cost/Bid Proposal Form(s) (Attachment 6)
- Proposer's Certification Form (Attachment 7)
- Non-Collusion Affidavit (Attachment 8)
- Non-Lobbying Certification (Attachment 9)
- Non-Discrimination Certification (Attachment 10)



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City of Santa Ana  
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Treasury & Customer Service  
20 Civic Center Plaza, 1st Floor  
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Jonathan V. Gerth, Esq.  
VP, Tax & Audit Services  
Avenu Audit Department  
5716 Corsa Ave., Ste 203  
Westlake Village, CA 91362

December 8, 2020

RE: City of Santa Ana, CA – RFP No. 20-137 – Addendum (Clarification of Avenu Insights & Analytics, LLC's Pricing Options for Professional Services

To: Finance & Management Services Agency:

Avenu Insights & Analytics/MuniServices, LLC ("Avenu Insights") would like to thank the City of Santa Ana ("City") for its consideration and the opportunity to competitively bid RFP No. 20-137 ("RFP") as it relates to the City's Utility Users' Taxes ("UUT"). Avenu Insights has been the industry expert in this particular field for decades and has only enhanced and expanded its California presence and expertise in the market in recent years. Insights' statewide provision of these services provides us with a level of both proprietary and full understanding of the uniqueness of the times within which we live, and the rapid advancement of technologies which combined have created a volatile environment and only added to the complexity and multitudes of compliance issues within the UUT arena. We are also well aware of the significance of these revenues as an essential portion of the City's operating budget.

Accordingly, we appreciate the opportunity to provide the City with a model of pricing for optional levels and varieties of services that Avenue Insights hereby offers and will indeed provide to the City in response to the RFP, including additional value added services, in a manner which demonstrates clarity and affordability to the City. Additionally, Avenue Insights herein offers brief explanations as to what is included within each cost proposal for each individual service to preclude any inferences that multiple services are not encompassed within each pricing model.

**ATTACHMENT 6 – COST/BID PROPOSAL FORM – RFP No. 20-137**

- **Utility Users' Tax Revenue Auditing, Recovery, Reporting, Analysis, and Legislative/State Agency Liaison and Implementation Monitoring Services - Cost/Bid Proposal**

All Fiscal Years below must be bid in order for the quote to be considered responsive except where bidder specifies a future commencement date of performance.

**(COST/BID PROPOSAL FORM - RFP No. 20-137 - Utility Users' Tax Revenue Auditing, Recovery, Reporting, Analysis, and Legislative/State Agency Liaison and Implementation Monitoring Services - Cost/Bid Proposal (Continued on Following Page)**

Fiscal Year (February 1 through January 31)		Option 1 Fixed Flat Fee	Option 2 Percentage of Revenue Source	Option 3* Percentage of Recovered Revenues	Option 4 Time and Expenses
1	FY 2021-2022	\$85,000	N/A	25%*	\$125/hr + approved travel
2	FY 2022-2023	\$85,000	N/A	25%*	\$125/hr + approved travel
3	FY 2023-2024	\$85,000	N/A	25%*	\$125/hr + approved travel
4	FY 2024-2025	\$85,000	N/A	25%*	\$125/hr + approved travel
5	FY 2025-2026	\$85,000	N/A	25%*	\$125/hr + approved travel
Total Cost:		\$425,000	N/A	25%*	\$125/hr + approved travel

\* Please note that the 25% contingency fee on all audits, including the request for any “specialty audits,” is provided pursuant to and included, without limitation, to the City pursuant to Avenu Insights’ UUT fixed-fee program (Option 1 above). This is along with all other payment monitoring, revenue forecasting, detection services (including aggregators and newly formed entities), etc. The 25% contingency fee applies to all delinquent and unpaid UUT discovered and realized by the City, including penalties and interest thereon, stemming from auditing activities (no prospective application) – which includes substantial legal support, if necessary, to navigate specialty and/or complex issues that have and continue to arise. Avenue Insights also values the ability to offer all such services in-house, and entirely absent the need for non-employee, contract services. The 25% contingency fee shall not exceed \$200,000.00 on any given audit, regardless of the time and effort expended by Avenue Insights. Avenue Insights is also offering the City an option to elect to conduct any audit pursuant to an hourly rate, should the City choose to do so (Option 4 above).

**Additionally, in order to limit the number of Cost/BID Pricing Charts pricing charts, the City may also elect to conduct an audit, whether deemed specialty or otherwise, at a flat-fee amount of \$30,000.00 per audit.**

#### **COST/BID PROPOSAL FORM - RFP No. 20-137 – Contingency Option**

- UUT Administration/Reporting service - Cost/Bid Proposal

All Fiscal Years below must be bid in order for the quote to be considered responsive except where bidder specifies a future commencement date of performance.

Total cost to the City will consist of:



1. A one-time implementation fee of \$5,000.00 to systematically notify, develop returns and processes specific the City’s taxes, and to include online file and pay capabilities for tax filers in addition to paper filings/payees.
2. Assuming City acceptance of Avenu Insights’ **COST/BID PROPOSAL FORM - RFP No. 20-137 - Utility Users’ Tax Revenue Auditing, Recovery, Reporting, Analysis, and Legislative/State Agency Liaison and Implementation Monitoring Services (Option 1)**.

Fiscal Year (February 1 through January 31)		Option 1 Fixed Flat Fee	Option 2 Percentage of Revenue Source	Option 3 Percent age of Recover	Option 4 Time and Expens	Option 5 Cost per transaction
1.	FY2021-2022	\$0.00	N/A	N/A	N/A	\$4/per monthly filing transaction
2.	FY2022-2023	\$0.00	N/A	N/A	N/A	\$4/per monthly filing transaction
3.	FY2023-2024	\$0.00	N/A	N/A	N/A	\$4/per monthly filing transaction
4.	FY2024-2025	\$0.00	N/A	N/A	N/A	\$4/per monthly filing transaction
5.	FY2025-2026	\$0.00	N/A	N/A	N/A	\$4/per monthly filing transaction
<b>Total Cost:</b>		\$0.00	N/A	N/A	N/A	UNKNOWN

The Administration/Reporting program proposed consists of an “Implementation Phase,” leading up to a “live” cutover from the City’s current UUT administration system at a mutually agreeable date; and a recurrent, ongoing UUT “Administration Cycle,” after which Avenue Insights will serve as the City’s full-service UUT administrator in coordination with City staff.

An outline of the steps and tasks included in each phase is detailed herein below as follows:

#### **Implementation Phase**

1. Convert and load to Avenue Insights Revenue Administration system all UUT taxpayer records (to be provided by the City);
2. Verify with the City all UUT taxpayer letters, forms, and notices to be used (these can be based on existing City forms and correspondence or further customized to the City’s desire);
3. Configuration of a secure web filing and payment portal for use by the City’s UUT (or other tax types) taxpayers;
4. Contacting all UUT taxpayers by mail, including an introductory letter with new filing address(es), 24-hour telephone contact information for taxpayer support, and web filing instructions; and other follow-ups as directed by the City;
5. Cutover from City to Avenue Insights’ UUT Administration system according to a schedule to be developed in coordination with the City’s staff and in accordance with the City’s needs.



**Ongoing UUT Administration Cycle:**

1. Beginning as of the scheduled date, Avenue Insights will receive filings and payments either by mailing and/or via the convenient online payment portal;
2. All paper filings, checks, and correspondence will be opened and batched in our secure facility.

Avenue Insights sincerely hopes this provides the information necessary to clarify our offerings, and we hope to hear from the City soon.

### **Statement of Work**

1. Assist the City in collecting additional general tax revenues due to the City, as determined from auditing, identification of entities which are not reporting, recovery of revenues from existing and newly identified entities, reporting and associated compliance activities to include the following UUT categories: Electric, Gas, & Telecommunications.
2. Assist the City in the development of UUT revenue forecast models for Electric, Gas, & Telecommunications UUT and Franchise Fees.
3. Provide legislative and state agency liaison and implementation monitoring including coordination with City's state and federal lobbyists in connection with legislation/regulation relating to City's UUT (all categories - Electric, Gas, Telecommunications & Water, including aggregators, plus CDTFA collected pre-paid telecommunications UUT).

Related to the above audit services, the Professional Consultant/Vendor would:

- Represent the City for purposes of examining records related to the above revenue sources to identify and confirm any errors/omissions leading to deficient payments to the City.
- For each error/omission identified and confirmed, prepare the appropriate documentation to facilitate recovery of revenue due to the City including any applicable penalties and interest.
- Prepare and forward to the appropriate entities'/parties' requests for corrective action and induce voluntary revenue recovery.
- Meet with designated City officials as necessary (but not less than quarterly) to review consultant's findings and recommendations.
- Provide any additional assistance as necessary to support the City in recovering and preventing tax delinquencies.
- Utility Users' Tax: Prepare annual UUT report that includes legal and legislative issues that could potentially affect UUT revenues and a five -year forecast or each utility industry type; assist in development of multi-year UUT budget revenue forecast model.
- Legislative/State Agency Liaison and Implementation Monitoring: Provide federal, state, and local legislative and state agency liaison and program implementation monitoring (including coordination with City's state and federal lobbyists in connection with legislation/regulation relating to City's UUT.

### **Avenue Insights Related Services**

- Represent the City for purposes of examining records related to the above revenue sources to identify and confirm any errors/omissions leading to deficient payments to the City.
- For each error/omission identified and confirmed, prepare the appropriate documentation to facilitate recovery of revenue due to the City including any applicable penalties and interest.
- Prepare and forward to the appropriate parties' requests for corrective action and revenue recovery.
- Meet with designated City officials as necessary (but not less than quarterly) to review consultant's findings and recommendations.
- Provide any additional assistance as necessary to support the City in recovering and preventing tax delinquencies.

- Utility Users' Tax: Prepare annual UUT report that includes legal and legislative issues that could potentially affect UUT revenues and a five-year forecast or each utility industry type; assist in development of multi-year UUT budget revenue forecast model.

#### **Additional, Available, Value-Added Service Offerings**

Related to the above audit services, the Professional Consultant/Vendor would:

- Represent the City for purposes of examining records related to the above revenue sources to identify and confirm any errors/omissions leading to deficient payments to the City.
- For each error/omission identified and confirmed, prepare the appropriate documentation to facilitate recovery of revenue due to the City including any applicable penalties and interest.
- Prepare and forward to the appropriate entities'/parties' requests for corrective action and induce voluntary revenue recovery.
- Meet with designated City officials as necessary (but not less than quarterly) to review consultant's findings and recommendations.
- Provide any additional assistance as necessary to support the City in recovering and preventing tax delinquencies.
- Utility Users' Tax: Prepare annual UUT report that includes legal and legislative issues that could potentially affect UUT revenues and a five-year forecast or each utility industry type; assist in development of multi-year UUT budget revenue forecast model.
- Legislative/State Agency Liaison and Implementation Monitoring: Provide federal, state, and local legislative and state agency liaison and program implementation monitoring (including coordination with City's state and federal lobbyists in connection with legislation/regulation relating to City's UUT.
- Represent the City for purposes of examining records related to the above revenue sources to identify and confirm any errors/omissions leading to deficient payments to the City.
- For each error/omission identified and confirmed, prepare the appropriate documentation to facilitate recovery of revenue due to the City including any applicable penalties and interest.
- Prepare and forward to the appropriate parties' requests for corrective action and revenue recovery.
- Meet with designated City officials as necessary (but not less than quarterly) to review consultant's findings and recommendations.
- Provide any additional assistance as necessary to support the City in recovering and preventing tax delinquencies.
- Utility Users' Tax: Prepare annual UUT report that includes legal and legislative issues that could potentially affect UUT revenues and a five-year forecast or each utility industry type; assist in development of multi-year UUT budget revenue forecast model.



**Additional Miscellaneous Contingent Services**

Avenue Insights has the proven capacity to provide the City with additional miscellaneous contingent consulting services. Such additional consulting services include, but are not be limited to: audit recovery of potential hotel visitors' taxes, provision of hotel visitors' tax administration services, audit recovery of potential tourist marketing district assessment fees, provision of tourist marketing district assessment fees administration services, audit recovery of potential business license taxes, and/or potential medical marijuana and/or cannabis taxes, or cannabis related operating agreement fees (as applicable), selection process assistance for adult-use retail cannabis business permitting, cannabis testing facility or testing laboratory permitting, miscellaneous commercial cannabis business (cultivation, manufacture, distribution) permitting and may also include Comprehensive Annual Financial Reporting statistical services as outlined in the Comprehensive Annual Financial Reporting (CAFR) Attachment to this addendum.

Predetermined fees are as follows:

- For revenue recovery audits - \$6,000 per assigned audit
- For tax administration services (including lockbox services) utilizing City official depository bank - \$5,000 per tax category (UUT and HVT) -

All other fees as may be set forth in any change order(s) mutually agreed to by the City and Avenu Insights.

Avenue Insights shall furnish at its own expense all labor, materials, equipment and other items necessary to carry out agreed to additional miscellaneous contingent services.

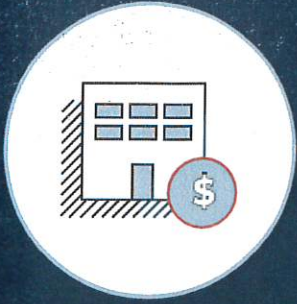
Very cordially,



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Jonathan V. Gerth, Esq.  
Avenu Insights & Analytics





# Comprehensive Annual Financial Reporting (CAFR)

BY AVENU INSIGHTS & ANALYTICS

## COMPLETE REPORTING INSIGHTS FROM ONE RELIABLE SOURCE

Gain the data-driven clarity to guide your community forward. Avenu's CAFR provides cities with an array of powerful reports for more informed decision-making. Access exclusive reporting on principal employers while staying compliant with GASB Statement 44.

### CAFR Statistical Services Include:

#### **BASIC PACKAGE: \$600**

- Assessed & Estimated Market Values
- Direct & Overlapping Property Tax Rates
- Property Tax Land Use Distribution
- Principal Property Tax Payers
- Principal Sales Tax Producers

#### **ADDITIONAL REPORTS**

- Principal Employers **\$1,100**
- Demographic & Economic Statistics **\$200**
- Direct & Overlapping Debt **\$600**



City of Santa Ana, CA – RFP No. 20-137 – Addendum Attachment **CAFR Statistical Services**  
(Clarification of Avenu Insights & Analytics, LLC's Pricing Options for Professional Services)

# EXHIBIT C

## CONSIDERATION

In consideration for the services to be provided by Avenue Insights and Analytics, LLC ("CONSULTANT") pursuant to the Consultant Services Agreement (the "Agreement") made as of the 19th day of January, 2021 by and between Avenue Insights and Analytics, LLC, a Delaware limited liability company and the City of Santa Ana, a charter city and municipal corporation of the State of California ("CITY") CONSULTANT shall be compensated by CITY as set forth below under the terms of the following items.

### ITEM

#### **#1 Utility Users' Tax Revenue Auditing, Recovery, Reporting, Analysis, and Legislative/State Agency Liaison and Implementation Monitoring Services Program**

Fiscal Year (February 1 through January 31)		Option 1 Fixed Flat Fee	Option 2 Percentage of Revenue Source	Option 3* Percentage of Recovered Revenues	Option 4 Time and Expenses
1	FY 2021-2022	\$85,000	N/A	25%*	\$125/hr + approved travel
2	FY 2022-2023	\$85,000	N/A	25%*	\$125/hr + approved travel
3	FY 2023-2024	\$85,000	N/A	25%*	\$125/hr + approved travel
4	FY 2024-2025	\$85,000	N/A	25%*	\$125/hr + approved travel
5	FY 2025-2026	\$85,000	N/A	25%*	\$125/hr + approved travel
Total Cost:		\$425,000	N/A	25%*	\$125/hr + approved travel

\* Please note that the 25% contingency fee on all audits, including the request for any "specialty audits," is provided pursuant to and included, without limitation, to the City pursuant to Avenue Insights' UUT fixed-fee program (Option 1 above). This is along with all other payment monitoring, revenue forecasting, detection services (including aggregators and newly formed entities), etc. The 25% contingency fee applies to all delinquent and unpaid UUT discovered and realized by the City, including penalties and interest thereon, stemming from auditing activities (no prospective application) – which includes substantial legal support, if necessary, to navigate specialty and/or complex issues that have and continue to arise. Avenue Insights also values the ability to offer all such services in-house, and entirely absent the need for non-employee, contract services. The 25% contingency fee shall not exceed \$200,000.00 on any given audit, regardless of the time and effort expended by Avenue Insights. Avenue Insights is also offering the City an option to elect to conduct any audit pursuant to an hourly rate, should the City choose to do so (Option 4 above).

CITY shall compensate CONSULTANT for this program service based on the **Option 1 Fixed Flat Fee** schedule shown above for each program fiscal year (February 1 through January 31) covered within the TERM of the Agreement for a total maximum program cost over the maximum TERM of the Agreement not to exceed **\$425,000**.

## **#2 Contingency Option - UUT Administration/Reporting Service Program**

Fiscal Year (February 1 through January 31)		Option 1 Fixed Flat Fee	Option 2 Percentage of Revenue Source	Option 3 Percentage of Recovered Revenues	Option 4 Time and Expense	Option 5 Cost per transaction
1.	FY2021-2022	\$0.00	N/A	N/A	N/A	\$4/per monthly filing
2.	FY2022-2023	\$0.00	N/A	N/A	N/A	\$4/per monthly filing
3.	FY2023-2024	\$0.00	N/A	N/A	N/A	\$4/per monthly filing
4.	FY2024-2025	\$0.00	N/A	N/A	N/A	\$4/per monthly filing
5.	FY2025-2026	\$0.00	N/A	N/A	N/A	\$4/per monthly filing
Total Cost:		\$0.00	N/A	N/A	N/A	UNKNOWN

- i. Requires City acceptance of Avenu Insights' Utility Users' Tax Revenue Auditing, Recovery, Reporting, Analysis, and Legislative/State Agency Liaison and Implementation Monitoring Services Program (Option 1 Fixed Flat Fee Pricing).
- ii. Requires a one-time implementation fee of **\$5,000** to systematically notify, develop returns and processes specific to the City's taxes, and to include online file and pay capabilities for tax filers in addition to paper filings/payees, and shall (including lockbox services) utilizing the City's official depository bank.

In the event that CITY shall elect the contingency option to receive **UUT Administration/Reporting Service Program** services, CITY shall compensate CONSULTANT for this program service based on the **Option 1 Fixed Flat Fee** schedule shown above for each program fiscal year (February 1 through January 31) covered within the TERM of the Agreement together with a one-time implementation fee of **\$5,000**.

## **#3 Contingency Option - HVT Administration/Reporting Service Program**

Fiscal Year (February 1 through January 31)		Option 1 Fixed Flat Fee	Option 2 Percentage of Revenue Source	Option 3 Percentage of Recovered Revenues	Option 4 Time and Expense	Option 5 Cost per transaction
1.	FY2021-2022	\$0.00	N/A	N/A	N/A	\$4/per monthly filing
2.	FY2022-2023	\$0.00	N/A	N/A	N/A	\$4/per monthly filing
3.	FY2023-2024	\$0.00	N/A	N/A	N/A	\$4/per monthly filing
4.	FY2024-2025	\$0.00	N/A	N/A	N/A	\$4/per monthly filing
5.	FY2025-	\$0.00	N/A	N/A	N/A	\$4/per monthly filing
Total		\$0.00	N/A	N/A	N/A	UNKNOWN

- i. Requires City acceptance of Avenu Insights' Utility Users' Tax Revenue Auditing, Recovery, Reporting, Analysis, and Legislative/State Agency Liaison and Implementation Monitoring Services Program (Option 1 Fixed Flat Fee Pricing).
- ii. Requires a one-time implementation fee of **\$5,000** to systematically notify, develop returns and processes specific to the City's taxes, and to include online file and pay capabilities for tax filers in addition to paper filings/payees, and shall (including lockbox services) utilizing the City's official depository bank.

In the event that CITY shall elect the contingency option to receive **HVT Administration/Reporting Service Program** services, CITY shall compensate CONSULTANT for the program service based on the **Option 1 Fixed Flat Fee** schedule shown above for each program fiscal year (February 1 through January 31) covered within the TERM of the Agreement together with a one-time implementation fee of **\$5,000**.

**#4 Contingency Option – Specialty UUT Major Audit Service Program – Electric, Gas, Telecom Utilities**

In the event that CITY shall within the TERM of the Agreement elect the contingency option to engage CONSULTANT to perform Major UUT Audits, whether deemed specialty or otherwise, CITY shall pay a flat-fee amount of **\$30,000** per Major UUT audit. Where a Major UUT Audit involves a public utility subject to a City of Santa Ana Franchise Fee the audit shall extend to cover such franchise fees.

**#5 Contingency Option – Miscellaneous Utility Audits**

In the event that CITY shall within the TERM of the Agreement elect the contingency option to engage CONSULTANT to perform Miscellaneous Utility Audits, whether deemed specialty or otherwise, and whether involving aggregators or newly formed entities, or non-UUT utilities, CITY shall pay a percentage fee amount based on **Item #1 Option 3 Percentage of Recovered Revenue**. Where a Miscellaneous Utility Audit involves a public utility subject to a City of Santa Ana Franchise Fee the audit shall extend to cover such franchise fees. (CITY may at its own option designate **Item #1 Option 4 Time and Expenses** as an alternative basis for payment for any such Miscellaneous Utility Audit.)

**#6 Contingency Option – Revenue Recovery Audits**

In the event that CITY shall within the TERM of the Agreement elect the contingency option to engage CONSULTANT to perform Revenue Recovery Audits, CITY shall pay a flat-fee amount of **\$6,000** per audit.

**Revenue Recovery Audits - Categories**

- Hotel Visitors' Taxes
- Hotel Tourist Marketing District Assessment Fees
- Business License Taxes and associated Business Improvement District Assessment Charges (as applicable)
- Medical Marijuana and/or Cannabis Taxes (cultivation, manufacture, distribution, testing), or Cannabis related Operating Agreement Fees (as applicable).



**#7 Contingency Option – Comprehensive Annual Financial Reporting (CAFR) Services**

In the event that CITY shall within the TERM of the Agreement elect the contingency option to engage CONSULTANT to provide CAFR Statistical Services, CITY shall pay a flat-fee amount in accordance with the schedule of fees set forth below for each reporting period for which CAFR Statistical Services are requested.

**CAFR Statistical Services Include:**

**BASIC PACKAGE: \$600**

- Assessed & Estimated Market Values
- Direct & Overlapping Property Tax Rates
- Property Tax Land Use Distribution
- Principal Property Tax Payers
- Principal Sales Tax Producers

**ADDITIONAL REPORTS**

- Principal Employers **\$1,100**
- Demographic & Economic Statistics **\$200**
- Direct & Overlapping Debt **\$600**

**#8 Contingency Option – Additional Work**

In the event that CITY shall within the TERM of the Agreement elect the contingency option to engage CONSULTANT to provide additional work within the terms of the Agreement, CITY shall pay the mutually agreed to amount(s) as set forth in any duly executed Change Order(s) mutually agreed to by the parties in accordance with the terms of the Agreement.






# Avenu Insights Analytics LLC UUT Agreement (2-1-2021 thru 1-31-26)\_(CAO ..\_

Final Audit Report

2021-01-06

Created:	2021-01-06
By:	Kristin Andrade (kandrade@santa-ana.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAvpCkwAYjPGPRmlaznr8TyhdDhK7Z1iDs

## "Avenu Insights Analytics LLC UUT Agreement (2-1-2021 thru 1-31-26)\_(CAO ..\_" History

-  Document created by Kristin Andrade (kandrade@santa-ana.org)  
2021-01-06 - 8:07:29 PM GMT- IP address: 98.153.69.210
-  Document emailed to Kathryn Downs (kdowns@santa-ana.org) for signature  
2021-01-06 - 8:08:03 PM GMT
-  Email viewed by Kathryn Downs (kdowns@santa-ana.org)  
2021-01-06 - 8:17:51 PM GMT- IP address: 184.181.108.147
-  Document e-signed by Kathryn Downs (kdowns@santa-ana.org)  
Signature Date: 2021-01-06 - 8:18:18 PM GMT - Time Source: server- IP address: 184.181.108.147
-  Agreement completed.  
2021-01-06 - 8:18:18 PM GMT