

AGENDA PLACEMENT FORM

(Submission Deadline – Monday, 5:00 PM before Regular Court Meetings)

Date: 5.20.2024

Meeting Date: 5.28.2024

Submitted By: Lance Anderson

Department: Purchasing Department

Signature of Elected Official/Department Head:



Court Decision: <small>This section to be completed by County Judge's Office</small>

<p>May 28, 2024</p>

Description:

Consideration and Approval with authorization for County Judge to sign Sales Order Agreement for Microfilm Storage for Johnson County District Clerk's Office with Avenu Insights and Analytics, LLC in the amount of \$5,100.00 with effective term 3/1/2024 - 2/28/2027 .

(May attach additional sheets if necessary)

Person to Present: Lance Anderson

(Presenter must be present for the item unless the item is on the Consent Agenda)

Supporting Documentation: (check one) PUBLIC CONFIDENTIAL

(PUBLIC documentation may be made available to the public prior to the Meeting)

Estimated Length of Presentation: 5 minutes

Session Requested: (check one)

Action Item Consent Workshop Executive Other _____

Check All Departments That Have Been Notified:

County Attorney IT Purchasing Auditor

Personnel Public Works Facilities Management

Other Department/Official (list) District Clerks Office

**Please List All External Persons Who Need a Copy of Signed Documents
In Your Submission Email**



CUSTOMER NO C101429	DATE April 16, 2024	SALES ORDER NUMBER
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BILL TO	Johnson County	SHIP TO
	Attn: Sady Whitley	
	204 South Buffalo Avenue	
	Cleburne, TX 76031	

CUSTOMER EMAIL

ADDRESS: swhitley@johnsoncountytexas.org

Customer Contact: Sady Whitley

Phone: 817-556-6839 Ext: 1009

Effective Term: Start: 03-01-2024

End: 2-28-2027

PRODUCT NAME	PRODUCT DESCRIPTION	PRODUCT CODE	EST QTY	UNIT PRICE	ESTIMATED SALES AMOUNT
Microfilm Storage	Microfilm Storage: Term 3/1/24 - 2/28/25	GR00005	850	\$2.00	\$ 1,700.00
Microfilm Storage	Microfilm Storage: Term 3/1/25 – 2/28/26	GR00005	850	\$2.00	\$ 1,700.00
Microfilm Storage	Microfilm Storage: Term 3/1/26 – 2/28/27	GR00005	850	\$2.00	\$ 1,700.00
	Microfilm Retrieval – 1 st Roll			\$25.00	
	Microfilm Retrieval – Each Additional roll			\$5.00	
8840104	Customer responsible for shipping costs				\$
				SUBTOTAL	\$ 5,100.00
				ESTIMATED TOTAL	\$ 5,100.00

CONFIDENTIAL & PROPRIETARY

This document is exclusively for commercial use between Avenu Insights & Analytics, and Customer, and is considered Confidential Information according to the Terms, not to be disclosed to third parties unless such disclosure is explicitly permitted under this Agreement.

****THIS IS NOT AN INVOICE**** – Please do not send payment from this order. You will receive a separate invoice for the services provided above****

If you have any questions regarding payment, you can reach us directly at AR@avenuinsights.com or (571) 485-7875.

TERMS AND CONDITIONS

Unless modified terms and conditions have been executed by the Parties and are referenced in the Special Instructions or Product Specific Terms below, the Sales Order Form (“Sales Order”) is governed by Avenu Insights and Analytics, LLC’s (“Avenu”) Standard Terms and Conditions for Services (“Standard Terms and Conditions”) found at [avenuinsights.com/processing-agreement-standard-terms-and-conditions-for-services/]. As used in this Sales Order, Terms and Conditions refers to either Avenu’s Standard Terms and Conditions, or, if applicable, the modified terms and conditions referenced in the Special Instructions or Product Specific Terms below (“Terms and Conditions”).

By executing this Sales Order, Customer acknowledges having

- (i) accessed online and/or been provided a copy of Avenu’s Standard Terms and Conditions, and
- (ii) read and accepted Avenu’s Standard Terms and Conditions. Any capitalized terms in this Sales Order that are not defined herein have the meaning indicated in Avenu’s Standard Terms and Conditions.

The Standard Terms and Conditions together with this Sales Order represent the entire agreement between the Parties' regarding this subject matter and supersede and prevail over any and all other discussions, understandings and agreements (including, without limitation, any purchase order or other unilateral document) related to the subject matter of the Agreement unless the additional terms are accepted in writing by both Parties.

In the event of any inconsistency or conflict between this Sales Order, on the one hand, and Avenu’s Standard Terms and Conditions, on the other hand, this Sales Order will take precedence.

Avenu’s fees are exclusive of all taxes, levies or duties imposed by taxing authorities. The Parties’ respective tax obligations will be as provided for in Avenu’s Standard Terms and Conditions and applicable law.

SPECIAL INSTRUCTIONS

1. **Avenu will invoice for microfilm storage in advance of the Term Start Date based on the number of microfilm rolls in storage.**
2. **If Client would like Avenu to store additional rolls of film, Client is responsible for shipping the film to Avenu.**
3. **Client will be responsible for all freight charges for microfilm shipped from Avenu to Client.**

PRODUCT SPECIFIC TERMS

ASSUMPTIONS: Avenu’s delivery of Services and the Estimated Sales Amount and Estimated Total are based on the assumptions, estimated quantities, and condition of the artifacts provided by the Customer. In the event the assumptions provided by the Customer are inaccurate or there is a discrepancy in the condition of the artifacts, Avenu shall notify the Customer in writing of any and all adjustments to the Sales Order and shall proceed unless, upon receipt, Customer provides written notice within five (5) days of

Customer's decision not to proceed. **For the avoidance of doubt, notwithstanding the Estimated Sales Amount and Estimated Total set forth herein, Avenu shall invoice Customer for actual products and quantities processed.**

DELIVERY: The Customer shall be solely responsible for determining the output requirements for the products and quantities processed ("Output Files"). Avenu shall not be responsible for uploading Output Files (i) into a non-Avenu system unless Customer provides for such upload in the Special Instructions or (ii) into an Avenu system unless Customer has a Maintenance Agreement and the Term of said Agreement extends beyond the Term of the Sales Order.

ACCEPTANCE: Customer will notify Avenu in writing within ten (10) business days of any defect that requires remediation. If not notified to the contrary, Avenu will deem all deliverables as acceptable by Customer and will consider all invoicing of said deliverables to be due and payable according to the Terms and Conditions. **For the avoidance of doubt, Avenu shall deem all deliverables as acceptable by Customer and will consider all invoicing of said deliverables to be due and payable upon delivery (and not uploading of Output Files into an Avenu or non-Avenu system) unless uploading of Output Files into an Avenu or non-Avenu system is expressly stated as part of the Product Name and Product Description and/or Special Instructions of the Sales Order.**

Customer: Johnson County
(Authorized Signature Only)

Avenu Insights & Analytics, LLC
(Authorized Signature Only)

CUSTOMER ACCEPTANCE: *I hereby accept the terms and conditions of this Sales Order and the Terms and Conditions for Services that is accessible online and authorize Avenu to proceed on this matter as set forth herein.*

Signature: 

Signature: 

Print/Name: Christopher Boedeker

Print/Name: James Barkman

Title: County Judge

Title: Chief Financial Officer

Date: May 28, 2024

Date: 5/6/2024

Processing Agreement Standard Terms and Conditions for Services

These standard terms and conditions ("Standard Terms and Conditions"), together with the Sales Order Form ("Sales Order"), govern Avenu Insights & Analytics, LLC's ("Avenu") provision and Customer's receipt of Services ("Services") as set forth in the Sales Order, and if applicable, described in the Statement of Work, which shall be attached to and incorporated by reference in the Sales Order as Exhibit A. As used in these Standard Terms and Conditions, "Agreement" means, collectively, (1) these Standard Terms and Conditions and (2) the Sales Order. If a conflict exists between these Standard Terms and Conditions, and the Sales Order, the terms and conditions of the Sales Order will control.

1. **SERVICES** Avenu agrees to provide to Customer the Services set forth in the Sales Order, and if applicable, described in the Statement of Work in accordance with the terms and conditions set forth in this Agreement.
2. **TERM** This Agreement will commence on the date that the Sales Order is executed by both parties ("Sales Order Effective Date") and will continue for the term period specified in the Sales Order, and if applicable, described in the Statement of Work, or, if not so specified, one year (the "Initial Term") unless otherwise extended or terminated by the parties in accordance with the provisions of this Agreement.
3. **PAYMENT** Customer agrees to pay Avenu the Services in accordance with, and subject to, the payment terms set forth in the Sales Order, and if applicable, described in the Statement of Work, including any payments due for partially completed work performed to the date of termination for loss of funding or to the date of termination for any other reason except for default by Avenu. Avenu will submit an invoice to Customer for each payment due, and Customer agrees to pay each invoice within thirty (30) calendar days after receipt of the invoice.
4. **IMPLEMENTATION** Implementation should begin as soon as possible from the Effective Date of the Sales Order for the performance of Services in accordance with the provisions of this Agreement.
5. **TAXES** If Customer is by law exempt from property taxes or sales and use taxes, those taxes will not be included in invoices submitted to Customer under this Agreement. Avenu may be considered a limited agent of Customer for the sole purpose of purchasing goods or services on behalf of Customer without payment of taxes from which Customer is exempt. If Avenu is required to pay taxes by determination of a proper taxing authority having jurisdiction over the products or services provided under this Agreement, Customer agrees to reimburse Avenu for payment of those taxes.
6. **DELIVERY AND ACCEPTANCE** Customer will have ten (10) business days after notification by Avenu that a portion of the Services are complete and ready for acceptance to inspect and accept or decline that portion of the Services. If Customer declines to accept all or any part of the Services,

Customer will provide Avenu a written description of the deficiencies and a reasonable opportunity to cure those deficiencies. Customer will indicate acceptance of the Services in writing. However, if Customer fails to accept or decline the Services and deliver a written list of deficiencies to Avenu within ten (10) business days after receipt of notice of delivery, the Services will be deemed to have been accepted by Customer.

7. **CONFIDENTIALITY** With respect to Customer business information that is confidential and clearly designated as confidential ("Customer Confidential Information"), Avenu will keep that information confidential by using the same degree of care and discretion that is used with information that Avenu regards as confidential. Avenu will not be required to keep confidential any information that: (a) is or becomes publicly available; (b) is already lawfully possessed by Avenu; (c) is independently developed by Avenu outside the scope of this Agreement without reliance on Customer Confidential Information; or (d) is rightfully obtained from third parties. Avenu is not required to keep confidential any ideas, concepts, methodologies, inventions, discoveries, developments, improvements, know-how, or techniques developed by Avenu while providing the Services. Avenu and Customer agree to use confidential information only for the purposes of this Agreement and on a strictly need-to-know basis and will not disclose confidential information to any third party (other than as permitted under this Agreement) or to the employees of the other party, Avenu subcontractors, or permitted consultants engaged by the Customer with the prior written consent of Avenu.
8. **OWNERSHIP, USE, AND RETURN OF DATA** Except for Avenu's preexisting proprietary information and processes, all information, records, documents, files, data, and other items relating to the business of Customer, whether prepared by Customer or Avenu or otherwise coming into the possession of Avenu in connection with performing the Services or otherwise during the Term will remain the exclusive property of Customer.
9. **INTELLECTUAL PROPERTY RIGHTS** The entire right, title and interest in and to Avenu'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 Avenu or its subcontractors. The foregoing notwithstanding, in no event shall any Customer-owned data provided to Avenu be deemed included within the Work Product.
10. **ACCESS TO FACILITIES AND INSURANCE** Customer agrees to provide Avenu with reasonable access to Customer facilities for provision of Services, as well as secure storage areas for materials, equipment, and tools, if required. If Avenu performs any of the Services on Customer premises, Avenu agrees to maintain standard insurance coverage in accordance with its corporate policy. Upon request, Avenu will provide evidence of coverage on a standard ACORD form certificate of insurance.

11. **FORCE MAJEURE** Avenu 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, quarantines, pandemics, endemics, weather, fire, flood, earthquake, weather, climate change, elements of nature, war, terrorism, civil disturbance, labor disruptions, strikes, embargoes, power or telecommunications failures, inability to obtain supplies, breakdown of equipment or interruption in vendor services or communications, or cause beyond the reasonable control of Avenu ("Force Majeure Event"). Upon the occurrence of a Force Majeure Event, the party that has experienced a delay or failure of performance caused by the Force Majeure Event will be excused from further performance or observance of the affected obligation(s) for as long as the extenuating circumstances prevail and that party continues to attempt to recommence performance or observance whenever and to whatever extent possible without delay. The party that experienced a delay or failure of performance caused by the Force Majeure Event will immediately notify the other party and describe in reasonable detail the circumstances causing the delay or failure of performance. The provisions of this Section shall survive termination of this Agreement.
12. **WARRANTIES** Avenu warrants that the Services will be performed in a professional and workmanlike manner. If third-party hardware or commercial software is furnished under this Agreement, then Avenu will, to the maximum extent allowable by third-party vendors, pass-through to Customer all warranties for materials furnished under this Agreement. Avenu will provide only the warranties and exchange policies for any defective items that are offered by the manufacturers. **THE LIMITED WARRANTIES SET FORTH IN THIS SECTION ARE MADE TO CUSTOMER EXCLUSIVELY AND AVENU MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE SERVICES PROVIDED. AVENU EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
13. **INDEMNITY** Avenu shall indemnify, defend, and hold harmless the Customer, 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 Avenu'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 Customer. "Avenu's performance" includes Avenu's action or inaction and the action or inaction of Avenu's officers, employees, agents, and subcontractors.
14. **LIMITATIONS OF LIABILITY**
NEITHER PARTY WILL BE LIABLE, UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES OF ANY KIND RESULTING FROM THE PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS UNDER THIS AGREEMENT EVEN IF THOSE DAMAGES ARE ATTRIBUTED TO BREACH OF THIS AGREEMENT, TORT, NEGLIGENCE, OR OTHER CAUSE OF ACTION. THE PARTIES AGREE THAT THIS LIMITATION SHALL APPLY EVEN IF A PARTY HAS BEEN

ADVISED OF THE POSSIBILITY OF NON-DIRECT DAMAGES OR IF, UNDER APPLICABLE LAW, NON-DIRECT DAMAGES ARE CONSIDERED TO BE DIRECT DAMAGES. EXCEPT FOR AMOUNTS EXPRESSLY DUE AND PAYABLE TO AVENU UNDER THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY TO THIS AGREEMENT BE LIABLE TO THE OTHER PARTY FOR ANY CLAIMS, PENALTIES OR DAMAGES, WHETHER IN CONTRACT, TORT, OR BY WAY OF INDEMNIFICATION, IN AN AMOUNT EXCEEDING THE FEES OR OTHER CHARGES PAID BY CUSTOMER TO AVENU FOR THE SERVICES THAT ARE THE SUBJECT OF THE CLAIM.

15. **TERMINATION FOR BREACH OR DEFAULT BY AVENU** If Avenu materially breaches any of the terms and conditions set forth in this Agreement or fails to perform the obligations set forth in this Agreement and fails to cure the breach or failure within forty-five (45) calendar days (or any longer period stated in the notice) after receipt of written notice specifying the basis for the breach or failure to perform, Customer may terminate this Agreement. Termination by Customer will be effective upon delivery of final payment to Avenu of all sums due under this Agreement to the effective date of the termination.
16. **TERMINATION OR SUSPENSION OF WORK FOR LOSS OF FUNDING** This Agreement is subject to termination for convenience upon not less than thirty (30) days written notice to Avenu if Customer has failed to receive funds for the continued procurement of the Services after every reasonable effort has been made by Customer to secure the necessary funding and if no substitute arrangement is made by Customer to obtain the same or similar Services from another source. If this Agreement is terminated before the End Date, Avenu will invoice Customer for work performed to the End Date, and Customer agrees to pay Avenu for those Services. Under no circumstances will Avenu be required to perform Services in the absence of available funding.
17. **NOTICES TO PARTIES** Unless otherwise specified in this Agreement, all notices, requests, or consents required to be given in writing under this Agreement shall be hand delivered, delivered by overnight delivery service, or mailed (certified mail, postage prepaid).

To Avenu:
5680 Trinity Parkway, Suite 120
Centreville, VA 20120
Attention: Contracts Department

To Customer:
Customer's Billing Address listed in the
Sales Order

18. **ASSIGNMENT AND SUBCONTRACTING** This Agreement is binding on the parties and their successors and assigns. Avenu may assign or otherwise transfer this Agreement and any rights, duties, or obligations under this Agreement to a corporate parent, subsidiary, or affiliate of Avenu. Any other attempt to make an assignment without prior written consent of the other party will be void. Avenu may provide for the delivery of all or part of the

Services through the use of subcontractors. Avenu will notify Customer of work being performed by any subcontractor that performs work on the premises of Customer and shall ensure that the insurance requirements that apply to Avenu under this Agreement apply to and are complied with by each subcontractor.

19. **INDEPENDENT CONTRACTOR** It is understood that Avenu 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 Customer. Customer understands that Avenu may perform similar services for others during the term of this Agreement and agrees that Avenu representation of other government sector Customers is not a conflict of interest. Avenu shall obtain no rights to retirement benefits or other benefits which accrue to Customer's employees, and Avenu hereby expressly waives any claim it may have to any such rights.
20. **GOVERNING LAW** This Agreement shall be governed by, interpreted, construed, and enforced in accordance with the laws of the State of Virginia, without reference to the principles of conflict of laws.
21. **NON-SOLICITATION AND NON-HIRE** Customer shall not, without the prior written consent of Avenu knowingly solicit, recruit, hire, or otherwise employ or retain any employee of Avenu that is performing the Services or has performed any of the Services under this Agreement during the Term of this Agreement. This restriction includes former employees of Avenu who have performed any of the Services during the term of this Agreement during a period of one (1) year after that employee is no longer employed by Avenu. Because actual damages are difficult to determine if Customer breaches the non-solicitation obligations under this Section, the parties agree that in lieu of an award of actual damages and not as a penalty, Avenu shall be entitled to, and Customer shall pay to Avenu as the sole and exclusive remedy for breach, liquidated damages of two (2) times the salary and bonus target employee at the time his or her employment with Avenu. Nothing in this Section shall waive the right of Avenu to seek injunctive relief to compel compliance by a current or former employee with the obligations of a former employee not to use or disclose that any confidential or proprietary information of the former employer. The non-solicitation provisions of this Section shall not restrict in any way the right of either party to solicit or recruit generally in the media, and shall not prohibit either party from hiring an employee or former employee of the other party who responds to any public advertisement or who otherwise voluntarily applies for hire without having been personally solicited or recruited by the hiring party. The provisions of this Section shall not prohibit either party from hiring employees of the other party if the status of the other party as a viable business entity so declines as to make it unlikely the party could retain the services of its employees.
22. **SEVERABILITY** If all or part of any term or condition of this Agreement, or the application of any term or condition of this Agreement, is determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of the terms and conditions of this Agreement (other than those portions determined to be invalid or unenforceable) shall not be

affected, and the remaining terms and conditions (or portions of terms or conditions) shall be valid and enforceable to the fullest extent permitted by law. If a judicial determination prevents the accomplishment of the purpose of this Agreement, the invalid term or condition (or portions of terms or conditions) shall be restated to conform to applicable law and to reflect as nearly as possible the original intent of the parties.

23. **WAIVER OR FORBEARANCE** Any delay or failure of either party to insist upon strict performance of any obligation under this Agreement or to exercise any right or remedy provided under this Agreement shall not be a waiver of that party's right to demand strict compliance, irrespective of the number or duration of any delay(s) or failure(s). No term or condition imposed on either party under this Agreement shall be waived and no breach by either party shall be excused unless that waiver or excuse of a breach has been put in writing and signed by both parties. Waiver in any instance of any right or remedy shall not constitute waiver of any other right or remedy under this Agreement. Consent to or forbearance of any breach or substandard performance of any obligation under this Agreement shall not constitute consent to modification or reduction of the other obligations or forbearance of any other breach.
24. **HEADINGS** The section headings used in this Agreement are merely for reference and have no independent legal meaning and impose no obligations or conditions on the parties.
25. **COUNTERPARTS** This Agreement may be signed in separate counterparts including facsimile copies. 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.
26. **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.
27. **ENTIRE AGREEMENT** The contents of this Agreement (including Sales Order and, if applicable, the Statement of Work) constitute the entire understanding and agreement between the parties and supersede any prior agreements, written or oral, that are not specifically referenced and incorporated in this Agreement. The terms and conditions of this Agreement shall not be changed or modified except by written agreement signed by both parties. Any such change or modification will become part of this Agreement and will be governed by the terms and conditions of this Agreement.