RESOLUTION - ACTION REQUESTED 2019-708

MEETING: December 17, 2019

TO: The Board of Supervisors

FROM: Vince Kehoe, Assessor-Recorder

RE: Approve an Agreement with Avenu (Recording System)

RECOMMENDATION AND JUSTIFICATION:
Approve an Agreement with Avenu in the Amount of $16,234.90 for Recording Service; and Authorize the Board of Supervisors Chair to Sign the Agreement.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
In 2004, the county approved the Exigent (Recording System). In 2007 the company was bought by ACS-Exigent, in 2017 Conduent bought the company. In 2018 Avenu bought out Conduent.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Negative would be that our Recording system would no longer be able to Record Documents.

FINANCIAL IMPACT:
Already in Budget

ATTACHMENTS:
Avenu Final (PDF)

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Marshall Long, District III Supervisor
SECONDER: Merlin Jones, District II Supervisor
AYES: Smallcombe, Jones, Long, Cann, Menetrey
Sales Order #

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<th>PRODUCT - sales support</th>
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SPECIAL INSTRUCTIONS: 

SUBTOTAL $5,234.90

TAX %
i.e. .08 or .0725

SALES TAX

CUSTOMER ACCEPTANCE: I hereby accept the terms and conditions of this Sales Order Agreement included in page 2, and authorize Avenu to proceed on this matter as set forth herein.

CUSTOMER SIGNATURE: [Signature] DATE: Dec 18, 2019

SALES APPROVAL: [Signature] 12/19/19

APPROVED AS TO FORM:

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Terms and Conditions:

Payment Terms: Customer agrees to remit payment to Avenu within 30 days from issuance of invoice.

Limited Warranty: Hardware and Commercial Software Warranties: If third-party hardware and/or commercial software is furnished under this Agreement, then Avenu shall, to the maximum extent allowable by said third-party vendors, pass-through to the Customer all manufacturers’ warranties for materials furnished under this agreement. Avenu shall provide only the standard manufacturers’ warranties, guarantees, and/or exchange policies for defective items, which are offered through the manufacturers themselves. AVENU MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THE HARDWARE AND COMMERCIAL OFF-THE-SHELF SOFTWARE, IN WHOLE OR IN PART. AVENU EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Rights to Third Party Software: Rights to third party commercial off-the-shelf software provided by third-party software vendors, including “shrink wrap” and “click-wrap” software, are subject to the provisions of the software licenses provided by those third-party software vendors, and Customer understands and agrees that acceptance and use of such third-party software shall be deemed an acceptance of the terms and conditions of the licenses. Client further agrees to use the third party software in accordance with the terms of those licenses. In the event Client requested Avenu to install third party software that contains “shrink wrap” or “click-wrap” software Client hereby authorizes Avenu to accept such “shrink wrap” or “click-wrap” software on behalf of the Client when the software is installed.

Limitation of Liability: IN NO EVENT SHALL AVENU BE LIABLE TO THE CUSTOMER HEREUNDER FOR ANY CLAIMS, PENALTIES OR DAMAGES, WHETHER IN CONTRACT, TORT, OR BY WAY OF INDEMNIFICATION, IN AN AMOUNT EXCEEDING TEN PERCENT (10%) OF THE FULL PRICE OF THE ORDERED GOODS AND SERVICES UNDER THIS AGREEMENT. UNDER NO CIRCUMSTANCES WILL AVENU BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY. THIS LIMITATION SHALL APPLY EVEN IF CUSTOMER HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT MAY ANY ACTION BE BROUGHT AGAINST AVENU ARISING OUT OF THIS AGREEMENT MORE THAN ONE YEAR AFTER THE CLAIM OR CAUSE OF ACTION ARISES, DETERMINED WITHOUT REGARD TO WHEN THE AGGRIEVED PARTY SHALL HAVE LEARNED OF THE INJURY OR LOSS. UNDER NO CIRCUMSTANCES WILL AVENU BE RESPONSIBLE FOR THE LOSS OF DATA OR SOFTWARE.

Force Majeure: Neither party to this agreement shall be responsible for delays or failures in performance resulting from an act of God, war, civil disturbance, labor dispute, or other cause beyond the reasonable control of such party.

Ownership of Data: Customer will retain all title, rights, and ownership of all data, including associated indexes, film, and other data provided to Avenu, whether stored on magnetic tape, magnetic disk, CD-ROM disk (or other “like” electronic media that may be used).

Risk of Loss & Title: Avenu shall bear the risk of loss or damage to any hardware and commercial software provided under this agreement, while in transit to the Customer's designated delivery or installation site. The Customer shall bear all risk of loss or damage to the hardware and commercial software after delivery to the Customer site, unless such loss or damage is due to the negligence or willful acts of Avenu, its employees, agents, representatives or subcontractors. Title and risk of loss to the hardware and commercial software shall pass to the Customer upon the date products were delivered to the customer's site.

Returns: Customer may return hardware and commercial software products purchased from Avenu within 15 days from the date products were delivered to the Customer’s site.

Termination for Breach: If Customer 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 ten (10) calendar days (or other reasonable period stated in the notice) after receipt of written notice specifying the basis for the breach or failure to perform, Avenu may terminate this agreement for breach. Termination by Avenu shall be effective upon written notice to Customer. Customer agrees to discontinue use of all Avenu-owned materials no later than the effective date of termination and return such Avenu-owned materials to Avenu within thirty (30) calendar days after termination.

Entire Agreement: The contents of this agreement 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. The parties agree that in event Client provides Avenu with a purchase order, or any other document, containing terms or conditions that are in addition to, or in conflict with, the terms and conditions contained in this agreement, such additional and/or conflict terms shall be deemed null and void.

Work being performed by Avenu throughout the project is earned as completed; therefore, in the event the Customer cancels this sales order without cause, the Customer shall equitably compensate Avenu for all services performed through the effective date of the cancellation.

Stop Work: Avenu is entitled to stop work on this Agreement when the funding or cost limit specified on page 1 is reached. Under no circumstances will Avenu be required to perform services or provide deliverables in the absence of available funding.
Agreement for Information Technology
Products and Services

Avenu Enterprise Solutions, LLC
Mariposa County, California

This agreement for information technology products and services ("Agreement") is entered into by and between Avenu Enterprise Solutions, LLC (formerly Conduent Enterprise Solutions, LLC) ("Avenu"), 8600 Harry Hines Blvd., Dallas, TX 75235, and Mariposa County, a government entity in the State of California ("Client"), 4982 10th Street, Mariposa, CA 95338. Avenu and Client (each individually a "party" and collectively the "parties") agree as follows:

1. SERVICES Avenu agrees to provide to Client the information technology products, software, and related materials ("System") and perform for Client the services ("Services") described in the Statement of Work, which is attached to and incorporated by reference in this Agreement as Schedule A, in accordance with the terms and conditions set forth in this Agreement.

2. TERM This Agreement will become effective on July 1, 2019 ("Effective Date") and shall continue through June 30, 2020 unless otherwise extended or terminated by the parties in accordance with the provisions of this Agreement ("Term").

3. PAYMENT Client agrees to pay Avenu for the System and Services in accordance with the payment provisions set forth in Schedule A. Avenu shall submit an invoice to Client for each payment due, and Client agrees to pay each invoice within thirty (30) calendar days after receipt of the invoice.

4. EXPENSES Specific types of expenses that will be reimbursed by Client are listed in Schedule A. Avenu will bear sole responsibility for all other expenses incurred in connection with the delivery of the System and performance of the Services. Expenses will be listed in each invoice. Upon request, Avenu will provide receipts or other reasonable documentation.

5. TAXES If Client is by law exempt from property taxes or sales and use taxes, those taxes will not be included in invoices submitted to the Client under this Agreement. Avenu may be considered a limited agent of Client for the sole purpose of purchasing goods or services on behalf of Client without payment of taxes from which Client 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, Client agrees to reimburse Avenu for payment of those taxes.

6. DELIVERY AND ACCEPTANCE Avenu will arrange for delivery of appropriate System components to the Client installation site(s), as set forth in Schedule A. Shipment of hardware shall be F.O.B. to the receiving point at each installation site. Avenu will pay reasonable transportation and insurance charges for hardware delivered to the receiving point at each installation site. All requirements for acceptance and testing of the System or any System components shall be set forth in Schedule A. Client agrees to provide Avenu with reasonable access to Client facilities for provision of Services, as well as secure storage areas for materials, equipment, and tools, if required.
7. CONFIDENTIALITY With respect to information relating to Client’s business which is confidential and clearly designated as confidential or proprietary ("Client Confidential Information"), Avenu will instruct Avenu personnel to keep that information confidential by using the same degree of care and discretion that is used with similar Avenu information that Avenu regards as confidential. However, Avenu shall not be required to keep confidential any information that: (i) is or becomes publicly available; (ii) is already lawfully possessed by Avenu; (iii) is independently developed by Avenu outside the scope of this Agreement and without any reliance on Client Confidential Information; or (iv) is rightfully obtained from third parties. Avenu shall not be required to keep confidential any ideas, concepts, methodologies, inventions, discoveries, developments, improvements, know-how or techniques developed by Avenu in the course of providing the Services.

8. AVENU PROPRIETARY INFORMATION Client agrees that Avenu methodologies, tools, ideas, concepts, know-how, structures, techniques, inventions, developments, processes, discoveries, improvements, proprietary data and software programs, and any other information identified as proprietary or confidential by Avenu, which may be disclosed to the Client, are confidential and proprietary information ("Avenu Confidential Information"). With respect to Avenu Confidential Information, the Client shall keep that information confidential by using the same degree of care and discretion that it uses with similar Client information that Client regards as confidential, but in any event no less than a reasonable degree of care. Client shall not be required to keep confidential any information which: (i) is or becomes publicly available; (ii) is already lawfully possessed by Client; (iii) is independently developed by the Client outside the scope of this Agreement and without any reliance on Avenu Confidential Information; or (iv) is rightfully obtained from third parties.

9. USE OF CONFIDENTIAL INFORMATION Avenu and Client shall use confidential information only for the purposes of this Agreement and on a strictly need-to-know basis, and shall not disclose confidential information to any third party, other than as set forth in this Agreement, or to the employees of the other party, Avenu subcontractors, or permitted consultants engaged by the Client without the other party’s prior written consent.

10. SYSTEM OWNERSHIP AND USE RIGHTS The System provided under this Agreement includes technical information, software programs for computers or other apparatus, designs, specifications, drawings, records, documentation, reports, materials, concepts, plans, inventions, data, discoveries or adaptations, creative works, trade names or trademarks, and works of authorship or other creative works (written, oral, or otherwise expressed) that are delivered to Client or developed, conceived, or acquired by Avenu, Avenu employees, or by the authorized agents or subcontractors of Avenu as a part of the Services, including derivative works (individually and collectively "Avenu Intellectual Property"). The Services shall not be considered a “work for hire” under United States copyright laws or other intellectual property laws, and all rights, title, and interest in Avenu Intellectual Property shall vest solely in Avenu. Client understands and agrees that all Avenu Intellectual Property (including all software upgrades, modifications, and customizations) provided under this Agreement shall at all times remain the property of Avenu. The provisions of this Section shall survive termination of this Agreement.

11. OWNERSHIP, USE, AND RETURN OF DATA All information, records, documents, files, data, and other items relating to the business of Client (including indexes, film, and other data created or acquired by use of the System), whether prepared by Client or Avenu or otherwise coming into the possession of Avenu in connection with performing the Services or otherwise during the Term or Extended Term shall remain the exclusive property of Client. Client may duplicate on electronic media the data entered into the System. Client retains ownership of all data created by the use of the System.
12. DATA BACKUP  Backup of the Client’s data stored in the Avenu provided solution shall be handled using one of the two (2) methods described below, depending on the Client’s preference:

a. Avenu shall supply removeable media to accomplish a six (6) day rotation of server backups. It shall create scheduled server tasks/jobs to perform a Monday-Friday and a weekend nightly backup process to the removeable media herein known as the ‘Avenu Backup Strategy’. It shall be the Client’s responsibility to change this media (i.e. nightly during the work week, Monday-Friday and for the monthly backup) so that the backups are performed accurately. Avenu shall not be liable for any failed backups resulting from the Client’s failure to rotate the media, causing the backups to not be performed. The backup media shall be stored in a fireproof box or vault or separate building from where the server is located. Optionally, the Client can send the Monthly backup media to the Dallas office at 8600 Harry Hines Blvd. Suite 300, Dallas Texas 75235 to be processed for safe keeping. Avenu shall not be liable for the media that is onsite or stored in the current server location.

b. Client supplies its own removeable backup media, magnetic tapes, fixed hard drives, etc. Upon a request from the Client in writing, Avenu will assist the Client in creating its own backup strategy to contain the scheduled server tasks/jobs to perform the same backup tasks described above, or any other backup tasks as defined or requested by the Client. However, in no event shall Avenu be liable for the Client-supplied backup media, its personnel, or the actual backup task itself under this scenario.

Prior to using the Avenu provided System, Client shall prepare and safeguard back-up copies of all data that will be used in connection with the System. Throughout the Term, Client will be responsible for backing up all data contained in the System on a regular basis utilizing any one of the two scenarios described above (and in all cases, immediately prior to the provision by Avenu of any warranty or maintenance Services) in accordance with standard industry back-up procedures in the written instructions for data back-up of the Avenu provided solution that is provided by Avenu. In the event of an application failure and Avenu is unable to recover any or all lost or corrupted data, the responsibility and liability of Avenu for the loss of Client data shall be limited to restoring the data to the last provided daily back-up. Avenu shall not be liable for monetary damages or set-off for loss of Client data or software. Except to the extent specifically provided in this Section as part of the Services, Client will be responsible for the integrity and content of data entered into and contained in the System. Avenu will not be responsible for loss of Client data or software under any circumstances.

13. SOFTWARE LICENSE  Avenu hereby grants to Client a limited, non-exclusive, non-transferable, revocable license to use the Avenu Intellectual Property included in the System solely for the internal operations of Client, and only during the Term of the Agreement. Avenu represents and warrants that Avenu possesses all rights necessary to effectuate the license set forth in this Section. The license granted under this Section does not include the right to grant sublicenses for the Avenu Intellectual Property to any third party, including other persons, agencies, or other governmental entities that are not parties to this Agreement unless specifically set forth in Schedule A. Client and its employees and agents will not cause or permit reverse engineering of all or any portion of the Avenu Intellectual Property; will not distribute, disclose, loan, market, rent, lease, or otherwise transfer to any third party any portion of the Avenu Intellectual Property without prior written authorization by Avenu; and will not export any Avenu software products in violation of federal export laws or regulations. The provisions of this Section shall survive termination of this Agreement.

14. THIRD PARTY HARDWARE AND SOFTWARE  Any hardware and third-party software components provided by Avenu as part of the System are listed in Schedule A. Rights to commercial off-the-shelf software or any other hardware or software provided by third-party software vendors are subject to the provisions the software licenses provided by those third-party software vendors. Client understands and agrees that acceptance and use of this third-party hardware and software will be deemed acceptance of
the terms and conditions of the licenses provided by the respective hardware and software vendors. Client further agrees to use the third party software in accordance with the terms of those licenses. For “shrink wrap” or “click-wrap” software, Client authorizes Avenu to accept the terms of each license on behalf of the Client when the software is installed. To the maximum extent allowable by each of the third-party commercial hardware and software vendors, Client shall be entitled to all standard manufacturers warranties, guarantees, or exchange policies for defective items, which are offered by the third-party hardware and commercial off-the-shelf software manufacturers and vendors for items furnished under this Agreement. Avenu explicitly disclaims all warranties of merchantability and fitness for a particular purpose. Avenu makes no other express or implied warranties whatsoever with regard to any items or components of third-party hardware or commercial off-the-shelf software.

15. INSURANCE If Avenu performs any of the Services on Client 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.

16. RISK OF LOSS OR DAMAGE TO HARDWARE Avenu will bear the risk of loss or damage to any hardware while in transit to or from Client installation site(s). Client will bear all risk of loss or damage to hardware after delivery to the installation site(s), unless the loss or damage is due to the negligence or willful acts of Avenu, its employees, agents, representatives, or subcontractors.

17. PERFORMANCE AND SYSTEM WARRANTIES Avenu warrants that the Services will be performed in a professional and workmanlike manner in accordance with generally applicable industry standards and the System delivered by Avenu will not infringe on any copyright, patent, trade secret, or other intellectual property rights or proprietary rights of any third party.

THE LIMITED WARRANTIES SET FORTH IN THIS SECTION AND THE SOFTWARE WARRANTY SET FORTH IN SECTION 18 OF THIS AGREEMENT ARE MADE TO CLIENT EXCLUSIVELY AND ARE IN LIEU OF ALL OTHER WARRANTIES. AVENU MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO ANY HARDWARE OR SOFTWARE OR THE SERVICES PROVIDED UNDER THIS AGREEMENT, IN WHOLE OR IN PART. AVENU EXPlicitly DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. AVENU EXPRESSLY DOES NOT WARRANT THAT THE SYSTEM OR ANY HARDWARE OR SOFTWARE COMPONENT OF THE SYSTEM WILL BE ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION. CLIENT WAIVES ANY CLAIM THAT ANY OF THESE WARRANTIES OR THE REMEDIES PROVIDED UNDER THIS AGREEMENT FAIL OF THE ESSENTIAL PURPOSE FOR WHICH THE WARRANTIES OR REMEDIES ARE PROVIDED. AVENU AND ITS SUPPLIERS ARE NOT LIABLE FOR ANY TEMPORARY DELAY, OUTAGES, OR INTERRUPTIONS OF THE SERVICES.

The limited System warranty provided under this Agreement shall not cover, and shall be void as to (i) any System component on which maintenance has been performed by a third party that has not been authorized in writing by Avenu; (ii) any System component that has been altered or modified by Client or any third party that has not been authorized to do so in writing by Avenu; (iii) any System component that is damaged due to the negligence or misconduct of Client or any third party; (iv) any System component that has been damaged as a result of failure to operate the System in accordance with documentation or operating instructions provided by Avenu; or (v) any failure due to a force majeure event or due to exposure to unusual physical or electrical stress. If any component of the System is believed to be defective, Client shall give Avenu prompt written notice that identifies each defect with specificity. Avenu will investigate and verify each reported defect. Upon verification by Avenu of a reported defect, Avenu shall (as determined by Avenu in the sole discretion of Avenu) repair, replace, or otherwise correct each verified defect at no cost to Client. The parties understand and agree that the remedy determined and applied by Avenu shall constitute a complete and satisfactory remedy for each covered defect. The remedies provided under this Section shall constitute the sole and exclusive remedies available to Client.
for any defects in System components. The provisions of this Section shall survive termination of this Agreement.

18. SOFTWARE WARRANTY   Avenu warrants that during the Term any application software components of the System that are developed and owned by Avenu (including customized software components) and furnished to Client by Avenu under this Agreement will be free from material errors that would prevent the documented operational features of the System from functioning when used properly under normal conditions and in accordance with the documentation and instructions for use provided by Avenu. The provisions of this Section shall survive termination of this Agreement. The limited warranty provided for Avenu software under this Section shall not cover, and shall be void as to (a) any third party hardware or software (including commercial off-the-shelf hardware and software) provided to or used by Client in connection with the System; (b) any component on which maintenance has been performed by a third party that has not been authorized in writing by Avenu; (c) any component that has been altered or modified by Client or any third party that has not been authorized in writing by Avenu; (d) any component that is damaged due to the negligence or misconduct of Client or any third party; (e) any component that has been damaged as a result of failure to operate the System in accordance with documentation or operating instructions provided by Avenu; or (f) any failure due to force majeure or exposure to unusual physical or electrical stress.

19. FORCE MAJEURE   Neither party shall be responsible for delays or failures in performance as a result of limitations or problems inherent in the use of the Internet and electronic communications; force majeure events, including but not limited to Acts of God, fire, flood, earthquake, weather, climate change, elements of nature, war, terrorism, civil disturbance, labor disruptions or strikes, quarantines, embargoes, or other governmental action, or cause beyond the reasonable control of a party (“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.

20. TORT AND PROPERTY DAMAGE CLAIMS   Each party shall indemnify and hold harmless the other party (and its successors, officers, directors, and employees) from any and all liabilities, claims, and expenses of whatever kind and nature for injury to or death of any person or persons and for loss of or damage to any tangible personal property occurring in connection with or in any way incident to or arising under this Agreement, resulting in whole or in part from the negligent acts or omissions of the indemnifying party. The indemnified party shall promptly notify the indemnifying party, in writing, of any claim and shall reasonably cooperate with the indemnifying party in the defense and settlement of the claim. The provisions of this Section shall survive termination of this Agreement.

21. LIMITATIONS OF LIABILITY

NEITHER PARTY SHALL 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.
AVENU SHALL NOT BE LIABLE FOR ANY FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS FROM THE SYSTEM OR SERVICES PROVIDED UNDER THIS AGREEMENT. CLIENT ACKNOWLEDGES THAT AVENU HAS SET ITS PRICING AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTY AND DAMAGES SET FORTH IN THIS AGREEMENT, AND THAT THESE LIMITATIONS AND DISCLAIMERS FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. CLIENT UNDERSTANDS AND AGREES THAT AVENU EXERCISES NO CONTROL OVER AND HAS NO RESPONSIBILITY OR LIABILITY FOR THE CONTENT OF INFORMATION PASSING THROUGH AVENU HOST COMPUTERS, SERVERS, NETWORK HUBS AND POINTS OF PRESENCE, OR THE INTERNET. 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 CLIENT TO AVENU DURING THE THREE (3) MONTHS PRECEDING THE CLAIM.

22. DISpute RESolution It is the intent of the parties that any disputes arising under this Agreement be resolved expeditiously, amically, and at the level within each party's organization that is most knowledgeable about the relevant issues. The parties understand and agree that the procedures outlined in this Section are not intended to supplant the routine handling of inquiries and complaints through informal contact of the parties. Accordingly, for purposes of the procedures set forth in this Section, a "dispute" is a disagreement that the parties have been unable to resolve by the normal and routine channels ordinarily used for resolving problems. Pending the final disposition of a dispute other than a dispute arising out of the termination of this Agreement by either party, the parties shall, at all times, proceed diligently with the performance of this Agreement. Before either party seeks any remedies available at law, the parties shall sequentially follow the procedures set forth below:

(a) The complaining party will notify the other party in writing of the reasons for the dispute, and the parties will work together to resolve the matter as expeditiously as possible. A formal written response will not be required, but the responding party may put its position in writing in order to clarify the issues or suggest possible solutions.

(b) If the dispute remains unresolved fifteen (15) calendar days after the delivery of the complaining party's written notice, a senior representative of Avenu and the Client (or a representative of Client who has authority to act to resolve the dispute) shall meet or participate in a telephone conference call within ten (10) business days of a request for the meeting or conference call by either party to resolve the dispute.

(c) If the parties are unable to reach a resolution of the dispute after following these procedures, or if either party fails to participate when requested, then the parties may pursue any remedies available under this Agreement.

23. 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, Client may terminate this Agreement. Termination by Client shall be effective upon delivery of final payment to Avenu of all sums due under this Agreement to the effective date of the termination. Client agrees to discontinue use of all hardware, software, and other Avenu-owned materials no later than the effective date of termination and return the hardware, software, and other Avenu-owned materials to Avenu within thirty (30) calendar days after termination.
24. TERMINATION FOR BREACH OR DEFAULT BY CLIENT  If Client 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 other reasonable period stated in the notice) after receipt of written notice specifying the basis for the breach or failure to perform, Avenu may terminate this Agreement for breach. Termination by Avenu shall be effective upon written notice to Client. Client agrees to discontinue use of all hardware, software, and other Avenu-owned materials no later than the effective date of termination and return the hardware, software, and other Avenu-owned materials to Avenu within thirty (30) calendar days after termination.

25. TERMINATION FOR LOSS OF FUNDING  This Agreement is subject to termination for convenience upon not less than thirty (30) days written notice to Avenu if Client has failed to receive funds for the continued procurement of the Products or Services after every reasonable effort has been made by Client to secure the necessary funding and if no substitute arrangement is made by Client to obtain the same or similar System or Services from another source. Client agrees to discontinue use of all hardware, software, and other Avenu-owned materials no later than the effective date of termination and return the hardware, software, and other Avenu-owned materials to Avenu within thirty (30) calendar days after termination.

26. EFFECT OF TERMINATION ON OBLIGATIONS AND LIABILITIES  Termination of this Agreement for any reason will not affect any liabilities or obligations of either party arising before termination or out of events causing termination and will not affect any damages or other remedies to which a party may be entitled under this Agreement, at law or in equity, arising from any breach or default. On and after the date of termination Avenu will discontinue all Services and indexes and images will no longer be accessible from Avenu. Client agrees to allow Avenu to remove any Avenu-owned hardware, software, and other Avenu-owned materials. Avenu will perform post-termination data conversion (to the extent possible) at the request of Client on a time and materials basis at the then-current applicable rates. If this Agreement is terminated for any reason during the first twenty-four (24) months of the Term, Client agrees to pay Avenu a termination fee in the amount of the unamortized cost of initial hardware and other start-up costs incurred by Avenu, as determined by Avenu and set forth in an early termination invoice.

27. INJUNCTIVE RELIEF  The parties recognize that a remedy at law for a breach of the provisions of this Agreement relating to proprietary and confidential information or the unauthorized use of any trademark, copyright, or other intellectual property of Avenu may not be adequate for protection of Avenu, and accordingly Avenu shall have the right to seek injunctive relief to enforce the provisions of this Agreement, in addition to any other relief and remedies available.

28. RELATIONSHIP OF THE PARTIES  This Agreement shall not constitute, create, give effect to, or otherwise imply a joint venture, partnership, or business organization of any kind. Avenu and Client are independent parties, and neither party shall act as an agent for or partner of the other for any purpose. Nothing in this Agreement shall grant to either party any right to make any commitments of any kind for or on behalf of the other party without the prior written consent of the other party. Avenu shall not be restricted from providing products or performing services for others and shall not be bound to Client except as provided under this Agreement.

29. 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 the party indicated below (with a delivery receipt requested), unless that party notifies the other, in writing, of a change in the address or contact information:
30. 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.

31. ASSIGNMENT AND SUBCONTRACTING  This Agreement shall be binding on the parties and each party’s 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 Client shall be void. Avenu may provide for the delivery of all or part of the Services through the use of subcontractors. Avenu shall notify Client of work being performed by any subcontractor that performs work on the premises of Client and shall ensure that the insurance requirements that apply to Avenu under this Agreement apply to and are complied with by each subcontractor.

32. CUMULATIVE REMEDIES  All remedies available to either party for breach of this Agreement by the other party are and shall be deemed cumulative and may be exercised separately or concurrently. The exercise of a remedy shall not be an election of that remedy to the exclusion of other remedies available at law or in equity. If any legal action is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney fees in addition to any other relief to which that party may be entitled.

33. 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.

34. 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.
35. 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.

36. NON-SOLICITATION AND NON-HIRE  Client 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 Client 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 Client 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.

37. ENTIRE AGREEMENT  The contents of this Agreement (including the Statement of Work and any other schedules or attachments to this Agreement that are referred to and incorporated in this Agreement by reference) 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.

IN WITNESS WHEREOF, the undersigned authorized representatives of Avenu and the Client have executed this Agreement.

Avenu Enterprise Solutions, LLC

Signature  
Mike Melka  
Name  
CFO  
Title

Mariposa County, California

Signature  
Name  
Title
SCHEDULE A
STATEMENT OF WORK

This Statement of Work is incorporated in the Agreement for Information Technology Products and Services ("Agreement") by and between Avenu Enterprise Solutions, LLC ("Avenu") and Mariposa County, California ("Client").

A. SCOPE OF SERVICES

AVENU RESPONSIBILITIES

1. Avenu will provide software maintenance services for Symphony, the Avenu open architecture land records document management, imaging, and workflow software ("System") currently utilized in the offices of the Assessor and Recorder.

2. Avenu will provide software maintenance services for Symphony Redaction, a module included in the System configuration.

3. Avenu will perform all on-going support of the Symphony System during the Term of this Agreement.

CLIENT RESPONSIBILITIES

1. Client understands and agrees that successful implementation of the System requires the Client to assign a high priority to the successful implementation. To that end, Client agrees to make all reasonable efforts to have Client personnel available to assist in the implementation efforts and to be trained at the appropriate times.

2. Client agrees to be responsible for purchasing, installing, and managing all necessary anti-virus protection software and anti-virus software updates on any Client-owned servers and workstations.

3. Client agrees to allow Avenu to schedule an Avenu support person to be on the Client site for all System installations.

4. Client will provide printer ribbons, toner cartridges, printer paper, electricity, and magnetic media for backups and image extractions, pick rollers and pad assemblies, cabling requirements, Internet access, and other miscellaneous supplies not specifically provided by Avenu.

5. Client will provide a medium speed connection to the internet (DSL, cable, or other service) of sufficient bandwidth to do support.

6. Client will be fully responsible for restoring the System in the event of virus disruption.

7. In the event of downtime determined by Avenu to have been caused by virus contamination of the System or traceable by Avenu to Client-installed software, Client agrees to pay Avenu for restoration of the System at the current Avenu hourly labor rate ($150 per hour on the Effective Date of this Agreement and subject to change to reflect increased costs of labor and materials).
B. ACCEPTANCE AND TESTING

1. Client shall have ten (10) business days after notification by Avenu that the System is ready for acceptance to inspect and accept the System delivered and installed by Avenu or decline to accept the System.

2. If Client declines to accept all or any part of the System, Client will provide Avenu a written description of the deficiencies and a reasonable opportunity to cure those deficiencies.

3. Client will indicate acceptance of the System in writing. However, if Client fails to decline to accept the System and deliver a written list of deficiencies to Avenu within ten (10) business days after receipt of notice of delivery, the System will be deemed to have been accepted by Client.

4. Client understands and agrees that minor defects (i.e., defects that do not inhibit the System from operating in substantial accordance with Avenu specifications) shall not constitute grounds for declining to accept the System. Minor defects may be corrected in subsequent releases of the System provided by Avenu as part of ongoing warranty or maintenance of the System.

C. PAYMENT AND RATES

Avenu will invoice Client for the Services based on the following price schedule.

<table>
<thead>
<tr>
<th>Services</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Symphony Maintenance</td>
<td>$10,000.00 per year</td>
</tr>
<tr>
<td>Symphony Redaction Maintenance</td>
<td>$1,000.00 per year</td>
</tr>
</tbody>
</table>