

Joan Newman

From: Lisa Churchill <Lisa.Churchill@avenuinsights.com>
Sent: Thursday, June 23, 2022 12:19 PM
To: Joan Newman
Cc: Lisa Churchill
Subject: RE: TX-Titus County, Film Storage **RESPONSE PLEASE**

I will check. I do know at one point we were SCT, ACS, XEROX, Conduent and now Avenu.

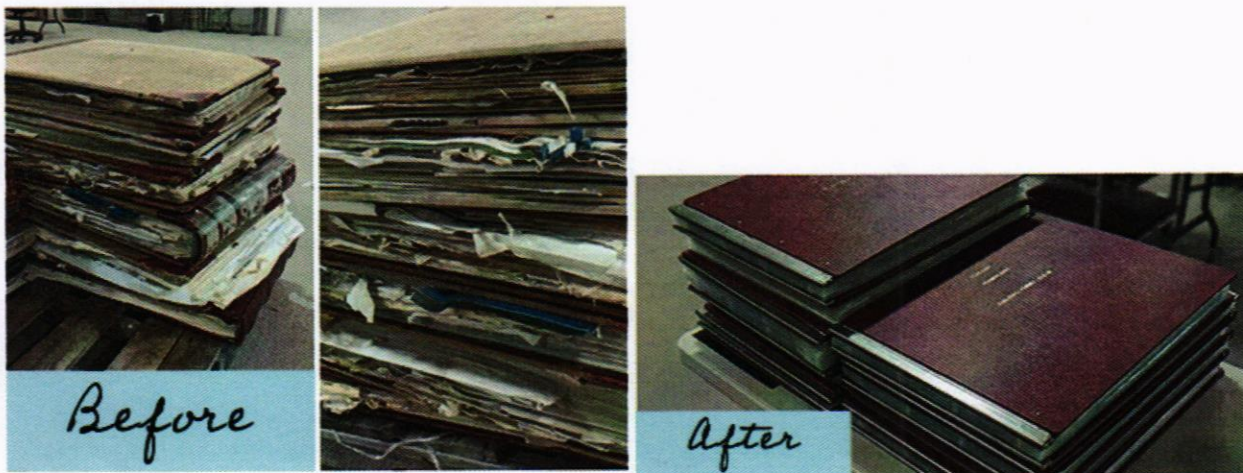
LISA CHURCHILL ^{PMP®}

CLIENT SUCCESS MANAGER

Avenu Insights & Analytics
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Check out our Digital Processing Services:
<https://www.avenuinsights.com/solutions/administration/digital-processing-services/>



From: Joan Newman <jnewman@co.titus.tx.us>
Sent: Thursday, June 23, 2022 1:12 PM
To: Lisa Churchill <Lisa.Churchill@avenuinsights.com>
Subject: RE: TX-Titus County, Film Storage **RESPONSE PLEASE**

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Agreement for Microfilm Storage

Avenu Government Records Services, LLC

Titus County

This agreement for microfilm storage services ("Agreement") is made by and between **Avenu Government Records Services, LLC** 8600 Harry Hines Blvd., Suite 300, Dallas, TX 75235 ("Avenu"), and **Titus County**, a government entity in the State of Texas ("Client"), 100 W First Street, Suite 204, Mt. Pleasant, TX 75455. Avenu and Client (each individually a "party" and collectively the "parties") agree as follows:

1. SERVICES Avenu agrees to provide to Client the microfilm storage services ("Services") described in the Statement of Work, which is attached to and incorporated 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 March 1, 2022 ("Effective Date") and will continue through February 28, 2027 ("End Date"), unless otherwise extended or terminated by the parties in accordance with the provisions of this Agreement ("Term"). At the end of the Term, the parties may agree in writing to extend this Agreement for additional one (1) year periods ("Extended Term"), subject to the termination provisions of this Agreement.

3. PAYMENT Client agrees to pay Avenu for the Services, including any partially completed work performed to the date of termination for loss of funding or any other reason except default by Avenu. Avenu will 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. 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.

5. DELIVERY AND ACCEPTANCE Client 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 Client declines to accept all or any part of the Services, Client will provide Avenu a written description of the deficiencies and a reasonable opportunity to cure those deficiencies. Client will indicate acceptance of the Services in writing. However, if Client 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 Client.

6. CONFIDENTIALITY With respect to Client business information that is confidential and clearly designated as confidential ("Client 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 Client 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 Client 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 Client with the prior written consent of Avenu.

7. OWNERSHIP, USE, AND RETURN OF DATA All information, records, documents, files, data, and other items relating to the business of Client, 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 will remain the exclusive property of Client.

8. ACCESS TO FACILITIES AND INSURANCE 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. 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.

9. 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.

10. 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 Client 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 CLIENT 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.**

11. 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 CLIENT TO AVENU DURING THE THREE (3) MONTHS PRECEDING THE CLAIM.

12. 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 will be effective upon delivery of final payment to Avenu of all sums due under this Agreement to the effective date of the termination.

13. TERMINATION WITHOUT CAUSE Notwithstanding any other provision or requirement of this Agreement, either party may terminate this Agreement at any time without cause by giving not less than ninety (90) calendar days prior written notice to the other party.

14. 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 Client has failed to receive funds for the continued procurement of the 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 Services from another source. If this Agreement is terminated before the End Date, Avenu will invoice Client for work performed to the End Date, and Client agrees to pay Avenu for those Services. Under no circumstances will Avenu be required to perform Services in the absence of available funding.

15. 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:

Avenu Government Records Services, LLC
8600 Harry Hines Blvd., Suite 300
Dallas, TX 75235

To Client:

Titus County
100 W First Street, Suite 204
Mt. Pleasant, TX 75455

Attn: Contracts Department

With a copy to:

Avenu Government Records Services, LLC
5860 Trinity Parkway, Suite 120
Centreville, VA 20120
Attn: Contracts Department

16. 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 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.

17. 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.

18. 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

Microfilm Storage Agreement



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.

19. ENTIRE AGREEMENT The contents of this Agreement (including 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.

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

Avenu Government Records Services, LLC

Titus County

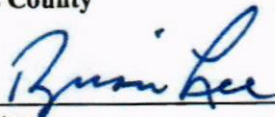


Signature

Name

Title

Date



Signature

Name

Title

Date

SCHEDULE A

STATEMENT OF WORK

This Statement of Work is incorporated in the Agreement for Microfilm Storage (“Agreement”) by and between Avenu Government Records Services, LLC (“Avenu”) and Titus County (“Client”).

A. SCOPE OF SERVICES

AVENU RESPONSIBILITIES

Avenu will perform the following Services for Client:

1. Avenu will provide microfilm storage for Client during the Term.
2. Avenu will store additional microfilm sent by Client.
 - Upon receipt from Client, Avenu will test microfilm for quality and storability.
 - Avenu will provide an audit report of all microfilm received from Client during the Term.
3. Avenu and Client will use and update an inventory report to track stored microfilm rolls.
4. If Avenu creates microfilm at Client’s request during the Term, Avenu will create the microfilm, place the microfilm in storage and update inventory log of microfilm.
5. Avenu will perform reprint services of lost or destroyed pages from record books, up to 50 pages, upon written request from Client. Avenu will ship reprinted documents to Client within fifteen (15) business days of Client request.
 - Avenu will retrieve microfilm from storage.
 - Avenu will test microfilm for reprint quality.
 - Avenu will reprint requested document(s) and ship to Client.
 - Avenu will return microfilm to storage after processing.

CLIENT RESPONSIBILITIES

1. Client will assign a Client employee who is authorized to request reprint services and make decisions regarding microfilm storage and retrieval under this Agreement.
2. Client will provide all reprint requests in writing with Volume/Book/Page and any pertinent information necessary to identify requested documents.
3. Client will work with Avenu to identify and resolve documents or microfilm that require special handling.

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4. Client will immediately notify Avenu in writing of any document reprints that require reworking and provide Avenu with Volume/Book/Page and any pertinent information necessary to identify the reprints in question.
5. If Client would like Avenu to store additional rolls of film, Client is responsible for shipping of microfilm to Avenu.
6. Client will be responsible for all freight charges for microfilm and reprints shipped from Avenu to Client.

B. ACCEPTANCE AND TESTING

1. Client will have ten (10) business days after receipt of microfilm or reprints ("Deliverables") to inspect and accept the Deliverables or decline to accept the Deliverables.
2. If Client declines to accept all or any part of the Deliverables, 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 Deliverables in writing. However, if Client does not accept the Deliverables and deliver a written list of deficiencies to Avenu within ten (10) business days after delivery, the Deliverables 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 Deliverables from operating in substantial accordance with Avenu specifications) shall not constitute grounds for declining to accept the Deliverables.

C. PAYMENT AND RATES

Client will pay Avenu based on the following price schedule.

Services	Price
Microfilm Storage	\$1.50 per roll per year. Currently, Avenu is storing 942 rolls of microfilm for Client. The parties may agree to increase or decrease this amount during the Term. Client will be invoiced annually in March during the Term and will pay Avenu based on the number of rolls of microfilm Avenu is storing for Client on March 1 of each year.
Microfilm Retrieval (per request)	\$21.50 for first roll and \$1.75 for each additional roll requested
Reprint of documents from microfilm	\$1.25 per page
Microfilm Creation	\$0.05 per frame