

## Consultant Services Agreement

This Consultant Services Agreement (the “Agreement”) is made as of August 1, 2023 (“Effective Date”) by and between **City of Richwood**, a municipal corporation of the State of Texas (“CLIENT”) and **Avenu Insights & Analytics, LLC**, a Delaware limited liability company (“CONSULTANT”), collectively the Parties. 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:

### A. Services

1. CONSULTANT will provide CLIENT with the Services described in EXHIBIT A, Statement of Work, which is attached hereto and incorporated by reference. CONSULTANT shall provide said services at the time, place, and in the manner specified in EXHIBIT A.
2. CONSULTANT shall furnish at its own expense all labor, materials, equipment and other items necessary to carry out the terms of this Agreement.

### B. Compensation

1. Upon execution of this Agreement, CLIENT will pay CONSULTANT as outlined in EXHIBIT B, Compensation Schedule, incorporated and included herein.

### C. General Provisions

1. Term of the Agreement: The initial term of this Agreement shall be for a period of three (3) years following the Effective Date, and automatically renew for two (2) successive one (1) year terms if neither party has cancelled (the “Term”). 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 prior 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. Provided, however, this Agreement is subject to termination upon not less than thirty (30) days written notice to CONSULTANT 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 CONSULTANT-owned materials no later than the effective date of termination and return the hardware, software, and other CONSULTANT-owned materials to CONSULTANT within thirty (30) calendar days after termination.
2. Effect of Termination: Notwithstanding non-renewal or termination of this Agreement, CLIENT 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 CLIENT’s receipt of revenue after termination which are subject to CONSULTANT’s fee, the CLIENT 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 CLIENT. 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.

3. 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 CLIENT. CLIENT 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 CLIENT's employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights.
4. 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 CLIENT 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.
5. 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 CLIENT:**

**City of Richwood**

Attn: Eric Foerster

1800 Brazosport Blvd N.

Richwood, TX 77531

Phone: (979) 265-3583

Email: [efoerster@richwoodtx.gov](mailto:efoerster@richwoodtx.gov)

**If to CONSULTANT:**

**Avenu Insights & Analytics, LLC**

Attn: Contracts Department

5860 Trinity Parkway, Suite 120

Centreville, VA 20120

Email: [contracts@avenoinsights.com](mailto:contracts@avenoinsights.com)

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

**Brandi Sanner, Client Services Manager**

12600 N. Featherwood Drive, Suite 240, Houston, TX 77034

Phone: (985) 335-7570 / Email: [brandi.sanner@avenoinsights.com](mailto:brandi.sanner@avenoinsights.com)

7. Indemnity: CONSULTANT shall indemnify, defend, and hold harmless the CLIENT, 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 CLIENT. "CONSULTANT's performance" includes CONSULTANT's action or inaction and the action or inaction of CONSULTANT's officers, employees, agents and subcontractors.

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 CLIENT'S EXCLUSIVE REMEDY FOR CLAIMS ARISING FROM OR OUT OF THIS AGREEMENT. THE PROVISIONS OF THIS SECTION ALLOCATE THE RISKS BETWEEN CONSULTANT AND THE CLIENT AND CONSULTANT'S PRICING REFLECTS THE ALLOCATION OF RISK AND LIMITATION OF LIABILITY SPECIFIED HEREIN.**
9. Insurance: CONSULTANT shall keep in full force and effect insurance coverage during the term of this Agreement, including without limitation statutory workers' compensation insurance; employer's liability and commercial general liability insurance; comprehensive automobile liability insurance; professional liability and fidelity insurance. The insurance certificate shall name the CLIENT, its agents, officers, servants and employees as additional insureds under the CGL and Automobile policies with respect to the operations and work performed by the named insured as required by written contract. The General Liability policy is Primary & Non-Contributory. Waiver of Subrogation applies under the General Liability and Workers' Compensation policies. The CGL insurance minimum coverage shall be at least \$1,000,000 per incident, claim or occurrence and \$2,000,000 aggregate. The Cybersecurity insurance minimum coverage shall be at least \$2,500,000 per incident, claim or occurrence. The Automobile Liability insurance minimum coverage shall be at least \$1,000,000 covering all owned, non-owned, and hired vehicles. The certificate shall provide that there will be no cancellation, termination, or non-renewal of the insurance coverage without a minimum 30-day written notice to the CLIENT, except in the case of cancellation for non-payment of premium which shall be at least 10-days written notice.
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.
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 CLIENT, 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 CLIENT 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.

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 CLIENT at the moment of their completed preparation.
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 CLIENT-owned data provided to CONSULTANT be deemed included within the Work Product.
14. 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.
15. 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, 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 CONSULTANT ("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.
16. 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. CONSULTANT 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. CONSULTANT 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.

17. 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.
18. 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.
19. 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.
20. 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.
21. 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.
22. 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.
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.
24. Implementation: Implementation should begin as soon as possible from the signing of this Agreement (the "Implementation Date") for the performance of services under the terms of this Agreement.

***[SIGNATURES ON FOLLOWING PAGE]***

IN WITNESS HEREOF, the parties have caused this Agreement to be executed on the date first written above.

**“CLIENT”**

**City of Richwood**

a Municipal Corporation

**“CONSULTANT”**

**Avenu Insights & Analytics, LLC**

a Delaware limited liability company

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

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

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

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

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

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

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

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

# **EXHIBIT A STATEMENT OF WORK**

This Statement of Work is incorporated in the Consultant Services Agreement (“Agreement”) by and between Avenu Insights and Analytics, LLC (“AVENU”) and the City of Richwood (“CLIENT”).

## **A.1 SALES AND USE TAX COMPLIANCE REVIEW**

### **Objectives and Methods**

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AVENU’s Sales and Use Tax Compliance Review is designed to assist CLIENT in enhancing its sales and use tax revenues by detecting, documenting, and correcting sales and use tax errors thereby producing previously unrealized revenue for CLIENT.

### **Scope of Work**

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In providing the Sales and Use Tax Compliance Review, AVENU shall:

- Meet with CLIENT’s designated staff to review service objectives, scope, procedures, coordination of effort, work plan schedule, public relations, and logistical matters.
- Establish an appropriate liaison with the CLIENT and define logical checkpoints for reviewing progress.
- Perform a review of the CLIENT’s businesses’ sales and/use tax remittances to ensure proper application of local sales and/ use tax law and achieve past and/or prospective compliance, as applicable.
- On behalf of the CLIENT, AVENU will assist the businesses, as needed, in preparing and filing amended returns and/or reallocation requests with the Comptroller’s office to gain compliance. AVENU and/or the CLIENT may also provide additional documentation to the Comptroller’s office to request its assistance in gaining compliance from taxpayers as needed.

### **AVENU Deliverables**

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#### **Progress Reports**

AVENU will provide periodic progress reports to CLIENT in the form of status updates. AVENU’s progress reports will identify errors detected, documented, and corrected.

### **CLIENT Assistance**

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CLIENT shall assist AVENU by providing information and assistance necessary to perform the Sales and Use Tax Compliance Review to include, without limitation, the following:

- Providing AVENU historical sales and use tax information including confidentiality reports received from the Comptroller for past periods, if available.
- Issuing necessary documentation to the Comptroller to allow AVENU to access and receive detailed confidentiality reports monthly.

- Providing a letter of introduction identifying AVENU as an authorized agent of the CLIENT to perform the Sales and Use Tax Compliance Review and to receive and examine taxpayer records necessary to assure sales and use tax compliance.
- Pursuing in good faith corrective action on errors detected by AVENU.
- Issuing necessary documentation to the Comptroller to correct errors validated by AVENU.

The parties agree that the CLIENT and/or the Comptroller retain exclusive authority and responsibility to administer, interpret and enforce the CLIENT's sales and use tax, recognizing that AVENU's role is limited to employing its unique expertise and proprietary tools for: i) detecting and documenting errors by taxpayers in the application, calculation, collection, and/or remittance of sales and use taxes and, ii) providing CLIENT with technical assistance, without assuming or being delegated the authority or responsibility of CLIENT to administer, interpret, and enforce its sales and use taxes.



## **EXHIBIT B COMPENSATION SCHEDULE**

This Compensation Schedule is incorporated in the Consultant Services Agreement (“Agreement”) by and between Avenu Insights and Analytics, LLC (“AVENU”) and the City of Richwood (“CLIENT”).

### **B.1 SALES AND USE TAX COMPLIANCE REVIEW**

In exchange for AVENU performing the work indicated above, the CLIENT will pay AVENU as follows:

The CLIENT shall pay AVENU a thirty percent (30%) contingency fee. The fee applies to the sales/use tax revenue received by the CLIENT from correction of taxpayer reporting errors detected and documented by the Sales Tax Compliance Review. The Contingency Fee applies to both: (a) past compliance (as applicable) – sales/use tax revenues received by the CLIENT from prior periods; and (b) prospective compliance (as applicable) -- incremental increase in sales/use tax revenues received for the first eight consecutive reporting quarters twenty-four (24) months following correction of the errors and confirmation of receipt of revenue by the CLIENT. An incremental increase is calculated as the current month's correct tax remittance less the monthly average of the prior twelve (12) months immediately prior to the first month of correct tax remittance.

AVENU will invoice CLIENT quarterly based on past and/or prospective compliance secured on behalf of CLIENT. Invoices are due and payable upon receipt.

All expenses incurred by AVENU in providing the Sales/Use Tax Compliance Review are the sole and exclusive responsibility of AVENU, except those expenses that receive prior written approval by CLIENT.

#### **Completion of Services**

Notwithstanding anything else in this Agreement, to the contrary, the CLIENT will pay AVENU per the terms of this Agreement for services begun before termination or expiration of the Agreement even if the monies are received after termination or expiration. AVENU will provide CLIENT with a list of taxpayer accounts submitted but not yet corrected as of the expiration or termination within a reasonable time after the expiration or termination (“completion list”). AVENU can continue working those taxpayer accounts on the completion list for a reasonable time to obtain a correction.

#### **Additional Consulting**

CLIENT may request that AVENU provide additional consulting services at any time during the Term of this Agreement. If AVENU and CLIENT agree on the scope of the additional consulting services requested, then AVENU shall provide the additional consulting on a Time and Materials basis. Depending on the personnel assigned to perform the work, standard hourly rates range from ninety dollars (\$90) per hour to three hundred fifty dollars (\$350) per hour. These additional consulting services will be invoiced at least monthly based on actual time and expenses incurred.