

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____, 2017, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as "City") and AVI Systems, Inc., a North Dakota Corporation, whose address of record is 7270 Trade Street, Suite 102, San Diego, California 92121, (hereinafter referred to as "Consultant").

WHEREAS, City is undertaking a project to upgrade the audio and video technology in the City Council chambers; and

WHEREAS, Consultant represents that it possesses the professional skills to provide design and installation services in connection with said project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF SERVICES.** The Consultant shall furnish the following services: Consultant shall provide the design and installation services described in Exhibit "A" attached hereto.

No additional services shall be performed by Consultant unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the Director of Information Technology or his designee. However, the means by which the work is accomplished shall be the sole responsibility of the Consultant.

2. **TIME OF PERFORMANCE.** All of the work outlined in the Scope of Services shall be completed in accordance with the Schedule outlined in Exhibit "B" attached hereto and incorporated herein by reference. By mutual agreement and written addendum to this Agreement, the City and the Consultant may change the requirements in said Schedule.

3. **RESERVED.**

4. **COMPENSATION.** Payment by the City to the Consultant for actual services rendered under this Agreement shall be made upon presentation of an invoice detailing services performed under the Scope of Services, in accordance

with the fee schedule set forth in Exhibit "C" attached hereto and incorporated herein by reference. The Consultant agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "C". For Consultant's services rendered under this Agreement, City shall pay Consultant the not to exceed sum of One Hundred Forty-Nine Thousand Seven Hundred Forty-Four Dollars and Fifty-Three Cents (\$149,744.53).

5. **METHOD OF PAYMENT.** Compensation to Consultant shall be paid by the City after submission by Consultant of an invoice delineating the services performed.

6. **RECORDS.** It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Consultant relating to the matters covered by this Agreement shall be the property of the City, and Consultant hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

7. **CONSULTANT'S BOOKS AND RECORDS.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

8. **INDEPENDENT CONTRACTOR.** It is expressly understood that Consultant is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Consultant shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Consultant desire any insurance protection, the Consultant is to acquire same at its expense.

In the event Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System

(PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

9. INDEMNITY. Consultant shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Consultant or Consultant's officers, employees, volunteers, and agents during performance of this Agreement, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Consultant or its employees, subcontractors, or agents, or by the quality or character of Consultant's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence or willful misconduct of the City or its officers, employees, volunteers or agents. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

10. INSURANCE. During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation Insurance. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. General Liability.

- (i) Consultant shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
- (ii) Consultant shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Consultant.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.
- (v) Consultant shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

c. Automobile Insurance.

- (i) Consultant shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Consultant.

- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

d. Professional Liability Insurance. Consultant shall carry professional liability insurance appropriate to Consultant's profession in the minimum amount of One Million Dollars (\$1,000,000). Architects and engineers' coverage is to be endorsed to include contractual liability.

e. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

f. Certificate of Insurance. Consultant shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium.

g. Notwithstanding any language in this Agreement to the contrary, Consultant shall be entitled to be paid pursuant to the terms of this Agreement until Consultant has obtained the insurance required by this Section 10 and provided documentation of said insurance to the City. In addition to any other remedies City may have, City reserves the right to withhold payment if Consultant's insurance policies are not current.

11. ASSIGNABILITY OF AGREEMENT. It is understood and agreed that this Agreement contemplates personal performance by the Consultant and is

based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express written consent of the City.

12. **TERMINATION FOR CONVENIENCE OF CITY.** The City may terminate this Agreement any time by mailing a notice in writing to Consultant that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

13. **CONFORMANCE TO APPLICABLE LAWS.** Consultant shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Consultant in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

14. **WAIVER.** In the event that either City or Consultant shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

15. **INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS.** In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

16. **AMBIGUITIES.** This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

17. **VENUE.** This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

18. **AMENDMENT.** This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

19. **INTEGRATION.** This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

20. **AUTHORITY TO EXECUTE.** The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

21. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

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


CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY:  4-12-2017
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

CONSULTANT
AVI SYSTEMS, INC.,
A North Dakota Corporation

BY: Brian W. Yandell
(Signature)

Brian W. Yandell
(Typed Name)

Its: Area Vice President
(Title)

BY: _____
(Signature)

(Typed Name)

Its: _____
(Title)

Taxpayer I.D. No. 45-0321251

ADDRESS: 7270 Trade St., Suite 102
San Diego, CA 92121

TELEPHONE: (858) 653-4330

FAX: (858) 695-7844

E-MAIL: brian.yandell@avisystems.com

The City Goals are:

- Replace the aging audio/video equipment with new equipment
- Provide better viewing experience for citizens with enhanced audio/video
- Provide better connectivity options for citizen's audio/video technology needs
- Move all video signals from a 4:3 aspect ratio to a 16:9 aspect ratio
- Maintain the GUI and button appearance so no additional training is needed for staff
- Provide graphical overlay technology so presenter can highlight information

3 Scope of Work, Specifications & Requirements

The scope of work outlines below is not a detailed engineering document and may require minor changes. See the attach line diagram for audio and video input/output connections, and recommended parts lists. The successful candidate will be responsible to design/deliver/install/configure/validate a complete audio/visual "turnkey system" for the council chambers.

- The successful candidate will be responsible to migrate from the old audio/video system to the new audio/video system with the least impact to City. This includes ensuring the old system is completely function during the transition to the new system. No work shall be performed on the 1st and 3rd Mondays of any month to not conflict with City Council meeting. The Room must be clean and free of all equipment on council meetings days.
- The successful candidate, once acceptance testing has been complete and signed off on, will attend the first two council meetings to help troubleshoot and correct any problems during the meeting.
- Crestron and Q-SYS programming must be performed by a manufacturer certified programmer.
- Crestron and Q-SYS equipment must be purchased through Crestron and Q-SYS authorized dealers/resellers.
- All cabling must be Crestron certified for control and video systems. Any cabling used for Audio must be broadcast quality. All cabling ran through the ceiling, walls, dias, or podium area shall be plenum rated.
- All cables and equipment not used from the old Audio/Video system will be removed and returned to the City.
- All cables installed as part of the project, greater than 6ft, will be label on both ends with self-laminated printed labels
- Asset tag, with City Stickers, all equipment over \$500 and provide spreadsheet with Asset tag, Part number, Product description, and Serial number.

EXHIBIT A

- A poster board (Bond and foam core) 36 x 48 showing the input/output , functional line diagram shall be mounted in the video room on the south wall.
- 3 copies of all source configuration files for all devices shall be provided on CD's.
- The successful candidate will provide a three-hour training on the basic Technical/administrative and troubleshooting steps to the Information Technology Department.
- The successful candidate will provide a two-hour training to the Clerks Departments on the end-user administration of the system.
- All equipment will have the newest firmware installed and loaded unless there is a known issue with the firmware and the vendor gets a waiver from City staff.

In the scope listed below the vendor will physically install/configure the equipment and run the cabling to connect the equipment in a professional and highly aesthetically pleasing manner.

Podium

A: Flip Top connectivity compartment with Retractable HDMI, VGA with 3.5mm audio, and CAT 6 cable. HDbaseT transmitter to send audio/video to Digital Matrix Switcher. HDMI adapter ring with Mini Display port, Display Port, Apple Lighting, DVI-D, and USB-C adapters. This will replace old connectivity compartment.

B: HD Document Camera. Connected via HDbaseT transmitter to send video to Digital Matrix, and format converter HDMI to HD-SDI to supply Tri-caster Video feed. This will replace old Document camera.

C: One 22" touch display for Podium to connect to existing computer located in the video room. USB Extender receiver for computer keyboard and mouse. HDbaseT receiver will provide digital video signal from video switcher. A Digital Graphics engine will be configured/customized and connected in-line between computer and display to allow annotation. This will replace the old podium monitor.

DIAS

A: Two 90" displays installed on the back wall above the dias for the gallery seating to view presentation feed. HDbaseT receivers will provide digital video signal for video switcher and control display.

B: Nine displays, one at each council member location. Each display will be able to display the presentation feed or a dedicated computer display. Source selection will be from existing Crestron six button panels. Nine USB extenders receivers for mouse. HDbaseT received will provide digital video from the video switcher. All non-user equipment must be mounted and hidden behind the fiberboard panels. Each USB extender must be clearly labeled on both sides.

Installation of the monitors must be aesthetically pleasing. The new display must not be vertically higher than the old display.

C: One 10" touch panel for chairperson. Touch panel will provide control and/or feedback of request to speak, note tally, and podium microphone mute.

D: Auxiliary HDMI and audio input/output panel (3.5mm) HDBaseT transmitter to send video/audio to digital Matrix switcher. HDBaseT receiver will provide video/audio signal from Digital Matrix switch. Audio input/output from Audio DSP.

E: One 15" touch panel at clerk station. Touch panel will provide control and/or feedback of presentation system on/off, independent and group microphone mutes, independent volume controls, video routing presents, request to speak, vote tally, and passcode to login. Control programming should closely mirror current design to reduce staff training. There shall be no reduction in functionality when compare to the current touch panel.

F: Core 110f audio processor installed in rack at clerk's station for local audio connectivity. Core system will handle AEC functions for DIAS area hardwired microphones. Will have same functionality as original audio system when not used for conferencing.

G: Install 12 earthworks microphones, will directly replace current microphones.

Wilbur Room

A: Move one of the old screens mounted behind the dias to the Wilbur room and mount on the north wall.

Rack

A: Rack/Install/Configure main video switcher, 16x16 HDBaseT Matrix switcher (card based) will accept video and audio signals from presentation input and four of the dias computers, Video will be route to displays and/or video conference codec, auxiliary video outputs.

B: Rack/Install/Configure 6X6 HDBaseT Matrix switcher will accept video signals from fire dias computers and presentation feed from main video switcher. Video will be router to dias monitors.

C: Ten USB extender transmitters for dias and podium computer keyboard and mouse.

D: I/O Frame 8s, with cards loaded, installed in main rack for balanced of audio connectivity.

E: Rack/Install/Configure pakedge SX24P for network audio transport functions.

Exhibit B

Time of Performance

All work shall be complete within 90 days from the date the Purchase Order is issued to AVI Systems for the project.

EXHIBIT B

PRICING SCHEDULE

REQUEST FOR PROPOSAL

Council Chamber Audio/Video Technology

Proposer shall submit pricing in a separate sealed envelope.

- Pricing proposal shall be the maximum fee to be charged for the proposed services, hardware and software.
- Pricing shall be broken down by task. Proposal shall list projected man hours by task required to complete the work as defined in Scope of Work along with the hourly billing rates for the various levels and staff who will be assigned to the project.
- Bill of Material shall be provided for all hardware and software required.
- Pricing proposal shall also cost summary as listed below.
- Proposal shall be signed.

Cost Summary

Costs	Total
Hardware & Software Licensing	\$97,238.25
Third Party Software	
Documentation & Training	\$5787.74
Support/Maintenance	\$9693.00
Installation	\$24211.54
Integration	\$11220.00
Misc.	Shipping and handling \$1594.00
Other (specify)	
Other (specify)	
Total:	\$149,744.53

The undersigned acknowledges receipt of the referenced RFP and/or Addenda and offers and agrees to furnish the articles and/or services specified on behalf of the proposer indicated below, in accordance with the specifications, terms and conditions of this RFP and Proposal Acknowledgement, for the pricing indicated on the Pricing Schedule.

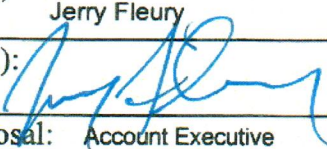
Company Name (Proposer):	AVI Systems INC
By (Person Submitting Proposal): (Print)	Jerry Fleury
By (Person Submitting Proposal): (Signature)	
Title of Person Submitting Proposal:	Account Executive
Business Address	7270 Trade Street Suite 102
(City/State/Zip):	San Diego CA 92121
Email Address:	jerry.fleury@avisystems.com
Telephone Number:	(858) 653-4330
Fax Number:	(858) 695-7844
Date:	10/26/2016

EXHIBIT C