

DRAFT

AGREEMENT FOR SERVICES #844-S0811

THIS AGREEMENT made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as “County”) and New Business Solutions, Inc. dba Walker’s Business Products and Services, a California Corporation duly qualified to conduct business in the State of California, whose principal place of business is 687 Placerville Drive, Placerville, CA 95667 (hereinafter referred to as “Contractor”);

WITNESSETH

WHEREAS, County has determined that it is necessary to obtain a Contractor to provide the design, purchase and installation of Maxon systems furniture, and related services on an “as requested” basis for departments County-wide; and

WHEREAS, Contractor has represented to County that it is specially trained, experienced, expert and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws; and

WHEREAS, County has determined that the provisions of these services provided by Contractor are in the public’s best interest and that these services, are more economically and feasibly performed by outside independent Contractors as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

NOW, THEREFORE, County and Contractor mutually agree as follows:

ARTICLE I

The Work: Contractor agrees to furnish personnel, equipment, and services necessary for the design, purchase and installation, storage, or reconfiguration, disassembly, and reassembly of Maxon systems furniture, and related items on an “as requested” basis for departments County-wide. All departmental requests for services provided pursuant to this Agreement shall be coordinated with the Chief Administrative Office, Procurement and Contracts Division, and approved by the individual requesting department prior to the placement of any orders for product and installation services. Contractor agrees to provide a firm quote inclusive of product, design, and installation costs prior to the issuance of any resulting purchase order. Proposed timelines for the completion of work performed will be in accordance with Exhibit “A”, marked “Proposed Timelines”, incorporated herein and made by reference a part hereof.

Project Manager: The Project Manager assigned to all projects on behalf of the Contractor is John Keltner, Vice President of Client Services. Contractor agrees that the Project Manager will be available and supervise all on-site installation projects, and provide any necessary technical and sales assistance as may be required at no additional cost to the County. Contractor will notify the County Purchasing Agent of any substitution in the Contractor’s assigned Project Manager, and such substitution shall be approved by the County prior to the commencement of any work performed.

Payment Bond: In the event the contractor intends to subcontract out any part of the work, a payment bond in the amount of 100% of the work, on a per project basis, will be required. Contractor must obtain prior written approval for the use of any subcontractors prior to the performance of any work.

ARTICLE II

Term: This Agreement shall become effective when fully executed by both parties hereto and shall expire three (3) years from the date of execution by the County.

ARTICLE III

Compensation for Services: For services provided herein, County agrees to pay Contractor in arrears upon County acceptance of product delivered and services rendered on a per project basis. Payment shall be made within thirty (30) days following County receipt and approval of itemized invoice(s) detailing product ordered and services rendered. Partial payment for the purchase of products only may be made with the concurrence of the Chief Administrative Officer.

For the purposes hereof, the billing rate for the purchase of product shall be Forty-Five Percent (57%) off list based on the then current Maxon systems furniture catalog. Design and specifications shall be billed at Fifty-Five Dollars (\$55.00) per hour for project programming and reconfigurations. Consultations performed by salesperson will be provided at no charge. Billing up to ten (10) hours of design time will be waived when new product is purchased. If product is not purchased, design time to be billed for time incurred at Fifty-Five Dollars (\$55.00) per hour.

Installation services shall be billed at Fifty-Five Dollars (\$55.00) per man-hour on public works projects requiring the payment of prevailing wage. Only New Business Solutions' employees are to be used on El Dorado County projects unless prior written approval is granted by the County for the use of subcontractors.

Technical assistance requested not in accordance with standard call-backs and follow-ups will be billed at Fifty-Five Dollars (\$55.00) per hour. Technical assistance out side of the standard terms of this Agreement must be authorized in advance by the Purchasing Agent.

Reconfiguration, disassembly, and reassembly services will be billed at Fifty-Five Dollars (\$55.00) per hour.

Storage, if any, shall be billed at One Dollar and Fifty Cents (\$1.50) per square foot, per month, or at a rate mutually agreed to between the Contractor and the County Purchasing Agent. Product is palletized and stored separately for use only on County of El Dorado projects.

In the event, the County requests an expedited shipment of goods, the Contractor will bill the County an additional Four Percent (4%) on the cost of product only.

The total amount of this Agreement shall not exceed \$300,000.00.

ARTICLE IV

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE V

Contractor to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Contractor shall act as Contractor only to County and shall not act as Contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Contractor's responsibilities to County during term hereof.

ARTICLE VI

Confidentiality: Contractor shall maintain the confidentiality and privileged nature of all records, including client files, together with any knowledge therein acquired, in accordance with all applicable State and Federal laws and regulations, as they may now exist or may hereafter be amended, or changed. Contractor, and all Contractor's staff, employees, and representatives, shall not use or disclose, directly or indirectly at any time, any said confidential information in the performance of this Agreement. This confidentiality provision shall survive after the expiration or termination of this Agreement.

ARTICLE VII

Assignment and Delegation: Contractor is engaged by County for its unique qualifications and skills as well as those of its personnel. Contractor shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

ARTICLE VIII

Independent Contractor/Liability: Contractor is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, associates and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Contractor shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Contractor or its employees.

ARTICLE IX

Prevailing Wage: The Contractor shall pay and require payment of wages according to a scale of prevailing wage rates determined by California law, which scale is on file at the El Dorado County Department of General Services, Facilities Division, and shall comply with all wage requirements.

ARTICLE X

Guarantees:

- a. **Final Guarantee:** The Contractor shall guarantee all materials and equipment furnished and work performed for a period of one year. Contractor warrants and guarantees for a period of one year that the Work is free from all defects due to faulty materials or workmanship and Contractor shall promptly make such corrections as may be necessary, including repairs of any damage to other parts of the Work resulting from such defects. County will give notice of observed defects with reasonable promptness. In the event that Contractor should fail to make such repairs, adjustments, or other work that may be made necessary by such defects, County may do so and charge Contractor the cost thereby incurred.
- b. **Extended Guarantees:** If a guaranty exceeding one year is provided by the supplier or manufacturer of any equipment used in this Project, then the guarantee for such materials shall be extended for such term. Contractor expressly agrees to act as coguarantor of such equipment and materials, and Contractor shall supply County with all warranty and guaranty documents relative to equipment and materials incorporated in the job and guaranteed by their suppliers or manufacturers.

ARTICLE XI

Warranty: The Contractor warrants to the County that materials and equipment furnished under the Contract will be of good quality and new, unless otherwise required or permitted by the Contract, that the Work will be free from defects or flaws and is of the highest quality of workmanship and that the Work will conform with the requirements of the Contract. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective.

ARTICLE XII

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be cancelled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE XIII

Default, Termination and Cancellation:

- A. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time.

No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired.

- B. **Bankruptcy:** This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
- C. **Ceasing Performance:** County may terminate this Agreement in the event Contractor ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. **Termination or Cancellation without Cause:** County may terminate this Agreement in whole or in part seven (7) calendar days upon written notice by County for any reason. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Contractor, and for such other services, which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Contractor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

ARTICLE XIV

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

COUNTY OF EL DORADO
CHIEF ADMINISTRATIVE OFFICE
PROCUREMENT AND CONTRACTS
330 FAIR LANE
PLACERVILLE, CA 95667
ATTN: BONNIE H. RICH, PURCHASING AGENT

Or to such other location as the County directs.

Notices to Contractor shall be addressed as follows:

NEW BUSINESS SOLUTIONS, INC.
687 PLACERVILLE DRIVE
PLACERVILLE, CA 95667
ATTN: DARRELL HINZ, PRESIDENT

Or to such other location as the Contractor directs.

ARTICLE XV

Indemnity: The Contractor shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Contractor's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Contractor, subContractor(s) and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of Contractor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XVI

Insurance: Contractor shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that Contractor maintains insurance that meets the following requirements:

- A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Contractor in the performance of the Agreement.
- D. In the event Contractor is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000.00 per occurrence. For the purposes of this Agreement, professional liability is not required.
- E. Contractor shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.

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- G. Contractor agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year.

New certificates of insurance are subject to the approval of Risk Management and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

- H. The certificate of insurance must include the following provisions stating that:
1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County, and;
 2. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all liability policies except worker's compensation and professional liability insurance policies.
- I. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.

- N. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for protection of the County.

ARTICLE XVII

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Contractor under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XVIII

Interest of Contractor: Contractor covenants that Contractor presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed by Contractor.

ARTICLE XIX

California Residency (Form 590): All independent Contractors providing services to the County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certify that they have a permanent place of business in California. The Contractor will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7%) percent of each payment made to the Contractor during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

ARTICLE XX

Administrator: The County Officer or employee with responsibility for administering this Agreement is Bonnie H. Rich, Manager of Procurement and Contracts, Chief Administrative Office, or successor.

Each individual Department Head shall be responsible for administering the progress of their project(s) and the appropriateness of payment to Contractor of services performed.

ARTICLE XXI

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

ARTICLE XXII

Partial Invalidity: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXIII

Venue: Any dispute resolution action rising out of this Agreement, including, but not limited to, litigation, mediation or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California. Contractor waives any removal rights it might have under Code of Civil Procedure Section 394.

ARTICLE XXIV

Taxpayer Identification Number (Form W-9): All independent Consultants or Corporations providing services to the County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

ARTICLE XXV

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

CONTRACT ADMINISTRATOR CONCURRENCE:

By: _____ Dated: _____
Bonnie H. Rich, Purchasing Agent
Chief Administrative Office
Procurement & Contracts Division

DEPARTMENT HEAD CONCURRENCE:

By: _____ Dated: _____
Laura S. Gill
Chief Administrative Officer

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

-- COUNTY OF EL DORADO --

Dated: _____

By: _____
Chair
Board of Supervisors
"County"

**ATTEST: Cindy Keck, Clerk
of the Board of Supervisors**

By: _____ **Dated:** _____
Deputy Clerk

-- CONTRACTOR --

Dated: _____

New Business Solutions, Inc., A California Corporation
doing business as Walker's Business Products and Services

By: _____
Darrell Hinz, President
"Contractor"

By: _____ **Dated:** _____
Corporate Secretary

- Office Supplies
- Office Furniture
- Office Machines
- Computers
- Networking
- Internet
- Audiovisual

I. Proposed Time-line:

While the time-line of providing these products and services can vary greatly depending on the complexity and availability of product, we have outlined a typical project time-line that would include all of the services. Walker's will always work to shorten these time-lines wherever possible.

Contact - County Department contacts Walker's with request for assistance.

Initial Meeting - Walker's will set an appointment to meet with the department within the next 5 business days or as agreed upon with the department. (5) days

First Draft Design – Following the initial meeting, Walker's will provide a first draft design within 5 business days. (5) days

Design Review and Revisions – Following review of the first draft design, Walker's will provide a second draft design within 5 business days. (5) days

Additional Revisions – Add 5 business days for each additional review, revisions and design. (5) days x # of revisions

Approval of Design, Order Placed – Once the design is approved and the County has placed an order, Walker's will order the required inventory within 2 business days. (2) days

Delivery to Walker's from Manufacturer – Standard orders from Maxon take 30 days to reach Walker's. Quick ship orders take 21 days. (21-30) days.

Delivery and Installation – Following receipt of the inventory at Walker's, the County Department will be contacted and a delivery and installation date will be arranged within 5 business days or as agreed upon with the department. (5) days

Project Completion – Typically, projects do not take more than 2 days to complete. (2) days.

WALKER'S

Business Products & Services

- Office Supplies
- Office Furniture
- Office Machines
- Computers
- Networking
- Internet
- Audiovisual

Billing – Walker's will invoice the county within 2 business days of the completion of the project.

Additions or Changes – Depending on the complexity of the additions or changes, refer to timelines provided above.