

PROFESSIONAL SERVICES CONTRACT BETWEEN  
THE CITY OF HUNTINGTON BEACH AND  
iKW SOLUTIONS INC.  
FOR  
ORACLE/JD EDWARDS TOOLS SOFTWARE UPGRADE AND AS NEEDED  
SYSTEM SUPPORT CONSULTING SERVICES

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Huntington Beach, a municipal corporation of the State of California, hereinafter referred to as "CITY," and, iKW SOLUTIONS INC., a Wyoming Corporation a hereinafter referred to as "CONSULTANT."

WHEREAS, CITY desires to engage the services of a consultant to support the City's Oracle/JD Edwards tools software upgrade project and as needed JD Edwards system support services; and

Pursuant to documentation on file in the office of the City Clerk, the provisions of the Huntington Beach Municipal Code, Chapter 3.03, relating to procurement of professional service contracts have been complied with; and

CONSULTANT has been selected to perform these services,

NOW, THEREFORE, it is agreed by CITY and CONSULTANT as follows:

1. SCOPE OF SERVICES

CONSULTANT shall provide all services as described in **Exhibit "A,"** which is attached hereto and incorporated into this Agreement by this reference. These services shall sometimes hereinafter be referred to as the "PROJECT."

CONSULTANT hereby designates Matthew Aarsvold who shall represent it and be its sole contact and agent in all consultations with CITY during the performance of this Agreement.

2. CITY STAFF ASSISTANCE

CITY shall assign a staff coordinator to work directly with CONSULTANT in the performance of this Agreement.

3. TERM; TIME OF PERFORMANCE

Time is of the essence of this Agreement. The services of CONSULTANT are to commence on 01/15, 2024 (the "Commencement Date"). This Agreement shall automatically terminate three (3) years from the Commencement Date, unless extended or sooner terminated as provided herein. All tasks specified in **Exhibit "A"** shall be completed no later than two (2) years from the Commencement Date. The time for performance of the tasks identified in **Exhibit "A"** are generally to be shown in **Exhibit "A."** This schedule may be amended to benefit the PROJECT if mutually agreed to in writing by CITY and CONSULTANT.

In the event the Commencement Date precedes the Effective Date, CONSULTANT shall be bound by all terms and conditions as provided herein.

4. COMPENSATION

In consideration of the performance of the services described herein, CITY agrees to pay CONSULTANT on a time and materials basis at the rates specified in **Exhibit "B,"** which is attached hereto and incorporated by reference into this Agreement, a fee, including all costs and expenses, not to exceed One Hundred Thousand Dollars (\$100,000).

5. EXTRA WORK

In the event CITY requires additional services not included in **Exhibit "A"** or changes in the scope of services described in **Exhibit "A,"** CONSULTANT will undertake such work only after receiving written authorization from CITY. Additional

compensation for such extra work shall be allowed only if the prior written approval of CITY is obtained.

6. METHOD OF PAYMENT

CONSULTANT shall be paid pursuant to the terms of **Exhibit "B."**

7. DISPOSITION OF PLANS, ESTIMATES AND OTHER DOCUMENTS

CONSULTANT agrees that title to all materials prepared hereunder, including, without limitation, all original drawings, designs, reports, both field and office notices, calculations, computer code, language, data or programs, maps, memoranda, letters and other documents, shall belong to CITY, and CONSULTANT shall turn these materials over to CITY upon expiration or termination of this Agreement or upon PROJECT completion, whichever shall occur first. These materials may be used by CITY as it sees fit.

8. HOLD HARMLESS

A. CONSULTANT hereby agrees to protect, defend, indemnify and hold harmless CITY, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all claims, damages, losses, expenses, judgments, demands and defense costs (including, without limitation, costs and fees of litigation of every nature or liability of any kind or nature) arising out of or in connection with CONSULTANT's (or CONSULTANT's subcontractors, if any) negligent (or alleged negligent) performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement by CONSULTANT, its officers, agents or employees except such loss or damage which was caused by the sole negligence or willful misconduct of CITY. CONSULTANT will conduct all defense at its sole cost and expense and CITY shall approve selection of CONSULTANT's counsel. This indemnity shall

apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as limitation upon the amount of indemnification to be provided by CONSULTANT.

B. To the extent that CONSULTANT performs "Design Professional Services" within the meaning of Civil Code Section 2782.8, then the following Hold Harmless provision applies in place of subsection A above:

"CONSULTANT hereby agrees to protect, defend, indemnify and hold harmless CITY and its officers, elected or appointed officials, employees, agents and volunteers, from and against any and all claims, damages, losses, expenses, demands and defense costs (including, without limitation, costs and fees of litigation of every nature or liability of any kind or nature) to the extent that the claims against CONSULTANT arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT. In no event shall the cost to defend charged to CONSULTANT exceed CONSULTANT's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more other defendants to the claims and/or litigation is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, CONSULTANT shall meet and confer with CITY and other defendants regarding unpaid defense costs. The duty to indemnify, including the duty and the cost to defend, is limited as provided in California Civil Code Section 2782.8.

C. Regardless of whether subparagraph A or B applies, CITY shall be reimbursed by CONSULTANT for all costs and attorney's fees incurred by CITY in enforcing this obligation. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT.

9. PROFESSIONAL LIABILITY INSURANCE

CONSULTANT shall obtain and furnish to CITY a professional liability insurance policy covering the work performed by it hereunder. This policy shall provide coverage for CONSULTANT's professional liability in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence and in the aggregate. The above-mentioned insurance shall not contain a self-insured retention without the express written consent of CITY; however an insurance policy "deductible" of Ten Thousand Dollars (\$10,000.00) or less is permitted. A claims-made policy shall be acceptable if the policy further provides that:

- A. The policy retroactive date coincides with or precedes the initiation of the scope of work (including subsequent policies purchased as renewals or replacements).
- B. CONSULTANT shall notify CITY of circumstances or incidents that might give rise to future claims.

CONSULTANT will make every effort to maintain similar insurance during the required extended period of coverage following PROJECT completion. If insurance is terminated for any reason, CONSULTANT agrees to purchase an extended reporting provision of at least two (2) years to report claims arising from work performed in connection with this Agreement.

If CONSULTANT fails or refuses to produce or maintain the insurance required by this section or fails or refuses to furnish the CITY with required proof that insurance has been procured and is in force and paid for, the CITY shall have the right, at the CITY's election, to forthwith terminate this Agreement. Such termination shall not

effect Consultant's right to be paid for its time and materials expended prior to notification of termination. CONSULTANT waives the right to receive compensation and agrees to indemnify the CITY for any work performed prior to approval of insurance by the CITY.

10. CERTIFICATE OF INSURANCE

Prior to commencing performance of the work hereunder, CONSULTANT shall furnish to CITY a certificate of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverage as required by this Agreement; the certificate shall:

- A. provide the name and policy number of each carrier and policy;
- B. state that the policy is currently in force; and
- C. shall promise that such policy shall not be suspended, voided or canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice; however, ten (10) days' prior written notice in the event of cancellation for nonpayment of premium.

CONSULTANT shall maintain the foregoing insurance coverage in force until the work under this Agreement is fully completed and accepted by CITY.

The requirement for carrying the foregoing insurance coverage shall not derogate from CONSULTANT's defense, hold harmless and indemnification obligations as set forth in this Agreement. CITY or its representative shall at all times have the right to demand the original or a copy of the policy of insurance. CONSULTANT shall pay, in a prompt and timely manner, the premiums on the insurance hereinabove required.

11. INDEPENDENT CONTRACTOR

CONSULTANT is, and shall be, acting at all times in the performance of this Agreement as an independent contractor herein and not as an employee of CITY. CONSULTANT shall secure at its own cost and expense, and be responsible for any and all payment of all taxes, social security, state disability insurance compensation, unemployment compensation and other payroll deductions for CONSULTANT and its officers, agents and employees and all business licenses, if any, in connection with the PROJECT and/or the services to be performed hereunder.

12. TERMINATION OF AGREEMENT

All work required hereunder shall be performed in a good and workmanlike manner. CITY may terminate CONSULTANT's services hereunder at any time with or without cause, and whether or not the PROJECT is fully complete. Any termination of this Agreement by CITY shall be made in writing, notice of which shall be delivered to CONSULTANT as provided herein. In the event of termination, all finished and unfinished documents, exhibits, report, and evidence shall, at the option of CITY, become its property and shall be promptly delivered to it by CONSULTANT.

13. ASSIGNMENT AND DELEGATION

This Agreement is a personal service contract and the work hereunder shall not be assigned, delegated or subcontracted by CONSULTANT to any other person or entity without the prior express written consent of CITY. If an assignment, delegation or subcontract is approved, all approved assignees, delegates and subconsultants must satisfy the insurance requirements as set forth in Sections 9 and 10 hereinabove.

14. COPYRIGHTS/PATENTS

CITY shall own all rights to any patent or copyright on any work, item or material produced as a result of this Agreement.

15. CITY EMPLOYEES AND OFFICIALS

CONSULTANT shall employ no CITY official nor any regular CITY employee in the work performed pursuant to this Agreement. No officer or employee of CITY shall have any financial interest in this Agreement in violation of the applicable provisions of the California Government Code.

16. NOTICES

Any notices, certificates, or other communications hereunder shall be given either by personal delivery to CONSULTANT's agent (as designated in Section 1 hereinabove) or to CITY as the situation shall warrant, or by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, to the addresses specified below. CITY and CONSULTANT may designate different addresses to which subsequent notices, certificates or other communications will be sent by notifying the other party via personal delivery, a reputable overnight carrier or U. S. certified mail-return receipt requested:

TO CITY:

City of Huntington Beach  
ATTN: Chief Financial Officer  
2000 Main Street  
Huntington Beach, CA 92648

TO CONSULTANT:

iKW Solutions Inc.  
ATTN: Matthew Aarsvold  
668 North Coast Highway, Suite 516  
Laguna Beach, CA 92651

17. CONSENT

When CITY's consent/approval is required under this Agreement, its consent/approval for one transaction or event shall not be deemed to be a consent/approval to any subsequent occurrence of the same or any other transaction or event.

18. MODIFICATION

No waiver or modification of any language in this Agreement shall be valid unless in writing and duly executed by both parties.

19. SECTION HEADINGS

The titles, captions, section, paragraph and subject headings, and descriptive phrases at the beginning of the various sections in this Agreement are merely descriptive and are included solely for convenience of reference only and are not representative of matters included or excluded from such provisions, and do not interpret, define, limit or describe, or construe the intent of the parties or affect the construction or interpretation of any provision of this Agreement.

20. INTERPRETATION OF THIS AGREEMENT

The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. If any provision of this Agreement is held by an arbitrator or court of competent jurisdiction to be unenforceable, void, illegal or invalid, such holding shall not invalidate or affect the remaining covenants and provisions of this Agreement. No covenant or provision shall be deemed dependent upon any other unless so expressly provided here. As used in this Agreement, the masculine or neuter gender and singular or plural number shall be deemed to include the other whenever the context so indicates or requires. Nothing contained herein shall be construed so as to require the commission of any act

contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no right to contract, then the latter shall prevail, and the provision of this Agreement which is hereby affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

21. DUPLICATE ORIGINAL

The original of this Agreement and one or more copies hereto have been prepared and signed in counterparts as duplicate originals, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original. Each duplicate original shall be deemed an original instrument as against any party who has signed it.

22. IMMIGRATION

CONSULTANT shall be responsible for full compliance with the immigration and naturalization laws of the United States and shall, in particular, comply with the provisions of the United States Code regarding employment verification.

23. LEGAL SERVICES SUBCONTRACTING PROHIBITED

CONSULTANT and CITY agree that CITY is not liable for payment of any subcontractor work involving legal services, and that such legal services are expressly outside the scope of services contemplated hereunder. CONSULTANT understands that pursuant to *Huntington Beach City Charter* Section 309, the City Attorney is the exclusive legal counsel for CITY; and CITY shall not be liable for payment of any legal services expenses incurred by CONSULTANT.

24. ATTORNEY'S FEES

In the event suit is brought by either party to construe, interpret and/or enforce the terms and/or provisions of this Agreement or to secure the performance hereof, each party shall bear its own attorney's fees, such that the prevailing party shall not be entitled to recover its attorney's fees from the nonprevailing party.

25. SURVIVAL

Terms and conditions of this Agreement, which by their sense and context survive the expiration or termination of this Agreement, shall so survive.

26. GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

27. SIGNATORIES

Each undersigned represents and warrants that its signature hereinbelow has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify CITY fully for any injuries or damages to CITY in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

28. ENTIRETY

The parties acknowledge and agree that they are entering into this Agreement freely and voluntarily following extensive arm's length negotiation, and that each has had the opportunity to consult with legal counsel prior to executing this Agreement. The parties also acknowledge and agree that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by that party or anyone acting on that party's behalf, which are not embodied in this Agreement, and that that party has not executed this Agreement in reliance on any representation, inducement,

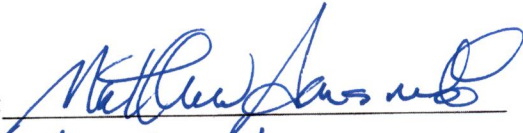
promise, agreement, warranty, fact or circumstance not expressly set forth in this Agreement. This Agreement, and the attached exhibits, contain the entire agreement between the parties respecting the subject matter of this Agreement, and supersede all prior understandings and agreements whether oral or in writing between the parties respecting the subject matter hereof.

29. EFFECTIVE DATE

This Agreement shall be effective on the date of its approval by the City Attorney. This Agreement shall expire when terminated as provided herein.

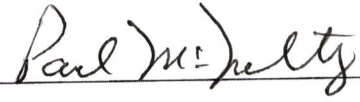
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized officers.

CONSULTANT,  
iKW SOLUTIONS INC.,

By:   
Matthew AARSVOLD  
print name

ITS: (circle one) Chairman President Vice President

AND

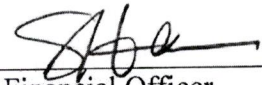
By:   
Paul McNulty  
print name

ITS: (circle one) Secretary Chief Financial Officer/Asst.  
Secretary – Treasurer

CITY OF HUNTINGTON BEACH,  
a municipal corporation of the State of  
California

\_\_\_\_\_  
City Manager

INITIATED AND APPROVED:

  
Chief Financial Officer

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney 

Date \_\_\_\_\_

RECEIVE AND FILE:

\_\_\_\_\_  
City Clerk

Date \_\_\_\_\_

COUNTERPART

CONSULTANT,  
iKW SOLUTIONS INC.,

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

\_\_\_\_\_  
print name

**ITS:** (circle one) Chairman/President/Vice President

**AND**

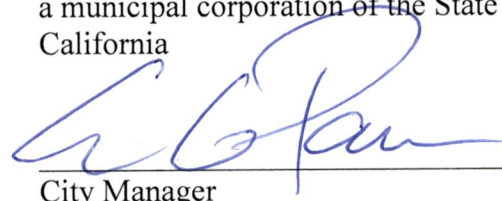
By: \_\_\_\_\_

\_\_\_\_\_  
print name

**ITS:** (circle one) Secretary/Chief Financial Officer/Asst.  
Secretary – Treasurer

**COUNTERPART**

CITY OF HUNTINGTON BEACH,  
a municipal corporation of the State of  
California

  
\_\_\_\_\_  
City Manager

INITIATED AND APPROVED:

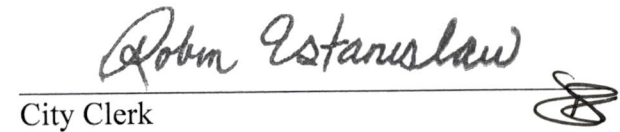
  
\_\_\_\_\_  
Chief Financial Officer

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

Date 3/6/2024

RECEIVE AND FILE:

  
\_\_\_\_\_  
City Clerk

Date 3/11/24

## **EXHIBIT "A"**

A. STATEMENT OF WORK: (Narrative of work to be performed.

SEE ATTACHED EXHIBIT A

B. CONSULTANT'S DUTIES AND RESPONSIBILITIES:

C. CITY'S DUTIES AND RESPONSIBILITIES:

D. WORK PROGRAM/PROJECT SCHEDULE:

# EXHIBIT A



## Consulting Services Statement of Work – 003

This Consulting Services Statement of Work, dated as of the 18<sup>th</sup> day of January 2024 ("**SOW Effective Date**"), is made pursuant to the Professional Services Contract ("**Agreement**") by and between iKW Solutions (herein "**Provider**") a State of Wyoming C Corporation and the City of Huntington Beach, CA, a municipal Corporation of the State of California (herein "**Client**"). This Statement of Work incorporates all terms and provisions of the Professional Services Contract dated February 10, 2020.

### 1. Delivery Period: January 15, 2024 through January 14, 2027

### 2. Engagement Overview / Scope of Services:

iKW Solutions will provide consultants at the City's request to support the City's JD Edwards-related needs and perform Ad Hoc support services for the City's EnterpriseOne release 9.2.

The Services may include:

- Applications (Functional) Ad Hoc Support in support of the City's JDE EnterpriseOne applications, including but not limited to:
  - EnterpriseOne Foundation (Address Book)
  - General Accounting (i.e., General Ledger, Accounts Payable, Accounts Receivable)
  - Human Capital Management (HCM) (Human Resources, Payroll)
  - Distribution (i.e., Procurement, Inventory)
  - Asset Lifecycle Management (Fixed Assets)
  - Real Estate Management
  - Hubble Software support
- Development (Technical) Ad Hoc services in support of the City's Current and any Future State customizations and bolt-ons to the JD Edwards software.
- CNC (Technical) Ad Hoc services in support of the City's Configurable Network Computing needs on Release 9.2 of JD Edwards EnterpriseOne.

### Ad Hoc Services and Deliverables

- Ad Hoc Services may include the following services:
  - Functional assistance with annual 1099 and W2 creation
  - Support of ACA updates
  - Troubleshooting and issue resolution for problems encountered in the use of JDE.
  - Help with reports (and/or One View Reporting)
  - Support with operations of specific JDE functions within a supported module (e.g., G./L, A/P, HCM, etc.)

# iKW Solutions

- Requirements Gathering, Design, Construction, and Testing of customization and/or bolt-ons to JDE.
- Application configuration and testing for changes to module(s) currently used by City or new modules the City may wish to implement (e.g., Orchestrator)
- Requirements Gathering, Design, Construction, and Testing of customization and/or bolt-ons to JDE.
- Trouble shooting, set-up and/or report writing in Hubble.

## Pricing

iKW Solutions will provide professionals at the following levels and Hourly Rates. The following Rates are all inclusive (include applicable expenses for Travel). The Ad-Hoc support effort will not exceed \$100,000 without prior approval from the City.

Resource Level	On-Site Hourly Rate
Project Manager	\$195
Senior Business Analyst JDE HCM	\$195
Senior Business Analyst JDE Finance	\$180
Senior Business Analyst JDE Supply Chain	\$180
Senior Business Analyst JDE Real Estate	\$190
CNC	\$155
Development Lead JDE Development	\$160

Resource Level	Remote Hourly Rate
Project Manager/Reporting Lead	\$165
Senior Business Analyst JDE HCM	\$165
Senior Business Analyst JDE Finance	\$160
Senior Business Analyst JDE Supply Chain	\$160
Senior Business Analyst JDE Real Estate	\$180
CNC	\$140
Development Lead JDE Development	\$150
Reporting Data Architect	\$150

### 3. Project Approach:

iKW will utilize our proprietary Methodology to support all JD Edwards needs the City may request.

### 4. Resources:

As this is an Ad Hoc request we don't know which skills will be required to support the City's needs. Resources will be identified when the City requests support.

## EXHIBIT "B"

### Payment Schedule (Hourly Payment)

#### A. Hourly Rate

CONSULTANT'S fees for such services shall be based upon the following hourly rate and cost schedule:

Resource Level	On-Site: Hourly Rate
Project Manager	\$195
Senior Business Analyst JDE HCM	\$195
Senior Business Analyst JDE Finance	\$180
Senior Business Analyst JDE Supply Chain	\$180
Senior Business Analyst JDE Real Estate	\$190
CNC	\$155
Development Lead JDE Development	\$160

Resource Level	Remote: Hourly Rate
Project Manager/Reporting Lead	\$165
Senior Business Analyst JDE HCM	\$165
Senior Business Analyst JDE Finance	\$160
Senior Business Analyst JDE Supply Chain	\$160
Senior Business Analyst JDE Real Estate	\$180
CNC	\$140
Development Lead JDE Development	\$150
Reporting Data Architect	\$150

B. Travel. Charges for time during travel are not reimbursable

#### C. Billing

1. All billing shall be done monthly in fifteen (15) minute increments and matched to an appropriate breakdown of the time that was taken to perform that work and who performed it.
2. Each month's bill should include a total to date. That total should provide, at a glance, the total fees and costs incurred to date for the project.
3. A copy of memoranda, letters, reports, calculations and other documentation prepared by CONSULTANT may be required to be submitted to CITY to demonstrate progress toward completion of tasks. In the event CITY rejects or has comments on any such product, CITY shall identify specific requirements for satisfactory completion.

4. CONSULTANT shall submit to CITY an invoice for each monthly payment due. Such invoice shall:

- A) Reference this Agreement;
- B) Describe the services performed;
- C) Show the total amount of the payment due;
- D) Include a certification by a principal member of CONSULTANT's firm that the work has been performed in accordance with the provisions of this Agreement; and
- E) For all payments include an estimate of the percentage of work completed.

Upon submission of any such invoice, if CITY is satisfied that CONSULTANT is making satisfactory progress toward completion of tasks in accordance with this Agreement, CITY shall approve the invoice, in which event payment shall be made within thirty (30) days of receipt of the invoice by CITY. Such approval shall not be unreasonably withheld. If CITY does not approve an invoice, CITY shall notify CONSULTANT in writing of the reasons for non-approval and the schedule of performance set forth in **Exhibit "A"** may at the option of CITY be suspended until the parties agree that past performance by CONSULTANT is in, or has been brought into compliance, or until this Agreement has expired or is terminated as provided herein.

5. Any billings for extra work or additional services authorized in advance and in writing by CITY shall be invoiced separately to CITY. Such invoice shall contain all of the information required above, and in addition shall list the hours expended and hourly rate charged for such time. Such invoices shall be approved by CITY if the work performed is in accordance with the extra work or additional services requested, and if CITY is satisfied that the statement of hours worked and costs incurred is accurate. Such approval shall not be unreasonably withheld. Any dispute between the parties concerning payment of such an invoice shall be treated as separate and apart from the ongoing performance of the remainder of this Agreement.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
01/26/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Heights Park Insurance Services  
2100 4th St, Ste C 211  
San Rafael CA 94901

CONTACT NAME: Alyssa Wilcox  
PHONE (A/C, No, Ext): 619-432-2810 FAX (A/C, No): 619-839-3684  
E-MAIL ADDRESS: alyssa@heightsparkins.com

INSURED IKW Solutions, Inc.  
668 N Coast Hwy, Ste 516  
Laguna Beach CA 92651

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Underwriters at Lloyd's, London	48944
INSURER B: Continental Casualty Company	20443
INSURER C: State Compensation Ins Fund	35076
INSURER D: Travelers Casualty & Surety Co of Am	31194
INSURER E:	
INSURER F:	

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	<input checked="" type="checkbox"/>	7013600861	03/22/2023	03/22/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	<input checked="" type="checkbox"/>	7013600861	03/22/2023	03/22/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTIONS	<input type="checkbox"/>	7013600875	03/22/2023	03/22/2024	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/>	9289677-2023	12/19/2023	12/19/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	TECH ERRORS & OMISSIONS	<input type="checkbox"/>	APT1127723	10/09/2023	10/09/2024	1,000,000 / 1,000,000
A	CYBER & PRIVACY	<input type="checkbox"/>	APT1127723	10/09/2023	10/09/2024	1,000,000 / 1,000,000
D	CRIME - THEFT OF CLIENT PROPERTY	<input type="checkbox"/>	107532780	10/28/2023	10/28/2024	1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
The City, its officers, elected or appointed officials, employees, agents, and volunteers are to be covered as additional insureds by separate attached endorsement(s) as respects liability arising out of action performed by or on behalf of the contractor, premises owned, occupied or used by the contractor, or automobiles owned, leased or borrowed by the contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City. By:

MICHAEL E. GATES  
CITY ATTORNEY  
CITY OF HUNTINGTON BEACH

## CERTIFICATE HOLDER

City of Huntington Beach  
2000 Main St  
Huntington Beach, CA 92648

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Alyssa Wilcox

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# City of Huntington Beach

Business License  
(714) 536-5267 FAX (714) 536-5934

P.O. Box 190  
Huntington Beach, CA 92648-2702

**Sunny Han**  
Chief Financial Officer

I K W SOLUTIONS INC  
668 NORTH COAST HIGHWAY # 516  
LAGUNA BEACH, CA 92651

Dear Business Owner:

Thank you for your payment. Attached is your City of Huntington Beach Business License certificate. Please note that approximately one month prior to the license expiration date, you will be mailed a renewal notice for the upcoming year. If for any reason your renewal notice does not arrive, you are still responsible for renewing and paying your business license prior to the expiration date. Penalties will be incurred if the payment is not received by the expiration date.

Please post the business license in public view. If you do not transact business from a fixed location within the City, you must carry this license with you at all times. If a vehicle license plate number is displayed on the Business License certificate below, you must carry a copy of the certificate in that vehicle. Please contact the Business License office if there are any changes to: ownership, address, business name, business vehicle, or type of business conducted. Additionally, please notify our office if you discontinue your business.

The Gender Tax Repeal Act of 1995 (Act) prohibits a business from discriminating based on a person's gender for prices of similar or like-kind goods and services. However, the Act does not prohibit price differences based on the amount of time, difficulty, or cost of providing the services. In addition to prohibiting discrimination based on a person's gender, the Act requires certain businesses to clearly and conspicuously disclose to customers in writing the pricing for each standard service provided. The posting requirement applies to barbers and hair salons, tailors or businesses providing aftermarket clothing alterations, dry cleaners, and laundries providing services to individuals. To access the Department of Consumer Affairs publication, please use the following webpage: [https://www.barbercosmo.ca.gov/consumers/gender\\_policy.pdf](https://www.barbercosmo.ca.gov/consumers/gender_policy.pdf). To access the publication in Korean, Spanish, Vietnamese, Traditional Chinese, Simplified Chinese, or Tagalog, please use the following webpage: <https://www.dca.ca.gov/publications/index.shtml>

There are many resources available to our business owners. Listed below are a few that might be of interest and assistance to you.

Office of Business Development - (714) 536-5582

Huntington Beach Chamber of Commerce - (714) 536-8888

CA Department of Tax and Fee Administration - (949) 440-3473

Service Corps of Retired Executives - (714) 550-7369

Fictitious Business Name Information - (714) 834-2889

Community Development - (714) 536-5271

If you have any questions, please call a Business License representative at (714) 536-5267.

## City of Huntington Beach Business License

**Business Name / Service Address**

I K W SOLUTIONS INC

**POST IN PUBLIC VIEW**

**License Number**

A308430

**Owner / Corporation**

I K W SOLUTIONS INC

**Effective Date**

02/01/2024

**Expiration Date**

01/31/2025

**License Type**

PROFESSIONAL SERVICES

**Amount Paid**

\$110.80



THIS LICENSE IS ONLY FOR THE BUSINESS AND TYPE SHOWN. IT IS FOR THE PERSON TO WHOM ISSUED AND IS NON-TRANSFERABLE. RENEWAL IS DUE ON OR BEFORE THE EXPIRATION DATE.

ORIGINAL

**Contract 800651 OB between  
San Diego County Regional Airport Authority  
and  
iKW Solutions Inc.  
For  
Business Applications Technical Support Services**

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## SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY

### Contractor Agreement

This Agreement is made by and between the SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY, and IKW SOLUTIONS Inc., a Wyoming corporation. The Parties agree:

1. **DEFINITIONS:** As used within this Agreement, the following terms shall have the meanings as set forth below:

Accounting Records: any and all documents relating to invoices, costs, payment, settlement, or supporting documentation of Contractor relating to this Agreement.

Agreement: this Service and Consulting Agreement including all exhibits and attachments and executed Task Authorizations.

Airport: the San Diego International Airport.

Audit Period: the period of time from commencement of the Term of the Agreement to the third anniversary of the Authority's final payment under the terms of this Agreement.

Authority: the San Diego County Regional Airport Authority, a local governmental entity of regional government, acting through its President/CEO for purposes of this Agreement.

Compensation: all monetary consideration provided Contractor pursuant to this Agreement including fees and Reimbursable Expenses.

Contractor: iKW Solutions Inc., a Wyoming corporation, and any officers, directors, employees, agents, or volunteers of Contractor.

Design Professional: any of the following professions:

- *Architects* licensed pursuant to Chapter 3 of Division 3 of the Business and Professions Code, and a business entity offering architectural services in accordance with that chapter;

- *Landscape Architects* licensed pursuant to Chapter 3.5 of Division 3 of the Business and Professions Code, and a business entity offering landscape architect services in accordance with that chapter;

- *Professional Engineers* registered pursuant to Chapter 7 of Division 3 of the Business and Professions Code, and a business entity offering professional engineering services in accordance with that chapter; and

- *Professional Land Surveyors* licensed pursuant to Chapter 15 of Division 3 of the Business and Professions Code, and a business entity offering professional land surveying services in accordance with that chapter.

DHS: the U. S. Department of Homeland Security.

Expenses: expenditures made by Contractor in the necessary and reasonable performance of this Agreement. Expenses include costs for travel, facilities, equipment, personnel, tools, and other materials. See "Reimbursable Expenses" below.

FAA: the Federal Aviation Administration.

Non-design Professional: all professions other than Design Professionals as defined above.

Parties: the Authority and Contractor collectively.

President/CEO: the President/CEO of San Diego County Regional Airport Authority or his/her designee.

Proprietary Information: all confidential, personal, proprietary and trade secret information and materials of the Authority, or of its Board, officers, employees, or of its suppliers, vendors or customers. Proprietary Information includes, without limitation, any: (a) information, ideas or materials of a technical or creative nature, such as designs and specifications, computer source and object code, and other materials and concepts relating to the Authority's intellectual property rights; (b) information, ideas or materials of a business nature, such as non-public financial information; information regarding profits, costs, marketing, purchasing, sales, customers, suppliers, contract terms, employees and salaries; development plans; business and financial plans and forecasts; (c) all personal property, including, without limitation, all books, manuals, records, reports, notes, contracts, lists, blueprints and other documents or materials, or copies thereof, received by Contractor in the course of Contractor's rendering of the Services to the Authority, including, without limitation, records and any other materials pertaining to the Work Product; and (d) information, ideas and opinions of a personal nature, such as the thoughts, impressions, personal histories and goals of Authority employees.

Reimbursable Expenses: those Expenses which are identified in "Exhibit B" to this Agreement as reimbursable by the Authority.

Services: all actions, assistance, and deliverables described in "Exhibit A" to this Agreement.

SSI Information: all documents, data, reports, drawings, specifications and other works, whether complete or incomplete, in oral, written, graphic or electronic form related to airport or airline security or contingency plans, security incident response plans, security directives, or any other such documents or materials protected by 49 CFR Part 1520, *et seq.*

TSA: the Transportation Security Administration, or any successor to the TSA.

Work Product: all documents, data, reports, drawings, specifications, and other works, including copies prepared by Contractor pursuant to this Agreement, whether complete or incomplete and whether in oral, written, graphic, or electronic form.

2. **TERM**: The term of this Agreement commences on March 16, 2020 and ends March 15, 2023 (the "Term"), with an option for Two (2) one-year extensions, which may be exercised at the sole discretion of the President/CEO.
3. **SCOPE OF WORK**: Subject to the terms and conditions set forth in this Agreement, Contractor shall provide the Authority with the Services set forth in "Exhibit A" entitled "Scope of Work", which is attached to and incorporated in this Agreement.
4. **COMPENSATION**:
  - A. **General**: Authority shall pay Contractor for the Services provided in accordance with the terms set forth in "Exhibit B", entitled "Compensation and Payment Schedule", which is attached to and incorporated in this Agreement. Authority shall make good faith efforts to pay Contractor all undisputed amounts within thirty (30) days of Authority's approval of Contractor's invoice submitted in accordance with Section 5 of this Agreement. The payments specified in "Exhibit B" shall be the only compensation to which Contractor shall be entitled under this Agreement. Authority has no obligation to expend the amount of monies designated as Maximum Amount Payable or to pay any amount in excess of the Maximum Amount Payable.

- B. **No Guarantee of Compensation:** Should this Agreement be an "on-call" agreement, Authority makes no guarantee to Contractor as to the amount of Contractor-provided Services that will be requested by the Authority or the amount of compensation that will be provided Contractor pursuant to this Agreement. Under no circumstances, shall Contractor or any of its subcontractors be entitled to or compensated for any direct or indirect loss arising from or relating to Authority's failure to authorize performance of Services under this Agreement. Said direct and indirect loss includes, but is not limited to, loss of expected profits, business overhead, loss of productivity, and loss of opportunity to work on other projects.
- C. **Staff Assignments:** Contractor agrees to assign only competent personnel to perform Services according to the reasonable and customary standards of training and experience in the relevant field. Where Services are provided on an hourly rate basis, Contractor agrees to use personnel with the lowest hourly rate to competently provide Services. Failure to assign competent personnel will constitute grounds for immediate termination and/or refusal to compensate Contractor for such Services.
- D. **Staff Continuity:** Contractor will use its best efforts to ensure continuity of personnel assigned to perform Services. Contractor will obtain Authority's prior approval before reassigning any full-time staff.
- E. **Expenses:** Unless expressly provided otherwise in "Exhibit B", Contractor shall bear all expenses required to perform Services pursuant to this Agreement.
5. **INVOICES:** Contractor shall submit monthly invoices, or at such other intervals as otherwise directed by Authority, describing the Services and Reimbursable Expenses for which payment is sought in accordance with Sections 3 and 4 of this Agreement. Invoices shall be in a form acceptable to the Authority and include the following:

A. **Documentation of Services:**

- 1) Contractor shall submit monthly invoices that identify by name each person or persons who provided Services during the period covered by the invoice. Unless otherwise agreed to by the Authority, the invoice, below each person's name, will describe with specificity each task the person performed and the date(s) that the person performed the task. Following the description of each task performed, the invoice will list (i) the amount of time by date that the person expended on the task, (ii) the documents associated with the task that the individual prepared, (iii) the compensation requested for the tasks provided by the person, and (iv) the basis of calculation of the compensation. For each identified task, the invoice will identify the authorized Reimbursable Expenses incurred by the individual in performance of each task. Identification of Reimbursable Expenses will include the documentation specified below.
- 2) Contractor shall provide written notice to the Authority when the total compensation expended under the Agreement reaches 75% of the total compensation allowed. If requested in writing by the Authority, each invoice shall state the total compensation and expense for each task billed as of the date of the statement and provide a running total of all compensation and expenses invoiced from the beginning of the Agreement year in which Contractor began providing Services to the date of the current invoice.

B. **Documentation of Reimbursable Expenses:**

- 1) Reimbursable Expenses, if any, for which Contractor may request reimbursement are set forth specifically in "Exhibit B".

- 2) Reimbursable Expenses under \$25.00: Contractor shall attempt in good faith to attach to each invoice all necessary documentation and receipts to support expenses under \$25.00.
- 3) Reimbursable Expenses over \$25.00: Contractor shall attach to each invoice, detailed, itemized receipts to support expenses over \$25.00. In no event will the Authority reimburse Contractor for expenses over \$25.00 that are not supported by necessary written detailed documentation with itemized receipts.

C. **Declaration To Accompany Each Invoice:** Invoices submitted shall contain the following signed certification at the end of the billing statement:

**"I hereby certify under penalty of perjury that the above bill is just and correct according to the terms of the Agreement between Contractor and the Authority and that payment has not been received.**

**By: \_\_\_\_\_"**

D. **Invoice Address:** Unless otherwise agreed by the Parties, all invoices shall be sent to the Authority at the address specified below:

San Diego County Regional Airport Authority  
Accounts Payable  
P.O. Box 82776  
San Diego CA 92138-2776

6. **ACCOUNTING RECORDS:** During the Audit Period, the Contractor shall maintain an acceptable cost accounting system. The Contractor agrees to provide the Authority or any other authorized government entity, including but not limited to the FAA and the Comptroller General of the United States or any of their duly authorized representatives, access to any books, documents, papers and records of the Contractor which are pertinent to this Agreement for the purpose of making audit examination, excerpts and transcriptions. The Authority or any other authorized government entity, including but not limited to the FAA and the Comptroller General of the United States or any of their duly authorized representatives, may audit Contractor's Accounting Records. Such audit(s) shall be conducted at reasonable times. Contractor shall maintain all Accounting Records for the entire length of the Audit Period, and shall fully cooperate with any such audit(s). Contractor shall maintain all records within the County of San Diego. If Contractor fails to maintain all records within the County of San Diego, Contractor agrees to reimburse Authority for reasonable expenses involved in traveling to the records storage site. Except as provided in this section, the cost of an audit shall be borne by the Authority. However, if the audit reveals a discrepancy of more than two percent (2%) between the Compensation requested by Contractor in accordance with this Agreement and the compensation determined by the audit, Contractor shall pay the cost of the audit as reasonably determined by the Authority.
7. **TIME IS OF THE ESSENCE:** Time is of the essence in this Agreement. If Contractor fails to competently perform Services within the time periods specified in "Exhibit A", or, if no time periods are specified, within a reasonable time period, Authority may terminate this Agreement pursuant to the terms of this Agreement.
8. **ASSIGNMENT OR TRANSFER PROHIBITED:** This Agreement is a personal services agreement between the Parties. Contractor may not in any manner, by operation of law or otherwise, assign, hypothecate, encumber or transfer this Agreement or any of the rights, duties or obligations under this Agreement, in whole or in part, without the express, prior written consent of the Authority. Any attempted or purported assignment of any right or obligation pursuant to this Agreement, without such consent, shall be voidable at the sole discretion of Authority and grounds for termination pursuant to the terms of this Agreement.

## 9. TERMINATION:

- A. If the President/CEO, in his/her sole discretion, becomes dissatisfied with Contractor's performance under this Agreement, the President/CEO may terminate this Agreement by giving written notice to Contractor. Such termination shall be effective immediately on delivery of such notice to Contractor.
- B. Any violation or breach of the terms of this Agreement by the Contractor or its subcontractors may result in the suspension or termination of this Agreement or such other action that may be necessary to enforce the rights of the parties to this Agreement. The Authority will provide Contractor written notice that describes the nature of the breach and corrective actions the Contractors must undertake in order to avoid termination of the Agreement. The Authority reserves the right to withhold payments to the Contractor until such time the Contractor corrects the breach or the Authority elects to terminate the Agreement pursuant to section C below. The Authority's notice will identify a specific date by which the Contractor must correct the breach. The Authority may proceed with termination of the Agreement if the Contractor fails to correct the breach by the deadline indicated in the Authority's notice.
- C. In addition to any other rights and remedies allowed by law and this Agreement, either party may terminate this Agreement with or without cause by giving thirty (30) days prior written notice. Such termination shall be effective on the date specified in the written notice.
- D. Contractor shall cease performing Services on the effective date of termination and Contractor shall have no further rights under this Agreement except as expressly provided herein. The Authority shall have all rights and remedies provided by law.
- E. Upon termination of this Agreement, Contractor may be compensated in accordance with "Exhibit B" only for Services actually performed and accepted by Authority. Contractor shall not be entitled to any compensation for contractual damages, including, but not limited to expected lost profits, office overhead, loss of productivity, lost opportunity to work on other projects or any other consequential or incidental damages arising from the termination of this Agreement.
- F. If the termination is due to the failure of the Contractor to fulfill the obligations, the Authority may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Contractor shall be liable to the Authority for any additional cost occasioned to the Authority thereby. If, after notice of termination for failure to fulfill the obligations in this Agreement, it is determined that the Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the Authority. In such event, compensation to the Contractor shall be determined in accordance with subsection E, above.
- G. Upon termination of this Agreement, Contractor shall deliver immediately to the Authority all property belonging to the Authority, whether given to Contractor by the Authority or prepared by Contractor in the course of rendering the Services, including, but not limited to, all Work Product then in progress, including all material in Contractor's possession that contains Proprietary Information or SSI Information and any copies thereof, whether prepared by Contractor or others. Following termination, Contractor shall not retain any written or other tangible (including machine-readable) material containing any Proprietary Information or SSI Information.
- H. The duties and obligations imposed by the terms and conditions of the Agreement and the rights and remedies available thereunder are in addition to, and not limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

**10. PROPRIETARY INFORMATION & SSI INFORMATION OF AUTHORITY OR TSA:**

- A. **General:** Contractor's Services may involve access to and creation of Proprietary Information or SSI Information.
- B. **Restrictions on Use and Disclosure:** During the Term of this Agreement and thereafter, Contractor shall: (a) hold and use Proprietary Information or SSI Information in strict confidence and solely for the benefit of Authority and not for the benefit of Contractor or any third party; (b) not copy or use any Proprietary Information, except as necessary to perform Services; and (c) not disclose or otherwise make available any Proprietary Information or SSI Information to any third party unless first authorized in writing by the Authority.
- C. **Restrictions on References to Authority:** Contractor shall not represent in any way that Authority endorses or supports Contractor or Contractor's activities without the prior written consent of Authority. Contractor is prohibited from making any representations regarding the relationship between Contractor and Authority without the prior written consent of Authority. Contractor shall not make any representations about Authority or use the Authority's name or the name of any of its Board Members, employees, or agents in documents or material generated by Contractor without the Authority's prior written consent.
- D. **Indemnity:** Contractor shall hold harmless and indemnify Authority for the payment of any civil penalties assessed Authority by the TSA or DHS because of Contractor's unauthorized release or divulging of any SSI Information.

**11. AUTHORITY OWNERSHIP OF SERVICES AND WORK PRODUCT:** Authority shall own all Services, including, but not limited to Work Product, prepared pursuant to this Agreement. Ownership includes all rights attendant to ownership, including rights of copyright, patent, and intellectual property rights. Contractor, at its own cost and expense, shall deliver all Work Product to Authority when requested by Authority. With prior written consent of Authority, Contractor may retain limited copies of Work Product, but only for purposes expressly authorized in Authority's consent. Work Product, including copies retained by Contractor, may not be shown to any other public or private person or entity unless expressly authorized in writing by Authority.

**12. INDEPENDENT CONTRACTOR:** Contractor is an independent contractor in the performance of this Agreement and shall act in an independent capacity and not as an officer or employee of the Authority. Contractor shall have no authority to act as an agent on behalf of the Authority unless specifically authorized to do so in writing. Authority shall have no liability for Contractor's actions and performance and assumes no responsibility for taxes, bonds, payments, or other commitments, implied or express, that may be made by or for Contractor. Contractor shall purchase all bonds and pay all taxes required for the performance of Services. Nothing contained in this Agreement shall be construed as creating a partnership or joint venture between Contractor and Authority or between Contractor and any other entity or party or cause Authority to be responsible in any way for the debts or obligations of Contractor or any other party or entity.

**13. SUBCONTRACTORS:** Contractor agrees that all of its subcontractors shall be subject to the prior written approval by the Authority. Contractor shall remain responsible to the Authority for any and all Services and obligations required under this Agreement, whether performed by Contractor or its subcontractor(s). Any subcontractor(s) employed by Contractor shall be independent contractors and not agents of the Authority. Contractor shall ensure its subcontracts and other agreements made pursuant to this Agreement with subcontractor(s) include all applicable requirements set forth by this Agreement, including,

but not limited to, sections entitled: "Insurance Requirements", "Indemnification", and "Conformance with Rules and Regulations".

**14. INSURANCE REQUIREMENTS:**

- A. Contractor shall procure, at its expense, and keep in full force and effect at all times during the Term of this Agreement, the types and amounts of insurance specified in "Exhibit C", entitled "Insurance Requirements for Contractor", which is attached hereto and incorporated by reference herein. The specified insurance shall include and insure Authority, its Board and all its officers, employees, and agents, their successors and assigns, as additional insureds, against the areas of risk associated with the Services as described in "Exhibit A" with respect to Contractor's acts or omissions in the performance of this Agreement, its operations, use, and occupancy of the Airport, and other related functions performed by or on behalf of Contractor in, on or about Airport.
- B. Each specified insurance policy (other than Worker's Compensation and Employers' Liability and fire and extended coverages) shall contain a Severability of Interest (Cross Liability) clause which states, "It is agreed that the insurance afforded by this policy shall apply separately to each insured against whom a claim is made or suit is brought except with respect to the limits of the company's liability," and a Contractual Endorsement which shall state, "Such insurance as is afforded by this policy shall also apply to liability assumed by the insured under insured's Agreement with the Authority."
- C. All such insurance shall be primary and non-contributing with any other insurance held by Authority where liability arises out of or results from the acts or omissions of Contractor, its agents, employees, officers, assigns, or any person or entity acting for or on behalf of Contractor. Such policies may provide for reasonable deductibles and/or retentions acceptable to the President/CEO based upon the nature of Contractor's operations and the type of insurance involved.
- D. Authority shall have no liability for any premiums charged for such coverage(s). The inclusion of Authority, its Board and all its officers, employees, and agents, their successors and assigns, as insureds is not intended to, and shall not, make them, or any of them, a partner or joint venturer with Contractor in Contractor's operations at Airport or in the performance of this Agreement. In the event Contractor fails to furnish Authority with evidence of insurance and maintain the insurance as required, Authority upon ten (10) days prior written notice to comply, may, but shall not be required to, procure such insurance at the cost and expense of Contractor, and Contractor agrees to promptly reimburse Authority for the cost thereof plus fifteen (15%) percent for administrative overhead. Payment shall be made within thirty (30) days of invoice date.
- E. At least ten (10) days prior to the expiration date of the above policies, documentation showing that the insurance coverage has been renewed or extended shall be filed with Authority. If such coverage is canceled or reduced, Contractor shall, within fifteen (15) days of such cancellation or reduction of coverage, file with Authority evidence that the required insurance has been reinstated or provided through another insurance company or companies.
- F. Contractor shall provide proof of all required insurance and related requirements to Authority either by production of: the actual insurance policy(ies); or a Certificate of Insurance in a form acceptable to the Authority; or a broker's letter acceptable to the President/CEO in both form and content in the case of foreign insurance syndicates, or other written evidence of insurance acceptable to the President/CEO. The documents evidencing all required coverages shall be filed with Authority prior to Contractor performing Services or occupying the Airport. The documents shall contain (i) the

applicable policy number, (ii) the inclusive dates of policy coverages, (iii) the insurance carrier's name, address and telephone number, (iv) shall bear an original signature of an authorized representative of said carrier, and (v) shall provide that such insurance shall not be subject to cancellation, reduction in coverage, or nonrenewal except after written notice by certified mail, return receipt requested, to the Authority at least thirty (30) days prior to the effective date thereof. Authority reserves the right to have submitted to it, upon request, all pertinent information about the agent, broker, and carrier providing such insurance.

- G. Authority and Contractor agree that the insurance policy limits specified herein shall be reviewed for adequacy annually throughout the Term of this Agreement by the President/CEO who may, thereafter, require Contractor, on thirty (30) days prior written notice, to adjust the amounts of insurance coverage to whatever reasonable amount said President/CEO deems to be adequate.
- H. All insurance policies required herein shall have a minimum Best financial rating of A minus 7.
- I. Submission of insurance from a non-California admitted carrier is subject to the provisions of California Insurance Code §§ 1760 through 1780, and any other regulations and/or directives from the State Department of Insurance or other regulatory board or agency. Contractor agrees, except where exempted, to provide Authority proof of said insurance by and through a surplus line broker licensed by the State of California at the address specified below:

San Diego County Regional Airport Authority  
Risk Management Department  
P.O. Box 82776  
San Diego, CA 92138-2776

## **15. INDEMNIFICATION:**

- A. **Non-Design Professionals:** In addition to the provisions of the preceding section entitled "Insurance Requirements", Contractor shall indemnify, hold harmless and defend the Authority, its Board, officers, directors, employees, agents and volunteers from and against all claims, damages, losses and expenses, including reasonable attorneys' fees and court costs, arising out of, pertaining to, or relating to the performance of the Services described herein, caused by any act or omission of Contractor and/or any of its subcontractors, employees, agents, officers and directors, except where caused by the sole negligence or willful misconduct of the Authority.
- B. **Design Professionals:** Notwithstanding the provisions of the above, the following provision shall apply to Contractors that are Design Professionals when providing "design professional services" (as that term is defined under Civil Code section 2782.8) to the Authority. In addition to the requirements of the section entitled "Insurance Requirements", to the fullest extent permitted by law, Contractor shall defend (with counsel of the Authority's choosing), indemnify and hold the Authority, its Board, officers, directors, employees, agents, and volunteers, free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's Services, the project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Contractor's obligation to

indemnify shall not be restricted to insurance proceeds, if any received by Contractor, the Authority, its officials, officers, employees, agents, or volunteers. To the extent required by Civil Code section 2782.8, which is fully incorporated herein, Contractor's obligations under the above indemnity shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor, but shall not otherwise be reduced. If Contractor's obligations to defend, indemnify, and/or hold harmless arise out of Contractor's performance of "design professional services" (as defined under Civil Code section 2782.8), then upon Contractor obtaining a final adjudication that liability under a claim is caused by the comparative active negligence or willful misconduct of the Authority, Contractor's obligations shall be reduced in proportion to the established comparative liability of the Authority and shall not exceed the Contractor's proportionate percentage of fault.

**16. CONFORMANCE WITH RULES AND REGULATIONS:**

**A. Contractor agrees to abide by any and all:**

- 1) Applicable rules, regulations, resolutions, policies, codes, orders and restrictions which are now in force or which may be hereafter adopted by the Authority with respect to the operation of the Airport;
- 2) Orders, directives, or conditions issued, given or imposed by the President/CEO with respect to the use and operation of the Airport; and
- 3) Applicable laws, ordinances, statutes, rules, regulations, or orders of any federal, state, county, municipal or other governmental entity, exercising jurisdiction over the Airport.

**B. Contractor acknowledges that it has reviewed and accepts the SDIA Security Instructions posted on the Authority's website at [www.san.org](http://www.san.org). If TSA imposes a fine or penalty on the Authority for Contractor's non-compliance with federal laws and or TSA rules and regulations, then Contractor shall reimburse and indemnify the Authority for the entire amount of the fine or penalty.**

**17. PREVAILING WAGE: State prevailing wage rates may apply to work performed under this Agreement. State prevailing wage rates apply to all public works contracts as set forth in California Labor Code, including but not limited to §§1720, 1720.2, 1720.3, 1720.4 and 1771. Contractor is solely responsible to determine if state prevailing wage rates apply and, if applicable, pay such rates in accordance with all laws, ordinances, rules, and regulations.**

**18. BANKRUPTCY: In the event Contractor commences a proceeding under the Federal Bankruptcy Act or is adjudicated bankrupt or insolvent, or a judicial sale is made of Contractor's interest under this Agreement, this Agreement shall at the option of the Authority immediately terminate and all rights of Contractor hereunder shall immediately cease and terminate. If during the Term of this Agreement, Contractor files for bankruptcy protection, it covenants and agrees to serve the Authority with a copy of the court filing documents within five (5) days thereafter.**

**19. LICENSES AND PERMITS: Contractor shall possess all licenses, permits, qualifications, and approvals of whatever nature legally required for Contractor to perform the Services under this Agreement. Contractor represents and warrants that it, at its sole cost and expense, shall keep in effect at all times during the Term of this Agreement any and all licenses, permits, and approvals that are required for Contractor to practice its profession and/or perform the Services.**

20. **CONFLICT OF INTEREST:** Contractor is not now a party to, and during the Term of this Agreement shall not enter into, any contract or agreement that will create a conflict of interest with its duties to the Authority under this Agreement.
21. **ENTIRE UNDERSTANDING:** This Agreement contains the entire agreement of the Parties and supersedes all prior negotiations, discussions, obligations, and rights of the Parties regarding this Agreement. Contractor acknowledges that there is no other written or oral understanding between the Parties. No modification, amendment, or alteration of this Agreement shall be valid or enforceable against the Authority unless it is in writing, properly approved and executed by all Parties.
22. **NON-DISCRIMINATION:** Contractor agrees at all times to fully comply with all laws prohibiting discrimination against any person or class of persons by reason of race, color, gender, religious creed, sex (including pregnancy or child birth), age, national origin, ancestry, sexual orientation, physical or mental disability, medical condition including genetic characteristics, veteran status, marital status, family care status, or any other considerations made unlawful by federal, state or local law in performance of this Agreement. If the use provided for in this Agreement allows Contractor to offer accommodations or services to the public, such accommodations, or services shall be offered on fair and reasonable terms.
23. **PARTIAL INVALIDITY:** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder shall remain in full force and effect, and shall in no way be affected, impaired or invalidated.

24. **NOTICES:**

- A. **Notice:** Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (a) by personal delivery on the date that personal delivery is accomplished; (b) by overnight courier upon the date of signature verification of receipt; or (c) by certified or registered mail, return receipt requested, upon signature verification of receipt. Notice shall be sent to the addresses set forth below, or such other address as either party may specify in writing:

If to the Authority: President/CEO  
San Diego County Regional Airport Authority  
P. O. Box 82776  
San Diego, California 92138-2776

If to Contractor: iKW Solutions Inc.  
Attn: Matthew Aarsvold  
668 North Coast Highway, Suite 516  
Laguna Beach, CA 92651

- B. **Effectiveness:** Contractor agrees that Notice from the President/CEO shall be effective as to the Contractor as if it were executed by the Board or by Resolution of the Board.

25. **INTERPRETATION:**

- A. **Section Headings:** Section headings in this Agreement are for the convenience and reference of the Parties, and do not define or limit the scope of any section or provision.
- B. **Fair Meaning:** The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either Party.
- C. **Two Constructions:** If any provision in this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

- D. **Governing Law:** This Agreement and all of its terms and conditions shall be construed, interpreted and applied in accordance with, governed by, and enforced under the laws of the State of California.
- E. **Venue:** Notwithstanding applicable provision of 28 U.S.C. § 1391 or of California Code of Civil Procedure § 394, the Parties agree that the venue in all matters arising out of this Agreement shall be the Superior Court of California, County of San Diego.
- F. **Gender:** The use of any gender shall include all genders, and the use of any number shall be construed as the singular or the plural, all as the context may require.
- G. **Integrated Agreement:** The Parties agree that this Agreement and any documents to which it refers contain the whole agreement between the Parties relating to the terms and conditions by which Contractor is to provide Services. The Parties further agree that this Agreement supersedes all previous understandings and agreements between the Parties regarding such terms and conditions. Each party to this Agreement acknowledges that, in agreeing to enter into this Agreement, it has not relied on any representation, warranty, collateral contract or other assurance that is not set out in this Agreement or in any documents to which it refers, that was made before the execution of this Agreement. Each party waives all rights and remedies which, but for this provision, might otherwise be available to it in respect to any such representation, warranty, collateral contract or other assurance. However, nothing in this provision shall limit or exclude any liability for willful misconduct or fraud. The Parties further agree that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties.
- H. **Other Agreements Not Affected:** Except as specifically stated herein, this Agreement and its terms, conditions, provisions and covenants shall not in any way change, amend, modify, alter, enlarge, impair or prejudice any of the rights, privileges, duties or obligations of either of the Parties under or by reason of any other agreement between the Parties.
26. **JOINT AND SEVERAL LIABILITY:** If Contractor is a limited liability company ("LLC"), partnership, or joint venture or is an entity comprised of more than one party or entity, the obligation imposed on Contractor under this Agreement shall be joint and several, and each member, general partner, joint venturer, party or entity of Contractor shall be jointly and severally liable for all obligations.
27. **WAIVER:** Waiver by either party of any breach by the other party of any one or more of the terms or conditions of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or any other term or condition of this Agreement. Failure on the part of either party to require full and complete compliance by the other party with any of the terms or conditions of this Agreement shall not be construed as changing the terms or conditions or preventing full enforcement of other provisions to this Agreement.
28. **COST OF LITIGATION AND/OR ADMINISTRATIVE ACTIONS - ATTORNEY FEES:** If any action, whether an action in litigation or an administrative action, is brought by a party to this Agreement and arises out of or is traceable to any rights, privileges, or obligations bestowed by this Agreement, including but not limited to breach of any provision of this Agreement, the Parties agree that the prevailing party shall be entitled to and the non-prevailing party shall be bound to pay all reasonably incurred costs associated with the action. The Parties agree that all reasonably incurred costs associated with the action include, but are not limited to attorney fees, costs of legal research incurred in preparing documents filed with the court or administrative body, expert witness fees, and exhibits used in presenting the prevailing party's case to the court, jury or administrative body.

29. **AUTHORITY'S RIGHT TO CONTRACT WITH OTHERS:** The rights granted by the Authority under this Agreement are not exclusive, and Authority reserves the right to enter into other agreements covering the same or similar Services that are described in the Agreement.
30. **EFFECT OF DEBARMENT OF CONTRACTOR ON EXISTING CONTRACTS:** For the entire Term of this Agreement, Authority reserves the right to immediately terminate this Agreement in the event that Contractor or any subcontractor is debarred from contracting or providing services by the Authority, the federal government, or by any other California governmental entity.
31. **PROHIBITION OF BENEFITS:** Contractor is familiar with the Authority's prohibition against receipt of benefits by Authority personnel as set forth in Authority Code §2.10. The Authority's Code is posted on the Authority website at [www.san.org](http://www.san.org). Contractor agrees not to offer any Authority personnel any benefit prohibited by said Code. The offer or giving of any benefit prohibited by the Authority Code shall constitute a material breach of this Agreement by Contractor. In addition to any other remedies the Authority may have in law or equity, Authority may terminate this Agreement for breach as provided herein.
32. **FEDERAL AVIATION ADMINISTRATION REGULATIONS:** During the performance of this Agreement, the Contractor, for itself, its assignees, successors in interest and subcontractors (hereinafter referred to as the "Contractor") agrees as follows:
- A. **CIVIL RIGHTS – GENERAL** (49 U.S.C. § 47123).
- 1) Contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.
  - 2) This provision binds the Contractor and any subcontractor from the bid solicitation period through the completion of the contract. This provision is in addition to that required of the Title VI of the Civil Rights Act of 1964.
- B. **CIVIL RIGHTS – TITLE VI.**
- 1) **Title VI Solicitation Notice.** The Authority, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.
  - 2) **Title VI Clauses for Compliance with Nondiscrimination Requirements.** During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:
    - a) **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
    - b) **Non-discrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or

indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

- c) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
  - d) Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Authority or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Authority or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
  - e) Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Authority will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
    - (1) Withholding payments to the Contractor under the contract until the Contractor complies; and/or
    - (2) Cancelling, terminating, or suspending a contract, in whole or in part.
  - f) Incorporation of Provisions: The Contractor will include the provisions of paragraphs a) through f) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Authority to enter into any litigation to protect the interests of the Authority. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
- 3) Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities, including but not limited to:
- a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);

- b) 49 CFR Part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- c) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- d) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 *et seq.*, as amended) (prohibits discrimination on the basis of disability and 49 CFR Part 27);
- e) The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- f) Airport and Airway Improvement Act of 1982 (49 U.S.C. § 471, Section 47123, as amended) (prohibits discrimination based on race, creed, color, national origin, or sex);
- g) The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and § 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- h) Titles II and III of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131-12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- i) The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- j) Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- k) Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency ("LEP"). [To ensure compliance with Title VI, Contractor must take reasonable steps to ensure that LEP persons have meaningful access to your programs.] (70 Fed. Reg. at 74087 to 74100); and
- l) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. §1681, *et seq.*).

**C. FEDERAL FAIR LABOR STANDARDS ACT.** All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act ("FLSA"), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor

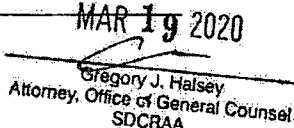
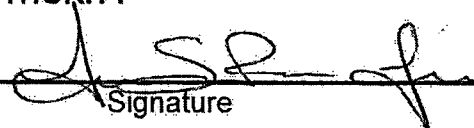
standards for full and part time workers. The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

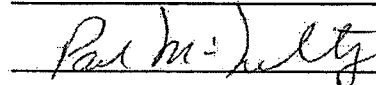
- D. **OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970:** All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety Health Act of 1970 (29 CFR Part 1910). The Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor-Occupational Safety and Health Administration.
- E. **SUBORDINATION:** This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between the Authority and the United States, relative to the development, operation, or maintenance of the Airport.
- F. **NO INTERFERENCE:** Contractor agrees for itself, its successors and assigns that it will not make use of Authority premises in any manner which might interfere with the landing and taking off of aircraft or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the Authority reserves the right to cause the abatement of such interference at the expense of Contractor.
- G. **EXCLUSIVE RIGHTS:** It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of § 308a of the Federal Aviation Act of 1958 (49 U.S.C. § 40103; P.L. 103-272; 108 STAT. 1102, and as it may be amended in the future).

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**33. SIGNATURES:**

- A. **Signature of Parties:** It is an express condition of this Agreement that it shall not be complete or effective until signed by Authority and by Contractor.
- B. **Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

<b>APPROVED AS TO FORM</b>  <b>APPROVED AS TO FORM</b> Date: <u>MAR 19 2020</u>  Gregory J. Halsey Attorney, Office of General Counsel SDCRAA	<b>SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY</b>
	 Signature
	<u>Kimberly J. Becker</u> Name
	<u>President/CEO</u> Title
	Date: <u>6.7.2020</u>

<b>CONTRACTOR:</b> <u>iKW Solutions Inc.</u>
<b>SIGNATURE:</b> 
<b>NAME:</b> <u>Matthew Aarsvold</u> <u>Paul M. Aarsvold</u>
<b>TITLE:</b> <u>Chief Executive Officer</u> <u>VP Sale</u>
<b>DATE:</b> <u>3/10/2020</u>
<p>By my signature above, I, hereby certify under penalty of perjury under the laws of the State of California, that I am an officer or employee of the organization with authority to bind and obligate the organization.</p> <p>If your corporation has a seal, please affix below:</p>

## **EXHIBIT A – SCOPE OF WORK**

**A-1. Purpose:** The Authority is entering into this Agreement to obtain Services needed to provide on-call technical support services. The Authority has entered into agreements with four (4) Contractors to provide the described Services.

**A-2. Task Authorization Process and Content:**

**A. Process:** When a work task is identified, Authority will issue a Task Order Request for Proposal. The Task Order Request for Proposal will include: (1) a description of the Scope of Work to be performed; (2) specifications; (3) plans; (4) proposed form of pricing (i.e., hourly or lump sum); (5) a statement indicating that all terms and conditions in this Agreement shall be incorporated into each Task Order; (6) any other necessary contractual provisions, and may optionally include, (7) bonding requirements.

Within three (3) working days of issuance of the Task Order Request for Proposal, unless an alternative time is otherwise indicated in the Task Order Request for Proposal, Contractor shall submit its responding proposal to the Authority in the form of a Task Order Proposal. Contractor's Task Order Proposal shall include, but not be limited to: a listing of deliverables to be provided, a proposed milestone schedule, subcontractors to be utilized (if applicable), and a proposed price in the form to be specified by the Authority.

The Parties understand and agree that the nature of the Airport's operations may compel the Authority to give greater weight to timeliness of project completion in the decision to award a particular project. If timeliness in the project's start and finish are equal amongst the Contractor's Task Order Proposal's, cost shall be the deciding factor. The Contractor with the best overall bid, as determined by the Authority, will be awarded the project and issued a Task Authorization to perform the Service. The Authority may either accept the proposal or negotiate the elements thereof, as appropriate, to establish a clear, mutual agreement of the work to be performed, deliverables to be provided, schedule of performance, subcontractors to be utilized, terms of payment, and other requirements. Before commencing any work a formal Task Authorization must be executed by the parties. No work shall be authorized nor shall any payment be made without an Authority-issued Task Authorization. The work described and included in a Task Authorization shall be referred to herein as "Work". A sample Task Authorization is attached as "Schedule A".

**B. Content:** The Task Authorization issued by the Authority shall set forth the following agreed to particulars: 1.) Scope of Work and applicable technical specifications and drawings; 2.) Performance Period; 3.) Price and terms of payment; 4.) Insurance coverage requirements; 5.) Subcontractor information if applicable; 6.) Bonding requirements; and 7) Such other information as may be necessary to perform the Work. The Contractor shall sign the Task Authorization. Contractor's signature shall constitute Contractor's acceptance of all of the terms and conditions of the Task Authorization, this Agreement and any amendments thereto (collectively, the "Contract Documents").

**C. Amount:** Task Authorizations will be issued with a maximum project value of \$100,000.

**A-3. Scope of Contractor's Responsibilities, Contractor- Provided Services, and Contractor-Provided Deliverables:** At the direction of the Authority, Contractor shall provide the following, but not be limited to, Services:

**A. Specified Services:**

1. Technical Support Services for the following systems:

- a. Oracle JD Edwards EnterpriseOne Version 9.2.x ("E1"), integration tools/applications (Magic xpi, Bottom-line Transform, Morpheus v3.5, etc.);
- b. Web Content Management Systems, DNN (formerly DotNetNuke ("DNN")) and WordPress;
- c. Enterprise Business Intelligence Platforms; and
- d. PMWeb v6 Construction Program Management Software.

Technical support services shall include, but not limited to, system analysis, upgrades, modifications, new development, documentation, troubleshooting, report building, on-site and off-site training, best practices recommendations and implementation.

In addition to above, Technical support services shall also include, but not limited to:

- a. Software installation, maintenance, troubleshooting and remediation as necessary.
- b. Code / object development and corresponding documentation.
- c. Consulting with vendor support as necessary to resolve support or development issues.
- d. Integration and workflow development and support.
- e. Reporting support as needed.
- f. Third-party tool development.

2. Training and development of written training materials.

Contractor to supply progress reports that describe tasks undertaken by Contractor and the status of pending deliverables requested by the Authority. Reports shall be documented and submitted in an electronic format, or as otherwise directed by the Authority.

3. Services shall be performed between 8:00am to 6:00pm PST Monday - Friday. Contractor shall confirm to Authority, within one (1) hour of receipt of notification of Authority's request for Service.

**B. General:**

- 1. Security: Contractor shall ensure that ALL its employees who will have ANY kind of electronic or other sensitive access to system information, both onsite and/or remotely, shall retain an Authority Airport ID Badge. Individuals will be required to visit the Access Control Office (ACO) for fingerprinting and a second time for training and badging once a background check is cleared. Badge renewal also requires a visit to the Authority's ACO. Contractor shall be required to use a 2-Factor Authentication for any remote access necessary in the course of installation, warranty and ongoing maintenance phases. Remote access and 2-Factor Authentication required by the Authority shall be provided and enforced by the Access Control Office (ACO). Contractor is responsible for all costs. If Contractor's employee providing service is arrested by federal or state authorities for any offense, the Authority must be notified immediately and the individual must immediately cease all work associated with the Agreement. Contractor must

reassign work to an alternate employee, upon approval of the Authority, and alternate employee must complete the badging process as described above.

2. Cleanliness: Contractor shall, at all times, while providing Services at the Airport, keep the immediate and surrounding service area clean and free of debris. Contractor shall ensure that all tools and equipment will be removed from the service area when Work is complete.

**C. Contractor's Work Performance:**

**1. Changes in the Work—Change Orders:**

- a. The Contractor shall be responsible for its costs to implement and administer a Request for Information (RFI) system throughout the duration of the Agreement. Regardless of the number of RFIs (or written directions) issued, the Contractor will not be entitled to additional compensation or additional Contract time unless the cause and impacts of each RFI are identified and attributable to parties other than the Contractor. The Contractor shall be responsible for the Authority's administrative costs for answering RFIs where the answer could reasonably be found by reviewing the Task Authorization and contract documents or are solely for the convenience of the Contractor; such costs may be deducted from progress payments.
- b. All changes to the Work described in the Task Authorization shall be negotiated before any Work begins. All changes to the work shall be included in a written amendment to the Task Authorization. The amendment to the Task Authorization shall be signed by both parties. There shall be no performance of Work described in the amendment to the Task Authorization until such time as the amendment to the Task Authorization has been signed by both the Authority and the Contractor.

**2. Liquidated Damages:**

- a. The Contractor and Authority agree that the date of beginning and the time for completion as specified in the Task Authorization are essential conditions of the Agreement and that the Authority will suffer financial loss in the form of lost revenues, contract administration expenses (including project management and consultant's expenses), delay and/or loss of public use if the Work is not completed within the time set forth in the Task Authorization; and it is further mutually understood and agreed that the Work embraced in the Task Authorization shall be commenced on the date set forth in the Task Authorization. The Contractor agrees that said Work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will insure completion within the time frame set forth in the Task Authorization. It is expressly understood and agreed by and between the Contractor and the Authority that the time for the completion of the Work is a reasonable time for its completion.
- b. If the Contractor shall neglect, fail or refuse to complete the Work within the time frame set forth in the Task Authorization or any portion of the Work as indicated by Task Authorization milestone, or any proper extension granted by the Authority, then the Contractor agrees, as a part consideration for the awarding of the Task Authorization, to pay to the Authority the daily amount of \$200 dollars not as a penalty but as liquidated damages for such breach of contract, for each and every calendar day that the contractor shall be in default after the Task Authorization completion date or Task Authorization milestone. Liquidated damages shall not be assessed when the delay is due to excusable

causes beyond the control of and without the fault or negligence of the Contractor, including acts of the Authority. The assessment of liquidated damages for the completion of Task Authorization work ceases upon completion, not substantial completion. If applicable, the assessment for Task Authorization milestone liquidated damages ceases upon the meeting of that milestone.

- c. The liquidated damages amount is fixed and agreed upon by and between the Contractor and the Authority because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Authority would in such event sustain, and the amount is agreed to be the amount of damages which the Authority would sustain. Contractor and the Authority also recognize the delays, expense and difficulties involved in the calculation and proof of the actual loss suffered by the Authority if the Work is not completed on time. Accordingly, instead of requiring such proof, the Authority and Contractor agree that the amount of Liquidated Damages specified herein shall be presumed to be the damages suffered by the Authority resulting from the delay in completion of the Work. The Contractor specifically agrees at the time of contracting that the amount of liquidated damages is manifestly reasonable under the circumstances for the Work.

**3. Approval of the Work:**

- a. All Work shall be subject to the approval of the Authority and any Work in need of correction because of improper or unsatisfactory preparation or workmanship shall be corrected by Contractor to the satisfaction of, and at no cost to, the Authority.
- b. Contractor will have two (2) days from the time of notification to correct improper or unsatisfactory work. In the event said work is not corrected within the time specified above, and in addition to any other actions/remedies permitted by law, Authority shall have the immediate right to complete the Work to its satisfaction and shall deduct the cost to correct said Work from Contractor's invoice.
- c. All Work is to be completed in compliance with all Local and Federal codes and regulations.
- d. Contractor shall provide continuous protection of Authority equipment, property and personnel from Work performed. Contractor shall be responsible for protection of the Work until the finished Work has been approved by Authority.
- e. All areas are to be left clean and in good condition at the end of the job. Contractor shall remedy all damage caused by this work to the satisfaction of, and at no cost to, the Authority.

**D. Contractor's Use Of Premises:**

- 1. Contractor's use of premises will be limited only to those areas necessary for performance of the work or services described in the Contract Documents. All other areas shall remain undisturbed.
- 2. Contractor must receive prior written authorization from Authority, if Contractor requires an area to store equipment and/or supplies at the Airport.

**E. Warranty:**

1. All materials, parts and labor shall be considered under Contractor Warranty for a minimum of three hundred sixty-five (365) calendar days after performance of work and final acceptance by the Authority.
2. All manufacturers' material warranty information shall be provided by Contractor to the Authority.

**F. Authority:**

1. **AUTHORITY'S RIGHT TO STOP WORK:** If the Contractor fails to correct Work which Authority deems not in accordance with the requirements of the Contract Documents or fails to carry out Work in accordance with the Contract Documents or for any cause whatsoever, the Authority may order the Contractor to stop the Work, or any portion of the Work, until the cause for such order has been eliminated; however, the Authority's right to exercise this provision shall not be for the benefit of the Contractor or any other person or entity. If the Authority stops the Work because of conduct by the Contractor, its agents, representatives or subcontractors, no compensation in time or money shall be owed to the Contractor for such stoppage.
2. **AUTHORITY'S RIGHT TO CARRY OUT THE WORK:** If the Contractor defaults or neglects to carry out Work in accordance with the Contract Documents and fails within ten (10) days or within the time specified, whichever is less, after receipt of written notice from the Authority to commence and continue correction of such default or neglect with diligence and promptness, the Authority may by any means acceptable to it, without prejudice to other remedies the Authority may have, correct such deficiencies. In such case an appropriate Task Authorization amendment shall be issued deducting from payments then or thereafter due the Contractor the cost or estimated cost of correcting such deficiencies, including compensation for additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor and/or its surety shall pay the difference to the Authority.

**G. No Waiver Of Rights:**

1. Observation or Inspection by the Authority or its authorized agents or representatives, any order or certificate for payment of money, any payment for, acceptance of the whole or any part of the Work by the Authority, any extension of time, any position taken by the Authority or its authorized agents or representatives shall not operate as a waiver of any provision of this Contract, or of any power herein reserved by the Authority or any right to damages. No waiver of any breach of Contract shall be held to be a waiver of any other or subsequent breach, and payment shall not be deemed to be the equivalent of acceptance.
2. All remedies provided in this Contract shall be taken and construed as cumulative; that is, in addition to each and every remedy provided herein, the Authority shall have any and all equitable and legal remedies that it would otherwise have.

**H. Authority's Administration Of the Contract:**

1. The Authority will administer this Agreement and all Task Authorizations as described in the Contract Documents, unless notice is given to the Contractor that a Construction Manager or like entity has been retained to administer the Contract.
2. The Work will be performed under the jurisdiction of the Authority, who may execute general control over the conduct of the Work as may be necessary to safeguard the interest of the Authority. The Contractor shall promptly comply with

any and all orders and instructions given by the Authority in accordance with the terms of this Agreement. The Contractor assumes all risks and consequences of performing the Work in accordance with any order, including but not limited to, instruction, direction, interpretation or determination, of anyone not authorized to issue such order.

**I. Defective Work – Notice To Contractor:**

1. If, in the opinion of the Authority, Work is not being done in accordance with any applicable codes, laws, or the Contract Documents, written notice shall be given to the Contractor or its authorized agent. Written notice to any foreman or agent in charge of any portion of the Work in the absence of the Contractor shall be considered as notice to the Contractor.
2. Work which is defective in its construction or deficient in any of the requirements set forth in the Contract Documents will not be considered as accepted in consequence of the failure of any employee of the Authority or inspector connected with the Work to point out said defects or deficiency during construction. The Contractor shall at its sole expense correct any defective or non-conforming Work whenever discovered. If Contractor refuses or neglects to replace defective or non-conforming Work, such Work may be replaced by the Authority, after notice to the Contractor and its sureties, at the expense of the Contractor, and the Contractor and its sureties shall be liable therefore. If directed by the Authority, the Contractor shall uncover and/or expose Work for its inspection by the Authority. Should the Work thus exposed or examined prove acceptable, adjustments in time to complete or milestones set forth in the Task Authorization and price will be made pursuant to the Contract Documents for the uncovering or removing, and the replacing of the covering or making good of the parts removed. Should the Work exposed or examined prove unacceptable, the uncovering or removing and replacing shall be at the Contractor's expense.

- J. Additional Services:** If and when Authority requests Contractor to provide services in addition to those specified above, Contractor shall develop a work plan detailing the specific tasks to be completed and providing a detailed not-to-exceed budget for performing such tasks. Contractor shall not perform any Additional Services until Authority has issued a written notice-to-proceed with the execution of the work plan. Contractor will not be authorized to perform or invoice Authority for any work not specifically authorized in the Authority's notice-to-proceed.

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**SCHEDULE A - Task Authorization - SAMPLE**

[Date]

VIA E-mail/U.S. MAIL

[Name]

[Company]

[Address]

[City, State, Zip]

Re: On-Call Ready Service Agreement (Agreement No. XXXXXXOB)

Task Authorization (TA) No.

Project Name:

[Acct.#, WO#]

Dear [Name]:

Pursuant to the terms and conditions of the referenced On-Call Ready Service Agreement, this is your authorization to perform the work in accordance with the Authority's scope of work dated [Date], your job walk of the project on [Date], and your proposal dated [Date]. The total not to exceed amount for this TA is [\$Amount].

Subject to your written acceptance and agreement to this TA, you are to proceed with the work under this TA on or before [Date] and complete the work on or before [Date]. Pursuant to the On-Call Ready Service Agreement, the Authority may assess liquidated damages in the amount of \$200.00 for each calendar day that the Contractor is in default after the TA completion date or TA milestone.

All liaisons with the Authority for this TA shall be through the Information & Technology Services Department Project Manager, [Name] unless you are otherwise directed in writing. [Name] may be contacted at [Telephone], or by email [Address]. Please email your acceptance to [Name] and return the signed original to [Name].

Sincerely,

[Name]

[Title], Information & Technology Services

Accepted:

\_\_\_\_\_  
[Name], [Title]

\_\_\_\_\_  
Date

## **EXHIBIT B – COMPENSATION & PAYMENT SCHEDULE**

### **B-1. Compensation for Services:**

- A. Specified Services:** The Authority shall pay to Contractor the prices set forth in each Task Authorization when the work described in the Task Authorization is performed and completed to the satisfaction of the Authority, as set forth in Exhibit A of this Agreement.
- B. For Additional Services.** Contractor's compensation for Additional Services shall be as mutually agreed to by the Parties prior to Contractor providing Additional Services.

### **B-2. Reimbursable Expenses: None.**

### **B-3. Total Amount Payable:** The total amount payable under this Agreement shall not exceed Nine Hundred Thousand Dollars (\$900,000.00).

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## **EXHIBIT C – INSURANCE REQUIREMENTS FOR CONTRACTOR**

Contractor shall at all times during the Term of this Agreement maintain, at its expense, the following minimum levels, and types of insurance.

- C-1. Commercial General Liability:** (including, without limitation, Contractual Liability, Personal and Advertising Injury, and Products/Completed Operations coverage's written on an "occurrence," not "claims made" basis): in the amount of one million dollars (\$1,000,000) each occurrence and in the aggregate.
- A. The Commercial General Liability policy shall be endorsed to include the Authority, its agents, officers and employees as an additional insured.
  - B. The coverage provided to the Authority, as an additional insured, shall be primary and noncontributory.
  - C. Such coverage shall include a waiver of subrogation endorsement in favor of the Authority.
- C-2. Worker's Compensation and Employer's Liability:** In the amounts required by law in the State in which the Services contemplated under this agreement are to be performed, but not less than one million dollars (\$1,000,000) for Employer's Liability. Such coverage shall include a waiver of subrogation endorsement in favor of Authority.
- C-3. Professional Liability/Technology Errors and Omissions Insurance:** Contractor shall provide coverage in the amount of one million dollars (\$1,000,000) per claim. If the policy maintains a policy aggregate, such aggregate shall not be less than twice the per claim limit. Coverage shall include liability arising from errors, omissions, or negligent acts in rendering or failing to render computer or information technology services and technology products. Coverage for violation of software copyright should be included. Technology services should cover liabilities, and claim expenses arising from acts, errors and omissions, in rendering or failing to render all services in the provision of all products in the performance of the Services, including the failure of products to perform the intended function or serve the intended purpose. Services insured, at a minimum, include (1) systems analysis, (2) systems programming, (3) data processing, (4) systems integrations, (5) outsourcing including outsourcing development and design (6) system design, consulting, development and modification, (7) training services related to computer software or hardware, (8) management, repair maintenance of computer products, networks and systems, (9) marketing, selling, servicing, distributing, installing and maintaining computer hardware or software, (10) data entry, modification, verification, maintenance, storage, retrieval or preparing of data output, and any other services provided by the Contractor. If coverage is on a claims-made basis, coverage shall be maintained throughout the term of the agreement and continuously for three (3) years thereafter without lapse, or provide evidence of a three-year extended claims reporting period endorsement.

## **EXHIBIT D – Cybersecurity Requirements**

- A. Cybersecurity Ownership and Liability.** The cybersecurity requirements defined in this exhibit are to protect the Authority from financial or operational loss due to a cybersecurity breach. Contractor and/or subcontractors will be held liable for all damages associated with failure to adhere to the cybersecurity requirements defined in this exhibit. The Authority's information technology systems are intended solely for the business purposes of its employees, authorized contractors, and other specifically designated users. Unauthorized use is prohibited. All information processed and contained in the Authority computer systems is the property of the Authority. Violation of these guidelines is grounds for contract termination.
- B. Standards Compliance.** Contractor's implementation and ongoing support shall follow NIST (National Institute of Standards Technology,) ISO (International Standards Organization) 27001 or CIS (Center for Internet Security) 20 controls. The Contractor shall verify that the addition of security features does not adversely affect connectivity, latency, bandwidth, response time, and throughput specified.

Within ten (10) business days of the Agreement execution date, Contractor shall provide the Authority with a copy of Contractor's information security policy detailing an overview of the firm's security posture and system implementation policy.

- C. Security Sensitive Information.** Contractor is responsible for compliance with all laws and regulations relating to Sensitive Security Information (SSI). SSI is information that if publicly released, would be detrimental to transportation security as defined by Federal regulation 49 C.F.R. part 1520. Although SSI is not classified information, there are specific procedures for protecting, sharing, and destroying SSI. SSI regulations mandate specific requirements for handling SSI, including the following:
- **Lock Up All SSI:** Store SSI in a secure container such as a locked file cabinet or drawer (as defined by Federal regulation 49 C.F.R. part 1520.9 (a)(1)).
  - **When No Longer Needed, Destroy SSI:** Destruction of SSI must be complete to preclude recognition or reconstruction of the information (as defined by Federal regulation 49 C.F.R. part 1520.19).
  - **Mark SSI:** The regulation requires that even when only a small portion of a paper document contains SSI, every page of the document must be marked with the SSI header and footer shown at left (as defined by Federal regulation 49 C.F.R. part 1520.13). Alteration of the footer is not authorized.
- D. Account/Access Control.** Contractor will adhere to the below best practices for user account and access control:
- Default and shared usernames are not allowed.
  - Hardware authentication settings (such as passwords) must be changed from their factory default values.
  - Password must be a minimum of 12 characters including special characters. Accounts that have elevated access or permissions will require a 25-character password with special characters.
  - Passwords must be changed every 90 days.
  - Contractor shall protect passwords, including not storing passwords in clear text and not hardcoding passwords into software or scripts.
  - Contractor shall configure each account to operate using the principle of least privilege. This includes operating system permissions, file access, user accounts, and application-to-application communications.
  - All management and configuration interfaces are to be secured using multi-factor authentication for administrative access.