

6/18/98

Introduced By: Louise Miller

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Proposed No.: 98-403

MOTION NO. **10525.4**

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A MOTION authorizing the chair of the council to enter into a contract with Daystar, Inc. for the installation and maintenance of a legislative management system.

WHEREAS, there are approximately eight hundred pieces of legislation each year introduced by members of the metropolitan King County council, and

WHEREAS, the council has a computer system capable of operating an automated legislative management system, to track and provide information about pending and passed legislation, and

WHEREAS, the public, other agencies and the council, would greatly benefit from an enhanced legislative management system which provides far greater functionality than the current manual system, and

WHEREAS, the council, while automating as much as possible with its current computer applications, is not able to provide as current or as comprehensive information as would be provided from a new automated legislative management system, and

WHEREAS, the council directed staff to prepare and issue a Request for Proposal for the design, installation, training and maintenance of an automated legislative management system, and

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WHEREAS, funding had already been identified for this purpose in the county technology bond funds, and

WHEREAS, after sending out the Request for Proposal and receiving three responses, a council committee comprised of both councilmembers and council staff reviewed the responses and determined that the Legistar system, a product of Daystar Computer Systems, Inc., was the top rated proposer, and

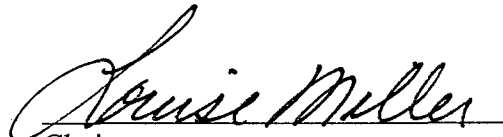
WHEREAS, a contract for \$175,670, which includes design, installation, training and maintenance, has been negotiated with Daystar Computer Systems, Inc.;

NOW, THEREFORE BE IT MOVED by the Council of King County:

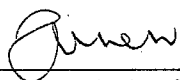
The chair of the metropolitan King County council is authorized to enter into a contract, substantially in the form attached, in the amount not to exceed \$175,670 with Daystar Computer Systems, Inc. for the design, installation, training and maintenance of an automated legislative management system.

PASSED by a vote of 10 to 0 this 3rd day of August, 1998.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Chair

ATTEST:


Clerk of the Council

Attachments: Contract

CONTRACT NO.		DEPARTMENT	County Council
FEDERAL TAXPAYER I.D.		CONSULTANT	Daystar Computer Systems, Inc.
SERVICES PROVIDED	Deliver and install an automated legislative management system		
AMOUNT \$	175,670	FUND SOURCE	Fund Balance
DURATION	07-09-98	TO	4-18-99 plus maintenance period to 4-18-2009

**LEGISTAR CUSTOM SOFTWARE DEVELOPMENT
AND LICENSE AGREEMENT**

1. Identification of the Parties:

This Agreement is made between the Metropolitan King County Council ("County") and Daystar Computer Systems ("Daystar").

2. Purpose of Agreement:

County desires to retain Daystar as an independent contractor to develop the computer software (the "Software") described in the Scope of Work attached to this Agreement as Exhibit A and incorporated herein by reference. Daystar is ready, willing and able to undertake the project of turnkey installation of the Software as set forth herein ("the Project"), including but not limited to design, modification, customization, base table loading, installation, training, and post-installation support. Daystar shall provide services and comply with the requirements set forth hereinafter and in the following attached exhibits which are incorporated herein by reference and agrees to do so under the terms and conditions set forth in this Agreement.

<input type="checkbox"/> Scope of Work	Attached hereto as Exhibit	A
<input type="checkbox"/> Planning Report	Attached hereto ¹ as Exhibit	B
<input type="checkbox"/> RFP No. 106-98RLD	Attached hereto as Exhibit	C
<input type="checkbox"/> Response to RFP	Attached hereto as Exhibit	D
<input type="checkbox"/> Daystar Disclosure Form (K.C.C. 3.04)	Attached hereto as Exhibit	E
<input type="checkbox"/> Personnel Inventory Report (K.C.C. 12.16)	Attached hereto as Exhibit	F
<input type="checkbox"/> Affidavit of Compliance (K.C.C. 12.16)	Attached hereto as Exhibit	G
<input type="checkbox"/> Disability Assurance of Compliance/Section 504	Attached hereto as Exhibit	H
<input type="checkbox"/> Minority/Women's Business (K.C.C. 4.18)	Attached hereto as Exhibit	I
<input type="checkbox"/> Certificate(s) of Insurance	Attached hereto as Exhibit	J
<input type="checkbox"/> Copyright & Intellectual Property Rights Assignment	Attached hereto as Exhibit	K
<input type="checkbox"/> Supplementary Escrow Agreement	Attached hereto as Exhibit	L
<input type="checkbox"/> County-supplied licenses	Attached hereto as Exhibit	M

¹ To be attached after approval per Section 3.1 herein.
06/25/98 8:38 AM

Accordingly, the parties agree as follows:

3. Project Plan, Schedule and Milestone Payments:

Daystar will complete the project according to the following schedule. Payment for each phase will occur following satisfactory completion of all tasks for that phase. Specific tasks to be completed for each phase are detailed below.

Project Phases	Start Date	End Date	Payment upon completion of phase
1. System Analysis & Specifications	07-06-98	08-28-98	\$ 14,880
2. Customizations and Presentation	08-31-98	10-23-98	\$ 30,555
3. Installation and Training	10-26-98	12-18-98	\$ 33,430
4. Performance Period - Final Acceptance	12-21-98	1-15-99	\$62,880
5. Live System Operation - Warranty Period	1-18-99	4-18-99	\$13,925
6. On-going Maintenance & Support ²	4-18-99	4-18-2009	

Phase 1: Preparation of Systems Analysis and Specifications Planning Report

Daystar shall prepare a Planning Report for the Software, satisfying the requirements set forth in the Scope of Work. The Planning Report shall include:

- (a) conclusions of Daystar's on-site analysis of current operations including meetings with County staff to identify desired procedural improvement or modification
- (b) code tables and Report format change recommendations
- (c) listing of all items to be delivered to County under this Agreement ("Deliverables")
- (d) specifications for all hardware and software for the project and approval by Daystar of existing county hardware and software or recommendations for any necessary changes;

Daystar shall deliver the Planning Report to County by August 28, 1998. County shall have 15 days to review the Planning Report. Upon approval of the Planning Report by County, it will be marked as Exhibit B and will be deemed by both parties to have become a part of this Agreement and will be incorporated by reference. Daystar shall thereupon commence final development of Software that will conform to the requirements set forth herein and in the Planning Report.

² Start and end dates will be extended by each day the Software does not meet the requirements for acceptance under Phase 4 of Section 3, herein.

If the Planning Report is in County's reasonable judgment unsatisfactory in any material respect, County shall prepare a detailed written description of the objections. County shall deliver such objections to Daystar within 15 days of receipt of the Planning Report. Daystar shall then have 15 days to modify the Planning Report to respond to County's objections. County shall then have 15 days to review the modified Planning Report. Additional delay in approval of the Report by the County shall extend by that amount of time the dates for performance specified in the project plan .

Phase 2. Customizations and Presentation

- Delivery of final specifications report
- Completion of modifications to Legistar system
- On-site installation and test of beta version
- Review and acceptance of customizations by county

Phase 3. Installation and Training

- Deliver and install the completed system including all modifications and customization identified in Phase II. At a minimum the system will include all of the functionality described in Daystar's response to the RFP, including but not limited to the following features:

A. Legislative Tracking	
1. Legislation General Information	<ul style="list-style-type: none"> • Title • Proposed number • Date received by Clerk's office • Date introduced • Councilmember introducing (including all subsequent introducers in chronological order) • Committee referral • Committee lead staff and staff assigned to legislation • Executive staff working on legislation • Need for advertising • Date Ordinance passed • Vote • Permanent Ordinance number
2. Full Text of Ordinance	<ul style="list-style-type: none"> • As introduced • As amended during the committee process • As passed • Only most current version of Ordinance is readily available • All prior versions of Ordinance should be easily located
3. Reports/logs	<ul style="list-style-type: none"> • Preparation of committee and council agenda by referring to the general information • Electronic preparation of minutes and proceedings of committee and

<p>council meetings</p> <ul style="list-style-type: none"> • Electronic recording of attendance • Electronic recording of votes as they are taken • Voting records by Councilmember and committee • Attendance reports for council and committee meetings • Ad hoc reports on any item of general information with parameters user-defined
B. Legislative Drafting
1. Code <ul style="list-style-type: none"> • Current King County Code available electronically • Full-text searchable capabilities
2. Flag on any code section for which amendment has been introduced <ul style="list-style-type: none"> • Information about person making amendments • Information on date and time of amendments
3. Ability to draft legislation which is intended to be private until introduced
4. Ability to add to the system any introduced legislation which amends the code, but which is not drafted in the system including: <ul style="list-style-type: none"> • Information about person making amendments • Information on date and time of amendments
5. Templates for ordinances and motions for legislative drafting on the system
6. Clerk's office drafting guide as on-line help
7. Context-sensitive help
C. Legislative Research
1. Ability to add legislation (including attachments) to the database as it is passed
2. Create tables of subsequent history for all ordinances which are passed <ul style="list-style-type: none"> • must indicate which succeeding ordinances relate to any particular ordinance (e.g., Ordinance 12345 was repealed by Ordinance 18435)
D. General
1. Internet compatible <ul style="list-style-type: none"> • must be available throughout the enterprise and to the public on the Internet
2. Automatic updates <ul style="list-style-type: none"> • updates appear as soon as they are added to the system • available information is always current
E. Security
1. multi-tiered, customizable security
2. ability to define 15 different security groups
3. different security settings are possible for each security group

- Delivery and installation of Crystal Reports software
- Provision of licenses for all system components including:
 - Legistar site license
 - ISYS Web server site license

Crystal Reports Writer Pro
Real-time Communications license

- Completion of contracted data conversion
- Completion of on-site training for users and administrators. At a minimum, the following training will be provided:

Training Description	# of Sessions	# Employees/ Session	Total # Trained
System Overview (1.5 hours)	3	32	96
General User Training (2 days)	2	8	16
System Administrator (1 day)	1	4	4
ISYS User Training (1.5 hours)	1	8	8
ISYS System Administrator (1.5 hours)	1	4	4
Train the Trainer	1	2	2
Crystal Reports	1	4	4

- The county maintains the right to copy and utilize training materials supplied by Daystar for the sole purpose of training county personnel on the use of Legistar and its associated modules.
- Daystar will provide updated versions of training materials at no cost to the county as they become available as long as the county is under a current software support agreement.
- Daystar will provide training on any upgrades to the county's systems administrator. Tuition for this training is to be included as part of the annual maintenance fee for the Legistar system.

Phase 4. Performance Period

Daystar shall certify in writing to the county when the software is installed in its final form and ready for use. At that time the software will be tested for a period of 30 calendar days commencing on the first regular working day following certification. The performance period shall end when the software has met the standard of performance for a period of 30 consecutive days. Daystar will document in writing any actions required by the county that are necessary to achieve the required level of performance. Use of the system during this period does not constitute acceptance.

At a minimum, the standard of performance shall include the following:

- The system operates in conformance with Daystar's technical specifications and the criteria agreed to in this scope of work.
- The system must be able to retrieve and display records within a specified amount of time following the execution of a request. The specified response times must be met during normal working hours with 75% of workstations working concurrently on the system, and with the maximum number of records loaded into the data base. Mandatory response times have been set as follows:
 1. Initial retrieval of a record does not exceed 10 seconds. Once a record has been retrieved, accessing additional information pertaining that record does not exceed 10 seconds.
 2. Ad hoc requests, including full text searches, require no more than 30 seconds to retrieve and display the records.
- Daystar will demonstrate and guarantee that the database will employ record locking to ensure that concurrent updates to the same record cannot be made, and will provide a means to inform the user when such an attempt is being made.
- Daystar will demonstrate the security features in place to ensure that access to records will be granted to only those users with the appropriate levels of security.
- The daily availability of the system is no less than 98.0 percent based on a seven hour work day. The system will be considered unavailable if it is inoperative due to vendor software failure. Downtime for each failure will start from the time the county makes a bonafide attempt to contact the Daystar representative, and will continue until the software is restored to full operation.

In the event the software does not meet the standard of performance for any day during the initial 30 consecutive day period, the performance test shall continue on a day-to-day basis for a period not to exceed 90 total days. During this 90 day period, the system must meet the standard of performance for 30 consecutive days in order to be accepted by the county.

Phase 5. System Acceptance

The county shall maintain appropriate records and shall notify Daystar in writing upon successful completion of the performance tests. The letter is necessary to establish that the county accepts the software, and to authorize payment in accordance with the payment schedule.

The system will not be accepted until all modules have successfully completed performance testing.

Phase 6. Maintenance and Support

Commencing with final system acceptance, the first 90 days of system support for Daystar's software is provided free of charge. Subsequent support will be provided by Daystar on an annual basis for an additional fee. Increases in the costs for annual support shall not exceed the increase in the consumer price index (CPI). System improvements, upgrades and enhancements shall be provided to the county at no charge for as long as a current

maintenance agreement is in effect. All warranties in this Software License Agreement shall apply to any improvements or changes to the Software obtained from Daystar by the County after acceptance testing.

4. Payment:

The total contract price for Phases 1-5 shall be:

Phase 1:	\$ 14,880
Phase 2:	\$ 30,555
Phase 3:	\$ 33,430
Phase 4:	\$ 62,880
Phase 5:	\$ 13,925
Phase 6	Ongoing maintenance and support will be paid according to the provisions of Section 9 herein.

County shall pay Daystar in milestone payments for satisfactory completion of each of the first five phases as set forth above. Each installment shall be payable upon submission of an invoice and certification of completion of each project phase by Daystar and written acceptance by County of the deliverables for that phase.

County shall also reimburse Daystar for reasonable actual travel and subsistence expenses incurred with the prior approval of the County, not to exceed the rates established for federal employees as published in the Code of Federal Regulations for travel in the Seattle area for travel. The total reimbursement for travel and subsistence shall not exceed \$20,000.

County shall compensate Daystar for any cancellation fees incurred by Daystar for travel scheduled for July 8, 1998, if such travel was canceled because the County Council did not approve the execution of this contract at its July 6, 1998 meeting.

5. Changes in Project Scope:

If at any time following acceptance of the Planning Report by County, County should desire a change in Daystar's performance under this Agreement that will alter or amend the Specifications or other elements of the Planning Report, County shall submit to Daystar a written proposal specifying the desired changes.

Daystar will evaluate each such proposal at its standard rates and charges. Daystar shall submit to County a written response to each such proposal within 10 working days following receipt thereof. Daystar's written response shall include a statement of the availability of Daystar's personnel and resources, as well as any impact the proposed changes will have on the contract price, delivery dates or warranty provisions of this Agreement.

Changes to the Planning Report shall be evidenced by a "Planning Report Modification Agreement." The Planning Report Modification Agreement shall amend the Planning Report appropriately to incorporate the desired changes and acknowledge any effect of such

changes on the provisions of this Agreement. The Planning Report Modification Agreement shall be signed by authorized representatives of County and Daystar, whereupon Daystar shall commence performance in accordance with it.

Should Daystar not approve the Planning Report Modification Agreement as written, Daystar will so notify County within 10 working days of Daystar's receipt of the Planning Report Modification Agreement. Daystar shall not be obligated to perform any additional services prior to its approval of the Planning Report Modification Agreement.

For purposes of this Agreement, each Planning Report Modification Agreement duly authorized in writing by County and Daystar shall be deemed incorporated into and made part of this Agreement. Each such Planning Report Modification Agreement shall constitute a formal change to this Agreement adjusting fees and completion dates as finally agreed upon.

6. Delays:

Daystar acknowledges that its failure to deliver the Software according to the Planning Report's delivery schedule will result in expense and damage to County. Daystar shall use all reasonable efforts to deliver the Software on schedule. Daystar shall inform County at its earliest opportunity of any anticipated delays in the delivery schedule and of the actions being taken to assure completion of the Software within a time period acceptable to County.

The delivery schedule shall be adjusted for mutually agreed-upon delays, or for delays solely attributable to County.

7. Acceptance Testing of Software:

County shall have 90 days from the date of certification by Daystar in writing that the Software is installed in its final form and ready for use to inspect, test and evaluate it to determine whether the Software satisfies the acceptance criteria in accordance with procedures set forth in the Planning Report, or as established by Daystar and approved by County prior to testing. The Software must meet the acceptance criteria for at least 30 consecutive days. When it does, the County shall give written notice of acceptance to Daystar.

If the Software does not satisfy the acceptance criteria, County shall give Daystar written notice stating why the Software is unacceptable. Daystar shall have 30 days from the receipt of such notice to correct the deficiencies. County shall then have 30 days to inspect, test and evaluate the Software. If the Software still does not satisfy the acceptance criteria, County shall have the option of either (1) repeating the procedure set forth above, or (2) terminating this Agreement pursuant to the section of this Agreement entitled "Termination." If County does not give written notice to Daystar within the initial 90-day inspection, testing and evaluation period or any extension of that period, that the Software does not satisfy the acceptance criteria, County shall be deemed to have accepted the Software upon expiration of such period.

8. Training:

Training: Daystar shall provide the following training using qualified Daystar personnel ("trainers"). The training will be conducted on such dates and locations as the parties may agree.

Training Description	# of Sessions	# Employees/ Session	Total # Trained
System Overview (1.5 hours)	3	32	96
General User Training (2 days)	2	8	16
System Administrator (1 day)	1	4	4
ISYS User Training (1.5 hours)	1	8	8
ISYS System Administrator (1.5 hours)	1	4	4
Train the Trainer	1	2	2
Crystal Reports	1	4	4

County will be responsible for all costs and expenses of all County's trainees, including room, board, transportation, salary, insurance and other benefits, and other expenses while attending the training. County shall pay the travel expenses of the trainers in accordance with the rates established for federal employees as published in the Code of Federal Regulations for travel in the Seattle area.

9. Maintenance of Software:

Services provided: Beginning on the first day following expiration of the warranty period set forth in the section of this Agreement entitled "Warranties," Daystar shall provide the following error-correction and support services according to the following classifications:

Unlimited Services:

- Investigation and correction of any Legistar software problems reported by County or discovered by Daystar.
- In-house application maintenance including duplicate customized system upkeep.
- Legistar version updates as they are made available;
- Technical assistance on the use and maintenance of the software.

Billable Services:

- Report modifications and remote database maintenance.
- Installation services for Legistar updates.
- Training services.

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- Travel time and travel related expenses.

Service Rates: The rates for billable services shall be:

Activity	Rate per Hour
Consultation	\$150
Training	\$150
Analysis	\$100
Programming	\$100
Clerical Support	\$ 25

Service Responsibilities: Daystar shall maintain the software so that it operates in conformity with all descriptions and specifications herein, including specifications for the performance of all improved or modified versions of the software which the County has been licensed to use. Daystar shall correct all errors discovered by the County.

Support and Response Time: In the event that the County detects any error, defect or non-conformity in the software, Daystar shall furnish complete off-site telephone support in the form of consultations, assistance and advice on the use or maintenance of the software within 2 hours of the County's request. In the event that such problem in the software is not corrected within 24 hours of the initiation of such off-site telephone support, the County shall submit to Daystar a listing of the output and all such other data which Daystar reasonably may request in order to reproduce operating conditions similar to those present when the error, defect or non-conformity was discovered. In the event that such problem is not corrected within 5 working days after Daystar receives from the County a listing of output and other data, Daystar shall expeditiously implement temporary workaround procedures and shall demonstrate to the County the good faith and diligent initiation and prosecution of corrective measures for all such problems involving the software.

Daystar will provide support in accordance with the terms of this agreement for a period of at least ten (10) years after final acceptance of the software by the County. At least ninety (90) days before the expiration of a year's term, Daystar must give the County written notice that it intends to increase the annual maintenance fee or billable rates under the agreement; provided, however, that neither the fee nor the billable rates may be increased in any year more than the increase, if any, in the National Consumer Price Index (CPI) for the preceding 12 months, published by the U.S. Department of Labor, Bureau of Labor Statistics.

County Termination of Maintenance: County may discontinue the maintenance services described above upon not less than 90 days' written notice to Daystar.

10. Ownership of Software:

Subject to payment of all compensation due under this Agreement and all other terms and conditions herein, Daystar hereby grants County a perpetual, nonexclusive, nontransferable,

royalty-free license to use the Software furnished to County by Daystar under this Agreement.

The license granted herein shall authorize County to:

- (a) install the Software on computer systems owned, leased or otherwise controlled by County,
- (b) utilize the Software for data-processing,
- (c) copy the Software only as necessary to exercise the rights granted herein, and
- (d) modify the Software, provided that such modification shall not create any proprietary ownership interest in the Software or modified parts thereof on behalf of County and that all original copyright notices shall be copied to any modified forms of the Software.
- (e) use and copy documentation pertaining to the Software as supplied by Daystar (hereinafter "Documentation") as required to exercise the license granted herein.
- (f) make back up copies of the Software and Documentation in accord with the back up procedures followed by the County. The County may copy, reproduce, modify, adapt or translate the Documentation as it deems necessary provided that such copies are used in accord with the License granted herein and any such copies of the Documentation are utilized solely by King County.

11. Improvements and Other Modifications:

Improvements in the Software, including any additions or modifications made by Daystar to or in the software at any time after acceptance testing, which improve the efficiency and effectiveness of the basic program functions and which do not change the agreed upon functions, shall be furnished to the County at no charge.

If, after acceptance testing, Daystar shall develop improvements or changes to the Software which change the basic program functions or add new program functions, the County shall have the right to obtain such program changes upon payment as follows: a) Daystar's standard prices then in effect for installing such changes, or b) the difference between the then current price of the Software including such changes and the applicable fees and charges for the Software reflected herein. The warranties in this Software License Agreement shall apply to any improvements or changes to the Software obtained by the County after acceptance testing. Daystar warrants that future maintenance or software releases shall not degrade the Software, cause a breach of any other warranty or require the County to purchase new or additional hardware or software for continued operation of the Software.

12. Ownership of Data:

The parties agree that all data in the Legistar database supplied or created by King County is the property of King County. Daystar makes no claim to such data and shall make no use of it except in the performance of its duties under this agreement, except with the written approval of King County.

13. Ownership of Background Technology:

Daystar warrants that it owns or holds a license to use and sublicense various preexisting development tools, routines, subroutines and other programs, data and materials that Daystar may include in the Software developed under this Agreement. This material shall be referred to hereafter as "Background Technology." Daystar's Background Technology includes, but is not limited to, those items identified in Exhibit C, attached hereto, and made a part of this Agreement.

County agrees that Daystar shall retain any and all rights Daystar may have in the Background Technology. Daystar grants County an unrestricted, nonexclusive, perpetual, fully paid-up worldwide license to use the Background Technology in the Software developed and delivered to County under this Agreement, and all updates and revisions thereto. However, County shall make no other commercial use of the Background Technology without Daystar's written consent.

Licenses to use certain other software which may be necessary or desirable for County to obtain for use with the Software and which are the property of other parties are listed on Exhibit D, attached hereto, and made a part of this agreement. County will obtain these licenses at its own sole expense and will provide Daystar with satisfactory proof of such licenses.

14. Warranties:

- (a) Warranty of Software Performance: Daystar warrants that for 90 (ninety) days following acceptance of the Software by County, the Software will be suitable for its intended purpose as described in the Request for Proposals, Daystar's Proposal, and the Scope of Work set forth herein, and free from reproducible programming errors and defects in workmanship and materials, and will substantially conform to the Specifications in the Planning Report when maintained and operated in accordance with Daystar's instructions. If reproducible programming errors are discovered during the warranty period, Daystar shall promptly remedy them at no additional expense to County. Daystar further warrants that a Daystar representative has inspected the computer equipment provided by the County and certifies that the provided computer equipment is appropriate for the software described in this contract. Daystar is responsible for the whole system integration and guarantees the functionality of the integrated system as a whole. This provision shall constitute an express warranty on the part of Daystar.

Guarantee of Functionality

Functionality shall mean that the configuration as specified by Daystar (e.g. software, software updates, computer equipment provided by the County and inspected by Daystar including the servers and networking environment, and services) shall operate together efficiently in light of industry standards, so long as the system is maintained in accordance with the manufacturer's specifications. Daystar warrants and represents that the proposed configuration of software and hardware has been specifically created for the County as being an operationally efficient integration of hardware, software, communications network and services, in light of the County's current identified specifications and projected expansions.

Guarantee of System Integration

System integration means the installation and operation of all hardware, software, and communications components so they function in an operational environment and in conjunction with each other. By executing this agreement, Daystar acknowledges its commitment to successful integration of hardware/software/communications capabilities and warrants that the capabilities being supplied and installed by any third party shall conform to the County's and Daystar's specifications and industry standards and is fully operational. Daystar guarantees the integration of the system as specified; however, third party contractors remain ultimately liable for the installation and operation of the local-area and wide-area communications networks.

Daystar shall coordinate the resolution of the problems with the hardware and software specified and/or supplied under this Agreement which arose upon delivery or at any time during the warranty or maintenance periods contained in this or other agreements between the parties. Problems shall be resolved by Daystar to the County's satisfaction and in accordance with the published specifications.

- (b) **Warranty of Title:** Daystar owns and has the right to license or convey title to the Software and documentation covered by this Agreement. Daystar will not grant any rights or licenses to any intellectual property or technology that would conflict with Daystar's obligations under this Agreement.
- (c) **Warranty Against Disablement:** Daystar expressly warrants that no portion of the Software contains or will contain any protection feature designed to prevent its use. This includes, without limitation, any computer virus, worm, software lock, drop dead device, Trojan-horse routine, trap door, time bomb or any other codes or instructions that may be used to access, modify, delete, damage or disable County's Software or computer system. Daystar further warrants that it will not impair the operation of the Software in any way other than by order of a court of law.

- (d) **Warranty of Compatibility:** Daystar warrants that the Software shall be compatible with the County's hardware and software as set forth in the Planning Report Specifications.
- (e) **Warranty of Professional Services.** Daystar warrants that its services shall be performed in a timely and professional manner by qualified professional personnel; and that its services and Software shall conform to the standards generally observed in the industry for similar Services and Software.
- (f) **Warranty of Media.** Daystar warrants the tapes, diskettes or other media delivered to the County to be free of defects in materials and workmanship under normal use for ninety (90) days from the date of receipt by the County. During that period, the County may return defective media to Daystar and it will be replaced without charge to the County.
- (g) **Warranty of Year 2000 Compliance.** Daystar represents and warrants that the software is Year 2000 Compliant as defined herein. Without waiving the definition of Year 2000 Compliant, Daystar represents and warrants that: 1) The software will function without error or interruption related to date data, including errors or interruptions from functions which may involve date data from more than one century; 2) The software requires that all date data, whether received from users, systems, applications or other sources, include and indicate a century; 3) All date output and results, in any form, shall include and indicate the century.

Year 2000 Compliance. An information system is "Year 2000 Compliant" when the system is able to accurately process date data--including, but not limited to, calculating, comparing, and sequencing--from, into, and between the twentieth and twenty-first centuries, including leap year calculations.

Daystar represents and warrants that the computer equipment, software and systems, individually and in combination, shall be Year 2000 Compliant, when used in accordance with the documentation supplied by Daystar. Daystar further represents and warrants that any upgrades, modifications, customizations or new versions of the computer equipment, software and systems, individually and in combination, shall be Year 2000 Compliant, when used in accordance with the documentation supplied by Daystar.

In addition to all legal and equitable remedies available to the County for breach of this paragraph, Daystar shall allow County employees or authorized representatives of the County to repair, remove or alter computer equipment, software and systems which are not Year 2000 Compliant.

15. Intellectual Property Infringement Claims:

- (a) **Express Warranty Against Intellectual Property Infringement:** Daystar warrants that the Software and documentation delivered to County under this Agreement shall not infringe on the copyright, patent or trade secrets of any third party. To the extent this material contains matter proprietary to a third party, Daystar shall obtain a license from the owner permitting the use of such matter and granting Daystar the right to sub-license its use.
- (b) **Indemnification Against Liability for Infringement:** Daystar shall indemnify County and any of its employees or agents against all liabilities, claims and legal costs (including reasonable attorney fees) arising from any claim or suit alleging infringement by the Software of any United States patent or copyright, or the trade secret or trademark rights of any third party. Daystar's obligations hereunder will survive any expiration or termination of this Agreement. County shall promptly notify Daystar in writing of any third party claim or suit and Daystar shall have sole control of the defense of any such action and all negotiations for its settlement or compromise. County may participate at its own expense in the defense of any such action if such claim is against County. The foregoing represents Daystar's entire liability to County in connection with claims alleging intellectual property infringement by the Software.
- (c) **Repair or Replacement of Infringing Software:** If a third party infringement claim is sustained in a final judgment from which no further appeal is taken or possible, and such final judgment includes an injunction prohibiting County from continued use of the Software or portions thereof, Daystar shall, at its sole election and expense:
- (1) procure for County the right to continue to use the Software pursuant to this Agreement;
 - (2) replace or modify the Software to make it non-infringing, provided that the modifications or substitutions will not materially and adversely affect the Software's performance or lessen its utility to County; or
 - (3) if none of the above options is reasonably available, refund the purchase price paid by County for the Software, minus depreciation based on a ten-year useful life, upon County's return of the Software.

16. Confidentiality:

The County acknowledges that it may acquire information and materials about Daystar, including, but not limited to, its methods, systems, technology and know-how. Daystar represents that the Software contains valuable trade secrets and confidential and proprietary information, including but not limited to program code and system engineering designs (hereafter "Confidential Information"). Daystar shall prominently identify and mark any such information prior to its delivery to the County. The County agrees, during and after the

term of this Agreement, to hold such Confidential Information in strict confidence and not to disclose it to others or use it in any way without the other party's prior written authorization.

The County further agrees to take all reasonable precautions to protect the confidentiality of the Confidential Information, including, without limitation, implementing and enforcing operating procedures to minimize the possibility of unauthorized use or copying of the Confidential Information. However, the County may disclose Confidential Information without such authorization to an employee or agent of the County who must have such information to perform its obligations under this Agreement, provided that the employee or agent has been advised of the confidential nature of such information and is under an express written obligation to maintain such confidentiality.

County shall have no obligation to keep confidential or refrain from using any information which:

- (a) was in its possession or known to it, without an obligation to keep it confidential, before such information was disclosed to it by Daystar;
- (b) is or becomes public knowledge through no fault of its own;
- (c) is independently developed by or for it;
- (d) is disclosed by Daystar to others without any restriction on use and disclosure; or
- (e) is or becomes lawfully available to it from a source other than Daystar.

17. Source Code Access:

County agrees that the Software developed under this Agreement shall be delivered to County in object code form only. Daystar agrees that one copy of the source code version of the Software and associated documentation shall be deposited with an escrow agent specializing in software escrow's to be mutually agreed upon in writing by Daystar and County after good faith negotiation. County and Daystar shall enter into a supplementary escrow agreement with the escrow agent in substantially the form attached as Exhibit L hereto and incorporated by reference herein.

The source code shall be delivered to the escrow agent within sixty (60) days after delivery of the object code to County. Thereafter, the source code version of all updates, enhancements and modifications of the Software created by Daystar on County's behalf, as well as associated documentation, shall be deposited by Daystar with the escrow agent. County shall pay all fees necessary to establish and maintain the escrow.

Daystar hereby grants to County a contingent license to receive the source code from the escrow agent and to use the source code to support its use of the Software in machine-readable form if one or more of the following conditions occurs:

- (a) Daystar, whether directly or through a successor or affiliate, ceases to be in the software business.
- (b) Daystar fails to fulfill its obligations to maintain the Software as provided in this Agreement.
- (c) Daystar becomes insolvent or admits insolvency or a general inability to pay its debts as they become due.
- (d) Daystar files a petition for protection under the U.S. Bankruptcy Code, or an involuntary petition is filed against it and is not dismissed within 60 days.

The source code shall be used solely by County to maintain the Software and shall be subject to every restriction on use set forth in this Agreement. County agrees not to disclose the source code to third parties except on a need-to-know basis under an appropriate duty of confidentiality.

18. Hold Harmless and Indemnification

- (a.) In providing services under this Contract, Daystar is an independent contractor, and neither Daystar nor its officers, agents or employees are employees of the County for any purpose. Daystar shall be responsible for all federal and/or state tax, industrial insurance and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a County employee under state or local law.

The County assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by or on behalf of Daystar, its employees and/or others by reason of this Contract. Daystar shall protect, indemnify and save harmless the County and its officers, agents and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) Daystar's failure to pay any such compensation, wages, benefits or taxes; and/or (2) the supplying to Daystar of work, services, materials, and/or supplies by Daystar employees or other suppliers in connection with or in support of the performance of this Contract.

- (b.) Daystar further agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception which occurs due to the negligence, intentional act and/or failure for any reason to comply with the terms of this Contract by Daystar, its officers, employees, agents, and/or representatives. This duty to repay shall not be diminished or extinguished by the prior termination of the Contract pursuant to the Duration of Contract, or the Termination section.

(c.) Daystar shall protect, defend, indemnify, and save harmless the County, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of Daystar, its officers, employees, and/or agents. Daystar agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees, or agents.

For this purpose, Daystar, by mutual negotiation, hereby waives, as respects the County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the County incurs any judgment, award and/or cost arising therefrom including attorney's fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from Daystar.

Claims shall include, but not be limited to, assertions that the use or transfer of any software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in unfair trade practice.

Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this agreement.

19. Insurance Requirements:

By the date of execution of this Contract, Daystar shall procure and maintain for the duration of this Contract, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of work hereunder by Daystar, its agents, representative, employees, and/or subcontractors. The cost of such insurance shall be paid by Daystar or subcontractor. Daystar may furnish separate certificates of insurance and policy endorsements for each subcontractor as evidence of compliance with the insurance requirements of this Contract.

For All Coverages:

Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions when required, may be acceptable on a "claims made" form.

If coverage is approved and purchased on a "claims made" basis, Daystar warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of completion of the work which is the subject of this Contract.

By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to Daystar under this contract. Daystar shall assess

its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Agreement.

(a.) Minimum Scope Of Insurance

Coverage shall be at least as broad as:

1. General Liability:

Insurance Services Office form number (CG 00 01 Ed. 11-88) covering commercial general liability.

2. Professional Liability:

Professional Liability, Errors and Omissions coverage.

In the event that services delivered pursuant to this Contract either directly or indirectly involve or require professional services, Professional Liability, Errors and Omissions coverage shall be provided. "Professional Services", for the purpose of this Contract section shall mean any services provided by a licensed professional.

3. Automobile Liability:

Insurance Services Office form number (CA 00 01 Ed. 12-90) covering business auto coverage, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9.

4. Workers' Compensation:

Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington.

5. Employers Liability or "Stop-Gap":

The protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the General Liability policy.

(b.) Minimum Limits Of Insurance

Daystar shall maintain limits no less than, for:

1. General Liability: \$ 1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$ 2,000,000 aggregate limit.

2. Professional Liability, Errors and Omissions: N/A

3. Automobile Liability: N/A

4. Workers' Compensation: Statutory requirements of the State of residency.

5. Employers Liability or "Stop Gap" coverage: N/A

(c.) Deductibles and Self-Insured Retentions

Any deductibles or self-insured retention's must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to Daystar's liability to the County and shall be the sole responsibility of Daystar.

(d.) Other Insurance Provisions

The insurance policies required in this Contract are to contain, or be endorsed to contain the following provisions:

1. General and Automobile Liability Policy(s):

- (a) The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of Daystar in connection with this Contract.
- (b) To the extent of Daystar's negligence, Daystar's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees or agents shall not contribute with Daystar's insurance or benefit Daystar in any way.
- (c) Daystar's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

2. All Policies:

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written notice, has been given to the County.

(e.) Acceptability of Insurers

Unless otherwise approved by the County, Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

Professional Liability, Errors and Omissions insurance may be placed with insurers with a Bests' rating of B+:VII. Any exception must be approved by the County.

If at any time of the foregoing policies shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, Daystar shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

(f.) Verification of Coverage

Daystar shall furnish the County with certificates of insurance and endorsements required by this Contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by the County and are to be received and approved by the County prior to the commencement of activities associated with the Contract. The County reserves the right to require complete, certified copies of all required insurance policies at any time.

(g.) Subcontractors

Daystar shall include all subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages provided by subcontractors as evidence of compliance with the insurance requirements of this Contract shall be subject to all of the requirements stated herein.

20. Term of Agreement: This Agreement commences on the date it is executed and shall continue until full performance by both parties, or until earlier terminated under the terms of this Agreement.

21. Termination:

- (a.) This Contract may be terminated by the County without cause, in whole or in part, upon providing Daystar 10 days' advance written notice of the termination.
- (b.) The County may terminate this Contract, in whole or in part, upon 5 days' advance written notice in the event: (1) Daystar materially breaches any duty, obligation, or services required pursuant to this Contract, or (2) the duties, obligations, or services required herein become impossible, illegal, or not feasible. If the Contract is terminated by the County pursuant to this Subsection 21 (b) (1), Daystar shall be liable for damages, including any additional costs of procurement of similar services from another source.

If the termination results from acts or omissions of Daystar, including but not limited to misappropriation, nonperformance of required services or fiscal

mismanagement, Daystar shall return to the County immediately any funds, misappropriated or unexpended, which have been paid to Daystar by the County.

- (c.) If expected or actual funding is withdrawn, reduced or limited in any way, the County may, upon written notice to Daystar, immediately terminate this Contract in whole or in part. If the Contract is terminated as provided in this Subsection 21 (c), (1) the County will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination; and (2) Daystar shall be released from any obligation to provide further services pursuant to the Contract. Funding under this Contract beyond the current appropriation year is conditional upon appropriation by the County Council of sufficient funds to support the activities described in this Contract. Should such an appropriation not be approved, this contract will terminate at the close of the current appropriation year.
- (d.) Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Contract or law that either party may have in the event that the obligations, terms and conditions set forth in this Contract are breached by the other party.

The rights and obligations under the sections entitled "Source Code Escrow", "Intellectual Property Infringement Claims," "Confidentiality" and "General Provisions" shall continue to bind the parties after termination of the Agreement as provided herein.

22. Taxes: County shall be responsible for payment of any sales and use tax under the laws of the state of Washington due based on work performed or products delivered under this Agreement.

23. Assignment:

- (a.) Daystar shall not assign or subcontract any portion of this Contract or transfer or assign any claim arising pursuant to this Contract without the written consent of the County. Said consent must be sought in writing by Daystar not less than 15 days prior to the date of any proposed assignment.
- (b.) "Subcontract" shall mean any agreement between Daystar and a Subcontractor or between Subcontractors that is based on this Contract, provided that the term "subcontract" does not include the purchase of (i) support services not related to the subject matter of this contract, or (ii) supplies.

24. Daystar's Employees and Subcontractors:

Daystar represents that before an employee or subcontractor of Daystar performs any services required by this Agreement, Daystar shall either:

- (a.) provide County with a signed copy of an employment or independent contractor/consulting agreement effecting the assignment of such employee's or subcontractor's rights in all copyrightable or patentable software or other materials

he or she creates as a result of the performance of work or services under this Agreement; or

- (b.) deliver to County an Assignment of Rights ("the Assignment") in substantially the form attached hereto as Exhibit J, signed by such employee or subcontractor. Daystar shall orally inform each employee or subcontractor of the substance of the Assignment before he or she executes such form.

25. Project Staff: The parties agree that the services of Ronald E. Cichon, Dariusz Tajanko, David Hodapp, and Helen Uvjarosy on the project as specified in Daystar's proposal are essential to the satisfactory performance by Daystar of the services required by this Agreement. Daystar shall not change the assignments for each individual on the project without the approval of County, which shall not be unreasonably withheld.

26. Mediation: County and Daystar agree to exercise reasonable efforts in good faith to resolve by mediation any dispute arising under this Agreement. The parties agree to first try to resolve the dispute informally with the help of a mutually agreed-upon mediator and shall equally share the reasonable fees of the mediator.

27. Invoices: Daystar shall submit its invoices and such other documents as are required pursuant to this Contract within 10 days of completion of each phase. Unless waived by the County in writing, failure by Daystar to submit the final invoice and required documents will relieve the County from any and all liability for payment to Daystar for the amount set forth in such invoice or any subsequent invoice.

28. Withholding of Payment Pending Corrective Action: If Daystar fails to comply with any terms or conditions of this Contract or to provide in any manner the work or services agreed to herein, the County may withhold any payment due Daystar until the County is satisfied that corrective action, as specified by the County, has been completed. This right is in addition to and not in lieu of the County's right to terminate this Contract as provided in Section 21, above.

29. Maintenance of Records

- (a.) Daystar shall maintain accounts and records, including personnel, property, financial, and programmatic records and other such records as may be deemed necessary by the County to ensure proper accounting for all contract funds and compliance with this Contract. All such records shall sufficiently and properly reflect all direct and indirect costs of any nature expended and services provided in the performance of this Contract.
- (b.) These records shall be maintained for a period of 6 years after termination hereof unless permission to destroy them is granted by the Office of the Archivist in accordance with RCW Chapter 40.14, or unless a longer retention period is required by law.

30. Corrective Action

If the County determines that a breach of contract has occurred, that is Daystar has failed to comply with any terms or conditions of this Contract or Daystar has failed to provide in any manner the work or services agreed to herein, and if the County deems said breach to warrant corrective action, the following sequential procedure will apply:

- (a.) The County will notify Daystar in writing of the nature of the breach;
- (b.) Daystar shall respond in writing within 3 working days of its receipt of such notification, which response shall indicate the steps being taken to correct the specified deficiencies. The corrective action plan shall specify the proposed completion date for bringing the Contract into compliance, which date shall not be more than 10 days from the date of Daystar's response; unless the County, at its sole discretion, specifies in writing an extension in the number of days to complete the corrective actions;
- (c.) The County will notify Daystar in writing of the County's determination as to the sufficiency of Daystar's corrective action plan. The determination of sufficiency of Daystar's corrective plan shall be at the sole discretion of the County;
- (d.) In the event that Daystar does not respond within the appropriate time with a corrective action plan, or Daystar's corrective action plan is determined by the County to be insufficient, the County may commence termination of this Contract in whole or in part pursuant to Section 21(b);
- (e.) In addition, the County may withhold any payment owed Daystar or prohibit Daystar from incurring additional obligations of funds until the County is satisfied that corrective action has been taken or completed; and
- (f.) Nothing herein shall be deemed to affect or waive any rights the parties may have pursuant to Section 21, Subsections a, b, c, and d.

31. Conflict of Interest

King County Code Chapter 3.04 is incorporated by reference as if fully set forth herein and Daystar agrees to abide by all the conditions of said Chapter. Failure by Daystar to comply with any requirements of this Chapter shall be a material breach of contract.

- (a.) Daystar covenants that no officer, employee, or agent of the County who exercises any functions or responsibilities in connection with the planning and implementation of the scope of services funded herein, or any other person who presently exercises any functions or responsibilities in connection with the planning and implementation of the scope of services funded herein shall have any personal financial interest, direct or indirect, in this Contract. Daystar shall take appropriate steps to assure compliance with this provision.

- (b.) If Daystar violates the provisions of Subsection 31(a) or does not disclose other interest required to be disclosed pursuant to King County Code Section 3.04.120, as amended, the County will not be liable for payment of services rendered pursuant to this Contract. Violation of this Section shall constitute a substantial breach of this Contract and grounds for termination pursuant to Section 21(b)(1) above as well as any other right or remedy provided in this Contract or law.

32. Nondiscrimination

King County Code Chapters 12.16 and 12.18 are incorporated by reference as if fully set forth herein and Daystar agrees to abide by all the conditions of said Chapters. Daystar shall be responsible for ensuring compliance by its subcontractors with the requirements of these Chapters. Failure by Daystar to comply with any requirements of these Chapters shall be a material breach of Contract.

- (a.) During the performance of this Contract, Daystar agrees that it will not discriminate against any employee or applicant for employment because of religion, color, race, sex, sexual orientation, age, national origin, or the presence of any sensory, mental or physical disability, nor tolerate harassment based on any of these categories, unless based upon a *bona fide* occupational qualification. Daystar will take affirmative action to ensure that applicants and employees are treated, without regard to their creed, color, race, religion, sex, sexual orientation, age, national origin, or the presence of such disability. Such affirmative action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Daystar agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

Daystar will, prior to the commencement and during the term of this Contract, furnish the County, upon request and on such forms as may be provided by the County, a report of the affirmative action taken by Daystar in implementing the terms of this provision, and will permit access by the County to Daystar's records of employment, employment advertisements, application forms, other pertinent data and records related to this Contract for the purpose of monitoring and investigation to determine compliance with these EEO requirements.

Daystar will implement and carry out the obligations contained in its affidavit and certificate of compliance regarding equal employment opportunity. Failure to implement and carry out such obligations in good faith may be considered by the county as a material breach of this Contract and grounds for withholding payment and/or termination of the Contract and dismissal of Daystar.

- (b.) During the performance of this Contract, neither Daystar nor any party subcontracting under the authority of this Contract shall engage in unfair employment practices. It is an unfair employment practice for any:

1. employer or labor organization to discriminate against any person with respect to referral, hiring, tenure, promotion, terms, conditions, wages or other privileges of employment;
2. employment agency or labor organization to discriminate against any person with respect to membership rights and privileges, admission to or participation in any guidance program, apprenticeship training program, or other occupational training program;
3. employer, employment agency, or labor organization to print, circulate, or cause to be printed, published or circulated, any statement, advertisement, or publication relating to employment or membership, or to use any form of application therefore, which indicates any discrimination unless based upon a *bona fide* occupational qualification;
4. employment agency to discriminate against any person with respect to any reference for employment or assignment to a particular job classification;
5. employer, employment agency or a labor organization to retaliate against any person because this person has opposed any practice forbidden by King County Code Chapter 12.18 or because that person has made a charge, testified or assisted in any manner in any investigation, proceeding or hearing initiated under the provisions of King County Code, Chapter 12.18;
6. publisher, firm, corporation, organization or association printing, publishing or circulating any newspaper, magazine or other written publication to print or cause to be printed or circulated any advertisement with knowledge that the same is in violation of King County Code Section 12.18.030C., or to segregate and separately designate advertisements as applying only to men and women unless such discrimination is reasonably necessary to the normal operation of the particular business, enterprise or employment, unless based upon a *bona fide* occupational qualification; and/or
7. employer to prohibit any person from speaking in a language other than English in the workplace unless:
 - a. the employer can show that requiring that employees speak English at certain times is justified by business necessity, and
 - b. the employer informs employees of the requirement and the consequences of violating the rule.

- (c.) Affirmative Action Reporting: Daystar shall furnish to the County, on such forms as may be provided by the County:

A personnel inventory report providing minority, female and persons with disabilities employment data;

An affidavit and certificate of compliance demonstrating its commitment to comply with the provisions of King County Code, Chapter 12.16;

An employee referral statement signed by an authorized referral agency representative evidencing compliance with King County Code, Chapter 12.16.

Daystar shall be responsible for ensuring that each of its subcontractors entering into agreements valued at \$25,000 or more complies with these reporting requirements as applicable.

Failure to implement and carry out such obligations in good faith may be considered by the County as a material breach of this Contract and grounds for withholding payment and/or termination of the Contract.

33. Section 504 and Americans With Disabilities Act

Daystar has complete a Disability Self-Evaluation Questionnaire for all programs and services offered by Daystar (including any services not subject to this Contract); and has evaluated its services, programs and employment practices for compliance with Section 504 of the Rehabilitation Act of 1973, as amended, ("504") and the Americans with Disabilities Act ("ADA"). Daystar will prepare a Corrective Action Plan for the structural, programmatic, and/or service changes necessary at each of its premises within the State of Washington to comply with 504 and the ADA, and it is attached as an exhibit to this Contract and incorporated herein by reference.

34. Minority and Women's Business Enterprises

King County Code Chapter 4.18 is incorporated by reference as if fully set forth herein and Daystar agrees to abide by all the conditions of said Chapter. Failure by Daystar to comply with any requirements of this Chapter shall be a material breach of Contract. *Failure to meet the M/WBE utilization goals may subject Daystar to monetary penalties and/or other penalties as set forth in KCC 4.18.*

During the term of this Contract, Daystar shall:

- (a.) Comply, as to tasks and proportionate dollar amount throughout the term of this Contract, with minority/women's business utilization requirements specified in the County's request for proposal and identified in this Contract.

(b.) Request approval for any proposed substitution of minority/women's business enterprises. King County's M/WBE and Contract Compliance Division may approve the substitution of a certified minority/women's business when:

1. The minority/women's business cannot perform the necessary tasks;
or
2. The minority/women's business is unwilling to perform the necessary tasks.

(c.) Comply with the original committed percentage use of minority business enterprises and/or women's business enterprises whenever Contract supplements, amendments or change orders are made which affect the total dollar value of this Contract.

(d.) Not engage in Contracts between a responding party and a minority business enterprise and/or women's business enterprise in which said minority and/or women's business enterprise promises not to provide subcontracting quotations to other responding or potential responding parties.

(e.) Meet the goals of this commitment for contracting with minority/women's business enterprises. Any minority/women's business enterprises associated with this Contract must be certified by the State Office of Minority and Women's Business Enterprise (OMWBE), recognized by King County, and have signed a declaration verifying that it has been previously sought to do business within the geographic boundaries of King County prior to the time the bid or proposal is submitted. Recognition by the County of certified M/WBEs is contingent on the M/WBE:

1. meeting the definition of a minority firm as now and hereinafter defined at KCC 4.18.010(U). (Note: for the purpose of recognition, the County's definition of Hispanic is narrower than that of OMWBE. Bidders are charged with the knowledge of the KCC 4.18 et. seq.); and
2. performing a commercially useful function as now and hereinafter defined in KCC 4.18.010(H). The determination of whether a M/WBE bidder (proposer) or proposed M/WBE for utilization on this Contract satisfies the County's recognition requirements shall be made by the County's M/WBE and Contract Compliance Division.

Goals for this Contract and any subsequent supplements, changes, or amendments to it are 0% for minority business enterprises and 0% for women's business enterprises or a combined M/WBE goal of 0%.

(f.) Minority/Women's Business Enterprises (M/WBE) Liquidated Damages: The County in general, and the M/WBE program in particular, are damaged when an Contract, or portion of an Contract, to be performed by a minority/women's business enterprise is not actually performed by a minority/women's business enterprise in compliance with

King County Code Chapter 4.18. Because the actual amount of such damage is not reasonably calculable, the parties agree and stipulate that liquidated damages equal to the dollar value of the utilization lost to the County due to the violation (not to exceed 10% of the total dollar value of the Contract) shall be:

the amount required to compensate the County for resulting delays in carrying out the purpose of the program;

the costs of meeting utilization goals through additional Contracts;

the administrative costs of investigation and enforcement; and

other damages and costs caused by the violation.

(g.) Maintain relevant records and information necessary to document compliance with King County Code, Chapter 4.18, and Daystar's utilization of minority and women's business in its overall public and private business activities, and shall include the right of the County to inspect such record.

35. King County Recycled Product Procurement Policy

It is the policy of King County to use recycled materials to the maximum extent practicable (King County Code Chapter 10.16). Contractors able to supply products containing recycled materials which meet performance requirements are encouraged to offer them in bids and proposals and to use them wherever possible in fulfillment of contracts.

Daystar shall use recycled paper for the production of all printed and photocopied documents related to the fulfillment of this Contract and shall ensure that, whenever possible, the cover page of each document printed on recycled paper bears an imprint identifying it as recycled paper.

If the cost of recycled paper is more than fifteen percent higher than the cost of non-recycled paper, Daystar may notify the Contract Administrator, who may waive the recycled paper requirement.

Daystar shall use both sides of paper sheets for copying and printing and shall use recycled/recyclable products wherever practical in the fulfillment of this Contract.

36. Entire Contract/Waiver Of Default

The parties agree that this Contract is the complete expression of the terms hereto and any oral or written representations or understandings not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance of the provisions of this Contract. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Contract unless stated to be such through written approval by the County, which shall be attached to the original Contract.

37. General Provisions:

- (a.) Complete Agreement: This Agreement together with all exhibits, appendices or other attachments, which are incorporated herein by reference, is the sole and entire Agreement between the parties relating to the subject matter hereof. This Agreement supersedes all prior understandings, agreements and documentation relating to such subject matter. In the event of a conflict between the provisions of the main body of the Agreement and any attached exhibits, appendices or other materials, the Agreement shall take precedence.
- (b.) Modifications to Agreement: Modifications and amendments to this Agreement, including any exhibit or appendix hereto, shall be enforceable only if they are in writing and are signed by authorized representatives of both parties.
- (c.) Waiver: No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.
- (d.) No Agency: Nothing contained herein will be construed as creating any agency, partnership, joint venture or other form of joint enterprise between the parties.
- (e.) Daystar an Independent Contractor: The parties acknowledge that Daystar will perform its obligations hereunder as an independent contractor. The manner and method of performing such obligations will be under Daystar's sole control and discretion; County's sole interest is in the result of such services. It is also expressly understood that Daystar's employees and agents, if any, are not County's employees or agents, and have no authority to bind County by contract or otherwise.
- (f.) Notices: All notices and other communications required or permitted under this Agreement, except for approval of travel and subsistence expenses, shall be in writing and shall be deemed given when delivered personally, or five days after being deposited in the United States mail, postage prepaid and addressed as follows, or to such other address as each party may designate in writing:

County:

Council Administrator
Metropolitan King County Council
1200 King County Courthouse
Seattle, WA 98104-2312

Daystar:

222 South Riverside Plaza
Suite 2360
Chicago, IL 60606

- (g.) Applicable Law: This Agreement will be governed by the laws of the State of Washington, and venue to enforce this Agreement shall be in the Superior Court of the State of Washington for King County.
- (h.) Headings Not Controlling: The headings in this Agreement are for reference purposes only and shall not be construed as a part of this Agreement.

38. **Signatures:** Each party represents and warrants that on this date they are duly authorized to bind their respective principals by their signatures below.

IN WITNESS WHEREOF, the parties hereby execute this Agreement:

County:

By: _____
(Signature)

(Date)

Louise Miller, Chair,
Metropolitan King County Council

Approved as to form:

By: _____
(Signature)

(Date)

Legal Counsel
Metropolitan King County Council

Daystar:

By: _____
(Signature)

(Date)

(typed or printed name)

Title: _____

(Exhibit K to Custom Software Development and License Agreement Between
DAYSTAR, INC. and KING COUNTY)

COPYRIGHT AND INTELLECTUAL PROPERTY RIGHTS ASSIGNMENT

_____ [employee or subcontractor] in consideration for valuable promises made to him or her by Daystar in his or her contract for employment or services, receipt of which is hereby acknowledged, grants to Daystar, Inc., all right, title and interest, if any, in the work described as follows:

Legistar version ____, modified for use of Metropolitan King County Council, more specifically identified as:

[LIST WORK'S FULL TITLE AND COPYRIGHT REGISTRATION NUMBER, IF ANY].

[NAME OF EMPLOYEE/SUBCONTRACTOR]

By: _____
(Signature)

(Date)

(Printed Name)

Address:

10525

LEGISTAR:

By: _____

(Signature)

(Date)

(Printed Name)

Address:

SUPPLEMENTARY ESCROW AGREEMENT

(Exhibit L to Custom Software Development and License Agreement Between
DAYSTAR, INC. and KING COUNTY)

This Supplementary Escrow Agreement ("Agreement") is made as of the effective date written on the signature page, between DAYSTAR, INC., a _____ corporation having a regular and established place of business at _____ and an address for notice of _____ ("DAYSTAR, INC."); _____, the Metropolitan King County Council, having a regular and established place of business at _____ and an address for notice of 1200 King County Courthouse, Seattle, Washington 98104-2312, ("COUNTY"); and the escrow agent whose name and address are set forth on the signature page hereof ("Escrow Agent").

1. Background

1.1 DAYSTAR, INC. and COUNTY have entered into a software license agreement dated _____ (the "License Agreement"). This Agreement is intended to be supplementary to the License Agreement. All terms used herein shall have the meaning used in the License Agreement except as otherwise indicated herein or the context otherwise requires.

1.2 The License Agreement calls for certain materials comprising "embodiments of software," as that term is used in Section 365(n) of the U.S. Bankruptcy Code ("Code"), 11 U.S.C. § 365(n), to be deposited into escrow for the protection of COUNTY's rights in the software that is the subject of the License Agreement. Any set of such materials is referred to herein as a "Deposit." Escrow Agent is willing to act as escrow agent for such Deposits.

1.3 The parties intend that this Agreement be an "agreement supplemental to any license agreement" within the meaning of section 365(n) of the Code. The parties enter into this Agreement in consideration of this background and of the covenants set forth herein.

2. Deposit Procedures

2.1 From time to time, DAYSTAR, INC. may deliver a Deposit to Escrow Agent. Any such Deposit shall be accompanied by a Deposit Registration in substantially the form of Exhibit A attached to this Agreement. Escrow Agent shall not be obliged to accept any materials for deposit unless accompanied by such a Deposit Registration.

2.2 Upon receipt of any Deposit, Escrow Agent shall verify that the identifying information on the labeling of the Deposit matches the identifying information set forth in the Deposit Registration, and shall notify COUNTY upon completion of such verification. Escrow Agent shall not be required to verify the existence, completeness, or accuracy of any Deposit, nor to determine whether what is deposited is or is not confidential or proprietary information, other than as set forth in the previous sentence.

2.3 DAYSTAR, INC. may from time to time remove a Deposit from escrow, with the prior consent of COUNTY, by delivering to Escrow Agent a written consent signed by COUNTY and setting forth the same identifying information about the Deposit as in the Deposit Registration for that Deposit. The written consent may condition COUNTY's consent on DAYSTAR, INC.'s deposit of a substitute Deposit in accordance herewith. Escrow Agent shall verify that the identifying information on the labeling of the Deposit being removed matches the identifying information set forth in the written consent; verify any substitute Deposit in accordance with Section 2.2; and notify COUNTY upon completion of such verification. Escrow Agent shall have no other obligation to determine the contents of the Deposit materials being removed.

3. Verification of Escrow Deposit

3.1 From time to time, by joint notice to Escrow Agent from COUNTY and DAYSTAR, INC., COUNTY may cause the Deposit(s) to be temporarily removed from escrow by a third party identified in the notice (the "Verifier") for the purpose of verifying the completeness and accuracy thereof.

3.2 The responsibility for the completeness and accuracy of the verification shall be solely that of the Verifier. Neither Escrow Agent nor DAYSTAR, INC. shall have any responsibility or liability to COUNTY for any incompleteness or inaccuracy of any verification.

4. Security of Deposit Materials

4.1 Escrow Agent shall establish one or more safe-deposit boxes or other receptacles in which it shall place all Deposits. Each safe-deposit box shall be kept by Escrow Agent under the control of one or more of Escrow Agent's officers, selected by Escrow Agent from time to time, whose identity shall be available to DAYSTAR, INC. at all times.

4.2 Escrow Agent shall not permit any person (including Escrow Agent employees and DAYSTAR, INC. or COUNTY personnel) to have access to any Deposit except in accordance with and for purposes permitted by this Agreement.

4.3 Escrow Agent shall ensure that any person who is given access to Deposit materials in accordance herewith is, or is accompanied at all times by, an Escrow Agent employee. Escrow Agent shall log each such access in its written records, specifying (1) the identity of the person who was given access, (2) the date and time of entry and exit, (3) the stated purpose of the access, and (4) the identity of the accompanying Escrow Agent employee if other than such an employee.

4.4 Without limiting the foregoing, Escrow Agent shall exercise the same high level of care in safeguarding the Deposit(s) as a prudent person would use to safeguard similar valuable and proprietary information that belonged to Escrow Agent.

4.5 Escrow Agent shall not divulge or disclose any information contained in any Deposit materials to any person or entity, nor otherwise make such information available to any person or entity, nor make any use of it, nor permit any use to be made of it, except to the minimum extent required for performance of Escrow Agent's duties under this Agreement, without the express prior written consent of DAYSTAR, INC..

4.6 If Escrow Agent is ordered to disclose or provide any portion of the Deposit(s) by a court or administrative body, Escrow Agent shall immediately notify both DAYSTAR, INC. and COUNTY. Escrow Agent shall not oppose any motion by DAYSTAR, INC. for an order by the court or administrative body protecting the confidentiality of the Deposit(s) materials, and/or for leave to intervene to seek such an order.

4.7 Escrow Agent shall keep a complete written log or logs of the activities undertaken and materials deposited or withdrawn pursuant to this Agreement, in a form reasonably acceptable to DAYSTAR, INC.. DAYSTAR, INC. shall be entitled to inspect (a) Escrow Agent's facilities and records pertaining to Deposits, and (b) the physical and technical status and condition of the Deposits (in compliance with the security provisions of this Agreement), at reasonable times during normal business hours and, at Escrow Agent's election, upon at least one (1) business day's notice to Escrow Agent.

4.8 COUNTY shall be entitled to inspect Escrow Agent's records pertaining to the status of the Deposit(s) at reasonable times during normal business hours and, at Escrow Agent's election, upon at least one (1) business day's notice to Escrow Agent.

5. Deposit Term; Escrow Agent Fees

5.1 Escrow Agent's obligation to retain the Deposit(s) ("Deposit retention obligation") shall run for one year from the effective date of this Agreement, renewable for additional one-year periods upon receipt by Escrow Agent of Escrow Agent's then-standard one-year renewal fee.

5.2 Escrow Agent shall invoice COUNTY for its then-standard one-year renewal fee at least thirty days but no more than ninety days prior to each forthcoming expiration of the Deposit retention obligation, and shall send a copy of such invoice to DAYSTAR, INC. If the renewal fee has not been received by Escrow Agent prior to such expiration, the Deposit retention obligation shall expire without further notice, and Escrow Agent shall carry out the provisions of Section 7.4

6. Release of Deposit Materials

6.1 Escrow Agent shall release the materials comprising a Deposit to COUNTY strictly and solely in accordance with this Section.

6.2 To obtain a release of the Deposit(s), COUNTY may submit to Escrow Agent, in accordance with this Agreement's notice provisions, with a copy to DAYSTAR, INC., a release request accompanied by a sworn affidavit executed under oath on behalf of COUNTY by an officer of COUNTY authorized to do so. The affidavit shall (a) describe in detail the then-existing circumstances which COUNTY contends entitles COUNTY to release of the Deposit(s) under the License Agreement and (b) state that COUNTY has complied with all conditions prerequisite to such a release of the Deposit(s) as set forth in the License Agreement.

6.3 Escrow Agent shall give DAYSTAR, INC. notice of COUNTY's release request within two business days after receiving the request.

6.4 DAYSTAR, INC. or its successor may object to the requested release within five business days after Escrow Agent's notice to it of the release request. The objection shall take the form of a sworn affidavit submitted to Escrow Agent in accordance with this Agreement's notice provisions, with a copy to COUNTY. The affidavit shall be executed under oath on behalf of DAYSTAR, INC. by an officer of DAYSTAR, INC. authorized to do so. The affidavit shall (a) describe in detail the then-existing circumstances which in DAYSTAR, INC.'s view preclude COUNTY from being entitled to release of the Deposit(s) under the License Agreement, or (b) describing in detail how COUNTY has failed to comply with all conditions prerequisite to such a release of the Deposit(s) as set forth in the License Agreement.

6.5 If DAYSTAR, INC. timely submits an objection to release in the form and manner set forth above, then Escrow Agent shall retain custody of the Deposit(s) until either (a) DAYSTAR, INC. and COUNTY agree on a course of action, or (b) a court of competent jurisdiction orders the Deposit(s) to be released.

6.6 If DAYSTAR, INC. does not timely object to release in the manner set forth above, then Escrow Agent shall immediately deliver the Deposit(s) to COUNTY by overnight courier or by registered U.S. Mail.

6.7 Escrow Agent's only obligations with respect to a release of the Deposit(s) are as set forth in this Section 6. In particular, Escrow Agent has no obligation to investigate whether any affidavit submitted by either DAYSTAR, INC. and/or COUNTY is false or misleading.

7. Termination of Custody

7.1 DAYSTAR, INC. may terminate Escrow Agent's custody of the Deposit(s) upon termination of COUNTY's license, by notice to Escrow Agent with a copy by regular mail to COUNTY.

7.2 DAYSTAR, INC. may terminate Escrow Agent's custody of a Deposit by notice to Escrow Agent if DAYSTAR, INC., in its business judgment, is not satisfied with the physical security or record-keeping provided by Escrow Agent. DAYSTAR, INC. shall notify COUNTY within ten (10) days after such a termination.

7.3 DAYSTAR, INC. may terminate Escrow Agent's custody of a Deposit at any time for any other reason by notice to Escrow Agent and thirty (30) days' prior notice to COUNTY.

7.4 Upon any termination of Escrow Agent's custody of the Deposit(s) or expiration of the Deposit retention obligation, Escrow Agent shall (a) immediately return all materials comprising the Deposit to DAYSTAR, INC., and (b) notify COUNTY of the return.

8. General Provisions

8.1 Escrow Agent shall not, by reason of its execution of this Agreement, assume any responsibility or liability for any transaction between DAYSTAR, INC. and COUNTY, other than the performance of its obligations under this Agreement. DAYSTAR, INC. and COUNTY shall defend Escrow Agent against any Claim, and indemnify Escrow Agent against any Loss or Expense, arising out or relating to Escrow Agent's performance of its obligations under this Agreement, except in the event of a judgment which specifies that Escrow Agent acted with gross negligence or willful misconduct.

(a) The term "Claim" is used here to encompass any and all claims, counterclaims, cross-claims, and the like for monetary or injunctive relief in any court or other forum, and any and all demands not yet matured into one or more of the foregoing.

(b) The term "Loss or Expense" is used here to encompass any and all losses, damages, costs, and expenses, including costs of court and reasonable attorneys' fees and disbursements (other than attorneys' fees and disbursements incurred by separate counsel for Escrow Agent at a time when DAYSTAR, INC. or COUNTY is also defending Escrow Agent, unless separate counsel is required by conflicts of interest between Escrow Agent and DAYSTAR, INC. or COUNTY during such defense), of every kind, nature, and description that is or are based upon, arising out of, or otherwise in respect of a specified matter.

8.2 Entire Agreement. Except as may be expressly provided otherwise herein, this Agreement constitutes the entire agreement between the parties concerning the subject matter thereof. No prior or contemporaneous representations, inducements, promises, or agreements, oral or otherwise, between the parties with reference thereto shall be of any force or effect. No modification or amendment to this Agreement shall be valid or binding unless reduced to writing and duly executed by the party or parties to be bound thereby.

8.3 Assignment. Escrow Agent may not assign any right nor delegate any obligation under this Agreement, and any purported assignment or delegation shall be null and void and a breach of this Agreement, except with the express prior written consent of DAYSTAR, INC. and COUNTY.

8.4 Notices. Notices hereunder shall be delivered and effective as follows:

(a) Every notice required or contemplated by this Agreement to be given by either party may be delivered in person or may be sent by courier, telecopy, express mail, telex, telegraph or postage prepaid certified or registered air mail (or its equivalent under the laws of the country where mailed), addressed to the party for whom it is intended, at the address specified in this Agreement. Any party may change its address for notice by giving notice to the other parties of the change.

(b) Any written notice shall be effective no later than the date actually received. Unless otherwise provided in this Agreement, notice by courier, express mail, certified mail, or registered mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent and in the absence of such record of delivery it shall be rebuttably presumed to have been delivered on the third business day after it was deposited, first-class postage prepaid, in the mails. Notice by telex or telegraph shall be deemed given at the time it is recorded by the carrier in the ordinary course of business as having been delivered, but in any event no later than one business day after dispatch.

(c) Notice not given in writing shall be effective only if acknowledged in writing by a duly authorized officer of the party to whom it was given.

(d) As used in this section concerning notices, references to a particular date means the date itself, if a business day, otherwise the first business day after the date.

8.5 Binding on Successors. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns permitted by this Agreement.

8.6 No Joint Venture or Partnership. This Agreement shall not be construed as establishing a joint venture or partnership between any two or more of DAYSTAR, INC., COUNTY, and/or Escrow Agent.

8.7 Counterparts. This Agreement may be executed in separate counterparts, each of which so executed and delivered shall constitute an original, but all such counterparts shall together constitute one and the same instrument. Any such counterpart may comprise one or more duplicates or duplicate signature pages any of which may be executed by less than all of the parties provided that each party executes at least one such duplicate or duplicate signature page. The parties stipulate that a photostatic copy of an executed original shall be admissible in evidence for all purposes in any proceeding as between the parties.

Executed the dates written below, to be effective (date) _____.

10525.

____ DAYSTAR, INC. NAME ____

____ COUNTY NAME ____

By: _____
(Signature)

By: _____
(Signature)

(Title)

(Title)

(Date)

(Date)

Approved as to form:

_____, Legal Counsel

____ ESCROW AGENT NAME ____

By: _____
(Signature)

(Title)

(Date)

COUNTY-SUPPLIED LICENSES

(Exhibit M to Custom Software Development and License Agreement Between
DAYSTAR, INC. and KING COUNTY)

King County will supply licenses for its use of the following software:

- A. One (1) license for Microsoft Windows NT 4.0 Server.
- B. Fifty (50) client access license for Microsoft SQL Server.
- C. One (1) license for Microsoft SQL Server.