

ORIGINAL

AGREEMENT FOR SERVICES #273-S0811

THIS AGREEMENT made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and Daystar Computer Systems, Inc., an Illinois Corporation, duly qualified to conduct business in the State of California, whose principal place of business is 600 Jackson Boulevard, Chicago, IL 60661 and whose Agent for Service of Process is Corporate Creations Network, Inc., 131A Stony Circle, #500, Santa Rosa, CA; (hereinafter referred to as "Consultant");

WITNESSETH

WHEREAS, County has determined that it has a need for, and Consultant agrees to grant to County, a Legistar integrated agenda workflow system specifically capable of the generation and maintenance of agenda documentation for use by the Board of Supervisors, various County departments, commissions, committees, and the public within El Dorado County; and

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

WHEREAS, Consultant warrants and represents that the program identified herein will serve the intended and functional purpose for El Dorado County; and

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

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

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

ARTICLE I

Scope of Services:

A. Software License

1. Consultant grants and County accepts a perpetual, nonexclusive and non-transferable license to use the Consultant's application (the "Software"), described as Legistar.
2. The Software referred to hereinabove is intended to be used for the general purposes of providing a customized, comprehensive, agenda workflow management and information retrieval system designed specifically to support the legislative process. The function of the Software includes, but is not limited to, the following purposes: information storage and indexing; scanned images and attachments; automatic agenda creation; automatic minutes; legislative tracking; information retrieval, public access web interface suite; and legislative reports.
3. The County is permitted one installation of the server data base portion of the Software and one secondary installation for testing. The License also permits an unlimited number of concurrent County workstation or internet connections to the Software, although County's use may be further governed by the performance or license limitations from third party providers of components of its network, data base, and hardware environment.
4. The Software or portions thereof, shall be used by County only on County's own computer equipment and only for the processing of County's own business.

County shall not use the Software in the operation of a service bureau or in any other manner that would permit or allow the use of the Software, or any portion thereof, in connection with transactions in which County is not involved. County shall under no circumstances assign, sublicense, or otherwise transfer the License to any other entity.

County shall at all times limit the use of the Software to its employees who have been appropriately trained.

The Software is being provided to County in executable object code form only. County agrees not to modify, translate, decompile, nor create or attempt to create, by reverse engineering or otherwise, the source code from the object code of the Software, nor adapt the Software in any way to create a derivative work.

5. The County includes the right to make two security backup copies of the Software provided that (a) reasonable security precautions are taken to prevent the unauthorized copying or disclosure of the Software or any part hereof, and (b) that at all times Consultant's ownership of the Software is disclosed by prominent display of Consultant propriety and copyright notices.

6. Consultant represents that it is the owner of the Software and that it has the right to modify and to grant the right to use of the Software to County. All modifications, changes, enhancements, conversions, upgrades, or additions made to the Software and all related documentation, whether made by Consultant, County, or a third party, under this or any other Agreement, are and shall be the sole and exclusive property of Consultant, including all applicable rights to patents, copyrights, trademarks and trade secrets inherent therein, shall be considered a part of the Software, and shall be included in the license hereby granted to the County.
7. Both Consultant and County acknowledge and agree that successful operation of the Software in the County's environment shall require their full and mutual good faith cooperation, including, without limitation, the fulfillment of the obligations set forth in this Agreement.
8. In addition to providing Consultant with full, good faith cooperation and such information as may be required by Consultant in order to customize and execute the Software, County shall (a) appoint one or two employees of County who shall have sufficient computer systems experience and organizational authority to act as coordinator of all County activities in connection with the operation of the Software, and to supervise all tasks undertaken by County in connection with the modification, preparation, installation, use and support of the Software; (b) install and test all new revisions and updates of Software within thirty (30) days of receipt from Consultant, if circumstances warrant County may request a time extension that is mutually agreed upon by both parties; (c) provide written statements or descriptions of any Software problems at Consultant's request and perform any Software tests requested by Consultant support personnel who may be investigating any reported problems; (d) provide Consultant with suitable scratch media and supplies, which media will be returned upon request, to investigate reported problems; and (e) provide Consultant with the ability to remotely login to the Software using Internet Virtual Private Network (VPN), T1, DSL access or a phone modem at a communication rate of no less than 56 kbps.
9. County shall not sell, transfer, publish, disclose, display or otherwise make available to others any source code, or object code relating to the Software.

County shall use its best efforts to assist Consultant in identifying and preventing any unauthorized use or disclosure of the source code or object code of the Software or of any portion of the Software, or any of the algorithms or logic contained therein. Without limitation of the foregoing, County shall advise Consultant immediately in the event that County learns or has reason to believe that any person who has had access to the Software, or any portion thereof, has violated or intends to violate the terms of this Agreement; and the County will cooperate with Consultant in seeking injunctive or other equitable relief in the name of the County or Consultant against any such person.

County acknowledges that the Software contains proprietary trade secrets of Consultant and hereby agrees to maintain the confidentiality of the Software in a manner using at least the same degree of care and security as the manner used to maintain the confidentiality of County's own most confidential information.

Consultant acknowledges that in the course of implementing the Software for County it will necessarily be supplied with confidential or proprietary information of County concerning its business affairs, property, methods of operation, processing systems, or other information. Consultant hereby agrees to maintain the confidentiality of any such information which is clearly marked or labeled as confidential and to treat such information with the same degree of care and security as Consultant treats its own most confidential information.

All of the undertakings and obligations relating to confidentiality and non-disclosure, whether contained in this paragraph or elsewhere in this Agreement, and whether of Consultant or of the County, shall survive the termination of this Agreement for any reason.

Nothing in this paragraph shall prevent the operation of any law requiring that contracts with the County, and any other public records, be open to public inspection.

10. County shall, in addition to any license fee required hereunder, pay all applicable sales, use, transfer and other taxes and fees, whether federal, state or local, however designated, which are levied or imposed by reason of the transaction contemplated hereby; excluding, however Federal and Illinois State income taxes on profits which may be levied against Consultant. County agrees to reimburse Consultant for the amount of all such taxes and fees paid or accrued by Consultant as a result of this transaction.
11. Following Consultant's receipt of payment for services provided, County shall receive a Certificate of Escrow which entitles County to claim a copy of the Legistar Software Source Code per the terms and conditions set forth in Article IX E.

B. Software Maintenance

1. Consultant offers to County and County hereby accepts the following provisions for the maintenance and support of Software.
2. This Agreement includes the following support services provided at no additional cost to County:

Classification (A) Unlimited Services:

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

The County may report any Classification (A) service requests to Consultant via email at support@daystarnet.com, fax transmittal to (312) 896-5052, voice at (312) 559-0900, or such other phone numbers or email addresses as Consultant might provide.

Unless special arrangements are made, Consultant shall provide software support by phone during its regular business hours (7 AM to 7 PM Central Time) Monday through Friday,

except for holidays. When deemed necessary by Consultant or requested by County, Daystar will make arrangements to provide face-to-face support services either on County's site or at Consultant's offices. Consultant will respond to telephone inquiries within two (2) business hours. Excluded services and expenses include expenses beyond normal operating costs related to the delivery of any services, travel time, and travel related expenses.

During the course of this Agreement, Consultant will provide copies of any updates or new feature releases of the Software at no cost to the County other than the costs of installation.

1. County's Obligations:

As conditions to receiving support under this Agreement, County agrees to:

- a. Load and test all new revisions and updates of Consultant Software within thirty (30) days of receipt by County; if circumstances warrant County may request a time extension that is mutually agreed upon by both parties;
- b. Perform any Software tests requested by Consultant support personnel who may be investigating any reported problems;
- c. Provide written statements or descriptions of Software problems at Consultant's request;
- d. Provide Consultant with suitable scratch media and supplies to investigate reported problems, these will be returned upon request;
- e. Consult with Consultant prior to installing any Operating system patches, updates or service packets that may be applied to the Legistar server for assurance that they have passed out certification testing for compatibility;
- f. Provide Consultant with the ability to remotely login to the system running the Daystar software using Internet Virtual Private Network (VPN), T1, DSL or dial-up modem access.

2. Remote Connectivity:

All installation, problem diagnosis, upgrades, and remote system administration support services specified in this Agreement will be delivered via remote electronic connection to the County's Legistar Server, in accordance with Exhibit "A", marked "El Dorado County Computer and Network Resource Usage Policies and Standards Guide", Section 3, Remote Access Policy, incorporated herein and made by reference a part hereof.

Internet or modem dial-up: County is responsible for purchase, installation and on-going maintenance of any hardware or local communications services required. This includes internet access, ISP services, modem and phone line. All installation, troubleshooting, updates, remote system administration, and any other support services specified in this Agreement will be delivered via remote electronic connection to the County's Legistar Server.

Remote connection software will be the choice of the County's Information Technologies Department. On-going acceptance or use of a particular communications software program or protocol is subject to change by either party.

In the event that the County specified any software or communications methodology that incurs any cost to Consultant, all work and costs will be provided on a time and materials basis and payable by the County.

In the event that Consultant and the County are unable to mutually agree on an acceptable remote communications protocol, Support Services under this Agreement will be restricted to those that can be provided via voice phone or email support.

ARTICLE II

Term: This Agreement is effective October 1, 2007 and shall renew annually unless terminated in accordance with **ARTICLE IX**.

ARTICLE III

Compensation for Services: For services and all deliverables provided herein, County agrees to pay Consultant annually in advance and within thirty (30) days following County's receipt and approval of itemized invoice(s). Payment for all included support shall be one annual payment of \$10,420 due and payable thirty (30) days following the first day of the effective period as stated in **ARTICLE II** above. County and Consultant Agree that after the initial one (1) year period of this Agreement, the annual compensation for services to be provided upon renewal may increase by no more than five (5) percent annually. The total amount of this Agreement shall not exceed \$10,420.00 for the first annual period and an amount less than or equal to the previous annual payment plus a five (5) percent increase for each subsequent year.

ARTICLE IV

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

ARTICLE V

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

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ARTICLE VI

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

ARTICLE VII

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

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

ARTICLE VIII

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

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

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

ARTICLE IX

Default, Termination, and Cancellation:

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

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired.

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

ARTICLE X

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

Notices to County shall be addressed as follows:

COUNTY OF EL DORADO
CHIEF ADMINISTRATIVE OFFICE
330 FAIR LANE
PLACERVILLE, CA 95667
ATTN: KELLY WEBB, PRINCIPAL ADMINISTRATIVE ANALYST

or to such other location as the County directs.

Notices to Consultant shall be addressed as follows:

DAYSTAR COMPUTER SYSTEMS, INC.
600 W. JACKSON BLVD., SUITE 580
CHICAGO, IL 60661
ATTN: JOHN CICHON, GENERAL MANAGER

or to such other location as the Consultant directs.

ARTICLE XI

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

ARTICLE XII

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

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.

- C. Automobile Liability Insurance of not less than \$500,000.00 is required in the event motor vehicles are used by the Consultant in the performance of the Agreement.
- D. In the event Consultant is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E. Consultant shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to the Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Consultant agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Consultant agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of the Risk Management Division and Consultant agrees that no work or services shall be performed prior to the giving of such approval. In the event the Consultant fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County, and;
 - 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all liability policies except workers' compensation and professional liability insurance policies.
- I. The Consultant's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with the Risk Management Division, as essential for the protection of the County.

ARTICLE XIII

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

ARTICLE XIV

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

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ARTICLE XV

Nonresident Withholding (Form 588): All independent Consultants providing services to the County who are not California residents must file a State of California Form 588 certifying County's exemption from withholding where applicable; where not applicable, Consultant will indemnify and hold the County harmless for any action taken by the California Franchise Tax Board. The Consultant will be required to submit a Form 588 prior to execution of an Agreement or County shall withhold seven (7%) percent of each payment made to the Consultant during term of the Agreement where applicable. This requirement applies to any agreement/contract exceeding \$1,500.00.

ARTICLE XVI

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

ARTICLE XVII

Administrator: The County Officer or employee with responsibility for administering this Agreement is Kelly Webb, Principal Administrative Analyst, Chief Administrative Office, or designee/successor.

ARTICLE XVIII

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

ARTICLE XIX

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

ARTICLE XX

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

ARTICLE XXI

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

REQUESTING CONTRACT ADMINISTRATOR CONCURRENCE:

By: Kelly Webb Dated: 10/25/07
Kelly Webb
Principal Administrative Analyst
Chief Administrative Office

REQUESTING DEPARTMENT HEAD CONCURRENCE:

By: Laura S. Gill Dated: 10/25/07
Laura S. Gill,
Chief Administrative Officer

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

-- COUNTY OF EL DORADO --

Dated: 11/6/07

By: 
RON BRIGGS SECOND VICE-CHAIRMAN
Board of Supervisors
"County"

ATTEST:
Cindy Keck, Clerk
of the Board of Supervisors

By: 
Date: 11/6/07
Deputy Clerk

-- CONSULTANT --

Dated: 10/30/07

DAYSTAR COMPUTER SYSTEMS, INC.
A ILLINOIS CORPORATION

By: 
JOHN Ron Cichon, VP.
President
"Consultant"

By: 
Glenn Ruzi
Corporate Secretary

Dated: 10/30/07