

AGREEMENT
BETWEEN
WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION
AND
CITY OF OLYMPIA

THIS AGREEMENT is made and entered into by and between the Washington State Department of Transportation, hereinafter referred to as "WSDOT" and the City of Olympia, hereinafter referred to as "City" collectively, "Parties," and individually, "Party."

WHEREAS, the City has a need for 3D modeling/visualization, video production and/or commercial photography services and has requested WSDOT to provide those services, and

WHEREAS, WSDOT has the necessary personnel and equipment to perform the requested services and has agreed to gather and provide the requested data,

THEREFORE, pursuant to chapter 39.34 RCW, the above recitals that are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, and performances contained herein, and attached Exhibit A (Cost Estimate) and Exhibit B (Scope of Work), which by this reference are made a part of this Agreement, IT IS MUTUALLY AGREED AS FOLLOWS:

1. SCOPE OF WORK

- 1.1 The WSDOT shall furnish the necessary personnel, equipment, material and/or service(s) and otherwise do all things necessary for providing 3D infrastructure modeling/visualization, video production and/or commercial photography, as shown in Exhibit B, herein after referred to as the "Work."
- 1.2 The City agrees and accepts full liability for all data, information, and direction that the City has provided to the WSDOT in support of the Work to be performed by the WSDOT and/or its subcontractor(s), if any.
- 1.3 Task Assignments, as shown in Exhibit C, Example Task Assignment, will be provided to WSDOT for the purpose of documenting request and authorizing charges as described in Section 3 of this agreement. Task Assignments must be authorized by the City Manager or his or her designee prior to beginning Work or within 72 hours for unforeseen or emergency conditions.

2. PERIOD OF PERFORMANCE

- 2.1 Subject to its other provisions, the period of performance of this Agreement shall be for five (5) years, commencing on the date of execution of this Agreement, unless terminated sooner as provided in Section 9, "TERMINATION."

3. PAYMENT and INVOICING PROCEDURE

- 3.1 The City agrees, in consideration of the faithful performance of the Work to be performed by WSDOT and its subcontractor(s) if any, to reimburse WSDOT for the actual direct and related indirect costs of the Work. The City agrees that administrative overhead charges at WSDOT's current rate are part of the indirect costs. The Parties have determined that the estimated cost of accomplishing the services is detailed in Exhibit A, Cost Estimate.

3.2 Increases in Cost: The City agrees that the costs of the Work may exceed the Cost Estimate as shown in the Task Assignment amount by up to twenty-five percent (25%) and further agree to reimburse WSDOT for such overages, if any. In the event unforeseen conditions require an increase in cost of the Work that exceed twenty-five percent (25%), the Parties agree to amend this Task Assignment to address such increase in costs before WSDOT or its subcontractor(s), if any, shall perform Work in excess of the cost increase.

3.3 WSDOT shall submit detailed invoices for the Work performed for the City. The City agrees to make payments within thirty (30) calendar days of receipt of a WSDOT invoice. WSDOT may submit invoices at any time, but not more frequently than once per month. WSDOT shall submit invoices to the following address:

City of Olympia
Attention: Thanh Jeffers, Contract Administrator
601 4th Ave. E.
PO Box 1967
Olympia, WA 98507-1967

3.4 The City agrees to make payment to WSDOT for the completed Work within thirty (30) calendar days of receipt of a WSDOT invoice. Payments shall not be more frequent than one (1) per month. If the City objects to all or any portion of an invoice, it shall notify the WSDOT in writing, clearly explaining its objections, within fifteen (15) calendar days from the date of receipt of the invoice and shall pay that portion of the invoice not in dispute. The Parties shall immediately make every effort to settle the disputed portion of the invoice.

3.5 Upon expiration or termination of the Agreement, WSDOT agrees to invoice the City for the balance of the Work performed within thirty (30) calendar days after the expiration or termination date or the end of the fiscal year, whichever is earlier.

4. SUBCONTRACTORS

4.1 The Parties agree that WSDOT may use subcontractor(s) to perform some or all of the Work identified in Exhibit B. Should WSDOT elect to use a subcontractor to perform any of the Work, the Parties shall include in the Task Assignment all costs anticipated to be charged by the subcontractor(s). The City agrees to pay such costs in accordance with Section 3.

5. AUDIT AND RECORDS MAINTENANCE

5.1 All records for the Work performed by the WSDOT and subcontractor(s), if any, under this Agreement in support of all costs incurred shall be maintained by the Parties for a period of six (6) years. The Parties shall have full access to and right to examine the records, during normal business hours and as often as it deems necessary. Should the City require copies of any records, it agrees to pay the costs thereof. The Parties agree that the costs incurred herein are subject to audit by either or both Parties and/or their designated representatives, and/or state of Washington and/or the federal government.

6. RIGHTS IN DATA

6.1 All data, regardless of whatever format, which originates from this Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the City. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

6.2 The City shall have unrestricted access to, and use of said data.

7. INDEPENDENT CAPACITY

7.1 The employees or agents of each Party who are engaged in the performance of this Agreement shall continue to be employees or agents of that Party and shall not be considered for any purpose to be employees or agents of the other Party.

8. AMENDMENTS

8.1 This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties.

9. TERMINATION

9.1 Either Party may terminate this Agreement upon thirty (30) calendar days' prior written notification to the other Parties. If this Agreement is so terminated, the City shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement up to the effective date of termination.

10. DISPUTES

10.1 In the event that a dispute arises under this Agreement, it shall be resolved as follows: WSDOT and the City shall each appoint a member to a disputes board, these two members shall select a third board member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. An attempt at such dispute resolution in compliance with aforesaid process shall be a prerequisite to the filing of any litigation concerning the dispute. The Parties shall equally share in the cost of the third disputes board member; however, each Party shall be responsible for its own costs and fees.

11. GOVERNANCE

11.1 This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

11.2 In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. Applicable state and federal statutes and rules;
- b. Scope of Work; and
- c. Any other provisions of the Agreement, including materials incorporated by reference.

12. WAIVER

12.1 A failure by either Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the Party and attached to the original Agreement.

13. SEVERABILITY

13.1 If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end, the provisions of this Agreement are declared to be severable.

14. INDEMNIFICATION

14.1 The Parties shall protect, defend, indemnify, and hold harmless each other and their employees, authorized agents, and/or contractors, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, each Party's obligations to be performed pursuant to the provisions of this Agreement. The Parties shall not be required to indemnify, defend, or hold harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the negligence of the other Party; provided that, if such claims, suits, or actions result from the concurrent negligence of (a) the WSDOT, its employees, authorized agents, or contractors and (b) the AGENCY, its employees or authorized agents, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the negligence of each Party, its employees, authorized agents, and/or contractors.

14.2 The terms of this Section shall survive termination of this Agreement.

15. VENUE

15.1 In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties agree that any such action or proceedings shall be brought in Thurston County Superior Court. Further, the Parties agree that each will be solely responsible for payment of its own attorney's fees, witness fees, and costs.

16. ALL WRITINGS CONTAINED HEREIN

16.1 This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the Parties hereto.

17. CONTRACT MANAGEMENT

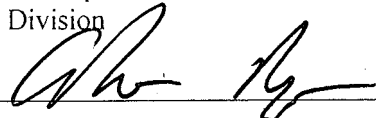
17.1 The program manager for each of the Parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

17.2 The Program Manager for the City: Thanh Jeffers Title: Contract Administrator
Phone: 360.753.8278 E-mail: tjeffers@ci.olympia.wa.us

17.3 The Program Manager for the WSDOT is: Kurt Stiles Title: Manager Visual Engineering Resource Group
Phone: 360 709-8008 E-mail: STILESK@wsdot.wa.gov

IN WITNESS WHEREOF, the Parties executed this Agreement as of the date signed last by the Parties below.

Department of Transportation,
Development Division

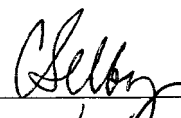
Signature: 

Name: Ahmer Nizal

Title: Tech Svc and Business mgr.

Date: February 26, 2016

City of Olympia


Signature: 

Name: Cheryl Selby

Title: Mayor - City of Olympia

Date: 2-23-16

APPROVED AS TO FORM for WSDOT:

Signature: 

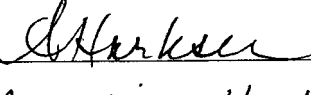
Name: ANN E. SALAY

Title: SR. AAG

Date: 2-25-16

This Agreement form may not be modified unless
Reviewed by an Assistant Attorney General
*Note: Exhibit B, Scope of Work cannot be used
to modify the terms of this Agreement.

APPROVED AS TO FORM for the City:

Signature: 

Name: Annaliese Harkson

Title: ASST. City Attorney

Date: 2-22-2016

Agreement GCB 1667

Exhibit A
Cost Estimates

- VIDEO PRODUCTION LABOR COST RATE RANGE: per hr
- VIDEO TAPE DUPLICATION LABOR COST RATE RANGE: per hr
(cost based on employee classification)
28 tapes for 15 minutes of recording time per tape
- DVD DUPLICATION LABOR COST RATE RANGE: per hr
(cost based on employee classification)
12 dvds per hour
- MATERIAL RATES:
VHS:
15 min.
(cost includes product, case and printed label)

DVD:
(cost includes product, case and printed label)
- WSDOT Overhead rate (July 1, 2015 to June 30, 2016) 10.36%

All rates subject to change due to cost increase of materials or labor rate changes.

Agreement GCB 1667

Exhibit B

Scope of Work

WSDOT agrees to furnish the necessary personnel, equipment, material and/or service(s) and otherwise do all things necessary to perform the following Services:

Scope of Work will be one or a combination of these products from Visual Engineering Resource Group:

- 3D computer infrastructure modeling / visualization / animation
- Video production
- Commercial photography

Agreement GCB 1667
Exhibit C
 Example Task Assignment

**Master Agreement
 Task Assignment Document**

Agreement No.	
Task No. <small>(To be assigned by Agreement Manager)</small>	
Task Amendment No.	

Project Title			Task Start Date May 1, 2014		
SR No.	County(s)		Amendment Date August 1, 2014		
Vendor No.			Task End Date		
Agency Office and Address			WSDOT Project Office and Address		
City	State	Zip	Org.	Mailstop	Fax
Agency Project Manager			WSDOT Project Manager		
Phone	Email		Phone	Email	

Funding

This section required if there is Fed. Aid Part.

Work Order No.	Org. Code	Amount	Fed. Aid Part.?	Fed. Aid Project No.	Fed. Aid Part. %
			<input type="checkbox"/> Yes <input type="checkbox"/> No		
			<input type="checkbox"/> Yes <input type="checkbox"/> No		
			<input type="checkbox"/> Yes <input type="checkbox"/> No		
			<input type="checkbox"/> Yes <input type="checkbox"/> No		
			<input type="checkbox"/> Yes <input type="checkbox"/> No		

A. This Task/Amendment Amount →

B. Previous Task Amount →

C. Total Task Amount →
(Task total: A+B= C)

Agency

WSDOT

Agreement Manager	
Address	
Phone	Email

Agreement Manager	
Address	
Phone	Email