

Amendment Number 3
to
Contract Number DIR-SDD-591
between
State of Texas, acting by and through the Department of Information Resources
and
Visual Innovations Company, Inc.
previously
Visual Innovations Inc.

This Amendment Number 3 to Contract Number DIR-SDD-591 (“Contract”) is between the Department of Information Resources (“DIR”) and Visual Innovations Company, Inc., previously Visual Innovations Inc. (“Vendor”). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. DIR acknowledges the name change of the Vendor to Visual Innovations Company, Inc., from Visual Innovations Inc., effective immediately. DIR shall change the contract documents hereafter to Visual Innovations Company, Inc.
2. **Contract, Section 2, Term of Contract**, is hereby amended as follows:
DIR and Vendor hereby agree to extend the term of the Contract for one (1) year through September 28, 2010, completing two (2) of three (3) optional one-year renewal terms. Prior to expiration of the term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to one (1) optional one-year term.
3. **Contract, Section 4, Pricing, Paragraph G. Travel Expense Reimbursement**, is hereby updated and restated in its entirety as follows:
G. Travel Expense Reimbursement
Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees by the current State Travel Management Program. Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.
4. **Contract, Section 5, DIR Administrative Fee, A)**, is hereby updated and restated in its entirety as follows:
A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is one and one quarter percent (1.25%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000.00 shall be \$1,250.00.

5. **Contract, Section 7, Software License and Service Agreements, A. Shrink/Click-wrap License Agreement**, is hereby updated and restated in its entirety as follows:

A. Shrink/Click-wrap License Agreement

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. **It is the Customer's responsibility to read the Shrink/Click-wrap License agreement and determine if the Customer accepts the license terms. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain changes in the Shrink/Click-wrap License Agreement language from the software publisher.**

6. **Appendix A, Section 4, General Provisions, G. Limitation of Authority**, is hereby added to the Contract as follows:

G. Limitation of Authority

Vendor shall have no authority to act for or on behalf of the Texas Department of Information Resources or the State of Texas except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or Texas Department of Information Resources.

7. **Appendix A, Section 9, Vendor Responsibilities, B. Vendor Certifications**, is hereby updated and restated in its entirety as follows:

B. Vendor Certifications

Vendor certifies that it and its designated Order Fulfillers: (i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract; (ii) are not currently delinquent in the payment of any franchise tax owed the State of Texas and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate; (iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract; (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate; (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract; (vii) are not suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration; (viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit,*

Threaten to Commit, or Support Terrorism”, published by the United States Department of the Treasury, Office of Foreign Assets Control; (ix) to the extent applicable to this scope of this Contract, Vendor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328; (x) Vendor agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas; (xi) Vendor certifies that they are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency; (xii) Vendor represents and warrants that the Customer’s payment to Vendor and Vendor’s receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code; and (xiii) under Section 2155.006, Government Code, Vendor certifies that the individual or business entity in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract.

8. **Appendix A, Section 9, Vendor Responsibilities, J. Limitation of Liability**, is hereby updated and restated in its entirety as follows:

J. Limitation of Liability

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State of Texas, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor’s liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor’s liability shall not apply to claims of patent, trademark, or copyright infringement.

9. **Appendix A, Section 9, Vendor Responsibilities, O. Use of State Property**, is hereby added to the Contract as follows:

O. Use of State Property

Vendor is prohibited from using the Customer’s equipment, the Customer’s Location, or any other resources of the Customer or the State of Texas for any purpose other than performing services under this Agreement. For this purpose, equipment includes, but is not limited to, copy machines, computers and telephones using State of Texas long distance services. Any charges incurred by Vendor using the Customer’s equipment for any purpose other than performing services under this Agreement must be fully reimbursed by Vendor to the Customer immediately upon demand by the Customer. Such use shall constitute breach of contract and may result in termination of the contract and other remedies available to DIR and Customer under the contract and applicable law.

10. **Appendix A, Section 9, Vendor Responsibilities, P. Immigration**, is hereby added to the Contract as follows:

P. Immigration

Vendor shall comply with the requirements of the Immigration Reform and Control Act of 1986 and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment

verification and retention of verification forms for any individual(s) hired on or after November 6, 1986, who will perform any labor or services under this Contract.

11. **Appendix A, Section 10, Contract Enforcement, B. Termination, 5) Customer Rights Under Termination**, is hereby updated and restated in its entirety as follows:

5) Customer Rights Under Termination

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and the Purchase Order issued prior to the termination or expiration of the Contract. The Purchase Order survives the expiration or termination of the Contract for its then effective term.

12. **Appendix A, Section 10, Contract Enforcement, B. Termination, 6) Vendor or Order Fulfiller Rights Under Termination**, is hereby updated and restated in its entirety as follows:

6) Vendor or Order Fulfiller Rights Under Termination

In the event a Purchase Order expires or is terminated, a Customer shall pay: 1) all amounts due for products or services ordered prior to the effective termination date and ultimately accepted, and 2) any applicable early termination fees agreed to in such Purchase Order.

13. **Appendix C, Pricing Index**, is hereby updated and restated in its entirety with Appendix C, Pricing dated October 2009, as attached to this Amendment Number 3.

14. All other terms and conditions of the Contract as amended, not specifically modified herein, shall remain in full force and effect. In the event of conflict among the provisions, the order of precedence shall be this Amendment Number 3, Amendment Number 2, Amendment Number 1, and then the Contract.

{This Section intentionally left blank}

IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of last signature, but in all events no later than September 28, 2009.

Visual Innovations Company, Inc.

By: /Signature on File/

Name: Lloyd S. McCarley

Title: VP

Date: 09/29/2009

The State of Texas, acting by and through the Department of Information Resources

By: /Signature on File/

Name: Cindy Reed

Title: Deputy Executive Director, Operations & Statewide Technology Sourcing

Date: 09/24/2009

Legal: /Signature on File/ 09/24/2009