

Summary of Settlement Agreement

WSDOT & Electronic Transaction Consultants Corporation (ETC)

Overview

The Settlement Agreement lays out the terms agreed to by WSDOT and the Electronic Transaction Consultants Corporation (ETC) to settle certain claims associated with a delay in the start of establishing and operating a Statewide Tolling System for Washington State, and the commencement of tolling of State Route 520. The agreement modifies the original December 22, 2009 contract between the two parties with its subsequent changes orders. The Settlement Agreement was executed June 30, 2012.

This was a lengthy and complex settlement process that began nearly a year ago and is a fair outcome for toll payers, taxpayers and the state of Washington. It covers the actual costs of last year's delays, which WSDOT estimated at \$6.4 million. Finalizing this settlement also avoids costly litigation and allows both parties to shift their focus to the future.

summary of settlement terms

Reductions in operational payments

In the settlement, ETC agrees to reduce its fixed monthly operations payment by \$33,333 a month, or \$400,000 a year, starting July 1, 2012. If WSDOT exercises its optional extensions to the contract, the reduction in payments will continue for a total of six years through June 30, 2018 for a total of \$2.4 million in reduced costs.

Additional background:

- **Substantial Completion:** ETC reaches Substantial Completion when the majority of the remaining back office system functionality is implemented. These remaining items make the back office system run more efficiently, such as automating manual processes. If this work is finished by December 31, 2012, WSDOT will extend the contract four years as outlined in the original contract. The extension would shift the contract end from June 2014 to June 2018.
- **Payment reductions from 2011:** WSDOT did not pay ETC operational costs between February and June 2011 and provided only partial payments between July and December 2011. These reductions totaled \$1.5 million in foregone payments. ETC's original contract with WSDOT is \$23 million.

WSDOT receives license to ETC's intellectual property: RITE the back office toll System

In the settlement, ETC agrees to provide WSDOT with a royalty free, non-exclusive, perpetual, irrevocable and non-transferable license to use the source code and related software and background documents necessary to operate the WSDOT Statewide Tolling Customer Service Center. The Code will be put into Escrow and permits WSDOT access.

Additional background:

- In February 2011, WSDOT hired independent consultants review ETC's source code and documentation. They assessed the value of the intellectual property at about \$4 million.
- Previously, WSDOT had no rights to this code because of a services contract with ETC.
- Owning the source code gives WSDOT flexibility and serves as an insurance policy. It also provides leverage for future improvement requests and operations beyond 2018.
- WSDOT may hire competitors to use the system (*e.g.*, a third-party company can operate the ETC system). However, WSDOT may not allow ETC's competitors access to ETC's source code.

Next Steps

The settlement marks an end to a challenging year that finished with the successful launch of SR 520 tolling. WSDOT is taking stock of lessons learned and shifting its energy toward the future:

- **Implementing a toll system accounting process unlike any other in the nation.** WSDOT and ETC are implementing a toll system accounting process that will meet the current and future needs of the state of Washington.
 - It will provide a higher level of transparency and accountability than any other toll system in the nation.
 - The system will be able to track every transaction by each toll facility and any future facilities. This new accounting process sets up WSDOT for the next decade.
- **We look forward to our ongoing partnership with ETC.** ETC collects one-third of all tolls in nation and now has the backing of majority share owner Autostrade, a multi-billion dollar company and an international leader in tolling.