

**OKLAHOMA DEPARTMENT OF TRANSPORTATION
TRAFFIC MONITORING SYSTEMS (TMS) ANNUAL DATA COLLECTION
CONTRACT**

Parties to the Contract

This contract is made and entered into this _____ day of _____, 2017, by and between the Oklahoma Department of Transportation (hereinafter referred to as "ODOT") and _____ (hereinafter referred to as "CONTRACTOR").

This contract incorporates by reference all information and attachments contained in Solicitation # _____.

SECTION 1: PURPOSE OF THE CONTRACT

1.1 Oklahoma Department of Transportation (ODOT) seeks a firm to collect data and install, upgrade, repair, operate/maintain, or service traffic monitoring systems employed at up to 94 station locations across the state. The collection and validation of quality traffic count, classification and weight data supported by technically competent expertise in the operation and maintenance of data recording and sensor equipment coupled with detailed knowledge and experience in the renovation of traffic monitoring stations facilities are the key critical qualifications for a firm to be awarded this contract. The contract period shall be for a one year term. ODOT traffic monitoring stations currently consist of 22 Weigh-in-Motion (WIM) stations and 72 Automatic Vehicle Classifier (AVC) stations. ODOT is in the process of converting 16 WIM (non LTR) stations to Classifier stations which will bring the totals to 6 WIM stations and 88 AVC stations, with completion expected by September 30, 2017. This contract addresses the requirements for fiscal year 2018. The general scope of the contract is as follows:

Data Collection and Systems Validation. This encompasses the following:

- a. Daily polling of up to 94 permanent traffic monitoring stations.
- b. Daily collection and archiving of volume, classification, speed and weight data by lane and by 15 minute interval.
- c. Daily review of collected data for the purpose of assessing the data recording equipment, equipment operability, data completeness and validity of collected data.
- d. Provide timely submission of collected data in specified formats (both raw BIN,PVR format and modified format as described in Appendix III) required for import into ODOT database and analysis by ODOT.

The intent of this contract is for ODOT to associate with a firm that has sufficient experience and proven technical expertise in traffic monitoring systems servicing, wireless data transfer and web page support. Additionally, the firm should have experience in operating and maintaining International Road Dynamics (IRD) Brand/Model and Peek Brand/Model WIM systems and Peek Brand/Model Automatic Data Recorder (ADR) AVC systems. The scope of work performed will be determined by the ODOT's Project Manager. ODOT seeks submission of a

contract bid addressing, as a minimum, each individual unit item listed on the "Bid Page" in accordance with the "Scope of Contract Cost Requirements" (Paragraph 4).

1.2 ODOT presently lists 94 sites (AVC and WIM) throughout the state where traffic monitoring devices are located. Site descriptions listing current status and conditions are detailed in attached appendices defined below. These lists are tentative and subject to change.

a. Appendix I - depicts cost items for which bids shall be submitted and expressed as unit cost and extended cost in the respective categories. All bid items are provisional and contingent on current ODOT needs. No bid item quantities shall constitute a promise or guarantee of work to be done.

b. Appendix II - describes the type, location, and number of lanes at all existing traffic monitoring sites and planned sites.

c. Appendix III - describes the format and structure of modified data to be submitted to ODOT for integration and analysis.

SECTION 2: TERMS OF THE CONTRACT

The initial term of the contract shall commence upon execution of this contract and continue to the end of the current federal fiscal year on September 30, 2018. Contract may be renewed for up to four additional one-year periods upon written consent by both parties and execution of a supplemental contract.

NON-AWARD

It is expressly understood that this Invitation for Bids (IFB) does not commit the ODOT to award a contract, pay any costs incurred in preparation of a proposal to this request, or to procure or contract services or supplies. Incomplete bids will be disqualified.

SECTION 3: COMPENSATION

ODOT agrees to pay and CONTRACTOR agrees to accept, payment according to the attached Bid Sheet for actual work completed only. Bid sheet depicting price bid for individual items is attached hereto and made part of this contract. Bid sheet is not a guarantee or promise of work and ODOT reserves the right to adjust any bid sheet quantities, at the discretion of ODOT.

SECTION 4: SCOPE OF CONTRACT COST REQUIREMENTS

4.1 Data Collection and Systems Validation. This requirement encompasses all aspects of data collection, review of data for the purpose of validating the operability of data recording and sensor equipment, wireless site monitoring and data transfer. Contractor will diagnose and make

adjustments to data recorders to restore to functional operating capability and data submission. The collection of valid data is paramount to ODOT's goal of maintaining a site operational rate of 90% or better for each traffic monitoring station. The site operational rate shall be based on the percentage of days of valid data for the particular month for each traffic monitoring station. For example, if for the month of October (with 31 days), a station collects 28 days of valid data, the station's operational rate for the month of October is 90.3 %. A "valid day of data" shall be defined as 24 continuous hours of recorded data with no identified inaccuracies. Inaccuracies can include but not limited to missing volume counts, abnormal zero counts, excessive class 15 counts, etc. The unit cost of "Data Collection and Systems Validation" (See Bid Sheet, Appendix I) is expressed as the dollar amount paid for one (1) day of valid data for the specified traffic monitoring station (AVC or WIM). Contractor activities which comprise the cost of one (1) day of valid data are as follows:

a. Polling, Data Transfer, and Archiving. CONTRACTOR shall conduct polling of each AVC and WIM traffic monitoring station on a daily basis. CONTRACTOR shall develop or acquire polling software compatible with Peek ADR2000 series traffic data recorders and IRD Isync WIM systems, capable of supporting manual polling, auto polling, and data transfer. Currently, all AVC and WIM sites use wireless technology with solar DC power. Additionally, CONTRACTOR shall archive collected data in a database with the capability to export daily data files in raw BIN & PVR format and modified data format (as described in Appendix III) or other formats allowing for import to ODOT database. CONTRACTOR shall provide and maintain wireless communication interface device (Reece, Raven etc.), wireless service and associated software and servers to facilitate wireless communication to all AVC and WIM sites.

b. Data Review. CONTRACTOR shall conduct daily review of volume, classification, speed, and weight data collected for each traffic monitoring station. Volume and class data will be examined by hour by class by interval to ensure that the ODOT class schema continuity is maintained and misclassification malfunctions are identified. The previously stated data review focus is for the purpose of identifying data errors which potentially may have been caused by (but not limited to) the following: (1) faulty operation of the data recorder, (2) faulty inductive loops, (3) faulty piezoelectric sensors (4) utility connection failures to power and communication services, (5) problems with supporting hardware, software, firmware.

c. Site Operational Notification. On a daily basis, Contractor will notify ODOT of the operational status of all AVC/WIM sites. CONTRACTOR will notify ODOT promptly of sites that are not functioning or otherwise not collecting valid data through the use of a site monitoring web page, email or phone. All costs to be included in bid item for Data Collection and Systems Validation.

d. Data Collection Servers. CONTRACTOR to provide and maintain all necessary servers to complete the collection of all data and to provide for storage and access to the above mentioned raw or modified data to ODOT. Cost to be included in bid item for Data Collection and Systems Validation.

e. Wireless Interface Devices (Gateways). Wireless Interface Devices (Gateways) and wireless service (ie. Sprint, Pioneer etc.) will be provided and maintained by CONTRACTOR.

Gateways to remain the property of CONTRACTOR and to be maintained by CONTRACTOR. All repairs of such devices to be the responsibility of CONTRACTOR. All costs relating to such devices to be included in bid item for Data Collection and Systems Validation.

f. Transition of Gateway Devices: CONTRACTOR to facilitate a smooth transition from existing RAVEN devices to any new devices installed by CONTRACTOR (raven, I3300 etc.) at CONTRACTOR's expense. Transition to be complete and the collection of valid data from all AVC/WIM sites to occur within 3 weeks of start of contract, a penalty of Five Hundred Dollars (\$500.00) per day will be charged to CONTRACTOR for each day past the allowed 3 week transition period until total transition of all sites is complete. Activation and collection of valid data of/with any newly installed Gateway device at any particular site to occur within 24 hours of existing Raven Gateway being disabled.

g. Equipment Repair.

1. CONTRACTOR will provide adjustment to or replacement of Gateways, service and/or power supplies within 48 hours.
2. ODOT will be responsible for replacement of data recorders, batteries, solar system, loops and piezos.
3. For utility failures (CONTRACTOR shall open work order with the appropriate utility provider within 48 hours).

h. Data Submission. CONTRACTOR shall submit daily files of data, for each site, on a monthly basis. These files shall be in raw Peek (.BIN) or PVR (.PVR) format and a modified comma delineated text format (.CSV) described in Appendix III, or any other format compatible with ODOT databases. The monthly data submission shall be received at ODOT no later than the 10th day of the following month. CONTRACTOR shall also submit, with the monthly data submission, a Monthly Site Summary which details causes of invalid data on a site by site basis. Data elements shall include traffic volume, vehicle classification, traffic speed, and vehicle weight. Data files submitted to ODOT shall then be reviewed by ODOT for validity, identifying incomplete, inaccurate or invalid data. At the end of each month, any day (24-hour period) with invalid data shall be deleted from the ODOT data base. The monthly site operational rate and the amount paid to CONTRACTOR shall then be computed based on the remaining days of valid data. If the specific traffic monitoring station achieves a 90% or better operational rate for the month, the payment to CONTRACTOR shall be paid the amount equal to the actual operational rate for the month.

i. Payment Reduction.

1. Individual Operational Site. As a result of CONTRACTOR failure to identify equipment problems and take corrective action within the specified time frame, individual sites with operational rates lower than the 90% rate specified in section 1.1 will result in the following payment reductions. For site operational rates between 80-89%, full month payout is 75% of specified rate. For site operational rates between 70-79%, full month payout is 50% of specified rate. For site operational rates between 60-69%, full month payout is 25% of specified rate. For site operational rates below 60%, no payment will be made.

2. Overall Operational Sites. If data collected from AVC/WIM sites fail to meet an overall operational rate of 60% for the month, due to CONTRACTOR error in collecting, polling or transfer of data, the payment by ODOT to CONTRACTOR shall be zero (0%) for that month. Repeated occurrences of CONTRACTOR error resulting in loss of data will justify contract termination as specified in Section 6.

SECTION 5: CONTRACT MODIFICATION

5.1 ODOT retains the right to modifications of this contract to meet changing requirements in its Traffic Monitoring System and data collection needs. This may include, but not limited to: site locations, type of sensor, hardware and software requirements, data format, and modifications to new construction requirements.

SECTION 6: CONTRACT TERMINATION

6.1 This contract may be terminated prior to the expiration date as contained herein without further obligation on CONTRACTOR's part.

6.2 For Convenience: ODOT may terminate the project and cancel this contract by giving thirty (30) days written notice if the continuation of the program in ODOT's opinion would not produce beneficial results commensurate with the further expenditure of funds. Actions which may be grounds for contract termination include but are not limited to the following:

a. Failure to perform work in accordance with established time frames and schedules or to provide schedules as required.

b. Failure to perform work in accordance with the ODOT standards or as outlined in this contract.

c. CONTRACTOR's negligence in performing work which results in loss of data or endangering contract personnel and/or the general public.

d. Failure to perform service call work within 2 days of notification by ODOT.

e. Providing false information to justify traffic data determined to be invalid by ODOT.

f. Failure to follow any specifications/instructions as outlined in this document.

g. Failure to take prompt, responsive action to resolve CONTRACTOR caused damages or conflicts with hardware and software.

h. Failure to coordinate safety issues with ODOT's Project Manager and the field Division Engineer.

6.3 Mutual Agreement: By mutual agreement and consent of ODOT and CONTRACTOR, this contract may be terminated.

6.4 Should this contract be terminated for any of the reasons specified ODOT shall be liable to CONTRACTOR only for reasonable value of the services and work satisfactorily performed up to and including the date of termination. Unless such termination be for materials breach by CONTRACTOR in which case ODOT shall incur no liability what so ever to CONTRACTOR for such term.

SECTION 7: STATEMENT OF NEEDS

7.1 Technical Expertise

ODOT is seeking a firm with the technical expertise to operate, install and maintain IRD and Peek WIM systems and Peek ADR series AVC systems. WIM and AVC systems will be maintained in accordance with the standards and specifications of this contract. WIM systems will operate in the current configuration (Loop-Piezo-Piezo-Loop). AVC systems will operate in the Loop-Piezo-Loop configuration. The firm ODOT is seeking also shall have sufficient knowledge of and experience in the traffic data collection industry and operational flexibility to research and test new technologies and when approved by ODOT, work toward implementing those technologies that will improve ODOT's traffic monitoring program.

7.2 Turnkey

This contract is considered a "turnkey" contract. CONTRACTOR shall be responsible for all equipment, materials and labor and the technical expertise to successfully install, repair, maintain and operate all WIM and AVC systems, in accordance with the requirements of this contract and manufacturer's specifications.

7.3 Contractor Provided Materials, Labor and Equipment.

All materials, services and equipment (including tools and vehicles), must be provided by CONTRACTOR. This includes but is not limited to batteries, lightning arrestors/surge protection, wiring, and etc. ODOT will not provide any equipment to CONTRACTOR. Any WIM or AVC equipment/hardware provided by this contract or purchased by ODOT outside of this contract can be installed by CONTRACTOR as part of this contract. All equipment/hardware installed shall be considered to be permanently installed property of ODOT with exception to those addressed in item 4.1 (e). However, CONTRACTOR will be responsible for contract maintenance for all equipment per the terms of this document. All equipment purchased from CONTRACTOR by ODOT either through this contract or through other authorized procurement, will be covered by warranty administered through CONTRACTOR. All equipment and material used in conjunction with this contract must comply with the specifications as detailed in this document. The manufacturer's data sheet for all equipment and materials intended for use during this contract shall be submitted to the ODOT Project Manager for approval prior to its use.

7.4 Vehicle Classification Table

CONTRACTOR shall provide the Project Manager with a description, printout, or listing which details how vehicles shall be classified using the FHWA's standard 13 class Scheme (Scheme modified). Any software, provided by CONTRACTOR must support formatting data to this scheme. ODOT may require CONTRACTOR to provide custom design classification tables. Each approved classification table shall have a distinctive name that includes that month and year of approval for contract use. No changes to the classification table may be made without the approval of the Project Manager. CONTRACTOR shall certify annually that the approved table is being used in all traffic monitoring sites. Any filtering techniques for mixed axles will require a written explanation to the Project Manager for approval before they are accepted for use.

7.5 Reporting Requirements

CONTRACTOR shall be required to submit reports to the ODOT Project Manager on activities concerning the operational status of the traffic monitoring stations, record of all diagnoses, repair, services & component replacements; and results of all scheduled maintenance services, calibration, construction, renovation, and recommendations on identified problem areas requiring ODOT expenditures.

a. Monthly Data Submission. CONTRACTOR shall submit data collected from traffic monitoring stations, consisting of daily files (BIN, PVR or comma delineated text modified format as described in appendix III) containing data formatted by lane, by interval for traffic volume, vehicle classification, and speed for AVC sites and containing data formatted by lane, by interval for traffic volume, vehicle classification, speed and vehicle weight for WIM sites. The monthly data submission shall be available to ODOT within 240 hours after the last day of the month (cut off is at midnight on the last day of the month). The monthly submission shall be received at ODOT on CD (2 copies) and/or made available to ODOT on a secure website.

b. Weekly Site Service Report. CONTRACTOR shall submit a weekly report of any construction, renovation, maintenance, services, observations and recommendations performed at or pertaining to any of the traffic monitoring stations. The report will specify activities by site and identify dates of work, scope of work, problem areas and recommendations. The report will be submitted each Monday by 8:00 am, documenting activities of the previous week (Monday through Sunday), and sent via e-mail to the ODOT Project Manager.

c. Site Log Book. A site log book will be stored at each Traffic Monitoring Station as a chronological record of all work performed on site to date. Entries in the Site Log Book will be dated; work performed will be described in detail, and initialed by CONTRACTOR field representative.

SECTION 8: CONTRACT PERSONNEL QUALIFICATIONS

Contract personnel shall have experience and a working knowledge in the operation and maintenance of International Road Dynamics and Peek weigh-in-motion systems and Peek Automatic Data Recorder electronics and software. All personnel shall be knowledgeable in the

requirements of the contract and their individual responsibilities and work functions necessary to satisfy those requirements. At least one full-time staff member shall be knowledgeable in the electronics, telecommunications and software requirements of the contract. CONTRACTOR shall provide a list of personnel along with their job duties and qualifications to the Project Manager. Any changes in duties or additions of new personnel must be coordinated with the Project Manager. CONTRACTOR shall certify that all personnel are trained and able to perform tasks to meet the requirements of the contract. If the quality of work by any individual fails to meet the standards required by this contract, upon notification by the ODOT Project Manager, CONTRACTOR shall take appropriate action to retrain or remove that individual. ODOT may request that individuals without the appropriate skills be removed from tasks that are beyond their skill levels, as determined by ODOT inspection staff, and the Project Manager.

SECTION 9: STANDARD CONSTRUCTION SPECIFICATIONS

It is understood that all references herein to Standard Specifications shall mean the Oklahoma Department of Transportation 2009 (or most current) Edition of Standard Specifications for Highway Construction.

9.1 CONTRACTOR shall be insured in accordance with the Standard Specifications, section 107. Prior to the issuance of the Work Order, CONTRACTOR shall provide proof of insurance.

9.2 CONTRACTOR's work shall be inspected by a technician from ODOT. The technician's inspection responsibilities shall include compliance with Standard Specifications for Highway Construction and any other incidentals necessary for a completed job.

9.3 ODOT shall not be responsible for personal injury, damage to, or loss of property, equipment or materials in regard to these specifications.

9.4 Traffic Control shall be provided by CONTRACTOR in accordance with Standard Specifications, section 104.

a. All traffic control devices and placement shall meet the "Manual on Uniform Traffic Control Devices (MUTCD), 2009 Edition (or most current)" and as shown on "Traffic Control Devices for Construction Work Zones" Standards.

b. Existing roadway shall remain open during construction. At no time shall more than one lane in one direction of a four-lane roadway and one lane of a two-lane roadway be closed to traffic.

c. CONTRACTOR shall submit traffic control plans, for ODOT approval, minimum two business days prior to any on-site construction or site renovation projects involving work on or within 15 feet of the roadway, in accordance with the MUTCD. Traffic control plans shall be submitted in CADD format and display location and positioning of all traffic control devices supplemented with any additional advisory information.

d. Traffic control requirements shall vary according to the functional class of each site as defined by ODOT. The functional class of each site shall be subject to change throughout the duration of the contract.

SECTION 10: MATERIALS AND EQUIPMENT

CONTRACTOR shall provide the necessary labor, materials, tooling, and installation equipment which are required to repair the systems, components and accessories as set forth in this Contract. All said systems, components, and accessories shall be deemed authorized by ODOT for repair or replacement.

10.1 All materials, devices, equipment, etc. shall be new and shall be installed, tested, and connected in strict compliance with the manufacturer's recommendations, and where required, under the direct supervision of a manufacturer's representative.

10.2 All apparatus and equipment furnished on this project shall be protected from damage by CONTRACTOR. All items marred or damaged shall be replaced or repaired to the complete satisfaction of the Project Manager solely at CONTRACTOR's expense.

10.3 Conflicts between any piece of equipment, switches, devices, etc. which if installed as shown in relation to any previously installed equipment, may impair the proper operation of the equipment, shall be resolved by CONTRACTOR to the satisfaction of the Project Manager at CONTRACTOR's expense.

Data Recorder Configuration Note: On East-West highways the northern most lane shall be identified as Lane No.1 and on North-South highways the western most lane shall be identified as Lane No.1. All lanes will be numbered consecutively across the full width of roadway.

SECTION 11: CONSTRUCTION

11.1 General: All construction methods and procedures not otherwise specified herein shall meet applicable sections of the Standard Specifications. The following codes shall be complied with in each and every respect as though fully written herein:

- a. OSHA Requirements, Latest Edition, thereof
- b. AASHTO Requirements, Latest Edition, thereof
- c. FHWA Requirements, Latest Edition, thereof

SECTION 12: MATERIAL AND WORKMANSHIP GUARANTY

It is the intent of this paragraph to obtain from CONTRACTOR a level of workmanship that will assure ODOT of an operational and maintainable system (as intended by the manufacturer).

Failure to perform as indicated shall require CONTRACTOR to replace in kind or repair any material or workmanship in question. All material and labor cost resulting from the replacement or repair of equipment or correction of poor workmanship shall be borne by CONTRACTOR. Final acceptance of the project will not be made until the warranty period expires. For material and workmanship, the warranty period is 12 months from date of sensor installation.

SECTION 13: DISPUTE RESOLUTION

Any dispute concerning the question of fact in connection with the work, not disposed of by the contract between the parties hereto, shall be referred to the STAFF agency that initially awarded this contract. The decision of the administrator of said agency, or his/her duly authorized representatives, shall be final and conclusive on the parties to this contract.

SECTION 14: GOVERNING RULES AND REGULATIONS

The SUB-CONTRACTOR shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any nature affecting the performance of this Contract, including worker's compensation laws, minimum and maximum salary and wage statutes and regulations. When required, CONTRACTOR shall furnish ODOT with satisfactory proof of its compliance therewith.

SECTION 15: COVENANT AGAINST CONTINGENT FEES

CONTRACTOR warrants that it has not employed or retained any company or person specifically to solicit or secure this contract, and that it has not paid or agreed to pay any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty ODOT shall have the right to annul this contract without liability, or at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage brokerage fee, gift, or contingent fee.

SECTION 16: EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this Contract, CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, age or national origin. Such actions shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

CONTRACTOR further agrees to insert a similar revision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

SECTION 17: TITLE VI - CIVIL RIGHTS ACT OF 1964

CONTRACTOR shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (P.L. 88-352), the Regulations of Department of Transportation issued thereunder (CFR Title 49, Subtitle A, Part 21).

SECTION 18: BINDING EFFECT

This contract shall be binding upon and inure to the benefit of ODOT and CONTRACTOR and shall be binding upon their successors and assigns subject to the limitations of Oklahoma law.

SECTION 19: HOLD HARMLESS CLAUSE

CONTRACTOR shall indemnify and hold harmless ODOT, their respective officers, employees and agents from all claims, suits, or actions of every kind and character made upon or brought against ODOT, their respective officers, employees and agents, for or on account of any injuries or damages received or sustained by any party or parties from negligent acts of said CONTRACTOR or its servants and agents in doing the work and rendering the services contracted for, or by or consequence of any negligence in operations or any improper material or equipment used, or by or on account of any negligent act or omission of said CONTRACTOR or his or its servants, agents and employees. This hold harmless and indemnity obligation shall include attorneys fees, court costs and all other expenses incurred in the investigation and defense of any claim or suit arising out of or asserting negligence of said CONTRACTOR.

SECTION 20: LIMITATION OF LIABILITY

The parties mutually recognize that ODOT is a governmental entity subject to the provisions of the Governmental Tort Claims Act (51 O.S. § 151 et seq.). The parties hereby mutually agree that ODOT may be held severally liable only for claims, demands, and suits in law or equity arising from any negligent act or omission of any of ODOT's respective employees, agents or officers which may occur during the prosecution or performance of this agreement to the extent provided in the Governmental Tort Claims Act. Nothing in this agreement shall be interpreted or construed to waive any legal defense which may be available to ODOT or any exemption, limitation or exception which may be provided by the Governmental Tort Claims Act or the Eleventh Amendment of the United States Constitution.

SECTION 21: PRIOR UNDERSTANDINGS

This contract incorporates and reduces to writing all prior understandings, promises, agreements, commitments, covenants, or conditions, and constitutes the full and complete understanding and contractual relationship of the parties.

SECTION 22: AMENDMENTS OR MODIFICATION OF CONTRACT

No changes, revisions, amendments or alterations in the manner, scope, or type of work or compensation to be paid by ODOT shall be effective unless reduced to writing and executed by the parties with the same formalities as are observed in the execution of this contract.

SECTION 23: GOVERNING LAW AND VENUE

Any claims, disputes or litigation relating to the solicitation, execution, interpretation, performance or enforcement of this Contract shall be governed by the laws of the State of Oklahoma and the applicable rules, regulations, policies, and procedures of the Oklahoma Transportation Commission. Venue for any action, claim, dispute or litigation, mediation or arbitration shall be in Oklahoma County, Oklahoma.

SECTION 24: INSURANCE

CONTRACTOR shall maintain at all times during the term of this contract, with an insurance carrier reasonably acceptable to ODOT and authorized to conduct business in the State of Oklahoma, insurance coverage as set forth in this Article:

- 24.1) Workers' Compensation Insurance as required by the statutes of the State of Oklahoma, and adequate (but in no event less than \$500,000) Employer's Liability Insurance.
- 24.2) Public Liability and Property Damage Insurance covering all operations and activities hereunder in the following minimum limits (but in no event less than the statutory limits found at 51 Oklahoma Statutes, Section 151 et. seq. or successor or amendatory statutes):
 - 24.2.1) Bodily Injury Liability in the amount of not less than \$100,000 for injuries, including accidental death and products liability, to any one person, and subject to the same limit for each person, in an amount not less than \$1,000,000 for one occurrence.
 - 24.2.2) Property Damage Liability in the amount of not less than \$100,000 for any one accident including products liability and an aggregate limit of \$1,000,000 per occurrence.
 - 24.2.3) Combined aggregate liability coverage shall not be less than \$2,000,000 (two million) for bodily injury, death, and property damage.

- 24.3) A Comprehensive Auto policy with a minimum limit of not less than One Million Dollars (\$1,000,000) damage, providing coverage for at least any and all leased, owned, hired or non-owned vehicles used in any of CONTRACTOR's activities pursuant to this agreement, with any self-insured retention not exceeding One Hundred Thousand Dollars (\$100,000). Any and all mobile equipment which is not covered under this Comprehensive Business Auto policy shall have said coverage provided for under the Comprehensive General Liability policy.
- 24.4) Professional Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) with prior act endorsement for the insurance to remain in effect for a minimum of two (2) years after conclusion of the contract and acceptance of CONTRACTOR's findings, results or recommendations by ODOT.

CONTRACTOR shall furnish ODOT with a certificate evidencing the existence of all such insurance coverage; and the certificates evidencing the existence of the insurance coverage specified in these specifications. Said insurance coverage shall provide that ODOT is named insured under said policy or policies and that said policy or policies cannot be canceled or materially modified except upon thirty (30) days advance written notice to ODOT. The foregoing provision regarding additional named insured shall not create or be deemed to create any liability on the part of said additional named insured which would not otherwise exist under the laws of the State of Oklahoma.

SECTION 25: RECORDS

CONTRACTOR shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred under this contract, and shall make all such materials available to ODOT or any of its duly authorized representatives and the State Auditor and Inspector at any reasonable time during the term of work on the contract, and for three (3) years from date of final payment to CONTRACTOR by STATE for work performed hereunder.

SECTION 26: HEADINGS

Article headings used in the contract are inserted for convenience of reference only and shall not be deemed a part of this contract for any purpose.

SECTION 27: ASSIGNMENT

CONTRACTOR shall NOT sublet, sell, transfer, assign, or otherwise dispose of the contract or contracts or any portion thereof, or of his right, title, or interest therein, without written consent of ODOT. In case such consent is given, CONTRACTOR will be permitted to sublet a portion thereof but shall perform with his own organization, work amounting to not less than 50% of the total contract cost. Request for permission to sublet, assign or otherwise dispose of any portion of the contract shall be in writing and accompanied by a statement showing that the organization

which will be performing the work is particularly experienced and equipped for such work. No sub-contracts, or transfer of contract, shall in any case release CONTRACTOR of his liability under the contract and bonds.

SECTION 28: NOTICES

All notices, demands, requests, or other communications which may be or are required to be given, served or sent by either party to the other pursuant to the Contract shall be in writing and shall be deemed to have been properly given or sent:

- 28.1) If intended for ODOT, by mailing by first class mail or, if sender prefers, by registered or certified mail, return receipt requested, with postage prepaid, addressed to state as:

Brian Thompson, Transportation Specialist VI
Strategic Asset & Performance Management Division Annex
Oklahoma Department of Transportation
7949 South I-35 Service Road
Oklahoma City, OK 73105
Telephone: (405) 990-0302 / (405) 636-4194
Email: bthompson@odot.org

- 28.2) If intended for CONTRACTOR by mailing by first class mail or, if sender prefers, by registered or certified mail, return receipt requested, with postage prepaid, addressed to CONTRACTOR as follows:

SECTION 29: SEVERABILITY

If any provision, clause, or paragraph of this contract or any document incorporated by reference shall be determined invalid by a court of competent jurisdiction, such determination shall not affect the other provisions, clauses, or paragraphs of this contract which are not affected by the determination. The provisions, clauses, or paragraphs and any documents incorporated by reference are declared severable.

SECTION 30: PAYMENT OF CLAIMS

CONTRACTOR shall pay all just claims due for the payment of all employees and mechanics for labor that shall be performed, for the payment of all material and equipment rental which is actually used or rented in the performance of the contract.

SECTION 31: BREACH OF CONTRACT

Failure to perform any and all of the terms and conditions of this contract shall be deemed a substantial breach thereof and give ODOT cause to cancel this contract on seven (7) days written notice to CONTRACTOR. ODOT then reserves the right to re-award the contract to the next lowest responsible available bidder -OR- should this contract be awarded to multiple vendors, ODOT may utilize those vendors. In the event of cancellation of this contract, CONTRACTOR shall not be entitled to damages and agrees not to sue ODOT for damages thereon. After notice of cancellation, CONTRACTOR agrees to perform the terms and conditions of this contract up to and including date of cancellation, as though no cancellation had been made and notwithstanding other legal remedies which may be available to ODOT because of the cancellation, agrees to indemnify ODOT for its costs in procuring the services of a new CONTRACTOR.

SECTION 32: TIME

Time is of the essence in this contract. The parties hereto expressly recognize that in the performance of their respective obligations hereunder, each party is relying on timely performance by the other party and will schedule operations and incur obligations to third parties in reliance upon timely performance by the other party hereto and may sustain substantial losses by reason of any failure of timely performance.

SECTION 33: CONFLICT OF INTEREST

CONTRACTOR understands that neither CONTRACTOR nor any sub-contractor or any professionally certified member of CONTRACTOR's staff may represent or act as a CONTRACTOR for any person, company or association in any action, cause or forum where the claim of that person, company or association is contrary to the interest of ODOT. All such actions shall be considered conflicts of interest and shall be deemed as a default and/or breach of duty under the terms of this contract. For any violation of this section, ODOT, at its sole discretion shall have the right to terminate this contract without liability to ODOT as provided in Section 6.2 and may withhold future contracts or seek damages from CONTRACTOR or any sub-contractor.

SECTION 34: EMPLOYMENT OF FORMER ODOT EMPLOYEES - ETHICS

34.1) Neither CONTRACTOR nor any sub-contractor retained by CONTRACTOR will engage on a full time or part-time basis any person, with the exception of a person who has retired from State service, for the performance of this contract who was involved in any manner in the development or participated in CONTRACTOR selection process for this contract, if that person has been within the past year an employee of ODOT in accordance with the provisions of 74 OS §85.42. For any violation of this section, ODOT, at its sole discretion, shall have the right to terminate this contract and/or any approved task order without liability and/or to withhold future consulting contracts or task orders from CONTRACTOR or sub-contractor.

34.2) CONTRACTOR will familiarize itself with the rules and regulations promulgated by the Oklahoma Ethics Commission (Oklahoma Administrative Code Title 257 Chapters 20 and 23). Any violation of these regulations by CONTRACTOR will be grounds for immediate termination of this contract and without further compensation from ODOT. Any violation of this provision by an employee of ODOT shall immediately be reported, in writing, by CONTRACTOR to ODOT.

SECTION 35: COUNTERPARTS

This CONTRACT may be executed in counterparts, including by means of facsimile or electronic signature pages, any of which need not contain the signature of more than one party and each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the date first written above.

CONTRACTOR:

By: _____

State of Oklahoma)

County of Oklahoma)

Subscribed and sworn to before me this _____ day of _____, 2017.

Notary Public

My commission expires:

Commission No.:

OKLAHOMA DEPARTMENT OF TRANSPORTATION

RECOMMENDED FOR APPROVAL:

SAPM Division Engineer Date

Director of Capital Programs Date

APPROVED AS TO FORM AND LEGALITY:

General Counsel Date

FOR THE DEPARTMENT

Deputy Director Date