

ATTACHMENT C

OKLAHOMA AGENCY CONTRACT TERMS

1. Statewide Contract Type

- 1.1 The Contract is an Agency Contract for the Oklahoma Department of Transportation (“Department” or “Customer”).
- 1.2 The Contract is a firm, fixed price contract for definite delivery and quantity for the Acquisitions available under the Contract.
- 1.3 It is expressly understood that a Request for Proposal (RFP) does not commit the Customer 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.
- 1.4 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, 2020. Contract may be renewed for up to four additional one-year periods upon written consent by both parties and execution

2. Compensation

- 2.1 **The Customer agrees to pay and Supplier (“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 the Customer reserves the right to adjust any bid sheet quantities, at the discretion of the Department.

3. Orders and Addendums

- 3.1 The Supplier 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 is not limited to, site locations, type of sensor, hardware and software requirements, data format, and modifications to new construction requirements.

- 3.2 Unless mutually agreed in writing otherwise, orders shall be placed directly with the Supplier by issuance of written purchase orders or by Purchase Card by state agencies and other authorized entities. All orders are subject to the Contract terms and any order dated prior to Contract expiration shall be performed. Delivery to multiple destinations will be required.
- 3.3 Any ordering document shall be effective between Supplier and the Customer only and shall not be an Addendum to the Contract in its entirety or apply to any Acquisition by another Customer.
- 3.4 Additional terms added to a Contract Document by a Customer shall be effective if the additional terms do not conflict with the General Terms and are acceptable to Supplier. However, an Addendum to the Contract shall be signed by the Agency Procurement Division Manager or designee. Regarding information technology and telecommunications contracts, pursuant to 62 O.S., §34.11.1, the Chief Information Officer acts as the Information Technology and Telecommunications Purchasing Director.

3. Contract Termination

- 3.1 This Contract may be terminated prior to the expiration date as contained herein without further obligation to Supplier.
- 3.2 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. ODOT shall incur no liability to CONTRACTOR if termination is based on materials breach.
- 3.3 Following termination of contract, whether via early termination or natural expiration of the contract term, CONTRACTOR shall immediately transfer to ODOT, at no cost, full control of the hosted Tetryon server environment, including all data, administrative privileges, and any other data, logins, or other related elements.

4. Termination for Funding Insufficiency

- 4.1. In addition to Contract terms relating to termination due to insufficient funding, the Customer may terminate any purchase order or other payment mechanism if funds sufficient to pay obligations under the Contract are not appropriated or received from an intended

third-party funding source. The determination by the Customer of insufficient funding shall be accepted by, and shall be final and binding on, the Supplier.

5. Termination for Cause

5.1. In addition to Contract terms relating to termination for cause, the Customer may terminate its obligations, in whole or in part, to Supplier if it has provided Supplier with written notice of material breach and Supplier fails to cure such material breach within thirty (30) days of receipt of written notice. The Customer may also terminate a purchase order or other payment mechanism or Supplier's activities under the Contract immediately without a thirty (30) day written notice to Supplier, if Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements if such non-compliance relates or may relate to Supplier provision of products or services to the Customer or if Supplier's material breach is reasonably determined (i) to be an impediment to the function of the Customer and detrimental to the Customer, or (ii) when conditions preclude the thirty (30) day notice.

Actions which may be grounds for contract termination include, but are not limited to, the following:

- Failure to perform work in accordance with established time frames and schedules or to provide schedules as required.
- Failure to perform work in accordance with the Customer standards or as outlined in this contract.
- Supplier negligence in performing work which results in loss of data or endangering contract personnel and/or the general public.
- Failure to perform service call work within 2 days of notification by the Department.
- Providing false information to justify traffic data determined to be invalid by the Department.
- Failure to follow any specifications/instructions as outlined in this document.
- Failure to take prompt, responsive action to resolve Supplier

caused damages or conflicts with hardware and software.

6. Termination for Convenience

6.1. In addition to any termination for convenience provisions in the Contract, the Customer may terminate a purchase order or other payment mechanism for convenience if it is determined that termination is in the Department's Customer's best interest. Customer will be provided at least thirty (30) days' written notice of termination.

7. Mutual Agreement

7.1. By mutual agreement and consent of the Customer and Supplier this contract may be terminated.

8. Contract Modification

8.1. The Customer 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 is not limited to, site locations, type of sensor, hardware and software requirements.

9. Covenant Against Contingent Fees

9.1. The Supplier 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 the Supplier 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.

10. Hold Harmless Clause

10.1. CONTRACTOR shall indemnify and save 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 by or 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 attorney's 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.

11. Limitation of Liability

11.1. The parties mutually recognize that ODOT is a governmental entity (12§ 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.

12. Prior Understandings

12.1. 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.

13. Amendments or Modification of Contract

13.1. 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.

14. Governing Law and Venue

14.1. 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.

15. 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:

- 15.1) Workers' Compensation Insurance as required by the statutes of the State of Oklahoma, and adequate (but in no event less than \$100,000) Employer's Liability Insurance.
- 15.2) 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):
 - 15.2.1) 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.
 - 15.2.2) 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.
 - 15.2.3) Combined aggregate liability coverage shall not be less than \$2,000,000 (two million) for bodily injury, death, and property damage.
- 15.3) 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 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.
- 15.4) 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

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 16. Headings

- 16.1. 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 17. Assignment

- 17.1. 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 18. Notices

- 18.1. 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:
- 18.1. 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:

Jeremy Planteen
Strategic Asset & Performance Management
Division Oklahoma Department of
Transportation
200 NE 21st St Rm A5
Oklahoma City, OK
73105
Telephone: (405) 521-2729
[Email: jplanteen@odot.org](mailto:jplanteen@odot.org)

- 18.2. 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 19. Severability

- 19.1. 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 20. Payment of Claims

- 20.1. 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 21. Breach of Contract

- 21.1. 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 thereof. 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 22. Time

- 22.1. 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 performances by the other party hereto and may sustain substantial losses by reason of any failure of timely performance.

Section 23. Conflict of Interest

- 23.1. CONTRACTOR understands that neither CONTRACTOR nor any sub-contractor or any professionally certified member of CONTRACTOR 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 24. Employment of Former ODOT Employees - Ethics

- 24.1. 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.

- 24.2.** 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 25. Counterparts

- 25.1.** 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.