

MANDATORY FTA CLAUSES

1. NO GOVERNMENT OBLIGATION TO THIRD PARTIES.

- 1.1 CHEROKEE COUNTY and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to CHEROKEE COUNTY, Contractor, or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from the underlying Agreement.
- 1.2 Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.

- 2.1 Contractor acknowledges that the provisions of the Project Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Project Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Agreement. Upon execution of the underlying Agreement, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the FTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Project Fraud Civil Remedies Act of 1986 on Consultant to the extent the Federal Government deems appropriate.
- 2.2 Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under CHEROKEE COUNTY of 49 U.S.C. Chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(I) on Contractor, to the extent the Federal Government deems appropriate.
- 2.3 Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3. ACCESS TO RECORDS.

- 3.1 Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- 3.2 Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- 3.3 Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be

required.

- 3.4 Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

4. FEDERAL CHANGES. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Master Contract between Purchaser (CHEROKEE COUNTY) and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contractor.

5. CIVIL RIGHTS AND EQUAL OPPORTUNITY.

CHEROKEE COUNTY is an Equal Opportunity Employer. As such, CHEROKEE COUNTY agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, CHEROKEE COUNTY agrees to comply with the requirements of 49 U.S.C. § 5323(h)(3) by not using any Federal assistance awarded by FTA to support procurement using exclusionary or discriminatory specifications.

Under this Contractor, Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

- 5.1 Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, age, or disability. In addition, Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

- 5.2 Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying Agreement:

5.2.1 *Race, Color, Religion, National Origin, Sex* - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., and Executive Order 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

5.2.2 *Age* - In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA

may issue.

5.2.3 *Disabilities* - In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

5.3 Subcontracts. Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

6. DISADVANTAGED BUSINESS ENTERPRISES (DBE).

6.1 This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. All Proposers qualifying under the subject solicitation are encouraged to submit proposals. The requirements of this solicitation apply for all Proposers, including those who qualify as a DBE. CHEROKEE COUNTY's overall goal for DBE participation in federally funded contracts awarded during FFY'20-FFY'22 (October 1, 2020 and September 30, 2023) is 9.62%. **CHEROKEE COUNTY has established a separate DBE goal for this Project of _____%.**

6.2 Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as CHEROKEE COUNTY deems appropriate. Each subcontract Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

6.3 Contractor will be required to report its DBE participation obtained through race-neutral means throughout the Term of Agreement.

6.4 Contractor is required to pay its subcontractor(s) performing work related to this Agreement for satisfactory performance of that work no later than fifteen (15) calendar days after Contractor's receipt of payment for that work from CHEROKEE COUNTY. In addition, Contractor may not hold retainage from its subcontractors.

6.5 Contractor must promptly notify CHEROKEE COUNTY whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of CHEROKEE COUNTY.

7. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS. The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, as may be amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any CHEROKEE COUNTY requests which would cause CHEROKEE COUNTY to be in violation of the FTA terms and conditions.

8. PROMPT PAYMENT OF SUBCONTRACTORS.

- 8.1 Consultant shall pay its subcontractors for satisfactory performance of their contracts no later than fifteen (15) calendar days from receipt of each payment received by Consultant from CHEROKEE COUNTY.
- 8.2 Failure to comply with the terms and conditions of this Article shall constitute a breach of contract and further payments for any work performed may be withheld until such time as corrective action is taken. Consultant shall be responsible for any corrective action required by CHEROKEE COUNTY at the time of final inspection. If Consultant fails to take corrective action, CHEROKEE COUNTY reserves the right to terminate the contract.
- 8.3 Any delay or postponement of payment among Consultant and its subcontractors may take place only for good cause, with prior written approval from CHEROKEE COUNTY.
- 8.4 All subcontract agreements between Consultant and subcontractors shall be in writing and shall contain all of the federal requirements and pertinent provisions of the prime contract.
- 8.5 Consultant is required to return any and all retainage payments to its subcontractors within thirty (30) calendar days after the subcontractor's work related to this Agreement is satisfactorily completed. CHEROKEE COUNTY discourages Consultant from withholding retainage from its subcontractors.

9. SUSPENSION, DEBARMENT, INELIGIBILITY AND VOLUNTARY EXCLUSION.

- 9.1 Contractor shall comply and comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:
 - a) Debarred from participation in any federally assisted Award;
 - b) Suspended from participation in any federally assisted Award;
 - c) Proposed for debarment from participation in any federally assisted Award;
 - d) Declared ineligible to participate in any federally assisted Award;
 - e) Voluntarily excluded from participation in any federally assisted Award; or
 - f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the CHEROKEE COUNTY. If it is later determined by CHEROKEE COUNTY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the CHEROKEE COUNTY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- 9.2 Contractor is required to comply with 2 CFR Part 180 and 2 CFR Part 1200 and must include the requirement to comply with Subpart C of 2 CFR 180 as supplemented by 2 CFR Part 1200 in any lower tier covered transaction.

10. ENERGY CONSERVATION. Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

11. LOBBYING.

11.1 Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Consultants who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying" with their bid. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

12. CLEAN AIR REQUIREMENTS. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. Contractor agrees to report each violation to CHEROKEE COUNTY and understands and agrees that CHEROKEE COUNTY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

13. CLEAN WATER REQUIREMENTS. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. Contractor agrees to report each violation to CHEROKEE COUNTY and understands and agrees that CHEROKEE COUNTY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

14. RECYCLED PRODUCTS. The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

15. FLY AMERICA. Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their vendors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

16. COVENANT AGAINST CONTINGENT FEES. Contractor shall comply with all relevant requirements of all Federal, State, and local laws. Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, CHEROKEE COUNTY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or

consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

17. NATIONAL ITS CONFORMANCE CLAUSE. To the extent applicable, Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and comply with FTA Notice, “FTA National ITS Architecture Policy on Transit Projects” 66 FR 1455 et seq., January 8, 2001, and any subsequent further implementing directives, except to the extent FTA determines otherwise in writing.”

18. ADA ACCESS. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

19. TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. Pursuant to 2 CFR 200.216 the Contractor shall not procure or obtain, enter into a contract, or extend or renew a contract to procure or obtain, equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities) as described in Public Law 115-232, Section 889.

19.1 For the purposes of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment provided by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company (or any subsidiary or affiliate of such entities).

19.2 Telecommunications or video surveillance services provided by such entities using such equipment.

19.3 Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

20. NOTIFICATION TO FTA; DISPUTES, BREACHES, DEFAULTS AND LITIGATION.

20.1 Contractor agrees that it will promptly notify the CHEROKEE COUNTY, the FTA Chief Counsel, and FTA Regional Counsel in which the CHEROKEE COUNTY is located of any current or prospective legal matter that may affect the Federal Government. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or legal disagreement in any forum for any reason. Matters that may affect the federal government include, but are not limited to, the Federal Government’s interest in the Award, the accompanying underlying agreement, and any amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.

20.2 *Additional Notice to U.S. DOT Inspector General.* The Contractor must promptly notify the U.S. DOT Inspector General in addition to the CHEROKEE COUNTY, the FTA Chief Counsel, and FTA Regional Counsel for the Region in which the CHEROKEE COUNTY is located, if the Contractor has knowledge of potential fraud, waste, or abuse occurring on a project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act 32 U.S.C. § 3729, et seq., or has or may have committed a crime or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the project subject to this Agreement or another agreement between the CHEROKEE COUNTY and Contractor, or an agreement

involving a principal, officer, employee, agent, or Third Party Participant of the CHEROKEE COUNTY. It also applies to subcontractors of any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this paragraph, "promptly" means to refer information without delay and without change.

20.3 Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA.

21. SOLID WASTE DISPOSAL. Pursuant to 2 CFR 200.323, the Contractor agrees to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

AGREED TO BY:

Contractor: _____

CHEROKEE COUNTY Contract No. _____

By: _____

Name: _____

Title: _____