



**SUNSET EMPIRE TRANSPORTATION DISTRICT**  
900 Marine Drive Astoria, Oregon 97103

---

## **Request for Proposals**

**Sunset Empire Transportation District**  
**Northwest Oregon Transit Feasibility Study**

**This Project is Funded by Federal Transit  
Administration 5305 Funds**

*Sunset Empire Transportation District is issuing this  
Request for Proposal and will be executing the final  
contract with the selected consultant.*

Jeff Hazen  
Executive Director

### **Request for Proposal Opening**

Date: February 1, 2017

Place: Sunset Empire Transportation District  
900 Marine Dr.  
Astoria, OR 97103

Time: 4:00 PM

## **SCHEDULE**

<b>Request for Proposal issued</b>	<b>December 23, 2016</b>
<b>Last date for specifications protest</b>	<b>SEVEN (7) days prior to RFP Opening</b>
<b>RFP opening</b>	<b>February 1, 2017 4:00 pm</b>
<b>RFP award date</b>	<b>February 23, 2017 9:00 am</b>
<b>Last date to protest award</b>	<b>SEVEN (7) days from the Intent to Award</b>

## **TABLE OF CONTENTS**

<b>SECTION 1</b>	<b>Request for Proposal</b>
<b>SECTION 2</b>	<b>Instructions to Proposers</b>
<b>SECTION 3</b>	<b>Scope of Work</b>
<b>SECTION 4</b>	<b>Proposal Contents and Response</b>
<b>SECTION 5</b>	<b>Evaluation and Selection Criteria</b>
<b>SECTION 6</b>	<b>Required Forms and Certifications</b>
<b>SECTION 7</b>	<b>Federal Transit Administration Requirements</b>
<b>SECTION 8</b>	<b>Sample Contract</b>
<b>SECTION 9</b>	<b>Insurance Certificates (to be submitted prior to contract execution)</b>

**SECTION 1**  
**REQUEST FOR PROPOSALS**

Notice hereby given that the Sunset Empire Transportation District (SETD), will receive sealed proposals per specifications **until 4:00 pm, February 1, 2017** to:

**Northwest Oregon Transit Feasibility Study**

No proposals will be received or considered after that time.

SETD, also referred to as the “District” is responsible for executing the contract resulting from this request, and for payments made under this contract.

SETD is seeking a consultant to study the potential for consolidation of two transit agencies. The consultant will provide strategic and technical information about coordinated transit services and administration in Clatsop and Columbia Counties, Oregon. The Project analyzes revenues, costs, business procedures and public transportation services under illustrative scenarios of public transportation service delivery and administration alternatives in the two northwest Oregon counties.

SETD provides fixed route and demand response public transportation service in Clatsop County with connections to Columbia County and Tillamook County. Columbia County (dba. Columbia County Rider) provides fixed route and demand response public transportation service in Columbia County with connections to Longview, Washington; Portland, Oregon; and Hillsboro, Oregon. SETD is the lead agency for this study.

Proposal packets are available from 8:00 am to 5:00 pm Monday through Friday, by contacting Jeff Hazen at [jeff@ridethebus.org](mailto:jeff@ridethebus.org) for an electronic copy, or at the Astoria Transit Center at 900 Marine Dr. Astoria, OR 97103

SETD reserves the right to reject any and all proposals not in compliance with all prescribed public bidding procedures and requirements, and may reject for good cause any and all proposals upon the finding that it is in the public interest to do so and to waive any and all informalities in the public interest. In the award of the contract, SETD will consider the element of time, will accept the proposal or proposals which in their estimation will best serve the interests of SETD and will reserve the right to award the contract to the contractor whose proposal shall be best for the public good.

If you have any questions, please email Jeff Hazen at [jeff@ridethebus.org](mailto:jeff@ridethebus.org) or call 503-861-5399.

**SECTION 2**  
**INSTRUCTIONS TO PROPOSERS**

**2.1 GENERAL**

Proposers shall study carefully and conform to these “Instructions to Proposers” so that their responses will be regular, complete and acceptable.

**2.2 RESPONSES**

All responses shall be legibly written in ink or typed and comply in all regards with the requirements of this solicitation.

Responses carrying orders or qualifications may be rejected as irregular.

All responses shall be signed in ink in the blank spaces provided herein (Section 6). If the response is made by a firm or partnership, the name and address of the firm or partnership shall be shown, together with the names and addresses of the members. If the response is made by a corporation, it shall be signed in the name of such corporation by an official who is authorized to bind the contractor. The responses will be considered by SETD to be submitted in confidence; proposers will be notified if a request is made for public disclosure of the response prior to completion of the evaluation and negotiation process.

**2.3 SUBMISSION OF RESPONSES**

All responses must be submitted in a sealed envelope bearing on the outside the **name and address of the contractor, the project title, due date and opening time**. Deliveries are to be sent to:

Sunset Empire Transportation District  
Executive Director  
900 Marine Dr.  
Astoria, OR 97103

If the response is forwarded by mail, the sealed envelope containing the response and marked as directed above must be enclosed in another envelope.

**2.4 RECEIPT AND OPENING OF RESPONSES**

Responses shall be submitted prior to the time fixed in the advertisement for responses. Responses received after the time so designated will be considered late responses and will be returned unopened.

No responsibility will be attached to any official of SETD for the premature opening of, or the failure to open, a response not properly addressed and identified.

The responses will be considered by SETD to have been submitted in confidence. At the time fixed for the opening, the responses shall be opened to avoid disclosure of contents to competing offerors, the public and the media during the process of evaluation and negotiation. A register of responses shall be prepared and shall be open for public inspection after contract award along with the contents of the responses. Once the closing time and date arrive, the names of the offerors submitting responses are read publicly. No other information will be disclosed during the evaluation and negotiation process unless required by law.

## **2.5 WITHDRAWAL OF RESPONSES**

Responses may be withdrawn by written or telegraphic request received from the contractors prior to the time fixed for opening. Negligence on the part of the vendor in preparing the response confers no right for the withdrawal of the response after it has been opened. The response will be irrevocable until SETD:

**2.5.a** Specifically rejects the response, or;

**2.5.b** Awards a contract and said contract is properly executed.

Contractors' responses shall be valid for at least ONE-HUNDRED TWENTY (120) days.

## **2.6 MODIFICATION**

Any contractor may modify his/her response by registered communication at any time prior to the scheduled closing time for receipt of responses, provided such communication is received prior to the closing time. The communication should not reveal the response price but should provide that the final price or terms will not be known until the sealed response is opened.

## **2.7 ACCEPTANCE OR REJECTION OF REPONSES**

In the award of the contract, SETD will consider the element of time, will accept the response which in their estimation will best serve the interest of SETD, and reserves the right to award the contract to the contractor whose response shall be best for the public good. SETD reserves the right to accept or reject any or all responses. Without limiting the generality of the foregoing, any response which is incomplete, obscure or irregular may be rejected. Only one response will be accepted from any one firm or association. Any evidence of collusion between proposers may constitute a cause for rejection of any responses so affected.

## **2.8 ADDENDA AND INTERPRETATIONS**

No oral interpretations shall be made to any proposer as to the meaning of any of the contract documents or be effective to modify any of the provisions of the contract documents. Every request for an interpretation shall be made in writing and addressed to the Sunset Empire Transportation District Executive Director and, to be given consideration, shall be received at least SEVEN (7) days prior to the date set for the opening of responses. All such interpretations will be mailed to all prospective proposers (at the respective address furnished for such purposes) not later than three (3) days prior to the date fixed for the opening of responses. Failure of any

proposer to receive any such addendum or interpretation shall not relieve such proposer from any obligation under this response as submitted. All addenda so issued shall become as much a part of the contract documents as if bound herein.

## **2.9 NONDISCRIMINATION**

The successful contractor agrees that, in performing the work called for by this response and in securing and supplying materials, contractor will not discriminate against any person based on race, color, religious creed, political ideas, sex, gender identification, age, marital status, physical or mental handicap, national origin or ancestry unless the reasonable demands of employment are such that they cannot be met by a person with a particular physical or mental handicap.

## **2.10 PREPARATION OF OFFERS**

Proposers are expected to examine the specifications, schedules and all instructions. Each proposer shall furnish the information required by the solicitation. Proposers shall sign the solicitation and print or type their name on other submitted exhibits and each continuation sheet thereof on which an entry is made. Erasures or other changes shall be initialed by the person signing the offer. Responses signed by an agent are to be accompanied by evidence of his/her authority unless such evidence has been previously furnished.

## **2.11 SPECIFICATIONS LIMITING COMPETITION**

Proposers may comment on any specification or requirement contained within this RFP, which they feel limits competition in the selection of a proposer to perform the services herein defined. Protests shall detail the reasons and any proposed changes to the specifications. Such comments shall be formal in writing, and are to be addressed to:

Sunset Empire Transportation District  
Executive Director  
Specification Protest, Northwest Oregon Transit Feasibility Study  
900 Marine Dr.  
Astoria, OR 97103

Such comments shall be submitted to SETD no later than SEVEN (7) days prior to the opening date. No comments will be accepted after that time.

## **2.12 EXCEPTIONS**

Responding vendors taking exception to any requirement of this RFP Document shall indicate such exception(s) on a separate page of their Proposal response.

Proposers failing to indicate any exceptions shall be interpreted as the responding vendor intends to fully comply with all RFP requirement(s) as written and subsequent agreement terms as stated. Explanation must be made for each item for which exception is taken giving in detail the extent of the exception and the reason(s) for which it is taken in order for consideration to be given to the vendor.

### **2.13 EMPLOYEES NOT TO BENEFIT**

No employee or elected official of Sunset Empire Transportation District shall be admitted to any share or part of this contract or to any benefit that may arise there from; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

### **2.14 NOTICE OF INTENT TO AWARD**

The notice of intent to award of the contract by SETD shall constitute a final decision of the District's intent to award the contract if no written protest of the award is filed with the SETD Executive Director within SEVEN (7) calendar days of the notice of intent to award. If a protest is timely filed, the award is a final decision of SETD's intent to award only upon issuance of a written decision denying the protest and affirming the award. The award and any written decision denying protest shall be sent to every proposer who provided an address.

Right to Protest: Any actual proposer who is adversely affected or aggrieved by SETD's award of the contract to another proposer on the same solicitation shall have SEVEN (7) calendar days after notice of intent to award has been issued to submit to the SETD Executive Director a written protest of the award. The written protest shall specify the grounds upon which the protest is based. To be an adversely affected or aggrieved proposer with a right to submit a written protest, a proposer must be next in line for award, i.e. the protester must claim that all higher rated proposers are ineligible for award because they are non-responsive or non-responsible. SETD will not entertain protests submitted after the time period established in this rule.

### **2.15 REIMBURSEMENT**

There is no expressed or implied obligation for SETD to reimburse responding firms for any expenses incurred in preparing responses in response to this request.

### **2.16 DEFAULT**

SETD, may, subject to the provisions of paragraph (4) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances.

- 2.16.a** If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or
- 2.16.b** If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failures within a period of ten (10) days (or such longer period as SETD may authorize in writing) after receipt of notice from SETD specifying such failure.
- 2.16.c** In the event SETD terminates this contract in whole, or in part, as provided in paragraph (2) above of this clause, SETD may procure, upon such terms and in

such manner as SETD may deem appropriate, supplies or services similar to those terminated, and the Contractor shall be liable to SETD for any excess costs for such similar supplies or services; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

**2.16.d** Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of SETD in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather; but, in every case, the failure to perform must be beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

**2.16.e** The rights and remedies of SETD provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

**2.16.f** As used in paragraph (2.16.d) of this clause, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.

## **2.17 PROPOSER QUALIFICATIONS**

If the contract is for a public work subject to ORS 279C.800 through ORS 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 et seq.), no bid will be received or considered by SETD unless the bid contains a statement by the bidder as a part of its bid that the provisions of ORS 279C.800 through ORS 279C.870 or the Davis Bacon Act (40 U>S>C> 3141 et seq.) to be complied with.

## **2.18 PAYMENTS**

The contractor shall be paid, upon the submission of proper instruments as outlined below, the prices stipulated in the response for services rendered and accepted, less deductions, if any, as provided.

**2.18.a** No claims will be considered for payment until the services are rendered with the exception of Solicitations or Purchase Orders that designate otherwise.

**2.18.b** Payments will be made monthly, or as agreed, within 30 days following receipt of any claims supported by an invoice and a duplicate.

**2.18.c** For a period of one year after payment of any claim, SETD reserves the right, under this contract, to recover any damages due as specified in the Clause of this contract entitled "Default".

## **2.19 TAXES**

Taxes, whether State or Federal, shall not be included in proposal prices. SETD is generally exempted from Federal taxes, specifically, but not limited to excise and transportation taxes.

## **2.20 LITIGATION**

In the event litigation is necessary the Contractor agrees that such will be conducted in the Courts of Clatsop County and/or the State of Oregon.

## **2.21 SUBCONTRACTORS**

Contractor shall not use subcontractors to perform the Work unless specifically pre-authorized in writing to do so by SETD. Contractor represents that any employees assigned to perform the Work, and any authorized subcontractors performing the Work, are fully qualified to perform the tasks assigned to them, and shall perform the work in a competent and professional manner. Contractor shall provide, if requested, any documents relating to subcontractor's qualifications to perform required Work.

## **2.22 SETD CLARIFICATION OF PROPOSALS**

SETD reserves the right to obtain clarification of any point in a firm's proposal or to obtain additional information necessary to properly evaluate a particular proposal. Failure of a proposer to respond to such a request for additional information of clarification could result in rejection of the firms' proposal.

## **2.23 OWNERSHIP**

All work products of the Contractor which result from this contract ("the work products"), except material previously and mutually identified as confidential, shall be provided to SETD upon request and shall be considered the exclusive property of SETD. In addition, if any of the work products contain intellectual property of the Contractor that is or could be protected by federal copyright, patent, or trademark laws, or state trade secret laws, Contractor hereby grants SETD a perpetual, royalty-free, fully paid-up, nonexclusive and irrevocable license to copy, reproduce, perform, dispose of, use and re-use, in whole or in part, and to authorize others to do so for SETD business, all such work products, including but not limited to: databases, templates, file formats, scripts, links, procedures, materials, training manuals and other training materials, specially created key commands, and any other information, designs, plans, or works provided or delivered to SETD or produced.

## **SECTION 3**

### **SCOPE OF WORK**

#### **3.1 BACKGROUND**

The Sunset Empire Transportation District (SETD) was formed by the Clatsop County Board of Commissioners on March 24, 1993. The District has been providing transportation in Clatsop County ever since and is located in the northwest corner of the state of Oregon along the coast. SETD encompasses the entire county covering approximately 840 square miles and serving over 37,000 citizens. The establishment of a tax base was approved by the voters on May 21, 1996 and the rate is permanently set at 16.2 cents per \$1,000.

In 2003, the Columbia County Commissioners learned that the private non-profit Colco would not be able to continue offering public transportation service due to financial constraints. The Board of Commissioners, knowing the severe negative impact this would have on the communities of the County, made public transit a County department known as Columbia County Rider (CC Rider) to continue public transportation in Columbia County. During the past year, efforts to create a dedicated funding source for transit and to create a Special District have not been successful with the voters in Columbia County.

The lack of a dedicated transit funding source has been problematic for CC Rider. It hampers their ability to plan for future service enhancements. Many of the grants they receive have a match component to them and the County is not always able to provide matching funds due to their challenging financial situation.

Both SETD and CC Rider are members of the Northwest Oregon Transit Alliance (NWOTA) who's purpose is to provide connections between its five member agencies to make public transportation a viable option for riders who want to travel from the Willamette Valley to the coast. SETD and CC Rider jointly operate the Lower Columbia Connector Route on Highway 30. This is an 5311(f) Intercity route between Portland and Astoria with connections to Longview, WA.

#### **3.2 CONSULTANT SCOPE OF WORK**

The selected consultant shall develop and deliver a final report determining if consolidation of both transit systems is feasible and identify any other alternatives. The report will include detailed financial history and projections under all Project alternatives. Options are to include:

- Consolidation of both agencies into one Special District
- County Service District
- Two separate Special Districts

### **Task 1 - Project management**

- In collaboration with the Project partners, Consultant shall develop project vision, goals and measures by which the study will be deemed successful, and guide the project to meet or exceed those measures.
- Facilitate and document weekly project management team meetings
- Maintain project work plan with project goals, tasks, schedules and assignments

### **Task 2 – Project outreach and communications**

- Facilitate and document project advisory committee meetings
- Prepare materials, facilitate and staff a range of public information events or meetings (e.g. boards of commissioners, focus groups, transportation advisory committees, city councils). Includes preparation of materials and talking points for local agency staff.
- Prepare project summaries, news, website content and other public information as needed.
- Key stakeholders include but are not limited to:
  - Columbia County Rider Transit Administrator
  - Columbia County Commissioner
  - Sunset Empire Transportation District Executive Director (Project Manager)
  - Sunset Empire Transportation District Commissioner
  - ODOT Regional Transit Coordinator
  - ODOT Region 2 Area 1 Planner and Area Manager
  - Oregon Special Districts Association

### **Task 3 – Existing conditions or agency profile**

- Assess and compare transit agency organizational structure, mission and goals, and local stakeholder or decision-making processes.
- Assess and compare agency transportation services, assets and major projects requiring time and financial commitments.
- Assess and compare agency budgets and financial commitments. Show at least five years past and future budget. Project future budget using past operation and capital expenditures and revenues, and reasonable assumptions of future financial commitments (e.g., vehicle replacements, loan payments, labor).
- Incorporate findings and analysis from 2016 SETD Long Range Comprehensive Transportation Plan.
- Document transit district and program history, including formation and past attempts to create transit tax in Columbia County.

#### **Task 4 – Case studies**

- Briefly assess at least five transit agencies, districts or programs similar in size and scope to Columbia County and SETD.
- Evaluate case studies for further research and evaluation for consolidation models or alternatives most applicable to Columbia County and SETD.
- Select three consolidation or expansion models most applicable to Columbia County and SETD in terms of political environment, operating and services environment, funding and budget, and program goals.

#### **Task 5 – Financial assessment**

- Develop assumptions and assess expected results for three consolidation alternatives. Use historical financial and service data, and demographic and socioeconomic trends used in recent county and state plans to project expected district revenues and expenditures.
- Assess the expected financial implications for both SETD and Columbia County.
- Help readers assess alternatives under different possible futures. This could be providing expected outcomes under at least two future scenarios or conditions (e.g., high growth, medium growth) for each alternative.

#### **Task 6 – Implementation needs**

- Describe potential resources, timeframe, stakeholders and other requirements to implement and support each of the consolidation alternatives.
- Recommend actions for local agencies to select and communicate next steps to implement a given consolidation alternative. Describe potential resources, timeframe, stakeholders and other requirements to take these actions.

#### **Task 7 - Deliverables**

- Project workplan: Consultant shall describe project scope and schedule. Consultant shall provide communications and outreach plan.
- Consultant shall describe work completed in each task above, including detailed financial history and projections under Project alternatives.

### **3.3 PROGRESS REPORTS**

Consultant shall provide monthly progress reports to the Project Manager. The progress reports shall include reporting period activities and deliverables, expected activities and deliverables (1-3 months ahead), schedule status and any critical issues affecting the Project.

### **3.4 TECHNICAL ASSISTANCE**

The Northwest Oregon Transit Feasibility Study is funded by the Federal Transit Administration 5305 funding (49 U.S.C. 5305) and administered by the Oregon Department of Transportation Rail and Public Transit Division. Technical assistance is available from the ODOT Rail and

Public Transit Division for questions regarding federal and state operations, management, and capital restrictions.

### **3.5 EXPECTATIONS**

Work cooperatively with SETD and Columbia County staff, specifically the Project Manager, Jeff Hazen and Columbia County Transit Administrator, Michael Ray.

### **3.6 TIMELINE**

The project must be completed no later than November 30, 2017

### **3.7 COMPENSATION**

Budget for the Project is not to exceed \$30,000.

**SECTION 4**  
**PROPOSAL CONTENTS AND RESPONSE**

**4.1 SUBMISSION INSTRUCTIONS**

Vendors must observe submission instructions and be advised as follows:

- 4.1.a** Proposals must be submitted in a sealed envelope bearing on the outside the name and address of the vendor, the name of the project for which the proposal is submitted and the time and date of the scheduled opening.
- 4.1.b** If the proposal is forwarded by mail, the sealed envelope containing the proposal and marked as directed above, must be enclosed in another envelope addressed to the Executive Director, Sunset Empire Transportation District, 900 Marine Dr., Astoria, OR 97103
- 4.1.c** No proposal will be accepted after 4:00 PM, February 1, 2017.
- 4.1.d** SEVEN (7) copies of the proposal response are to be supplied. One set of Signed Originals shall be included and clearly identified as such.
- 4.1.e** Sunset Empire Transportation District reserves the right to solicit additional information or proposal clarification from the vendors, or any one vendor, should SETD deem such information necessary.
- 4.1.f** All questions regarding the request for proposal process should be directed to Jeff Hazen, [jeff@ridethebus.org](mailto:jeff@ridethebus.org) , during regular business hours.
- 4.1.g** If a vendor is unable or unwilling to meet any SETD RFP requirement, an explicit statement to that effect must be made in the proposal as an exception.
- 4.1.h** This request for proposals and all supplemental information in response to this RFP will be a binding part of the final contract entered by the selected vendor and Sunset Empire Transportation District.
- 4.1.i** Any Proposer supplied material that may be considered confidential, to the extent allowed under Oregon Public Records Law, must be so marked with statutory exemption asserted.
- 4.1.j** SETD reserves the right to reject any or all proposals, and to accept the proposal deemed most advantageous to SETD.
- 4.1.k** The CONTRACTOR must supply copies of all contracts SETD will be expected to sign with the proposal.
- 4.1.l** Information should illustrate the quality of the CONTRACTOR'S work.
- 4.1.m** SETD encourages use of recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this

document. Responses shall be submitted on recycled paper with a minimum content of 30% post-consumer waste. Responses shall be double-sided and are to be stapled; the page numbers are to be consecutive and marked on each page. No wax page dividers or non-recyclable materials should be included in the proposal.

**4.1.n** Proposal responses are to be submitted in two separate sealed envelopes:

- One clearly marked “Technical Component” containing Proposer’s response to criteria 5.1,5.2 and 5.3.
- One clearly marked “Financial Component” containing Proposer’s response to criteria 5.4.

**4.1.o** Provide the following information in the order is which it appears below.

- The proposal must describe the qualifications of the proposer, including the qualifications of key staff, a project understanding and approach and the availability of resources to perform the required activities within the given timetables.

## **4.2 PROJECT UNDERSTANDING AND APPROACH**

This criterion relates to the proposer’s understanding of SETD and Columbia County Rider and the methodology and course of action used to develop the final report.

The issue is whether the Consultant has a clear and concise understanding of the project components based on existing information. Elements to be considered include the following:

- The proposer’s understanding of the District’s objectives as demonstrated by the response to the RFP.
- The proposer’s awareness of key issues and approach to proactively addressing them as part of the process.

Please include the following as a part of your response:

1. Familiarity with interregional transit services and the operational, financial and management or planning service needs.
2. Ability to organize and clearly communicate complex organizational goals and partnership strategies
3. Understanding of the unique challenges of Oregon public transit systems operating in rural/recreational regions, in general, and in the vicinity of Clatsop and Columbia Counties in particular.
4. Recommended approach to developing the project as described in Section 3 of this RFP. The schedule should clearly illustrate the proposer’s ability to perform the work described in the proposal with the staff included in the proposal.

## **4.3 PROPOSER'S QUALIFICATIONS AND EXPERIENCE**

### **Proposer Experience**

The successful proposer must demonstrate their qualification through past experience. Please share your experience in the following:

- Public transit planning and analysis
- Management and strategic planning.
- System change methodology and implementation.
- Public involvement process and the presentation of complex ideas to a general audience.
- Consensus building facilitation with governing bodies.

### **References**

- Provide three references of previous relevant projects.
- Describe the outcome of these projects. Detail issues that arose during the project and how they were dealt with.

### **Key Staff**

- Please detail the qualifications of key staff that will be assigned this project and their experience on projects similar to the project. Please include resumes of all key staff.

### **Project Costs**

- Project budget should be organized by task and show expected staff, labor rates by staff, hours, overhead and profit. Please provide an hourly rate for staff working on the project and estimate the amount of time each will be working on this Project and expected travel expenses.

**SECTION 5**  
**EVALUATION AND SELECTION CRITERIA**

An evaluation committee will review all proposals. Proposals may be subjected to a two-phase evaluation process.

In Phase One, points will be awarded based upon the Proposal Response in the format listed below. The Consultant may be selected based upon the results of Phase One.

Phase two, if deemed necessary by the evaluation committee, will consist of the highest scoring Proposers invited to an oral evaluation with the evaluation committee. The same criteria used to evaluate the written responses will be used to evaluate the finalist during the oral evaluation. No additions, deletions or substitutions may be made to proposals during the oral evaluations that cannot be viewed as clarification. Each evaluator will independently assign a score to each evaluation criteria during the oral interview.

The scores resulting from the interview and the written evaluation will be summed resulting in a final score. The award will be given to the highest scoring proper(s).

<b>Category</b>	<b>Points Available</b>
5.1 Project Understanding and Approach	0-50
5.2 Relevant Experience	0-20
5.3 References	0-10
5.4 Cost	0-20
<b>Available Points</b>	<b>0-100</b>

Once a selection has been made, SETD will enter contract negotiations. During negotiation SETD may require any additional information it deems necessary to clarify the approach and understanding of the requested services. Any changes agreed upon during contract negotiations will become part of the final contract. The negotiations will identify a level of work and associated fee that best represents the efforts required. If SETD is unable to come to terms with the highest scoring proposer, discussions shall be terminated and negotiations will begin with the next highest scoring proposer. SETD reserves the right to reject any and all proposals.

SETD will accept the proposal or proposals which in their estimation will best serve the interests of SETD and will reserve the right to award the contract to the consultant whose proposal shall be best for the public good.

## **SECTION 6**

### **REQUIRED FORMS AND CERTIFICATIONS**

**THE FOLLOWING FORMS MUST BE COMPLETED AND RETURNED WITH THE PROPOSAL RESPONSE**

- **Proposal Response**
- **Affidavit of Non-Collusion**
- **Congressional Lobbying Certificate**
- **Certificate Regarding Ineligible Contractors**
- **Conflict of Interest (COI) Disclosure**

**FAILURE TO COMPLETE AND RETURN THESE FORMS WILL MAKE THE OFFEROR INELIGIBLE FOR CONTRACT AWARD.**

## PROPOSAL RESPONSE

Submitted by: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

Phone number: \_\_\_\_\_ Fax number: \_\_\_\_\_

The undersigned, through the formal submittal of this proposal response, declares that he/she has examined all related documents and read the instruction and conditions, and hereby proposes to conduct a **Northwest Oregon Transit Feasibility Study** for SETD as specified, in accordance with the proposal documents herein, for the price set forth in the Response submittal attached hereto, and forming a part of this Proposal.

The OFFEROR, by his signature below, hereby represents as follows:

(a) That no Commissioner, officer, agency or employee of Sunset Empire Transportation District or SETD is personally interested directly or indirectly in this contract or the compensation to be paid hereunder, and that no representation, statement or statements, oral or in writing, of SETD, its Commissioners, officers, agents, or employees had induced him/her to enter into this contract and the papers made a part hereof by its terms;

(b) The Proposer and each person signing on behalf of any proposer certifies, in the case of a joint proposal, each party thereto, certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:

1. The prices in the proposal have been arrived at independently, without collusion, consultation, communication, or agreement for the purpose of restraining competition as to any matter relating to such prices with any other proposer or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in the proposal have not been knowingly disclosed by the proposer prior to the proposal deadline, either directly or indirectly, to any other proposer or competitor;
3. No attempt has been made nor will be made by the proposer to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restraining trade;

(c) The proposer fully understands and submits its proposal with the specific knowledge that:

1. The selected proposal must be approved by SETD and its Board of Commissioners.

2. This offer to conduct a **Northwest Oregon Transit Feasibility Study**, will remain in effect at the prices proposed for a period of not less than 120 calendar days from the date that proposals are due, and that this offer may not be withdrawn or modified during that time.
- (d) That this proposal is made without connection with any person, firm or corporation making a bid for the same material, and is in all respects, fair and without collusion or fraud.
- (e) Vendors shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.
- (f) That the Proposer, to the best of the Proposers knowledge, is not in violation of any Oregon Tax Laws. For purposes of this certification Oregon Tax Law means a State tax imposed by ORS 320.005 to 320.150 and 403.200 to 402.250. ORS Chapters 118,314,316,317,318,321, 323 and elderly rental assistance program under ORS 310.630 to 310.706 or any local taxes administered by the Department of Revenue under ORS 305.620.
- (g) That the Proposer accepts all terms and conditions contained in this RFP and that the RFP and the Proposal Response, and any modifications, will be made part of the contract documents. It is understood that all proposals will become part of the public file on this matter. The TCTD reserves the right to reject any or all proposals.
- (h) That the proposer holds current licenses that businesses or services professionals operating in this state must hold in order to undertake or perform the work specified in these contract documents.
- (i) That the proposer is covered by liability insurance and other insurance in the amount(s) required by the solicitation.
- (j) That the proposer qualifies as a carrier insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.
- (k) That the Proposer is legally qualified to contract with Sunset Empire Transportation District.
- (l) That the Proposer has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation or national origin. Nor has proposer or will proposer discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055, or a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225.
- (m) The proposer agrees to accept as full payment for the services specified herein, the amount as shown in his/her proposal.

(n) I, the undersigned agree to comply with the provisions of ORS 279.350 through ORS 279.375 or Davis Bacon Act (40 U.S.C. 276a) as applicable.

The names of the principal officers of the corporation submitting this Proposal, or of the partnership, or of all persons interested in this Proposal as principals are as follows:

_____	_____
Name	Title
_____	_____
Name	Title
_____	_____
Name	Title

(If Sole Proprietor or Partnership)

In witness, hereto, the undersigned has set his (its) hand this \_\_\_\_\_ day  
of \_\_\_\_\_, 2017

_____	_____
Name of Firm	Name of Proposer

(If Corporation)

In witness, whereof the undersigned corporation has caused this instrument to be executed by its duly authorized officers this \_\_\_\_\_ day of \_\_\_\_\_, 2017

\_\_\_\_\_  
Name of Corporation

\_\_\_\_\_  
By

\_\_\_\_\_  
Title

CONTRACT MANAGER:

Name \_\_\_\_\_

Title: \_\_\_\_\_

Telephone number: \_\_\_\_\_

Email address: \_\_\_\_\_

**AFFIDAVIT OF NON-COLLUSION**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I state that I am \_\_\_\_\_ (title) of \_\_\_\_\_ (name of firm) and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors, and officers. I am the person responsible in my firm for the price(s) and the amount of this Offer.

I state that:

- (1) The price(s) and amount of this Offer have been arrived at independently and without consultation, communication or agreement with any other contractor, Proposer or potential Proposer, except as disclosed on the attached document.
- (2) That neither the price(s) nor the amount of this Offer, and neither the approximate price(s) nor approximate amount of this Offer, have been disclosed to any other firm or person who is a Proposer or potential Proposer, and they will not be disclosed before Solicitation opening.
- (3) No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit an Offer higher than this Offer, or to submit any intentionally high or noncompetitive Offer or other form of complementary Offer.
- (4) The Offer of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive Offer.
- (5) \_\_\_\_\_ (name of firm), its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted of or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as described in the attached document.

I state that \_\_\_\_\_ (name of firm) understands and acknowledges that the above representations are material and important, and will be relied on by SETD in awarding the contract(s) for which this Offer is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from SETD of the true facts relating to the submission of Offers for this contract.

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Name of Company/Position)

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**CONGRESSIONAL LOBBYING CERTIFICATE**

The undersigned certifies, to the best of his or her knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of ANY Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with THIS Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions [as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Federal Regulations 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)].

The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

Date: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Name: \_\_\_\_\_

(Print) Name: \_\_\_\_\_ (Print) Title: \_\_\_\_\_

**NOTE: PROPOSER IS REQUIRED PURSUANT TO FEDERAL LAW TO INCLUDE THE ABOVE LANGUAGE IN SUBCONTRACTS OVER \$100,000 AND TO OBTAIN THIS LOBBYING CERTIFICATE FROM EACH SUBCONTRACTOR BEING PAID \$100,000 OR MORE UNDER THIS CONTRACT.**

**FAILURE TO SUBMIT THIS EXECUTED STATEMENT AS PART OF THE RESPONSE DOCUMENTS WILL MAKE THE RESPONSE NON-RESPONSIVE AND NOT ELIGIBLE FOR AWARD CONSIDERATION.**

**CERTIFICATE REGARDING INELIGIBLE CONTRACTORS**

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER INELIGIBILITY AND  
VOLUNTARY EXCLUSION FROM TRANSACTIONS FINANCED IN PART BY THE U.S. GOVERNMENT

\_\_\_\_\_  
(Name of Certifying Officer) (Title of Certifying Officer)

Hereby certify that: \_\_\_\_\_  
(Name of Proposer)

Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any State or Federal department or agency or from participation in Oregon Department of Transportation projects;

Have not within a three (3)-year period preceding this bid been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph 2 of this certification; and

Have not within a three (3)-year period preceding this proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

If Proposer is unable to certify to any of the statements in this certification, such prospective Bidder shall attach an explanation to this certification.

I hereby certify and affirm the truthfulness and accuracy of the above statement, and I understand that the provisions of 31 United States Code (U.S.C.) §3801 et seq., (Administrative Remedies for False Claims and Statements) are applicable hereto.

\_\_\_\_\_  
Name of Bidder

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Signature of Certifying Officer Telephone Number of Bidder

**FAILURE TO SUBMIT THIS EXECUTED STATEMENT AS PART OF THE RESPONSE DOCUMENTS  
WILL MAKE THE RESPONSE NON-RESPONSIVE AND NOT ELIGIBLE FOR AWARD  
CONSIDERATION.**

**CONFLICT OF INTEREST (COI) DISCLOSURE FORM**

**This COI Disclosure Form must be signed in ink by a principal of the Firm to certify that it is correct. A Firm’s certification that its disclosure form is correct includes the disclosure by its Associates and Subcontractors.**

My signature certifies that as disclosed on or attached to the present form:

(a) the Firm’s disclosures are complete, accurate, and not misleading.

**I hereby certify that I am authorized to sign this COI Disclosure Form as a Representative for the Firm identified below:**

**Complete Legal Name of Firm:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**Signature:** \_\_\_\_\_

**Name (print):** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Telephone:**(\_\_\_\_) \_\_\_\_\_ **Fax No.:** (\_\_\_\_) \_\_\_\_\_

**Date:** \_\_\_\_\_

**Please answer all questions “Yes”, “No” or “N/A” (if uncertain answer “Yes.”) If the answer to any of the questions is “Yes,” then use the applicable “Comments” fields to:**

(a) furnish all relevant facts that are necessary to make the response complete, accurate, and not misleading; and

(b) identify any actions that must be taken to avoid, neutralize, or mitigate such conflict of interest (e.g. communications barriers, restraint or restriction upon future contracting activities, or other precaution)

1. a) Is any Associate of the Firm a former employee of Agency within the last year? **No**  **Yes**

b) Is any Associate of the Firm a Relative or Member of the Household of a current Agency employee who had or will have any involvement with this Procurement or Contract Authorization? **No**  **Yes**

**If the answer to either of the above questions is “Yes”, complete the attached “Relatives and Former Agency Employees -Roles and Signatures” table (Part A and/or Part B, as applicable).**

2. Does the Firm or any Associate of the Firm have an Actual, Apparent or Potential Conflict Of Interest (“Individual” or “Organizational”) with regard to any member of an Agency Procurement evaluation or selection team? **No**  **Yes**  **Comments:**

3. Did the Firm or any Associate of the Firm conduct prior work on the Project described in the Procurement, or participate in preparing any part of the Procurement or any documents or reports related to the Procurement or to which the Procurement refers? **No**  **Yes**   
**Comments:**

4. Does the Firm or any Associate of the Firm have any past, present or currently planned interests which are an Actual, Apparent or Potential Conflict of Interest (“Individual” or “Organizational”), with respect to the Procurement or award of this Contract or performing the work for Agency? **No**  **Yes**  **Comments:**
  
5. Has the Firm or an Associate of the Firm offered to a Public Official, or is the Firm aware of any Public Official that has solicited or received, directly or indirectly, any pledge or promise of employment or other benefit based on the understanding that the Public Official’s vote, official action or judgment would be influenced thereby? **No**  **Yes** : **Comments:**
  
6. Has (or will) the Firm or an Associate of the Firm provided a direct beneficial financial interest to any person within two years after the person ceased to hold a position as a Public Official who was involved in the Procurement or Authorization for the Contract, or is the Firm aware of any such person or Public Official who has or will receive a direct beneficial financial interest within the two-year period? **No**  **Yes**  **Comments:**
  
7. Is the Firm aware of any current or former Public Official that has an Actual, Apparent or Potential Conflict of Interest with respect to the Procurement or award of this Contract or performing the work for Agency? **No**  **Yes** : **Comments:**
  
8. Does the prospective Contract include development of an environmental assessment (EA), environmental impact statement (EIS) or Finding of No Significant Impact (FONSI)? **No**  **Yes**   
**If yes**, in accordance with the disclosure statement requirements of Council on Environmental Quality Regulation, 40 C.F.R 1506.5(c), does the Firm have any financial or other interest in the outcome of this Project; and/or does the Firm have any agreement, enforceable promise, or guarantee to provide any future work on this Project? **No**  **Yes**   
**Comments:**
  
9. Have Subcontractors or other Associates furnished COI Disclosure Forms separate from the present form? (If yes, attach the disclosures.) **No**  **Yes**  **N/A**  **Comments:**
  
10. If the prospective Contract includes personal services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract, is the Firm or an Associate or an Affiliate of the Firm a party to the subject public contract?  
**No**  **Yes**  **N/A**  **Comments:**

**FAILURE TO SUBMIT THIS EXECUTED STATEMENT AS PART OF THE RESPONSE DOCUMENTS WILL MAKE THE RESPONSE NON-RESPONSIVE AND NOT ELIGIBLE FOR AWARD CONSIDERATION.**

## **SECTION 7**

### **FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS**

#### **FTA Required Third Party Contract Provisions**

The following Federally Required Contract Clauses apply to this procurement and all resulting contracts related to this solicitation. For more information see FTA Circular 4220.1F, revised July 1, 2010.

#### **A.1 NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

1. The Purchaser or Contractor acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to SETD, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. The 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.

#### **A.2 FALSE STATEMENTS OR CLAIMS CIVIL AND CRIMINAL FRAUD; 49 CFR Part 31 18 U.S.C. 1001**

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the 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 contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor 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 Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
2. The 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 the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
3. The 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.

**A.3 ACCESS TO THIRD PARTY CONTRACT RECORDS; 49 U.S.C. 5325(g), 18 CFR 18.36 (i), 49 CFR 633.17**

The following access to records requirements apply to this Contract:

1. As SETD is a local government and a sub grantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(g), the third party contractor and third party subcontractors at each tier agree to provide SETD, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any of the contractors' books, documents, papers and records which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Third party contractors and third party subcontractors, at each tier, further agree to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper Work management as determined by FTA. The third-party contractor and subcontractors, at each tier, also agree, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to the contractors' records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. As SETD is a sub grantee of the FTA Recipient in accordance with 49 CFR 633.17, Contractor agrees to provide SETD, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where SETD enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization, as a sub grantee of the FTA Recipient in accordance with 49 CFR 19.48, Contractor agrees to provide SETD, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where SETD is a sub grantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to SETD, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of 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 Contractor agrees to maintain same until SETD, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
7. FTA does not require the inclusion of these requirements in subcontracts.

#### **A.4 CHANGES TO FEDERAL REQUIREMENTS, 49 CFR Part 18**

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 Agreement (Form FTA MA (6) dated October, 1999) between SETD 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 contract.

#### **A.5 TERMINATION, 49 U.S.C. Part 18**

1. **Termination for Convenience (General Provision)** SETD may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to SETD to be paid the Contractor. If the Contractor has any property in its possession belonging to SETD, the Contractor will account for the same, and dispose of it in the manner SETD directs.
2. **Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, SETD may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by SETD that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, SETD, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

3. **Opportunity to Cure (General Provision)** SETD in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) days in which

to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to District's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from District setting forth the nature of said breach or default, District shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude District from also pursuing all available remedies against Contractor and its sureties for said breach or default.

4. **Waiver of Remedies for any Breach** In the event that District elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit District's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
5. **Termination for Convenience (Professional or Transit Service Contracts)** SETD, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, SETD shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
6. **Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, SETD may terminate this contract for default. SETD shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.
  - a. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.
7. **Termination for Default (Transportation Services)** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, SETD may terminate this contract for default. SETD shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of SETD, protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and District shall agree on

payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of SETD.

8. **Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if:

- a. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
- b. the contractor, within [10] days from the beginning of any delay, notifies SETD in writing of the causes of delay. If in the judgment of SETD, the delay is excusable, the time for completing the work shall be extended. The judgment of SETD shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

9. **Termination for Convenience or Default (Architect and Engineering)** SETD may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. SETD shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports,

estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

- a. If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.
- b. If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.
- c. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

10. **Termination for Convenience of Default (Cost-Type Contracts)** SETD may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of SETD or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from SETD, or property supplied to the Contractor by SETD. If the termination is for default, SETD may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to SETD and the parties shall negotiate the termination settlement to be paid the Contractor.

- a. If the termination is for the convenience of SETD, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.
- b. If, after serving a notice of termination for default, SETD determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, SETD, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

**A.6 CIVIL RIGHTS REQUIREMENTS, 29 U.S.C. § 623, 42 U.S.C. § 2000 42 U.S.C. § 6102, 42 U.S.C. § 12112, 42 U.S.C. § 12132, 49 U.S.C. § 5332 29 CFR Part 1630, 41 CFR Parts 60 et seq.**

The following requirements apply to the underlying contract:

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, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color,

creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to the underlying contract:
  - a. **Race, Color, Creed, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the 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, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, employment, upgrading, 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, the Contractor agrees to comply with any implementing requirements FTA may issue.
  - b. **Age.** In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 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.
  - c. **Disabilities.** 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 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. The 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.

#### **A.7 DISADVANTAGED BUSINESS ENTERPRISE (DBE), 49 CFR Part 26**

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.* The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The State's overall DBE Participation Goal is 10%. SETD does not have a separate DBE participation goal. SETD supports the state in reaching its DBE goal.

2. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as {insert agency name} deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
3. The successful bidder/offeror may be asked to report its DBE participation obtained through race-neutral means throughout the period of performance.
4. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from SETD. In addition, the contractor may not hold retainage from its subcontractors.
5. The contractor must promptly notify SETD, whenever a DBE subcontractor performing work related to this contract 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. The 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 SETD.

#### **A.8 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

The preceding provisions include, in part, certain Standard Terms and Conditions required by the USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F 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. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any SETD requests, which would cause SETD to be in violation of the FTA terms and conditions.

#### **A.9 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

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 SETD. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to SETD, 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 49 CFR 29, Subpart C 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.

Contractors are expected to complete the Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion form located in this RFP.

#### **A.10 BREACHES AND DISPUTE RESOLUTION, 49 CFR Part 18**

**Disputes**—Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of SETD. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the authorized representative of SETD. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized representative of SETD shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance During Dispute**—Unless otherwise directed by SETD, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**Claims for Damages**—Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**Remedies**—Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

**Rights and Remedies**—The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an

approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**A.11 LOBBYING, 31 U.S.C. 1352, 49 CFR Part 19, 49 CFR Part 20 (SEE 2.9.5)**

1. Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A. Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]
2. Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)
3. Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A. Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.
4. Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.
5. 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.*] - Contractors who apply or bid for an award of \$150,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." 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.

The required lobbying certification form, and disclosure form as applicable, are located in this RFP and must be returned for the bid offer to be valid.

**A.12 CLEAN AIR, 42 U.S.C. 7401 et seq, 40 CFR 15.61, 49 CFR Part 18**

The 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. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn,

report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

1. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### **A.13 CLEAN WATER REQUIREMENTS, 33 U.S.C. 1251**

The 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 . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

1. The 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.

#### **A.14 CARGO PREFERENCE REQUIREMENTS, 46 U.S.C. 1241, 46 CFR Part 381**

Use of United States-Flag Vessels - The contractor agrees: a. *to use* privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. *to furnish within 20* working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo *described in the preceding paragraph* to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (*through the contractor in the case of a subcontractor's bill-of-lading.*) c. *to include these* requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

#### **A.15 FLY AMERICA REQUIREMENTS, 49 U.S.C. §40118, CFR Part 301-10**

The 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 SETD and subrecipients of SETD's Federal funds and their contractors 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. The 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. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**A.16 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT, 40 U.S.C. §§ 327 -333 (1999), 29 CFR § 5 (1999), 29 CFR § 1926 (1998)**

1. **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. **Withholding for unpaid wages and liquidated damages** - The (write in the name of the grantee) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

**A.17 ENERGY CONSERVATION REQUIREMENTS, 42 U.S.C. 6321 et seq., 49 CFR Part 18**

Energy Conservation - The contractor agrees to comply with State goals, standards and policies relating to energy efficiency. References include Oregon Revised Statute Chapter 469, the State

Energy Plan, and the State Sustainability Plan, issued in compliance with the Energy Policy and Conservation Act.

**A.18 RECYCLED PRODUCTS, 42 U.S.C. 6962, 40 CFR Part 247, Executive Order 12873**

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**A.19 NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS (ITS) ARCHITECTURE AND STANDARDS**

The Contractor agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by Section 5307(c) of SAFETEA-LU, FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455 *et seq.*, January 8, 2001, and later published policies or implementing directives FTA may issue.

**A.20 ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES.**

The contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d), which states the Federal policy that elderly persons and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy.

The contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act.

In addition, the contractor agrees to comply with all applicable requirements of the following regulations and any subsequent amendments thereto:

- 1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37 (Rolling Stock);
- 2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;

- 3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38 (Rolling Stock);
- 4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;
- 5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
- 6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19;
- 7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
- 8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F;
- 9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 CFR Part 1194;
- 10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609; and
- 11) Any implementing requirements FTA may issue.

**SAMPLE SERVICES CONTRACT WITH XXXXXXXXXXXX FOR XXXXXXXXXXXX**

*This contract for personal services is entered into by and between **SUNSET EMPIRE TRANSPORTATION DISTRICT**, a special district of the State of Oregon, hereinafter referred to as SETC, and XXXXXXXXXXXX., hereinafter called the CONTRACTOR to provide the services described in the Request for Proposal issued XXXXXXXXXXXX, and the Proposal Response, due XXXXXX, which by this reference are hereby made part of and incorporated herein. The following provisions shall comprise this contract:*

**I. SCOPE**

*This Contract covers the personal services as described in Request for Proposals and the Proposal Response. Work shall be performed in accordance with a schedule approved by TCTD. The CONTRACTOR shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The Contract shall commence **upon contract execution and continue through XXXXXXXXXXXX.***

**II. COMPENSATION**

**A.** *SETD agrees to compensate the CONTRACTOR on a fee-for-services basis as detailed in this Contract. Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent DISTRICT contract and/or purchase order numbers. All charges shall be billed monthly and will be paid net 30 days from receipt of invoice. The maximum compensation authorized under this Contract shall not exceed \$XXXXXXXX.*

**B.** *The CONTRACTOR is engaged hereby as an independent contractor and will be so deemed for purposes of the following:*

**1** *The CONTRACTOR will be solely responsible for payment of any Federal or State taxes required as a result of this Contract.*

**2.** *This Contract is not intended to entitle the CONTRACTOR to any benefits generally granted to DISTRICT employees. Without limitation, but by way of illustration, the benefits which are not intended to be extended by this Contract to the CONTRACTOR are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the CONTRACTOR is presently a member of the Oregon Public Employees Retirement System).*

**3.** *If the CONTRACTOR has the assistance of other persons in the performance of this Contract, and the CONTRACTOR is a subject employer, the CONTRACTOR shall qualify and remain qualified for the term of this contract as an insured employer under Oregon Revised Statutes ("ORS") Chapter 656.*

**C.** *The CONTRACTOR certifies that, at present, he or she, if an individual is not a program, SETD, or Federal employee.*

*D. The CONTRACTOR, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.*

### **III. FEDERAL CONTRACT SPECIAL CONDITIONS**

#### **A. Failure to Perform**

*SETD may, subject to the provisions of paragraph (4) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances.*

- 1. If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or*
- 2. If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failures within a period of ten (10) days (or such longer period as SETD may authorize in writing) after receipt of notice from SETD specifying such failure. CONTRACTOR'S failure to perform the scope of work identified or failure to meet established performance standards shall be subject to consequences that include but are not limited to:*
  - Reducing or withholding payment;*
  - Requiring the CONTRACTOR to perform, at the CONTRACTORS expense, additional work necessary to perform the identified scope of work or meet the established performance standards; or*
  - Declaring a default, terminating the contract and seeking damages and other relief under the terms of the contract or other applicable law.*
- 3. In the event SETD terminates this contract in whole, or in part, as provided in paragraph (2) above of this clause, SETD may procure, upon such terms and in such manner as SETD may deem appropriate, supplies or services similar to those terminated, and the Contractor shall be liable to SETD for any excess costs for such similar supplies or services; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.*
- 4. The Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control of and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of SETD in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather; but, in every case, the failure to perform must be beyond the control of the Contractor and without the Contractor's fault or negligence. The Contractor shall not be liable for excess costs for failure to perform, unless the*

*supplies or services to be furnished were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.*

- 5. The rights and remedies of SETD provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.*
- 6. As used in this contract, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.*

**B. Termination for Convenience**

*This contract may be terminated by either party upon at least ten (10) days written notice to the other.*

**C. Compliance with Applicable Law**

*Contractor shall comply with all federal, state and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Contract, in effect at the time the Contract is executed and as may be amended, revised, enacted or adopted thereafter. Changes in these legal requirements after the execution of the Contract may or may not be the basis for modifications to Contractor's schedule, scope and fee, depending on a reasonable assessment of the nature of the change, the extent to which the change was anticipated by Contractor or the Parties, and other circumstances then existing.*

*Without limiting the generality of the foregoing, Contractor expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990, (iv) Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)); (v) Section 508 of the Clean Water Act (33 U.S.C. 1368; (vi) Executive Order 11738; EPA regulations (40 CFR part 15) and ORS 659.425; (vii) Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3); (viii) Executive Order 11246 entitled Equal Employment Opportunity as amended by Executive Order 11375 and as supplemented in 41CFR chapter 60; (ix) Davis-Bacon Act (40 U.S.C. 3141-3148) as supplemented in Department of Labor regulations (29 CFR Part 5), (x) Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5); (xi) Energy Policy and Conservation Act (pub.L. 94-163, 89 Stat. 871); (xii) all regulations and administrative rules established pursuant to the foregoing laws; and (xiii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.*

*DISTRICT's performance under the Contract is conditioned upon Contractor's compliance with, and Contractor shall comply with, the obligations applicable to public contracts and intended for contractors under ORS 279C.520 and 279C.530, which are incorporated by reference herein.*

*If conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Contract, Contractor shall in writing request SETD to resolve the conflict. Contractor shall specify if the conflict(s) create a problem for the design or other Services required under the Contract.*

**D. Reporting Requirements**

*Contractor shall comply with the reporting requirements of SETD including but not limited to Progress, Status and Performance reports necessary to support progress payments or cost reimbursements.*

**E. Records Maintenance; Access.**

*Contractor, and its Subcontractors, shall maintain all fiscal records relating to the Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain all other records pertinent to the Contract and the Project and shall do so in such a manner as to clearly document Contractor's performance.*

*SETD and the federal government and their duly authorized representatives shall have access, and Contractor shall permit the aforementioned entities and individual's access, to such fiscal records and other books, documents, papers, plans and writings of Contractor that are pertinent to the Contract to perform examinations and audits and make excerpts and transcripts.*

*Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of 3 years, or such longer period as may be required by applicable law, following final payment and expiration or termination of the Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later.*

**F. Patents; Copy Rights; Rights in Data**

*Any discovery or invention that arises during the course of the contract shall be reported to SETD. The Contractor shall promptly disclose inventions to SETD, within 2 months, after the inventor discloses it in writing to the Contractors personnel responsible for patent matters. The rights in the invention/discovery shall be allocated consistent with "Government Patent Policy" and FAR Part 27.*

*The Contractor shall comply with the requirements and regulations for Copy Rights and Rights in Data pursuant to FAR Part 27.*

#### **IV. CONSTRAINTS**

*The CONTRACTOR agrees:*

**A.** *If the services to be provided pursuant to this Contract are professional and/or consultative, the CONTRACTOR shall not delegate the responsibility for providing those services to any other individual or agency.*

**B.** *Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:*

**1.** *CONTRACTOR shall:*

**a.** *Make payments promptly, as due, to all persons supplying to the CONTRACTOR labor or materials for the prosecution of the work provided for in this Contract.*

**b.** *Pay all contributions or amounts due the Industrial Accident Fund from such CONTRACTOR or subcontractor incurred in the performance of this Contract.*

**c.** *Not permit any lien or claim to be filed or prosecuted against TCTD on account of any labor or material furnished.*

**2.** *If the CONTRACTOR fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the CONTRACTOR or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing SETD may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the CONTRACTOR by reason of this Contract.*

**3.** *The CONTRACTOR shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference.*

*All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.*

**4.** *The CONTRACTOR shall promptly, as due, make payment to any person or copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the CONTRACTOR, of all sums which the CONTRACTOR agrees to pay for such services and all moneys and sums which the CONTRACTOR collected or deducted from the wages of*

*the CONTRACTOR'S employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.*

5. *This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.*

6. *The CONTRACTOR agrees to indemnify, hold harmless and defend SETD, its officers, commissioners, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof (including attorney's fees), arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the CONTRACTOR or the CONTRACTOR'S employees or agents.*

7. *The CONTRACTOR'S failure to perform the scope of work identified or failure to meet established performance standards shall be subject to consequences that include, but are not limited to:*

*a. Reducing or withholding payment;*

*b. Requiring the CONTRACTOR to perform, at the CONTRACTOR'S expense, additional work necessary to perform the identified scope of work or meet the established performance standards; or*

*c. Declaring a default, terminating the Contract and seeking damages and other relief under the terms of the Contract or other applicable law.*

*8 All subject employers working under the Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.*

## **V. OWNERSHIP**

*Upon fulfillment of the Contract Terms, DISTRICT will have legal title to, and rights to use the entirety of the documents, images, and data used to create the plan, (collectively referred to as "the work") without limitation. This includes the right to use the work in contexts including, but not limited to: (1) public relations, press releases, or publicity; (2) re-use or modification of the work; and (3) use as a teaching aid or continuing education tool.*

## **VI. INSURANCE REQUIREMENTS**

### **A. COMMERCIAL GENERAL LIABILITY**

*Required by DISTRICT*

*Not required by DISTRICT*

The CONTRACTOR agrees to furnish SETD evidence of commercial general liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate for personal injury and property damage for the protection of SETD, its officers, commissioners, agents and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Contract. The general aggregate shall apply separately to this project / location. SETD, at its option, may require a complete copy of the above policy.

**B. AUTOMOBILE LIABILITY**

Required by DISTRICT                       Not required by DISTRICT

The CONTRACTOR agrees to furnish SETD evidence of business automobile liability insurance in the amount of not less than \$1,000,000 combined single limit for bodily injury and property damage for the protection of SETD, its officers, commissioners, agents and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. SETD, at its option, may require a complete copy of the above policy.

**C. PROFESSIONAL LIABILITY**

Required by DISTRICT                       Not required by DISTRICT

**D. POLLUTION LIABILITY INSURANCE**

Required by DISTRICT                       Not required by DISTRICT

**E.** Such insurance shall provide sixty (60) days written notice to SETD in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to SETD under this insurance. This policy(s) shall be primary insurance as respects to SETD. Any insurance or self-insurance maintained by SETD shall be excess and shall not contribute to it.

**F.** If the CONTRACTOR has the assistance of other persons in the performance of this contract, and the CONTRACTOR is a subject employer, the CONTRACTOR agrees to qualify and remain qualified for the term of this contract as an insured employer under ORS 656. The CONTRACTOR shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

**G.** If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the CONTRACTOR'S insurer will provide "tail" coverage as subscribed, whichever is greater, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be

acceptable in lieu of “tail” coverage, provided its retroactive date is on or before the effective date of this Contract.

**H.** The insurance, other than the Workers’ Compensation, Professional liability and Pollution liability insurance, shall include SETD as an additional insured. Proof of insurance must include a copy of the endorsement showing SETD as a scheduled insured.

**I.** CONTRACTOR shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by SETD.

**VII. SUBCONTRACTS**

The CONTRACTOR shall be responsible to SETD for the actions of persons and firms performing subcontract work. The CONTRACTOR certifies that the CONTRACTOR has not discriminated and will not discriminate against any minority, women or emerging small business enterprise in obtaining any subcontract.

**VII. TERMINATION - AMENDMENT**

**A.** This Contract may be terminated by either party upon at least ten (10) days written notice to the other.

**B.** This Contract and any amendments to this contract will not be effective until approved in writing by an authorized representative of the Sunset Empire Transportation District.

**C.** This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

The undersigned, by its signature, agrees to perform the scope of work as described in the Contract documents and meet the performance standards set forth therein. By their signatures below, the parties to this contract agree to the terms, conditions, and content expressed herein.

**[COMPANY]**

**Sunset Empire Transportation District**

[Street]

By:

[Address]

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name/Title (Printed)

\_\_\_\_\_  
Name/Title (Printed)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_

*Telephone/Fax Number*

---

*CCB License # (if applicable)*

---

*Oregon Business Registry*

---

*Entity Type/State of Formation*

*Approved as to Form*

---

*District Counsel*

**SECTION 9**

**INSURANCE CERTIFICATES**

*(to be supplied at the time of contract execution)*