



**ROGUE VALLEY TRANSPORTATION DISTRICT**

**REQUEST FOR QUALIFICATIONS**

**DESIGN, ARCHITECTURAL / ENGINEERING SERVICES  
AND CONSTRUCTION OVERSIGHT**

**OF  
DOWNTOWN ADMINISTRATION BUILDING AND MOBILITY  
TRAINING CENTER**

**PRE-PROPOSAL MEETING: MAY 11, 2022 AT 10:00AM**

**PROPOSALS DUE: MAY 20, 2022 BY 2:00PM**

**Submit To:  
Nick Black  
c/o Debbie Wilbur  
RVTD Senior Planner  
3200 Crater Lake Avenue  
Medford, OR 97504**

RVTD is seeking qualification proposals from qualified architecture and/or engineering firms for the preparation of plans and specifications suitable for receiving bids for the renovation of RVTD's Downtown Administration Building located at 130 E. 8<sup>th</sup> St. in Medford, OR and the Mobility Training Center located at 220 S. Front St. in Medford, OR. Firms are invited to submit a qualifications proposal outlining their experience and abilities in performing work required for this project.

## **DOWNTOWN ADMINISTRATION BUILDING**

**FIGURE 1: EXTERIOR 8<sup>TH</sup> STREET**



**FIGURE 2: EXTERIOR FRONT STREET**



**FIGURE 3: INTERIOR MAIN HALL FROM 8TH**



**FIGURE 4: INTERIOR OFFICE EXAMPLE (ADMINISTRATIVE OFFICE)**





**FIGURE 5: INTERIOR DANCE STUDIO (FINANCE)**



**FIGURE 5: HALLWAY TO DANCE STUDIO AND 2<sup>ND</sup> LARGE ROOM**



**FIGURE 6: CLOSET OFF DANCE STUDIO (VAULT)**



**FIGURE 7: WOMENS RESTROOM**



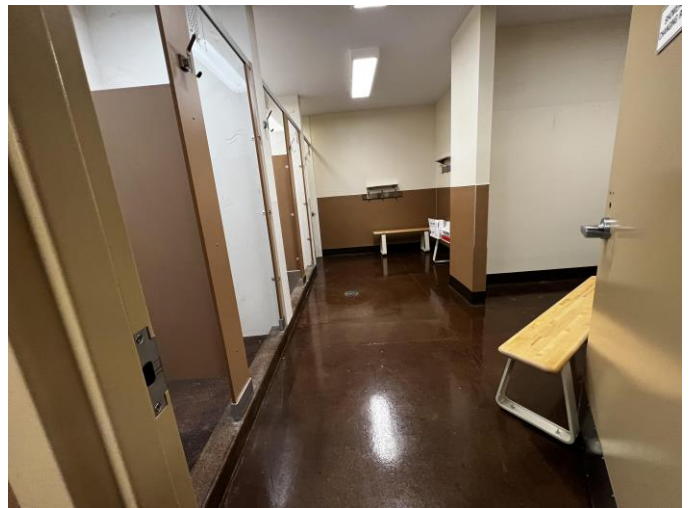
**FIGURE 8: WOMENS RESTROOM [2]**



**FIGURE 9: MENS RESTROOM**



**FIGURE 10: MENS SHOWERS**

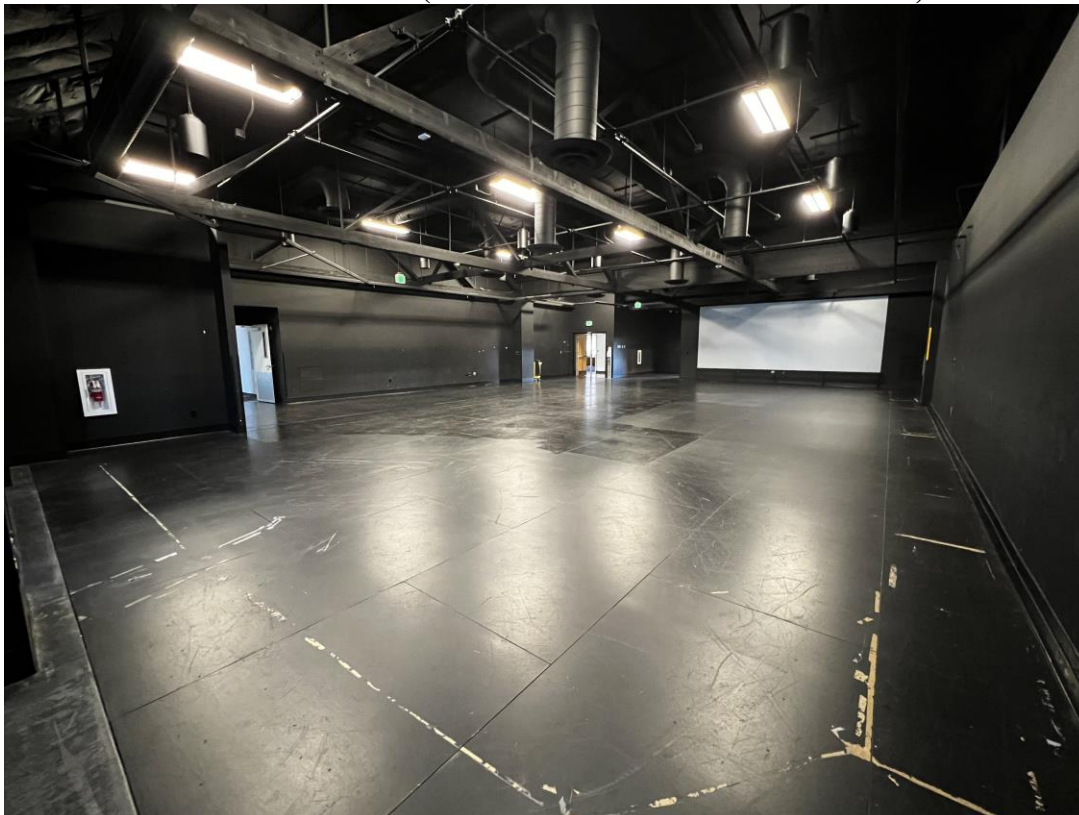




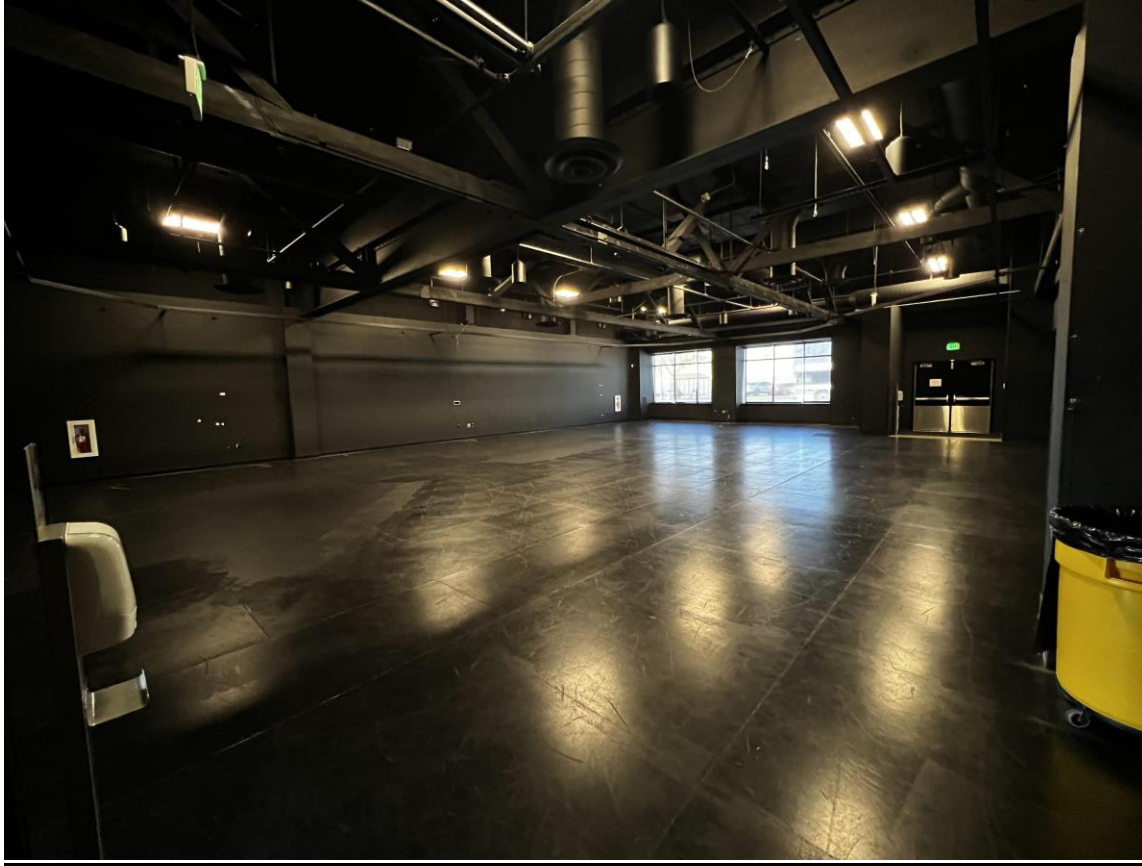
**FIGURE 11: ENTRANCE TO LARGE ROOM**



**FIGURE 12: LARGE ROOM (COMMUNITY MEETING ROOM)**



**FIGURE 13: LARGE ROOM [2] (COMMUNITY MEETING ROOM)**



**FIGURE 14: STORAGE ROOM (IT OFFICES/ EQUIPMENT STORAGE)**



**FIGURE 15: LARGE INTERIOR ROOM (KITCHEN/BREAK ROOM)**





## **MOBILITY TRAINING CENTER**

**FIGURE 1: EXTERIOR SOUTH**



**FIGURE 2: EXTERIOR FROM FRONT STREET**



**FIGURE 3: EXTERIOR FROM FRONT STREET**



**FIGURE 4: MAIN LOBBY/ WAITING AREA**

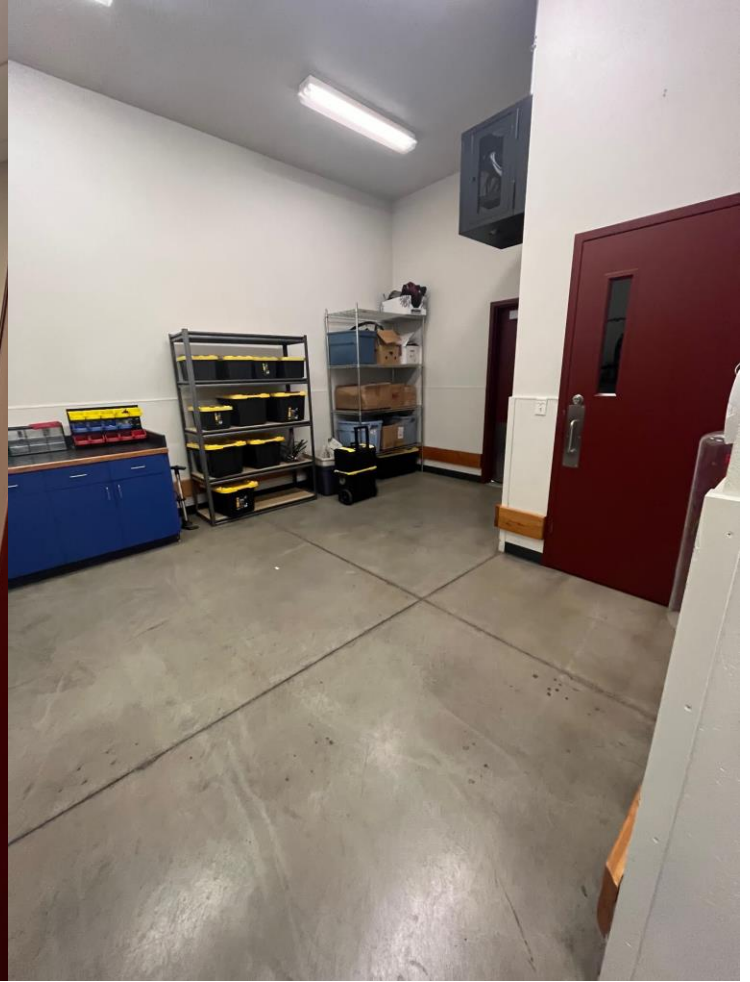




**FIGURE 5: PRIVATE OFFICE**

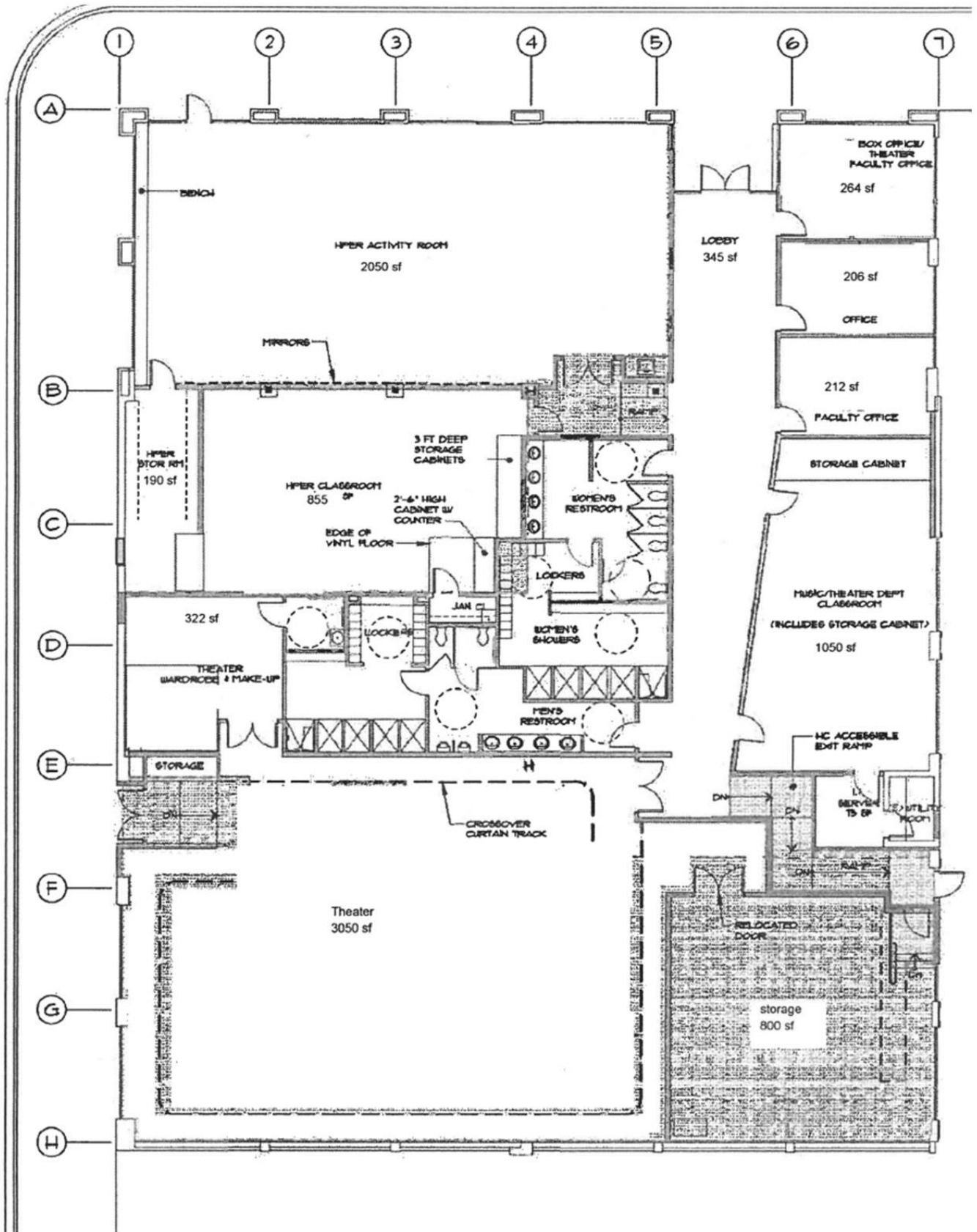


**FIGURE 6: STORAGE AREA**

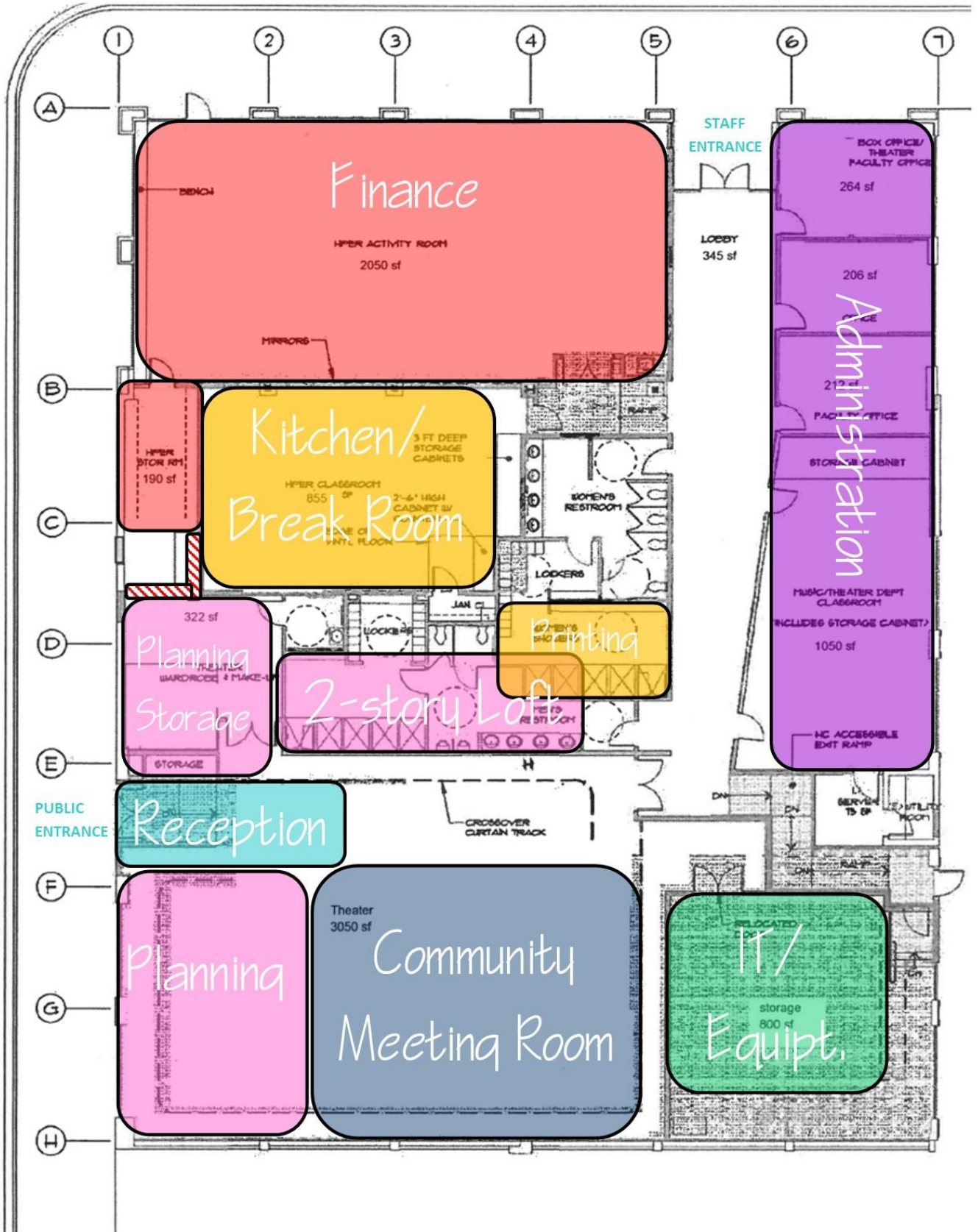




# AS-BUILT SITE LAYOUT



## PROGRAMMED SPACE LAYOUT



## **PROJECT DESCRIPTION AND OBJECTIVES**

The objectives of the architecture and structural engineering work include:

1. Preparing plans and specifications for RVTD's Downtown Administration Building renovation. The architect/engineer will provide up to two (2) schematic design plans and two (2) design development sets of plans for RVTD consideration to prepare construction documents sufficient for publishing an Invitation For Bid to construction companies.
2. Preparing plans and specifications for RVTD's Mobility Training Center. The architect/engineer will provide up to two (2) schematic design plans and two (2) design development sets of plans for RVTD consideration to prepare construction documents sufficient for publishing an Invitation For Bid to construction companies.
3. Assuring compliance with City of Medford requirements.
4. Assuring compliance with all Federal Department of Transportation requirements as identified by RVTD (listed at the end of this RFQ).
5. Preparing plans and specifications to ensure safety of the building and its occupants during severe weather and geological events.
6. Preparing construction cost estimates including permitting.
7. Minimizing obstructions to the RVTD patrons using the surrounding sites.
8. Completing a draft of the Construction Bid documents. Collaborating with RVTD to finalize the Construction Bid Documents and announcement to construction firms.
9. Overseeing the construction projects through to completion, including inspections.



## **BACKGROUND INFORMATION**

### **DOWNTOWN ADMINISTRATIVE BUILDING**

RVTD is seeking to renovate a 12,632 square foot building to house the Administrative, Finance, Planning and IT personnel. The building was recently purchased in December 2021 from Rogue Community College (RCC) and is located at 130 E. 8th St., Medford, OR 97501. The building is adjacent to RVTD's main transit center, Front Street Station, and provides a unique opportunity to enhance the community's access to RVTD personnel and public meeting spaces. The purchase of this building and the relocation of four departments to downtown is part of the ongoing Campus Master Planning work underway since 2019. The first phase of the Campus Master Plan was completed in 2021 with the conclusion that RVTD's primary headquarters does not have adequate space to meet the needs of the district through 2050. By moving non-critical personnel to another location, it would alleviate some space constraints at the main campus. To that end, this project will renovate the recently acquired building in downtown Medford which previously was occupied by RCC and housed a 1600 square foot theater, a 1,000 square foot dance studio, very large 10 shower locker room, three private offices, and miscellaneous spaces. The renovation will create approximately 16 office spaces, a community meeting room, an area for secure supply and file storage, and a kitchen and break room. The project will include the removal and addition of walls, adding interior circulation, replacing the flooring throughout the building and removing all but 2 of the showers.

The Downtown Administration building was originally constructed in 1922 and is in 'good' condition. However, the prior use of the building was not for administration activities. The majority of the building was devoted to a large theater, dance studio, wardrobe areas, makeup room, showers and storage. RVTD's goal is that by the by March 2023, this building will be renovated to accommodate all of the Administration, Finance, Planning and IT personnel, in addition to a large community meeting space that is more accessible to the public (SEE PAGE 13 FOR RVTD'S PREFERRED PROGRAMMING OF SPACE). The downtown building does not have basic energy efficiency tools such as occupancy sensors and efficient lighting. These will be included in the retrofit to further achieve sustainability building practices. RVTD is also interested in understanding the structural viability for installing solar panels and communication equipment on the roof.

### **MOBILITY TRAINING CENTER**

The qualified firm will also provide services for a new Mobility Training Center within the building that previously housed the Greyhound Terminal. The building located at 220 S. Front St. was built by Medford Urban Renewal Agency for Greyhound in 2006 under the ownership of RVTD. The Greyhound lease is no longer active and RVTD now has the opportunity to occupy the building. A Mobility Training Center will be constructed within the building where the general public can learn how to use RVTD's bus system and Valley Lift. A mock bus equipped with a wheelchair ramp, farebox, and seating area will allow the public to learn how to use transit at their own pace. The Mobility Center will also have an ADA eligibility area to understand the limitations of those seeking to use RVTD's Valley Lift service instead of the bus system. Two offices for RVTD's Travel Trainers and storage of related equipment will also need to be built. The building currently has a large passenger waiting area, a ticket counter, one private office, restrooms and a baggage holding area.

## **RESPONSE REQUIREMENTS**

Interested firms should submit qualification proposals that include the following:

1. Background of the firm. This should include a brief history of the firm and types of services the firm is qualified to perform.
2. Qualifications of the firm in performing this type of work. This should include examples of related experience and the names and phone numbers of contact persons familiar with the work performed on similar, previous projects.
3. Project team and their individual qualifications including but not limited to primary technical capabilities, as evidenced by academic degree, professional registration, certification and/or extensive experience. Identify individuals and subconsultants who will complete this work, their experience and their individual qualifications and anticipated assignments for this project. Brief resumes of key personnel to be assigned to this project should be included.
4. Description of project approach, proposed work elements, deliverables by work task. The project timeline should include the work under this RFQ in addition to the anticipated construction schedule to meet a March 31, 2023 completion date for the Downtown Administration Building and to meet a June 30, 2023 completion date for the Mobility Training Center.
5. Completion of page 20, the DBE Participation Form on page 21 and the Certification that no funds awarded through this contract will be used for lobbying purposes on page 30.

Proposals should be limited to no more than 10 (ten) pages. **Submit three (3) copies of proposals and statements of qualifications to RVTD no later than 2:00PM on May 20, 2022.** Proposals should be submitted to:

Nick Black  
RVTD Fleet Maintenance Manager  
3200 Crater Lake Avenue  
Medford, OR 97504

## **SELECTION PROCESS**

Proposals will be reviewed by RVTD staff in accordance with the Agency's contracting guidelines. Upon review of the submitted proposals, the Agency may negotiate a scope of work and professional services contract with one firm, or may select one or more firms for further consideration. Questions regarding this solicitation should be directed to Nick Black at 541-608-2431.

Evaluation of the proposals will be conducted between May 23-27, 2022 with anticipated pre award notification, negotiations on project scope and price occurring no later than June 7, 2022. Notice of award is anticipated to occur no later than June 13, 2022.

## **EXPANSION OR REDUCTION OF THE SCOPE OF WORK**

The final contract written for Professional Services for the Downtown Administration Building renovation and Mobility Training Center will include provisions for “contract amendments” that may be utilized to alter the Scope of Work. Such amendments may include but are not limited to adding or reducing identified tasks and adding or reducing the contract services.

## **RFQ EVALUATION CONSIDERATIONS**

All proposals will be judged based on the following criteria, with the evaluation weighted as indicated:

### **Category 1 – Proposal Response and Contractual Compliance (20 points)**

- a. Overall responsiveness to the RFQ requirements, completeness of the proposal;
- b. A proposed project schedule of tasks leading to the timely deliverables.

### **Category 2 – Record of Performance (30 points)**

The Consultant’s work experience and history of successful completion of similar or other projects and its record of completing projects within the specified timeframes and budgets will be considered under this category. The Consultant shall have a minimum of two (2) projects that demonstrate competence in skills required in the scope of work. Specific evaluation criteria under this section include:

- a. Demonstrated ability to successfully provide appropriate products and services required similar in size and scope to this project;
- b. Overall assessment of the Consultant’s previous similar work, based on information from references;
- c. Demonstrated ability to meet the requirements and services of this RFQ; and
- d. The Consultant’s customer service and satisfaction related to proposed services, as reported by references.

### **Category 3 – Resources and Capabilities (25 points)**

The Consultant’s resources and equipment, including the number and qualifications of personnel or subcontractor(s), types of equipment, software and description of services provided by the Consultant to successfully implement the work.

The Consultant shall have the capability to provide quality and responsive services with respect to the following:

- a. Ability to meet the Rogue Valley Transportation District’s needs as expressed in the RFQ, including the ability and willingness to work cooperatively with the Rogue Valley Transportation District’s staff;
- b. Demonstrated ability to perform services required by the RFQ;



#### **Category 4 – Understanding of the Project (25 points)**

RVTD's assessment of the Consultant's understanding of Rogue Valley Transportation District's needs and the Consultant's proposed solutions to meet the stated objectives of this RFQ. This category will be evaluated by reviewing the proposed scope of work, the description of the work approach, and the proposed work schedule.

**NOTE:** RVTD reserves the right to request clarification from a respondent for the purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes and to waive any minor irregularities in submittals.

#### **Specification Changes**

A prospective proposer may deliver to the Rogue Valley Transportation District a request for change to any of the proposal specifications. Such request must be received at RVTD by 12:00PM May 9, 2022. A written request shall include the following:

- a. A detailed statement of any legal or factual grounds for request;
- b. A description of any resulting prejudice to the prospective proposer; and
- c. A statement of the form of relief requested or any proposed changes to the specifications.

Staff will review the proposal change request and notify the prospective proposer of the decision in writing by 5:00 PM May 11, 2022.

#### **Addenda to RFQ**

- The Rogue Valley Transportation District will notify only those proposers who attend the pre-proposal meeting, or submit contact information for such purposes, of any addendum or any changes or modifications to this Request for Qualifications.
- This includes any amendment of dates in the Schedule for Selection Process. Any addenda so issued are to be considered part of the specifications of the RFQ. The Rogue Valley Transportation District is not responsible for any explanation, clarification, interpretation or approval made or given in any manner except by addenda issued by the Rogue Valley Transportation District.

#### **Consultant's Responsibility for Proposal**

The Consultant shall be fully responsible for all proposal development and submittals. The Rogue Valley Transportation District assumes no contractual or financial obligation as a result of the issuance of this RFQ, the preparation and submission of a proposal by a Consultant, product demonstration by a Consultant, the evaluation of an accepted/rejected proposal, or the selection of the finalist(s).

## **Proposal Acceptance or Rejection**

The Rogue Valley Transportation District reserves the right to reject any or all proposals, to accept or reject any or all the items in the proposal, to waive any informality in the proposals received, and to award the contract in whole or in part, if it is deemed to be in the best interest of the Rogue Valley Transportation District. The Rogue Valley Transportation District reserves the right to negotiate with any consultant after proposals are opened, if such action is deemed to be in the best interest of the Rogue Valley Transportation District.

In addition to the factors mentioned above, Consultants are cautioned to review carefully all terms, conditions and specifications of the RFQ prior to submittal of proposals. The Work may be awarded on the basis of the Consultant's proposal including the Consultant's qualifications as received and without further discussion.

**All Proposals shall be valid through June 30, 2022.**

## **Withdrawals and Modifications**

Any proposals can be withdrawn or modified in writing by contacting Debbie Wilbur at [dwilbur@rvtd.org](mailto:dwilbur@rvtd.org) prior to the May 20, 2022 closing time.

## **Contract**

The successful proposer will be expected to enter into a contract with the Rogue Valley Transportation District. The proposer will be required to maintain Commercial General Liability insurance, Automobile Liability insurance, and Personal Liability (Errors and Omissions) insurance for the duration of the agreement. *The firm who is awarded the contract will be expected to supply RVTD with a proposed contract including deliverables and costs associated with tasks within 5 business days of notice of award.*

## **Proposed RFQ and Contract Schedule**

**RFQ Release: April 26, 2022**

**Pre-Proposal Meeting: May 11, 2022 at 10:00AM**

**Location: 130 E. 8<sup>th</sup> St., Medford, OR 97501**

**Proposals Due: May 20, 2022 by 2:00PM**

**Complete Evaluation of Proposals: May 23-27, 2022**

**Notice of Intent to Award: May 31, 2022**

**Finalize Contract Negotiation By: June 7, 2022**

**Planned End Date of Services: August 1, 2023**

The Rogue Valley Transportation District reserves the right to change the schedule or terminate the selection process at any time at the Rogue Valley Transportation District's sole discretion. Notice thereof will promptly be provided to parties on the Rogue Valley Transportation District's RFQ holders list by e-mail if available, by letter if not.

## **Complaints**

Any proposer who has submitted a proposal to the Rogue Valley Transportation District and who is adversely affected by the Rogue Valley Transportation District's contract award to another proposer has 14 days after issuance of the Notice of Intent to award the contract, to submit a written protest of award to the Rogue Valley Transportation District. Such right to protest shall conform to the requirements of OAR 137-030-0104(1) and specify the grounds upon which the protest is based.

An adversely affected proposer must exhaust all avenues of administrative review and relief before seeking judicial review of the Rogue Valley Transportation District contract selection.

## TO BE COMPLETED BY CONTRACTOR

\_\_\_\_\_ Sole Proprietorship  
\_\_\_\_\_ Partnership (\_\_\_\_ Limited/\_\_\_\_\_ General)  
\_\_\_\_\_ Corporation

Contractor Name: \_\_\_\_\_

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

License Registration Number \_\_\_\_\_

Federal Tax ID Number \_\_\_\_\_

Phone Number \_\_\_\_\_

Email Address \_\_\_\_\_

DUNS # \_\_\_\_\_

Dun and Bradstreet active number must be registered with System For Award Management  
[www.sam.gov](http://www.sam.gov)

### STATEMENT OF QUALIFICATIONS CERTIFICATION

The undersigned is fully authorized to execute this certification on behalf of the CONTRACTOR and certifies on the CONTRACTORs behalf that, to the best of its knowledge, the information presented in this Statement of Qualifications is a statement of facts and that the CONTRACTOR has the financial capability to perform the work which is the subject of this solicitation. The CONTRACTOR further certifies that it knows of no person and/or organization conflicts of interest prohibited under federal, state and local law.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Title \_\_\_\_\_



## Disadvantaged Business Enterprise Certification

### DBE Certification

The contractor hereby agrees to subcontract a minimum of .75% of the contract to disadvantaged business enterprises.

**Firm Name:** \_\_\_\_\_

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

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

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

**Note: If there is no participation then this must be indicated on the form, and returned with the proposal.**

### DBE PARTICIPATION SCHEDULE

The undersigned Bidder/Offeror has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):

\_\_\_\_\_ The Bidder/Offer is committed to a minimum of .75% DBE utilization on this contract.

\_\_\_\_\_ The Bidder/Offeror (if unable to meet the DBE goal of %) is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

### DBE PARTICIPATION SCHEDULE

The Bidder/Offeror shall complete the following information for all DBE's participating in the contract that comprises the DBE Utilization percent stated in the DEB Utilization Form. The Bidder/Offeror shall also furnish the name and telephone number of the appropriate contact person should the Authority have any questions in relation to the information furnished herein.

### DBE IDENTIFICATION AND INFORMATION FORM

Name and Address	Contact Name and Telephone Number	Percent Of Contract	Description of Work To Be Performed

**(Failure to complete this form may render this bid non-responsive).**

**FEDERAL CLAUSES**  
**FEDERALLY REQUIRED AND OTHER MODEL CONTRACT CLAUSES**  
<https://www.transit.dot.gov/funding/procurement/best-practices-procurement-manual>

**ACCESS TO RECORDS AND REPORTS**

49 U.S.C. § 5325(g) 2 C.F.R. § 200.333 49 C.F.R. part 633

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

**CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

42 U.S.C. §§ 7401 – 7671q 33 U.S.C. §§ 1251-1387 2 C.F.R. part 200, Appendix II (G)

The Contractor agrees:

- 1) It will not use any violating facilities;
- 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
- 3) It will report violations of use of prohibited facilities to FTA; and
- 4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

**CIVIL RIGHTS LAWS AND REGULATIONS**

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

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

1. Nondiscrimination. In accordance with 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, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, 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. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
4. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

## **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

49 C.F.R. part 26

For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

The contractor, subrecipient or subcontractor 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 C.F.R. part 26 in the award and administration of DOT-assisted contracts. 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 the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

### **Overview**

It is the policy of the AGENCY and the United States Department of Transportation (“DOT”) that Disadvantaged Business Enterprises (“DBE’s”), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of the AGENCY to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE’s can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE’s;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This Contract is subject to 49 C.F.R. part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. The AGENCY shall make all determinations with regard to whether or not a Bidder/Offeror is in compliance with the requirements stated herein. In assessing compliance, the AGENCY may consider during its review of the Bidder/Offeror’s submission package, the Bidder/Offeror’s documented history of non-compliance with DBE requirements on previous contracts with the AGENCY.

### **Contract Assurance**

The Contractor, subrecipient or subcontractor 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 C.F.R. part 26 in the award and administration of DOT-assisted contracts. 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 the AGENCY deems appropriate.

### **DBE Participation**

For the purpose of this Contract, the AGENCY will accept only DBE's who are:

1. Certified, at the time of bid opening or proposal evaluation, by the [certifying agency or the Unified Certification Program (UCP)]; or
2. An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or
3. Certified by another agency approved by the AGENCY

### **DBE Participation Goal**

The DBE participation goal for this Contract is set at 0.75%. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling not less than % of the total Contract price. Failure to meet the stated goal at the time of proposal submission may render the Bidder/Offeror non-responsive.

### **Proposed Submission**

Each Bidder/Offeror, as part of its submission, shall supply the following information:

1. A completed DBE Utilization Form that indicates the percentage and dollar value of the total bid/contract amount to be supplied by Disadvantaged Business Enterprises under this Contract.
2. A list of those qualified DBE's with whom the Bidder/Offeror intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the DBE Participation Schedule. No work shall be included in the Schedule that the Bidder/Offeror has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Offeror may not deviate from the DBE Participation Schedule submitted in response to the bid. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by the AGENCY
3. An original DBE Letter of Intent from each DBE listed in the DBE Participation Schedule.
4. An original DBE Affidavit from each DBE stating that there has not been any change in its status since the date of its last certification.

### **Good Faith Efforts**

If the Bidder/Offeror is unable to meet the goal set forth above (DBE Participation Goal), the AGENCY will consider the Bidder/Offeror's documented good faith efforts to meet the goal in

determining responsiveness. The types of actions that the AGENCY will consider as part of the Bidder/Offeror's good faith efforts include, but are not limited to, the following:

1. Documented communication with the AGENCY's DBE Coordinator (questions of IFB or RFP requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);
2. Pre-bid meeting attendance. At the pre-bid meeting, the AGENCY generally informs potential Bidder/Offeror's of DBE subcontracting opportunities;
3. The Bidder/Offeror's own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation;
4. Written notification to DBE's encouraging participation in the proposed Contract; and
5. Efforts made to identify specific portions of the work that might be performed by DBE's.

The Bidder/Offeror shall provide the following details, at a minimum, of the specific efforts it made to negotiate in good faith with DBE's for elements of the Contract:

1. The names, addresses, and telephone numbers of DBE's that were contacted;
2. A description of the information provided to targeted DBE's regarding the specifications and bid proposals for portions of the work;
3. Efforts made to assist DBE's contacted in obtaining bonding or insurance required by the Bidder or the Authority.

Further, the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted when a non-DBE subcontractor was selected over a DBE for work on the contract. 49 C.F.R. § 26.53(b) (2) (VI). In determining whether a Bidder has made good faith efforts, the Authority may take into account the performance of other Bidders in meeting the Contract goals. For example, if the apparent successful Bidder failed to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, the Authority may view this as evidence of the Bidder having made good faith efforts.

### **Administrative Reconsideration**

Within five (5) business days of being informed by the AGENCY that it is not responsive or responsible because it has not documented sufficient good faith efforts, the Bidder/Offeror may request administrative reconsideration. The Bidder should make this request in writing to the AGENCY. The AGENCY will forward the Bidder/Offeror's request to a reconsideration official who will not have played any role in the original determination that the Bidder/Offeror did not document sufficient good faith efforts.

As part of this reconsideration, the Bidder/Offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Offeror will have the opportunity to meet in person with the assigned reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The AGENCY will send the Bidder/Offeror a written decision on its reconsideration, explaining the basis for finding that the Bidder/Offeror did or did

not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

### **Termination of DBE Subcontractor**

The Contractor shall not terminate the DBE subcontractor(s) listed in the DBE Participation Schedule (see below) without the AGENCY's prior written consent. The AGENCY may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify the AGENCY in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement. Failure to comply with these requirements will be in accordance with Section 8 below (Sanctions for Violations).

### **Continued Compliance**

Finally, for subcontracts with defined DBE contract goals, the prime contractor contract must include a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the AGENCY'S consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

The AGENCY shall monitor the Contractor's DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, it will be the responsibility of the Contractor to submit quarterly written reports to the AGENCY that summarize the total DBE value for this Contract. These reports shall provide the following details:

- DBE utilization established for the Contract;
- Total value of expenditures with DBE firms for the quarter;
- The value of expenditures with each DBE firm for the quarter by race and gender;
- Total value of expenditures with DBE firms from inception of the Contract; and
- The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to the DBE Coordinator. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder/Offeror shall permit:

- The AGENCY to have access to necessary records to examine information as the AGENCY deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract.
- The authorized representative(s) of the AGENCY, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data

and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.

- All data/record(s) pertaining to DBE shall be maintained as stated in Section [insert reference to record keeping requirements for the Project.]

### **Sanctions for Violations**

If at any time the AGENCY has reason to believe that the Contractor is in violation of its obligations under this Agreement or has otherwise failed to comply with terms of this Section, the AGENCY may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

- Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and
- Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.

### **ENERGY CONSERVATION**

42 U.S.C. 6321 et seq. 49 C.F.R. part 622, subpart C

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

### **GOVERNMENT-WIDE DEBARMENT AND SUSPENSION**

2 C.F.R. part 180 2 C.F.R. part 1200 2 C.F.R. § 200.213 2 C.F.R. part 200 Appendix II (I) Executive

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

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

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



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

## **LOBBYING RESTRICTIONS**

31 U.S.C. § 1352 2 C.F.R. § 200.450 2 C.F.R. part 200 appendix II (J) 49 C.F.R. part 20

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

1. 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 an 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.
2. If any funds other than Federal appropriated funds have been paid or will be paid 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 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.
3. 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 subrecipients 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. 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.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date

## **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

The Recipient and Contractor acknowledge and agree 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 the Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

49 U.S.C. § 5323(l) (1) 31 U.S.C. §§ 3801-3812 18 U.S.C. § 1001 49 C.F.R. part 31

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.

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. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

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.

## **RECYCLED PRODUCTS**

42 U.S.C. § 6962 40 C.F.R. part 247 2 C.F.R. part § 200.322

### **Recovered Materials**

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA),

“Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. part 247.

## **SEISMIC SAFETY**

49 C.F.R. Part 41

The CONTRACTOR agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations, 49 C.F.R. Part 41, and will certify to compliance to the extent required by the Regulation. The CONTRACTOR also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

## **ACCESS FOR INDIVIDUALS WITH DISABILITIES**

49 U.S.C. § 5301(d)

The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; 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 individuals with disabilities; 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 individuals with disabilities.

## **SAFE OPERATION OF MOTOR VEHICLES**

23 U.S.C. part 402 Executive Order No. 13043 Executive Order No. 13513 U.S. DOT Order No. 3902.10

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or AGENCY.

## **Distracted Driving**

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

## **PRIVACY ACT**

5 U.S.C. § 552a

The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

## **SENSITIVE SECURITY INFORMATION**

49 U.S.C. Section 40119(b)

Each third party contractor must protect, and take measures to ensure that its subcontractors at each tier protect, “sensitive security information” made available during the administration of a third party contract or subcontract to ensure compliance with “The Homeland Security Act”, as amended, specifically 49 U.S.C. Section 40119(b), The Aviation and Transportation Security Act, as amended, 49 U.S.C. § 114(r), U.S. DOT regulations, “Protection of Sensitive Security Information,” 49 C.F.R. part 15, and U.S. Department of Homeland Security, Transportation Security Administration regulations, “Protection of Sensitive Security Information,” 49 C.F.R. part 1520.

## **PROMPT PAYMENT**

49 CFR §26.29

Prime contractors must pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the AGENCY makes to the prime contractor. 49 C.F.R. § 26.29(a).

## **TERMINATION**

2 C.F.R. § 200.339 2 C.F.R. part 200, Appendix II (B)

### **Termination for Convenience (General Provision)**

The AGENCY may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the AGENCY’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 AGENCY to be paid the Contractor. If the Contractor has any property in its possession belonging to AGENCY, the Contractor will account for the same, and dispose of it in the manner AGENCY directs.

### **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, the AGENCY 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 be paid only 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 the AGENCY 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, the AGENCY, 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.

### **Opportunity to Cure (General Provision)**

The AGENCY, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] 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 AGENCY's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from AGENCY setting forth the nature of said breach or default, AGENCY 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 AGENCY from also pursuing all available remedies against Contractor and its sureties for said breach or default.

### **Waiver of Remedies for any Branch**

In the event that AGENCY elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by AGENCY shall not limit AGENCY's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract

### **Termination for Convenience (Professional or Transit Service Contracts)**

The AGENCY, by written notice, may terminate this contract, in whole or in part, when it is in the AGENCY's interest. If this contract is terminated, the AGENCY shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

### **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, the AGENCY may terminate this contract for default. The AGENCY 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.



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 AGENCY.

## **VIOLATION AND BREACH OF CONTRACT**

2 C.F.R. § 200.326 2 C.F.R. part 200, Appendix II (A)

### **Rights and Remedies of the AGENCY**

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

For purposes of this Contract, breach shall include (AGENCY to define).

### **Rights and Remedies of Contractor**

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the AGENCY, the Contractor expressly agrees that no default, act or omission of the AGENCY shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the AGENCY directs Contractor to do so) or to suspend or abandon performance.

### **Remedies**

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the AGENCY will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before the AGENCY takes action contemplated herein, the AGENCY will provide the Contractor with sixty (60) days written notice that the AGENCY considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

### **Disputes**

The AGENCY and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such

disputes by appropriate management level officials within the AGENCY and the Contractor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the AGENCY's direction or decisions made thereof.

### **Performance during Dispute**

Unless otherwise directed by AGENCY, 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 its employees, agents or others for whose acts it 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 AGENCY 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 AGENCY 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 AGENCY 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.

## **FEDERAL CHANGES**

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser 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.

## **PRIVACY ACT**

Contracts involving Federal Privacy Act Requirements – The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract.

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974.  
5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

## **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS**

Incorporation of Federal Transit Administration (FTA) Terms – The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT as set forth in FTA Circular 4220.1E 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 RVTB requests which would cause RVTB to be in violation of the FTA terms and conditions.