

SAMPLE CONTRACT



A. AGREEMENT

This Agreement is made between:

Owner: South Central IL Mass Transit District
1616 E. McCord Street
Centralia, IL 62801

and Contractor: _____

for the following Project:

Parking Lot Improvements at transit facility located at 1616 E. McCord Street, Centralia, IL 62801.

B. CONTRACT DOCUMENTS

The Contractor shall complete all work described in the Contract Documents for this project. The Contract Documents consist of the Instruction to Bidders, the Bid Proposal, and Bid Addenda, this Contract and written Change Orders issued after execution of this Agreement.

The Contract Documents represent the entire and integrated contract between the Owner and the Contractor and supersede all prior negotiations, representations, or agreements, either oral or written. This Contract may be amended only by written instrument signed by both the Owner and the Contractor.

Bidder's Initials _____

C. CONTRACT TIME

The Contractor shall begin the Work within ten (10) calendar days of receipt of a written Notice to Proceed, and shall substantially complete the work within the Contract Time identified in the Bid Proposal.

D. LIQUIDATED DAMAGES

The Contractor shall be charged a sum of \$50.00 as liquidated damages for each day beyond the Completion Date that the Work is not substantially complete.

E. CONTRACT SUM

Subject to additions and deductions by Change Order, the Contract Sum is:

_____ Dollars \$ _____

Prior to beginning work, the Contractor shall provide to the Owner a Schedule of Values related to the Work, which shall be used for purposes of periodic payments.

Requests for payment shall be sent to the South Central IL MTD representative (Director of Finance) for approval.

The Contract sum shall include all materials, labor, supervision, designing services, equipment, machinery, personnel safety protection and shall include all clean up of the working area during and after the job is completed.

F. PAYMENT

The Owner shall pay within thirty (30) days for completed work in monthly draws, less than 10% retainage, upon receipt of an acceptable invoice. Invoices shall be accompanied by signed Conditional Release of Liens forms from each applicable subcontractor and supplier.

Retainage shall be paid within in thirty (30) days of receipt of an acceptable Final Invoice. The Final Invoice shall be accompanied by signed Final Release and Waiver of Liens forms from all subcontractors and suppliers.

Bidder's Initials _____

CONTRACT PROVISIONS AND SPECIFICATIONS

A. GENERAL PROVISIONS

1.1 OCCUPATION OF THE PREMISES

The Contractor shall coordinate and cooperate with the Owner so as to minimally interfere with their operations.

1.2 SAFETY AND OBSERVANCE OF LAWS

The Contractor shall observe and comply with all Federal, State and local laws, ordinances, and regulations that affect the Work. The Contractor shall make every reasonable effort to maintain a safe work site, and shall comply with the Occupational Safety and Health Act of 1970 (OSHA) and all amendments thereto.

1.3 PERMITS AND FEES

The Contractor shall procure all permits and licenses, pay all charges, fees and taxes, and give all notices necessary and incident to the proper execution of work.

1.4 INSPECTIONS AND CORRECTION OF WORK

The Contractor shall schedule all required inspections and shall not cover up work requiring inspection until approval is obtained. All work which has been rejected shall be remedied or removed and replaced in an acceptable manner by the Contractor at his own expense.

1.5 WARRANTY

The Contractor shall warranty the workmanship for a period of one (1) year from the date of Final Completion. The date of Final Completion shall be the date of submission of a satisfactory final Application for Payment.

This warranty binds the Contractor to correct any defects in workmanship under this Contract which may be discovered within the one year period. Contractor shall at his own expense correct such defect within thirty (30) days of receiving written notice of the defect from the Owner.

Bidder's Initials _____

1.6 LABOR RATES

Contractor shall pay wage rates that prevail in the locality in which the Work is to be done. Wage rates may be obtained from the State of Illinois Department of Labor. The Contractor shall not pay less than the wage rates shown for each craft or type of “Laborer”, “Workman” or “Mechanic” employed on the project.

END OF CONTRACT PROVISIONS

Bidder's Initials _____

REQUIRED FEDERAL LANGUAGE

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

Contractor will be required to comply with all Civil Rights requirements. Contractor will be required to comply with all applicable Equal Employment Opportunity laws and regulations. During the performance of this contract, the contractor agrees as follows:

Nondiscrimination

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

Equal Employment Opportunity

- 2) 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. Dept. of Labor 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, without regard

3) to their race, color, creed, national origin, sex or age. Such action shall include, but not be limited to, the following: 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.

ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 18

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.

FEDERAL CHANGES

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 between South Central Transit and the 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.

**INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA)
TERMS
FTA Circular 4220.1E.**

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 SCIMTD requests which would cause SCIMTD to be in violation of the FTA terms and conditions.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

The Purchaser 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 Purchaser, 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 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 FRADULENT STATEMENTS AND
RELATED ACTS**

**31 U.S.C. 3801 et seq.
49 CFR Part 31 a8 U.S.C. 1001
49 U.S.C. 5307**

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. 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.

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.

TERMINATION
49 U.S.C. Part 18
FTA Circular 4220.1E§

a. Termination for Convenience SCT 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 SCT to be paid to the Contractor. If the Contractor has any property in its possession belonging to SCT, the Contractor will account for the same, and dispose of it in the manner that SCT directs.

b. Termination for Default 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, SCT 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 SCT 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, SCT, 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.

c. Opportunity to Cure SCT at its sole discretion may, in the case of a termination for breach or default, allow the Contractor 10 business 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 SCT'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 SCT setting forth the nature of said breach or default, SCT 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 SCT from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that SCT elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by SCT shall not limit SCT's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

PREFERENCE FOR RECYCLED PRODUCTS 42 U.S.C. § 6962

To the extent applicable, the Grantee and contractors agree to give preference to the purchase of recycled products for use in this Project pursuant to the various U.S. Environmental Protection Agency (EPA) guidelines, "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 CFR part 247, which implements Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26

The Grantee or subcontractor, shall not discriminate on the basis of race, color, national origin, or sex in the performance of any contract or agreement resulting from this bid solicitation. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT assisted contracts or agreements. Failure by the

contractor or subcontractor to carry out these requirements is a material breach of the contract or agreement, that may result in the termination of any contract or agreement resulting from this bid solicitation, or such other remedy as the Department deems appropriate.

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 60 days from the receipt of each payment the prime contractor receives from the Grantee. The prime contractor agrees further to return retainage payments to each subcontractor within 60 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Grantee.

**BUY AMERICA
49 U.S.C. 5323(j)
49 CFR Part 661**

The Grantee and Contractor agree to comply with 49 U.S.C. 5323(j) and FTA regulations. "Buy America Requirements," 49 C.F.R. Part 661 to the extent those regulations are consistent with SAFETEA-LU provisions, and subsequent amendments to those regulations that may be promulgated. The Grantee and Contractor also agree to comply with FTA directives to the extent those directives are consistent with SAFETEA-LU provisions, except to the extent that FTA determines otherwise in writing.

INTEREST OF MEMBERS OF CONGRESS

No member of or delegate to the Illinois General Assembly (or the Congress of the United States) shall be admitted to any share or part of this contract or to any benefit arising therefrom.

PROHIBITED INTERESTS

No member, or officer, or employee of South Central IL Mass Transit District with financial interest or control in this contract during their tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

CONTRACT CHANGES

Any proposed change in this contract shall be submitted to the South Central Illinois Mass Transit District for its prior approval.

SUBCONTRACTS

The contractor shall not enter into any sub-contracts or agreements, or start any work by the work forces of contractor or use any materials from the stores of the contractor, with respect to this contract, without the prior concurrence of the Illinois Department of Transportation. All such subcontracts, agreements, and force work and materials shall be handled as prescribed for third-party contracts, agreements and force-account work by the IDOT manual for Public Transportation Capital Grants. All requests for concurrence shall be submitted to South Central Illinois Mass Transit District for approval prior to submittal to IDOT.

RECORD RETENTION

During the course of the Project and for three (3) years thereafter from the date of transmission of the final expenditure report, the contractor agrees to maintain intact and readily accessible all data, documents, reports, records, contracts and supporting materials relating to this Project as the Federal Government may require.

DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

The proposer agrees, that if selected, to comply with all applicable provisions of Davis-Bacon and Copeland Anti-Kickback Acts. Per the Davis-Bacon Act, contractors are required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. Refer to Appendix "A" for current prevailing wages.

CONTRACT WORK HOURS AND SAFETY STANDARDS

(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 of 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 therefore 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** – SCT 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 money 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.

CLEAN WATER REQUIREMENTS 33 U.S.C. 1251

Applicability to Contracts

The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

Clean Water - (1) 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.
(2) 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.

BONDING REQUIREMENTS

Applicability to Contracts

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
 - (1) 50% of the contract price if the contract price is not more than \$1 million;
 - (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (3) \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check or other negotiable instrument may be accepted in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

Bid Bond Requirements (Construction)

(a) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to SCT and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

(b) Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by SCT to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of sixty (60) days subsequent to the opening of bids, without the written consent of SCT.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [sixty (60)] days after the bid opening without the written consent of SCT, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of SCT's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefore.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by SCT as provided in "Bid Bond" on page 7 (of bid package) shall prove inadequate to fully recompense SCT for the damages occasioned by default, then the undersigned bidder agrees to indemnify SCT and pay over to SCT the difference between the bid security and SCT's total damages, so as to make SCT whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless SCT determines that a lesser amount would be adequate for the protection of SCT.
2. SCT may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. SCT may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than \$1 million.

(ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(iii) Two and one half million if the contract price is more than \$5 million.

2. If the original contract price is \$5 million or less, SCT may require additional protection as required by subparagraph 1 if the contract price is increased.