

AGREEMENT
BETWEEN DEPARTMENT AND CONTRACTOR
FOR CONSTRUCTION CONTRACT

Financial Project No: 412994-3-52-01

Description:
Central Florida Commuter Rail Transit (CFCRT)
Station Finishes

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FOR CONSTRUCTION CONTRACT**

Contract No.: BDT 74
F.E.I.D. No: F36-3286318
Appropriation No.: SB 2000, Line 1918C
Procurement No: RFP-DOT-11-12-5007-STA1
D.M.S. Catalog Class No.: 973-160, 973-166

BY THIS AGREEMENT, effective as of the 24 day of February 2012, the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter called "Department") and ARCHER WESTERN CONTRACTORS, LTD., INC., (hereinafter called "Contractor"), agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Central Florida Commuter Rail Transit (CFCRT) Station Finishes.

(For informational purposes, the Project Specifications may rephrase this description as "Central Florida Commuter Rail Transit – Initial Operating Segment – Station Finishes-Package #1," and the Project Plans may rephrase this description as "Central Florida Commuter Rail Transit – IOS Stations – Pkg 1".)

ARTICLE 2 – THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally identified by the Department as follows:

Project Financial Numbers: 412994-3-52-01, 412994-3-52-03, 412994-3-52-04, 412994-3-52-06, 412994-3-52-12

(For informational purposes, the Project may be referred to hereinafter in Project Documents as 412994-3-52-01.)

ARTICLE 3 – CONTRACT TIMES

3.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

3.02 *Days to Achieve Substantial Completion and Final Payment*

A. The Work will be substantially completed within 430 days after the date when the Contract Time commences to run, as provided in Paragraph 2.07 of the General Conditions, and completed and ready for Final Payment in accordance with Paragraph 14.13 of the General Conditions within 460 days after the date when the Contract Time commences to run.

3.03 *Liquidated Damages*

A. Contractor and Department recognize that time is of the essence as stated in Paragraph 3.01 above and that Department will suffer financial loss if the Work is not completed within the times specified in Paragraph 3.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving the actual loss suffered by Department if the Work is not completed on time. Accordingly, instead of requiring any such proof, Department and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Department for each calendar day that expires after the time specified in Paragraph 3.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions, for Substantial Completion until the Work is substantially complete, the dollar amount as specified in the General Conditions, paragraph 15.04.

ARTICLE 4 – CONTRACT PRICE

4.01 Department shall pay Contractor the Contract Price of \$27,584,500.00, for completion of the Work in accordance with the Contract Documents as a lump sum price, payable in accordance with the General Conditions.

ARTICLE 5 – CONTRACT DOCUMENTS

5.01 *Contents*

A. The Contract Documents which comprise the entire agreement between Department and Contractor concerning the Work and which are incorporated herein by this reference consist of the following:

1. This Agreement.
2. Standard General Conditions of the Contract Between the Department and Contractor, which are referred to in the Contract Documents as the General Conditions.
3. Supplementary Conditions.
4. Specifications.
5. Plans.
6. Performance and Payment Bond.

7. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. All written Amendments, Supplemental Agreements, Contingency Work Orders, a letter from the Engineer granting additional Contract Time, and other documents modifying or supplementing the Contract Documents pursuant to paragraph 3.04 of the General Conditions.
- B. There are no Contract Documents other than those listed above in this Article 5. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 6 – MISCELLANEOUS

- 6.01 Department and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- 6.02 Assignment of the Contract is addressed in the General Conditions, Paragraph 6.04 A.
- 6.03 The Contractor agrees that it shall make no statements, press releases or publicity releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the Department's Engineer and securing the Department's prior written consent.
- 6.04 The Contractor shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof, and will not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under this Agreement.
- 6.05 If the Contractor is licensed by the Department of Business and Professional Regulation to perform the services herein contracted, then Section 337.162, Florida Statutes, applies as follows:
 - A. If the Department has knowledge or reason to believe that any person has violated the provisions of state professional licensing laws or rules, it shall submit a complaint regarding the violations to the Department of Business and Professional Regulation. The complaint shall be confidential.
 - B. Any person who is employed by the Department and who is licensed by the Department of Business and Professional Regulation and who, through the course of the person's employment, has knowledge to believe that any person has violated the provisions of state professional licensing laws or rules shall submit a complaint regarding the violations to the Department of Business and Professional Regulation. Failure to submit a complaint about the violations may be grounds for disciplinary action pursuant to Chapter 455, Florida Statutes, and the state licensing law applicable to that licensee. The complaint shall be confidential.

C. Any complaints submitted to the Department of Business and Professional Regulation are confidential and exempt from Section 119.07(1), Florida Statutes, pursuant to Chapter 455, Florida Statutes, and applicable state law.

- 6.06 The Contractor covenants and agrees that it and its employees and agents shall be bound by the standards of conduct provided in applicable law and applicable rules of the Board of Business and Professional Regulation as they relate to work performed under this Agreement. The Contractor further covenants and agrees that when a former state employee is employed by the Contractor, the Contractor shall require that strict adherence by the former state employee to Sections 112.313 and 112.3185, Florida Statutes, is a condition of employment for said former state employee. These statutes will by reference be made a part of this Agreement as though set forth in full. The Contractor agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Agreement.
- 6.07 An entity or affiliate placed on the discriminatory vendor list pursuant to section 287.134 of the Florida Statutes may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity.
- 5.08 The Department shall consider the employment by any contractor of unauthorized aliens a violation of Section 274 A (e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this agreement.
- 6.09 Pursuant to Section 216.347, Florida Statutes, the Contractor may not expend any State funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency.
- 6.10 This Agreement involves the expenditure of federal funds and Section 946.515, Florida Statutes does not apply.
- 6.11 This Agreement will not be renewed.
- 6.12 The Contractor and its employees, agents, representatives, or subcontractors are not employees of the Department and are not entitled to the benefits of State of Florida employees. Except to the extent expressly authorized herein, Contractor and its employees, agents, representatives, or subcontractors are not agents of the Department or the State for any purpose or authority such as to bind or represent the interests thereof, and shall not represent that it is an agent or that it is acting on the behalf of the Department or the State. The Department shall not be bound by any unauthorized acts or conduct of the Contractor or its employees, agents, representatives, or subcontractors. Contractor agrees to include this provision in all its subcontracts under this Agreement.
- 6.13 This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or

written, between the parties hereto. The State of Florida terms and conditions, whether general or specific, shall take precedence over and supersede any inconsistent or conflicting provision in any attached terms and conditions of the Contractor.

6.14 It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

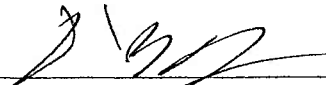
6.15 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

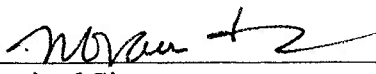
6.16 In any legal action related to this Agreement, instituted by either party, the Contractor hereby waives any and all privileges and rights it may have under Chapter 47 and Section 337.19, Florida Statutes, relating to venue, as it now exists or may hereafter be amended, and any and all such privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those grounded on convenience. Any such legal action may be brought in the appropriate Court in the county chosen by the Department and in the event that any such legal action is filed by the Contractor, the Contractor hereby consents to the transfer of venue to the county chosen by the Department upon the Department filing a motion requesting the same.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

ARCHER WESTERN CONTRACTORS,
LTD., INC.

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: 
(Authorized Signature)

By: 
(Authorized Signature)

David B. Casey
(Print/Type)

Noranne B. Downs
(Print/Type)

Title: Vice President

Title: District Secretary

FOR DEPARTMENT USE ONLY

APPROVED:

Contractual Services Office

LEGAL APPROVAL:
