



MEMORANDUM

To: Jason Ward, County Administrator
CC: Susan Brickle, Clerk to County Administrator
From: Nancy Rizzo, Purchasing Agent
Date: January 9, 2023
Subject: RFP 2023-21 JOC Program - Tupco, Inc.

Attached please find a contract for Tupco, Inc. for RFP 2023-21 Job Order Contracting for General Construction Services.

If you have any questions, please let me know.

RECEIVED

JAN - 9 2023

Dorchester County
Administrators Office

STATE OF SOUTH CAROLINA

CONTRACT No.#2023-21-03

Job Order Contracting Services for General Construction

COUNTY OF DORCHESTER

THIS CONTRACT (hereinafter the "Contract") entered into this 10th day of January 2023, between the **COUNTY OF DORCHESTER**, South Carolina, a public body corporate and politic and political subdivision of the State of South Carolina, (hereinafter the "County") and TUPCO Inc., a South Carolina Corporation, the address of which is 1406 Central Avenue, Summerville, SC 29483 (hereinafter the "Contractor"), ("Party" as to each; collectively the "Parties").

WITNESSETH

WHEREAS, the County wishes to contract Job Order Contracting Services in **Group A – Dorchester County**; and

WHEREAS, the Contractor has represented to the County that its staff is qualified to provide the work and perform this Contract in a professional and timely manner; and

WHEREAS, the County has relied upon the above representations by the Contractor;

WHEREAS, the Dorchester County Director of Business Services has recommended that a contract for aforesaid construction be entered into with the Contractor; and

NOW, THEREFORE, for and in consideration of these promises, of the mutual covenants herein set forth, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, and the above-referenced recitals incorporated into this Contract herein by reference, the Parties hereto hereby agree as follows:

ARTICLE 1 DOCUMENTS INCORPORATED BY REFERENCE

This contract includes the documents for the Job Order Contract, specifically identified as the following:

- Exhibit A: Request for Proposal (RFP) No. #2023-21, including the JOC Supplemental Conditions, other attachments, and all addenda
- Exhibit B: Construction Task Catalog® and Technical Specifications
- Exhibit C: Contractor's Insurance Certificate(s) and Endorsement(s)
- Exhibit D: Contractor's Proposal and Submittals dated November 16, 2022

All of which are hereby incorporated herein by reference and made a part hereof (hereinafter collectively referred to as the "Contract Documents"). Job Orders issued hereafter including all related documentation including, but not limited to, the Detailed Scope of Work, Job Order Proposal, Supplemental Job Order, Construction Change Directives, a Direction for a Minor Modification in the work issued by the County, and any other amendments or modifications executed by the County and the Contractor shall become and be a part of this Contract.

In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Contract, the following shall control:

- a. The JOC Supplemental Conditions (Section G) shall take precedence.
- b. As between the Contract and the Contract Documents or any other document to include, but not limited to, the plans or specifications, the Contract shall govern.
- c. In the event of any conflict, discrepancy, or inconsistency among any of the other Contract Documents, the Contractor shall notify the County immediately upon discovery of same, and the County will notify the Contractor of the resolution.
- d. Any documents not included or expressly contemplated in this Contract do not, and shall not, form a part of this Contract. The Contract Documents are intended to be complementary, and a requirement in one document shall be deemed a requirement in all documents.

ARTICLE 2 DEFINITIONS

- 2.1 Application for Payment: the Contractor's certified request for payment for completed portions of the Work and for materials or equipment suitably stored pending their incorporation into the Work; interchangeable with Payment Request
- 2.2 Architect/Engineer: the Architect/Engineer for the Work is identified in the Job Order; unless otherwise directed by the County in writing, the Architect/Engineer will perform those duties and discharge those responsibilities, if any, allocated to the Architect/Engineer in this Contract.
- 2.3 Change Order: a bilateral amendment to the Contract signed by the County, the Architect and the Contractor authorizing a change in the Contract Documents.
- 2.4 Construction Change Directives: a written order prepared by the County directing a change in the Work stating a proposed basis for adjustment, if any, in the Job Order Price or Job Order Completion Time
- 2.5 Job Order Price: The value of the approved Price Proposal and the amount the Contractor will be paid for completing the Detailed Scope of Work within the Job Order Completion Time.
- 2.6 Job Order Completion Time: The time within which the Contractor must complete the Detailed Scope of Work.
- 2.7 Direction for Minor Modification: supplemental instruction given in advance by the County to the Contractor, which may or may not include a change in the Job Order Price
- 2.8 Final Completion: denotes that the Work has been completed in accordance with the terms and conditions of the Contract Documents
- 2.9 Final Payment: the last payment made by the County to the Contractor of the entire unpaid balance of the Job Order Price as adjusted by Change Orders and/or modifications
- 2.10 Payment Request: used interchangeably with Application for Payment
- 2.11 Project: the total construction and/or furniture, furnishings and equipment of which the Work performed under the Contract Documents may be the whole or a part; used interchangeably with Work in this Contract. A Project consists of one Job Order, or a series of related Job Orders.
- 2.12 Project Site: geographic location of the Project, usually defined by legal boundary lines; used interchangeably with the Work Site
- 2.13 Schedule of Values: a statement furnished by the Contractor reflecting the portions of the Job Order Price allocated to the various portions of the Work and used as the basis for reviewing the Contractor's Application for Payment
- 2.14 Substantial Completion: that point at which, as certified in writing by the Architect / Engineer and approved by the County, the Work, or a designated portion thereof, is sufficiently complete in accordance with the Contract Documents such that the County or its designee can enjoy beneficial use or occupancy and can legally occupy, use or operate it in all respects, for its intended purpose
- 2.15 Work: the construction and services required by the Contract Documents, whether completed or partially completed, and including all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations; may constitute a whole or a part of the Project; used interchangeably with Project in this Contract
- 2.16 Work Site: the geographic location of the Work; used interchangeably with the Project Site

ARTICLE 3 REPRESENTATIONS OF THE CONTRACTOR

In order to induce the County to execute this Contract and recognizing that the County is relying thereon, the Contractor, by executing this Contract, makes the following express representations to the County:

- 3.1 The Contractor is fully qualified to act as the general contractor for the Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the general contractor for, and to construct the Project; and

- 3.2 The Contractor has become familiar with the Project Site and the local conditions under which the Project is to be constructed and operated; and
- 3.3 The Contractor has received, reviewed and examined all of the Contract Documents, including, but not limited to all plans and specifications, and has found them to the best of its knowledge, to be complete, accurate, adequate, consistent, coordinated and sufficient for construction.

ARTICLE 4 INTENT AND INTERPRETATION

With respect to the intent and interpretation of this Contract, the County and the Contractor agree as follows:

- 4.1 This Contract (along with its exhibits), together with the Contractor's and surety's performance and payment bonds for the Project constitute the entire and exclusive Contract between the Parties with reference to the Project, and said Contract supersedes any and all prior discussions, communications, representations, understandings, negotiations, or contracts; and
- 4.2 Anything that may be required, implied or reasonably inferred by the documents which make up this Contract, or any one or more of them, shall be provided by the Contractor for the Job Order Price; and
- 4.3 Nothing contained in this Contract shall create, nor be interpreted to create, privity or any other relationship whatsoever between the County and any person except the Contractor; and
- 4.4 When a word, term, or phrase is used in this Contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage; and
- 4.5 Wherever this Contract calls for "strict" compliance or conformance with the Contract Documents as to matters other than compliance with time limits, providing an updated schedule, and claim and Change Order procedures, the term shall mean within tolerances as described specifically in the Contract Documents, or if not specifically described, within industry standards and tolerances for deviation for the specific item or procedure in question; and
- 4.6 The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation"; and
- 4.7 The listing herein of any items as constituting a material breach of this Contract shall not imply that any other, non listed item will not constitute a material breach of this Contract; and
- 4.8 The Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract, shop drawings, and other submittals and shall give written notice to the County of any conflict, ambiguity, error or omission which the Contractor may find with respect to these documents, before proceeding with the affected Work. The express or implied approval by the ADC of any shop drawings or other submittals shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The County has prepared a Detailed Scope of Work for the Project, including any plans and specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. The Contractor shall not be liable to the County for damage resulting from errors, inconsistencies or omissions in the Detailed Scope of Work unless the Contractor recognized, or reasonably should have recognized, such error, inconsistency or omission and knowingly failed to report it to the County. If the Contractor performs any activity knowing it involves an error, inconsistency or omission which was recognized, obvious, or reasonably should have been recognized, without such notice to the County, the Contractor shall assume responsibility for such performance and shall bear the costs for correction.

ARTICLE 5 INDEPENDENT CONTRACTOR

The Contractor is an independent contractor and shall not be deemed the agent or employee of the County for any purpose whatsoever. The Contractor shall not hold itself out as an employee of the County, and shall have no power or authority to bind or obligate the County in any manner, except the County shall make payment to the Contractor for work/services and expenses as herein provided. The Contractor shall obtain and maintain all licenses and permits required by law for the performance of this Contract or its employees, agents, and servants. The Contractor shall be liable for and pay all taxes required by local, state or federal governments, including, but not limited, to social security, Workers' Compensation, employment security, and any other taxes and licenses or insurance premiums required by law. No employee benefits of any kind shall be paid by the County to or for the benefit of the Contractor or its employees, agents, or servants by reason of this Contract.

ARTICLE 6 OWNERSHIP OF THE DOCUMENTS WHICH MAKE UP THIS CONTRACT

As between the County and the Contractor, the documents which make up this Contract, and each of them, as well as any other documents furnished by the County, shall remain the property of the County. The Contractor shall have the right to keep one (1) copy of the Contract upon Final Completion of the Project; provided, however, that in no event shall the Contractor use, or permit to be used, any portion or all of such Contract on other projects without the County's prior written authorization.

ARTICLE 7 CONTRACTOR'S PERFORMANCE

The Contractor shall perform all of the Work required, implied or reasonably inferable from this Contract including, but not limited to, the following:

- 7.1 The Contractor will complete the entire Work described in the Contract Documents, except as specifically identified therein as the Work of other parties, in accordance with the terms herein, including all Exhibits, all as may be amended from time to time; and
- 7.2 The furnishing of any and all required surety bonds and Insurance Certificate(s) and Endorsement(s); and
- 7.3 The provision or furnishing, and prompt payment therefor, of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, disposal, power, fuel, heat, light, cooling, or other utilities, required for construction and all necessary building permits and other permits or licenses required for the construction of the Project; and
- 7.4 The creation and maintenance of a detailed and comprehensive copy of the Detailed Scope of Work, including any drawings or specifications, Supplemental Job Orders and other modifications depicting all as-built construction. Said items shall be submitted to the County, along with other required submittals upon Final Completion of the Project, and receipt of same by the County shall be a condition precedent to Final Payment to the Contractor. The Contractor shall prepare and submit final as-built drawings to the County.

ARTICLE 8 TIME FOR CONTRACTOR'S PERFORMANCE: DELAYS

- 8.1 The Contractor shall commence the performance of this Contract on the date set forth in the Notice to Proceed, issued by the Purchasing Services Manager, and shall diligently continue its performance to and until Final Completion of the project. The Contractor shall complete the Detailed Scope of Work no more than the number of Calendar Days specified in the Job Order or a Notice to Proceed (sometimes hereinafter

referred to as the “Job Order Completion Time”). By submitting a Job Order Proposal, the Contractor agrees that the Job Order Completion Time is a reasonable time for accomplishing Detailed Scope of Work. There will be no monetary early completion incentive. The Contractor shall submit its initial progress schedule in accord with Article 12.

- 8.2 The Parties agree it is impossible to determine the actual and consequential damages resulting from Contractor’s delay in completion of the Work, so a liquidated damages provision is appropriate. The Parties intend for a sum specified in the table below per day for each and every calendar day the completion of the Work is delayed beyond the Job Order Completion Time to be the predetermined measure of compensation for actual damages for a delay in completion of the Work. The Contractor agrees that if the Work, or any part thereof, is not completed within the time agreed upon in this Contract or any extension thereof, the Contractor or its sureties shall be liable to the County in the amount specified in the table below for each and every calendar day the completion of the Work is delayed beyond the Job Order Completion Time, as fixed and agreed liquidated damages and not as a penalty; and the County shall have the right to deduct from and retain out of monies which may be then due or which may become due and payable to the Contractor, the amount of such liquidated damages; and if the amount so retained by the County is not sufficient to pay in full such liquidated damages, the Contractor shall pay to the County or its sureties the amount necessary to effect payment in full of such liquidated damages.

Value of Job Order	Liquidated Damages
\$0 to \$10,000	\$100/Day
\$10,001 to \$50,000	\$250/Day
Over \$50,000	\$500/Day

Liquidated Damages will not be assessed for any adjustment of the Job Order Completion Time for completion of the Work granted in accordance with the provisions of this Contract.

Permitting the Contractor to continue and finish the Work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, will in no way be deemed a waiver on the part of the County of any of its rights under this Contract.

Additional provisions concerning the Contractor’s liability in certain specific events or circumstances are set forth throughout the Detailed Scope of Work. By submitting a Job Order Proposal, the Contractor expressly agrees to the terms thereof.

- 8.3 If the Contractor fails to achieve Final Completion of all punch list items within thirty (30) Calendar Days of the date of Substantial Completion, the County reserves the right to contract with other parties to complete the Work, or to use other forces, utilizing funds retained or collected under this Contract as set forth in Article 9 below. This Article is not limited by the terms of Article 11 below; and

In addition to other remedies of the County, actual damages may be withheld or collected for failure to meet the date for Final Completion, as set forth in Article 8, Item B above.

- 8.4 Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion.

- 8.5 All limitations of time set forth herein are material and are of the essence of this Contract.

- 8.6 The Contractor agrees to punctually and diligently perform all parts of the Work at the time scheduled as determined in Article 12 below. In this connection, the Contractor agrees that it will keep itself continually informed of the progress of the job and will, upon its own initiative, confer with the County so as to plan its

work in coordinated sequence with the work of the County and of others and so as to be able to expeditiously undertake and perform its work at the time most beneficial to the entire Project. The Contractor will be liable for any loss, costs, or damages sustained by the County for delays in performing the Work hereunder, other than for excusable delays, as set forth in Article 8, Item G below, for which the Contractor may be granted a reasonable extension of time.

8.7 If the Contractor is delayed at any time in the progress of the Work by any separate contractor employed by the County, or by changes in the Work, or by labor disputes, fire, unusual delay in transportation, unusually severe weather conditions, unavoidable casualties, delays specifically authorized by the County, or by causes beyond the Contractor's control, avoidance, or mitigation, and without the fault or negligence of the Contractor and/or subcontractor or supplier at any tier, then the Job Order Completion Time shall be extended by Supplemental Job Order for such reasonable time, if any, as the County may determine that such event has delayed the progress of the Work, or overall completion of the Work if the Contractor complies with the notice and documentation requirements set forth below.

8.8 If the Contractor is delayed, obstructed, hindered or interrupted for a period of time exceeding seven (7) Calendar Days by any act or neglect of the County, an adjustment shall be made for any increase in the direct cost of performance of the Detailed Scope of Work (excluding profit, extended home office overhead, incidental or consequential damages or disruption damages) and a Supplemental Job Order issued accordingly. The Contractor must assert its right under this Article by giving written notice to the Architect/Engineer within ten (10) Calendar Days of the beginning of a delay, obstruction, hindrance or interruption by the County. No adjustment shall be made for any delay, obstruction, hindrance or interruption after Final Payment for a Job Order or to the extent that performance would have been so delayed, obstructed, hindered or interrupted by any other cause, including, but not limited to concurrent cause or fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Contract. The direct costs described above shall be limited to those direct costs attributable solely to this Project, and shall be subject to documentation and verification of costs as required by the County. If unit prices are established in the Contract Documents or subsequently agreed upon, they shall form the basis for cost calculations under any claims for delay.

Any claim for extension of time shall be made in writing to the County, not more than Ten (10) Business Days from the beginning of the delay. The notice shall indicate the cause of delay upon the progress of Work. If the cause of the delay is continuing, the Contractor must give such written notice every Ten (10) Business Days. Within Ten (10) Business Days after the elimination of any such delay, the Contractor shall submit further documentation of the delay and a formal request for an extension of time for such delay.

The written request for a time extension shall state the cause of the delay, the number of Calendar Days extension requested, and such analysis and other documentation as is reasonably requested by the County to demonstrate a delay in the progress of the Work or the overall Project completion. If the Contractor does not comply with the above notice and documentation requirements, the claim for the delay shall be waived by the Contractor. The above notice and documentation requirements shall also be a condition precedent to the Contractor's entitlement to any extension of time.

Extensions of time will be the Contractor's primary remedy for any and all delays, obstructions, hindrances, or interference. Payment or compensation, for direct costs only (as set forth above), may be made to the Contractor for hindrances or delays solely caused by the County if such delays or hindrances are within the County's ability to control and are not partially caused by the Contractor or any of its agents, subcontractors or others for whom it is responsible. No payment or compensation will be made for interference, obstructions, hindrances or delays which are not solely caused by the County or which arise from the County's actions under Article 11.

Without limitation, the County's exercise of its rights under Article 16, regardless of the extent or number of such changes, or the County's exercise of any of its remedies or any requirement to correct or re-execute defective work, shall not under any circumstances be construed as delays, hindrances or interference compensable further than as described herein.

Weather delays are generally referred to as "rain days." Time for hot, cold, and/or windy conditions will be allowed for in the allocated date of completion. An average number of rain days has also been included in the completion date determination. This was determined by the following method: all Calendar Days in each month in which rainfall in any part of the day exceeded 0.10 inch has been calculated and averaged. These averages are as follows:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
9	10	8	8	9	9	14	16	11	16	7	12

Rain delays, therefore, will only be considered when the number of Calendar Days in any month in which rainfall, as recorded by the Charleston National Weather Service at the Charleston International Airport location, as 0.10 inch or greater, exceeds the number of Calendar Days shown. In considering a claim for rain days, the actual conditions at the Work Site shall control. Notwithstanding the requirements pertaining to the filing of claims herein, the Contractor shall make a claim for a time extension due to rain delays no later than the tenth (10th) calendar day of the month following the release of the National Oceanic and Atmospheric Administration (NOAA) monthly report.

ARTICLE 9 FIXED PRICE AND CONTRACT PAYMENTS

- 9.1 The County shall pay, and the Contractor shall accept, as full and complete payment for the Contractor's timely performance of its obligations hereunder the Job Order Price for the completion of the Detailed Scope of Work. The price set forth in this Article 9, Item A shall constitute the Job Order Price, which shall not be modified except by Supplemental Job Order or adjustment pursuant to approved unit prices, if any, as provided in this Contract.
- 9.2 The County will make one payment for all Job Orders that have a Job Order Completion Time of (45) days or less, or a Job Order Price of \$25,000 or less. For all other Job Orders, the County may make partial, monthly payments based on the percentage of the work completed. Before submitting an Application for Payment (Final or Partial) the Contractor shall reach an agreement with the County concerning the percentage complete of the Detailed Scope of Work and the dollar value for which the Application for Payment may be submitted.
- 9.3 For Job Orders greater than (45) days and \$25,000, prior to review of the first Payment Request, the Contractor must submit to the County and receive the County's approval for the Schedule of Values apportioning the entire Job Order Price among the different elements of the Project for purposes of periodic and Final Payment. As required for a Job Order, the Schedule of Values shall be presented in whatever format, with such detail including labor and material breakout, and backed up with whatever supporting information the County requests (see also the specifications for additional information). The Contractor shall not imbalance its Schedule of Values, nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Schedule of Values will be utilized for the Contractor's Payment Requests but shall only be so utilized after it has been approved in writing by the County.
- 9.4 The County shall pay the Job Order Price to the Contractor in accordance with the procedures set forth in this Article 9. On or before the tenth (10th) calendar day of each month after commencement of performance, but no more frequently than once monthly, the Contractor may submit a Payment Request for the period ending the last calendar day of the previous month. The Payment Request shall be in such format and include whatever supporting information as may be required by the County. Therein, the Contractor may request payment for ninety percent (90%) of that part of the Job Order Price allocable to the Project requirements properly provided, labor, materials and equipment properly incorporated in the Project, and materials or equipment necessary for the Project and properly stored at the Project Site (or elsewhere if offsite storage is approved in writing by the County), less the total amount of previous payments received from the County. Payment for materials stored offsite shall be at the discretion of the County and if approved, the Contractor shall provide appropriate documentation to substantiate materials are stored in a bonded warehouse or facility, title or other proof of ownership has been transferred to the County, and that

materials have been purchased and paid for by the Contractor (copies of paid invoices must be submitted to the County with Payment Request). Risk of loss shall be borne by, and insurance must be provided by the Contractor while in storage and in transit. At seventy-five percent (75%) completion of the Job Order Price, by dollar value, and at the option of the County, retainage will be reduced to five percent (5%) plus an additional amount as detailed in Article 17 below for defective or non-conforming work and anticipated liquidated damages.

Amounts reflected in Supplemental Job Orders may be included in Payment Requests to the extent they are not in dispute and subject to final approval of cost to the County for such changes in the Work.

Each Payment Request shall be signed by the Contractor and shall constitute the Contractor's representation that the quantity of Work has reached the level for which payment is requested, that the Work has been properly installed or performed in strict compliance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested.

Thereafter, the County shall review the Payment Request and may also review the Work at the Project Site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Payment Request and is as required by this Contract. The amount of each such payment shall be the amount approved for payment by the County less such amounts, if any, otherwise owing by the Contractor to the County or which the County shall have the right to withhold as authorized by this Contract, subject to approval by the County. Approval of the Contractor's Payment Requests shall not preclude the County from the exercise of any of its rights as set forth herein below.

The submission by the Contractor of a Payment Request also constitutes an affirmative representation and warranty that all Work for which the County has previously paid is free and clear of any lien, claim, or other encumbrance of any person whatsoever. As a condition precedent to payment, the Contractor shall, if required by the County, also furnish to the County properly executed waivers of lien or claim, in a form acceptable to the County, from all subcontractors, materialmen, suppliers or others having lien or claim rights, wherein said subcontractors, materialmen, suppliers or others having lien or claim rights, shall acknowledge receipt of all sums due pursuant to all prior Payment Requests and waive and relinquish any liens, lien rights or other claims relating to the Project Site. Furthermore, the Contractor warrants and represents that, upon payment of the Payment Request submitted, title to all Work included in such payment shall be vested in the County.

9.5 When payment is received from the County, the Contractor shall within Seven (7) Business Days pay all subcontractors, materialmen, laborers and suppliers the amounts they are due for the Work covered by such payment. The Parties expressly acknowledge the terms of Section 29-7-10 of the South Carolina Code of Laws, 1976, as amended, which provides that contractors shall pay laborers, subcontractors and materialmen out of the funds received under the construction contract, and Section 29-7-20 of the South Carolina Code of Laws, 1976, as amended, which provides, inter alia, that it shall be a criminal offense for the Contractor to fail to so pay laborers, materialmen and subcontractors. In the event the County becomes informed that the Contractor has not paid a subcontractor, materialman, laborer, or supplier as provided herein, the County shall have the right, but not the duty, to issue future checks and payment to the Contractor of amounts otherwise due hereunder naming the Contractor and any such subcontractor, materialman, laborer, or supplier as joint payees. The County shall notify the Contractor of its intent to implement such a procedure and will give the Contractor a reasonable period to cure any such failure prior to implementing the procedure. Such joint check procedure, if employed by the County, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the County to repeat the procedure in the future.

9.6 Neither payment to the Contractor, utilization of the Project for any purpose by the County, nor any other act or omission by the County shall be interpreted or construed as an acceptance of any Work of the Contractor not strictly in compliance with this Contract.

9.7 After written notice to the Contractor and a reasonable opportunity to cure, the County shall have the right to refuse to make payment, in whole or in part, and, if necessary, may demand the return of a portion or all of the amount previously paid to the Contractor due to:

- a) The quality of a portion, or all, of the Contractor's Work not being in accordance with the requirements of this Contract; and
- b) The quantity of the Contractor's Work not being as represented in the Contractor's Payment Request, or otherwise; and
- c) The Contractor's rate of progress being such that, in the opinion of the County, Substantial Completion may be inexcusably delayed; and
- d) The Contractor's failure to use Contract funds, previously paid the Contractor by the County, to pay the Contractor's Project-related obligations including, but not limited to, subcontractors, laborers and material and equipment suppliers; and
- e) Claims made, or likely to be made, against the County or its property for which the Contractor or its agents or subcontractors or others for whom it is responsible are, or reasonably appear to be, at fault; and
- f) Loss caused by the Contractor; and
- g) The Contractor's failure or refusal to perform any of its obligations to the County, after written notice and a reasonable opportunity to cure as set forth above.

In the event that the County makes written demand upon the Contractor for amounts previously paid by the County as contemplated in this Subarticle 9.6, the Contractor shall promptly comply with such demand. The County's rights hereunder survive the term of this Contract, are not waived by Final Payment and/or acceptance and are in addition to the Contractor's obligations in Article 17 and elsewhere herein.

9.8 When the Contractor believes that Substantial Completion has been achieved, the Contractor shall notify the County in writing and shall furnish a listing of those matters yet to be finished. The County will thereupon conduct a site review to confirm that the Work is in fact substantially complete. Upon its confirmation that the Contractor's work is substantially complete, the County will therein set forth the date of Substantial Completion for approval. After approval, the County will so notify the Contractor. If the County, through its review, fails to find that the Contractor's work is substantially complete, and is required to repeat all, or any portion, of its Substantial Completion review, the Contractor shall bear the cost of such repeat site review(s), which cost(s) may be deducted by the County from any payment then or thereafter due to the Contractor.

Guarantees and equipment warranties required by this Contract shall commence on the date of Substantial Completion.

Upon Substantial Completion, the County shall pay the Contractor an amount sufficient to increase total payments to the Contractor to one hundred percent (100%) of the Job Order Price less any amounts attributable to damages, and less one hundred fifty percent (150%) of the costs, as reasonably determined by the County for completing all incomplete work, correcting and bringing into conformance all defective and nonconforming work, and handling any outstanding or threatened claims. Such a calculation by the County of costs for completing all incomplete work, correcting and bringing into conformance all defective and nonconforming work, and handling any outstanding or threatened claims shall not bar the County from exercise of its rights elsewhere herein, in Article 18 below, or otherwise as provided by law for any incomplete, defective or nonconforming work or claims which are discovered by the County after the date of making such calculation or after the date of any partial or Final Payment, whether or not such incomplete, defective or nonconforming work or claims were obvious or should have been discovered earlier.

9.9 When the Project is finally complete and the Contractor is ready for a final review, it shall notify the County thereof in writing. Thereupon, the County will perform a final site review of the Project. If the County concurs that the Project is complete in full accordance with this Contract and that the Contractor has performed all of its obligations to the County hereunder, the Contractor will furnish a final Application for Payment to the County certifying to the County that the Project is complete and the Contractor is entitled to the remainder of the unpaid Job Order Price, less any amount withheld pursuant to this Contract. If the County is unable to issue its final Application for Payment and is required to repeat its final review of the Project, the Contractor shall bear the cost of such repeat review(s), which cost(s) may be deducted by the County from the Contractor's Final Payment.

9.10 Prior to being entitled to receive Final Payment, and as a condition precedent thereto, the Contractor shall furnish the County, in the form and manner required by the County, if any, with:

- a) An affidavit that all of the Contractor's obligations to subcontractors, laborers, equipment or material suppliers, or other third parties in connection with the Project, have been paid or otherwise satisfied, or a warranty that they will be paid out of the Final Payment; and
- b) If applicable, consent(s) of surety to Final Payment; and
- c) All other items listed in the quantities stated, in the project manual as requirements for Final Completion and Final Payment.

9.11 The County shall, subject to its rights set forth in Subarticle 9.6 above, endeavor to make Final Payment of all sums due the Contractor within thirty (30) Calendar Days of the final Application for Payment, with the exception of items in dispute or concerning which the County has exercised any of its rights to investigate or remove.

ARTICLE 10

INFORMATION AND MATERIAL SUPPLIED BY THE COUNTY

10.1 The County shall furnish to the Contractor, prior to the execution of this Contract, any and all written and tangible material in its possession concerning conditions at the site of the Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material as being in the possession of the County and for no other purpose. By furnishing such material, the County does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all.

10.2.1 DIFFERING SITE CONDITIONS: The Contractor shall promptly, and before such conditions are disturbed, notify the County in writing of: (i) subsurface or latent physical conditions at the site differing materially from those indicated in the Detailed Scope of Work, or (ii) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Detailed Scope of Work. The County shall investigate the conditions, and if it finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the Work, whether or not changed as a result of such conditions, an adjustment shall be made, through negotiation and mutual agreement, and modified in writing accordingly.

10.2.2 No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in Subarticle 10.A.2.a. above: provided, however, the time prescribed therefor may be extended by the County.

10.3 No claim by the Contractor for an adjustment hereunder shall be allowed if asserted after Final Payment under this Contract.

10.4 The Contractor is responsible for obtaining all permits or fees required of the Contractor by this Contract, or permits and fees customarily the responsibility of the Contractor, including, but not limited to, applicable licenses from the County's Building Services Department. Contractor's License Number, Person's Name, and Business Name must all be shown on all required licenses. The Contractor shall

coordinate with Dorchester County and all other authorities having jurisdiction.

- 10.5 The County will provide the Contractor five (5) copies of the complete Detailed Scope of Work. The Contractor may arrange to purchase additional copies of the Detailed Scope of Work which it may require.
- 10.6 The Architect/Engineer, along with the County's Project Manager, shall be the sole authorized representative of the County. Other than in matters of public safety or in time of natural disaster or crisis, the Contractor shall not take direction or act upon information from any County personnel other than the County's authorized representative(s). This provision shall in no way limit the authority of the Purchasing Services Manager as described herein or of the County Attorney or Building Services Departments.
- 10.7 Geotechnical and Special Inspection testing and SWPPP inspections / monitoring shall be by the Owner's third-party agent and are not part of the Contract Sum. Inspections and tests not explicitly assigned to Owner are Contractor's responsibility. Costs for retesting and reinspection construction that replaces or is necessitate by work that failed to comply with the Contract Documents will be charged to Contractor, and the Job Order Price will be adjusted by Supplemental Job Order.

ARTICLE 11

CEASE AND DESIST ORDER/COUNTY'S RIGHT TO PERFORM WORK

In the event the Contractor fails or refuses to perform the Work, or any separable part thereof, as required herein, or with the diligence that will ensure its proper, timely completion in accordance with the Contract Documents, the County may instruct the Contractor, by written notice, to cease and desist further Work, in whole or in part, or to correct deficient Work. Upon receipt of such instruction, the Contractor shall immediately cease and desist, or proceed, as instructed by the County. In the event the County issues such instructions to cease and desist, the Contractor must, within seven (7) Calendar Days of receipt of the County's instructions, provide a written, verified plan to eliminate or correct the cause of the County's order, which plan appears to the County to be reasonable, actually attainable, and in good faith. In the event that the Contractor fails and/or refuses to provide such a plan or diligently execute an approved plan, then the County shall have the right, but not the obligation, to carry out the Work, or any portion thereof, with its own forces, or with the forces of another contractor, and the Contractor shall be fully responsible and liable for the costs of the County performing such work, which costs may be withheld from amounts due to the Contractor from the County. The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the County may have against the Contractor.

If Work completed by the County or other contractor affects, relates to, is to be attached onto or extended by later Work of the Contractor, the Contractor shall, prior to proceeding with the later Work, and to the extent visible, report any apparent defects or variance from the Contract requirements which would render the Contractor's later Work not in compliance with the Contract requirements or defective or not in compliance with warranties or other obligations of the Contractor hereunder.

The provisions of this Article shall be in addition to the County's ability to remove portions of the Work from this Detailed Scope of Work and complete it separately.

ARTICLE 12

DUTIES, OBLIGATIONS, AND RESPONSIBILITIES OF THE CONTRACTOR

In addition to any and all other duties, obligations and responsibilities of the Contractor set forth in the Contract Documents, the Contractor shall have and perform the following duties, obligations and responsibilities to the County:

- 12.1 Reference is hereby made to the continuing duties set forth in Subarticle 4.H which are by reference hereby incorporated in this Subarticle 12.A. The Contractor shall not perform Work without adequate plans and specifications, or without, as appropriate, approved shop drawings, or other submittals. If the Contractor performs Work knowing or believing, or if through exercise of reasonable diligence it should have known that such Work involves an error, inconsistency or omission in the Contract without first providing written notice to the County, the Contractor shall be responsible for such Work and shall correct same bearing the costs set forth in Subarticle 4.H above.
- 12.2 All Work shall strictly conform to the requirements of this Contract. To that end, the Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work, unless otherwise specified in the Detailed Scope of Work.
- 12.3 The Work shall be strictly supervised, the Contractor bearing full responsibility for any and all acts, errors or omissions of those engaged in the Work on behalf of the Contractor, including, but not limited to, all subcontractors and their employees. The Contractor shall maintain an on-site superintendent while any portion of the Work is being performed.
- 12.4 The Contractor hereby warrants that all laborers furnished under this Contract shall be qualified and competent to perform the tasks undertaken, that the product of such labor shall yield only first-class results, that all materials and equipment provided shall be new (unless otherwise specified) and of high quality, that the completed Work will be complete, of high quality, without defects, and that all Work strictly complies with the requirements of this Contract. Any Work not strictly complying with the requirements of this Subarticle shall constitute a breach of this Contractor's warranty.
- 12.5 The Contractor is responsible for obtaining all licenses and permits and shall bear the cost of all fees, and calling for all inspections, that are customarily the responsibility of the Contractor. The Contractor will cooperate with and abide by the decision of inspectors having jurisdiction. The Contractor shall comply with all legal requirements applicable to the Work.
- 12.6 The Contractor must submit to the County the Contractor's schedule for completing the Work as described in the Detailed Scope of Work. The County will not review any Payment Request until such schedule has been submitted and approved. Such schedule shall be in a form as specified in the specifications, which shall provide for expeditious and practicable construction of the Project. The Contractor's schedule shall be updated no less frequently than monthly (unless the Parties otherwise agree in writing) and shall be updated to reflect conditions encountered from time to time and shall apply to the total project. Each such revision shall be furnished to the County. Strict compliance with the requirements of this Article 12 shall be a condition precedent to payment to the Contractor, and failure by the Contractor to strictly comply with the requirements shall constitute a material breach of this Contract.
- 12.7 The Contractor shall keep an updated copy of the Detailed Scope of Work at the site. Additionally, the Contractor shall keep a copy of approved shop drawings and other submittals. All of these items shall be available to the County during all regular business hours.
- 12.8 Shop drawings and other such submittals from the Contractor do not constitute a part of the Contract. The Contractor shall not do any work requiring shop drawings or other submittals unless such shall have been approved in writing by the County or as required by the Detailed Scope of Work. All work requiring approved shop drawings or other submittals shall be done in strict compliance with such approved documents or Contract requirements. However, approval by the County shall not be evidence that work installed pursuant thereto conforms with the requirements of this Contract and shall not relieve the Contractor of responsibility for deviations from the Detailed Scope of Work unless the County has been specifically informed of the deviation in writing submitted by the Contractor and has approved the deviation in writing.

The delivery of submittals shall constitute a representation by the Contractor that it has verified that the submittals meet the requirements of the Contract, or will do so, including field measurements, materials and field construction criteria related thereto.

The County shall have no duty to review partial submittals or incomplete submittals. The Contractor shall have the duty to carefully review, inspect, examine and physically stamp and sign any and all submittals before submission of same to the County.

- 12.9 The Contractor shall maintain the Project Site and adjacent areas affected by its work and/or the acts of its employees, materialmen and subcontractors in a reasonably clean condition during performance of the Work. Upon Substantial Completion, the Contractor shall thoroughly clean the Project Site of all debris, trash and excess materials or equipment. If the Contractor fails to do so, the County may complete the cleanup, by its own forces or by separate contract, and shall be entitled to charge the Contractor for same through the collection or withholding of funds through the mechanisms provided elsewhere herein.
- 12.10 At all times relevant to this Contract, the Contractor shall permit the County and its consultants to enter upon the Project Site and any offsite lay down areas, and to review or inspect the Work and any materials on any such site, without formality or other procedure.
- 12.11 The County may undertake or award other contracts for portions of the Work or additional work, and the Contractor shall fully cooperate with and ensure that its forces reasonably accommodate such other contractors and County employees, coordinate its schedule with the work of other contractors, and carefully fit its own work with such work as may be directed by the County. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by County employees. If the Contractor claims that delay or damage results from these actions of the County, it shall promptly submit a claim as provided herein.
- 12.12 PROTECTION OF PERSONS AND PROPERTY - It shall be the responsibility of the Contractor to initiate, continue, and supervise all safety programs and precautions in the performance of the terms of this Contract. The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to its employees, subcontractors' employees, employees of the County and members of the public, the Work itself and unassembled components thereof, and other property at the site or adjacent thereto. As part of the Contractor's obligations hereunder, the Contractor shall erect and maintain safeguards, barriers, signs, warnings, etc.

With notice to the County, the Contractor shall promptly remedy loss or damage to the Work or any person or property described herein caused in whole or in part by the acts of the Contractor or any subcontractor, sub-subcontractor or materialman. This obligation shall be in addition to the requirements of Article 13 herein. The County may direct the Contractor to remedy violations of applicable laws, rules, regulations, and interpretations related to safety when and if observed on the site. However, through exercising this authority, the County shall not incur any obligations to monitor, initiate, continue, or supervise safety programs and precautions such to diminish the Contractor's primary role in same. The County shall have the right to report suspected safety violations to the Occupational Safety and Health Administration (OSHA).

The Contractor shall promptly notify the County upon discovery of any unidentified material which the Contractor reasonably believes to be asbestos, lead, PCB, or other hazardous material, and shall immediately stop Work in the affected area of the Project. The Contractor shall not be responsible for removal or other work with regard to such hazardous material unless otherwise agreed between the County and the Contractor. In the case of Work stopped hereunder, Article 8 shall apply to claims for delay, hindrance or interference. Work will resume in the affected area of the Project immediately after such time as the hazardous material has been removed or rendered harmless, as certified by an industrial hygienist to be engaged by the County.

ARTICLE 13 INDEMNIFICATION

Except for expenses or liabilities arising from the negligence or intentional acts of the County, the Contractor hereby expressly agrees to indemnify and hold the County harmless against any and all expenses and liabilities arising out of the negligent performance, action or inaction of the Contractor in conduct of this Contract, as follows:

For matters other than those arising from the rendering or failure to render construction services, the Contractor expressly agrees to the extent that there is a causal relationship between its negligence, action or inaction, or the negligence, action or inaction of any of its employees or any person, firm or corporation directly or indirectly employed by the Contractor and any damage, liability, injury, loss or expense (whether in connection with bodily injury or death or property damage) that is suffered by the County and/or its officers or employees or by any member of the public, to indemnify and save the County and its officers and employees harmless against any and all liabilities, penalties, demands, claims, lawsuits, losses, damages, costs, and expenses arising out of the negligence, action or inaction of the Contractor, regardless of whether such liabilities, penalties, demands, claims, lawsuits, losses, damages, costs and expenses are caused in part by the County. Such costs are to include, without limitation, defense, settlement and reasonable attorney's fees incurred by the County and its employees. This promise to indemnify shall include, without limitation, bodily injuries or death occurring to the Contractor's employees and any person, directly or indirectly employed by the Contractor (including, without limitation, any employee of any subcontractor), the County's officers or employees, the employees of any other independent contractors, or occurring to any member of the public. When the County submits notice, Contractor shall promptly defend any aforementioned action.

For matters arising out of the rendering or failure to render construction services, the Contractor will indemnify and save the County and its officers and employees harmless from and against all liabilities, penalties, demands, claims, lawsuits, losses, damages, costs and expenses arising out of or resultant from any negligent act, error or omission of the Contractor in the rendering or failure to render construction services under this Contract. Such costs are to include, without limitation, defense, settlement and reasonable attorneys' fees incurred by the County and its officers and employees. This promise to indemnify shall include, without limitation, bodily injuries or death occurring to the Contractor's employees and any person, directly or indirectly employed by the Contractor (including, without limitation, any employee of any subcontractor), the County's officers or employees, the employees of any other independent contractors, or occurring to any member of the public. When the County submits notice of a claim that triggers the indemnity, the Contractor shall promptly defend any aforementioned action at its own cost.

The limits of insurance required in the Contract shall not limit the Contractor's obligations under this Article. The terms and conditions contained in this Article shall survive the termination of the Contract or the suspension of the Work hereunder. To the extent that any liabilities, penalties, demands, claims, lawsuits, losses, damages, costs and expenses are caused in part by the acts of the County, the Contractor's obligations shall be reduced in proportion to the County's fault. The obligations herein shall also extend to any actions by the County to enforce this indemnity obligation. The recovery of costs and fees all extend to those incurred in the enforcement of this indemnity.

ARTICLE 14 CLAIMS BY THE CONTRACTOR

Claims by the Contractor against the County, other than for time extensions covered by Article 8 hereof, are subject to the following terms and conditions:

- 14.1 All Contractor claims against the County shall be initiated by a written claim submitted to the County. Notice of such claim shall be received by the County no later than either ten (10) Calendar Days after the event, or ten (10) Calendar Days after the first appearance of the circumstances causing the claim, whichever is sooner, and same shall set forth in detail all known facts and circumstances supporting the claim. Final costs associated with any claim upon which notice has been filed must be submitted in writing to the County within thirty (30) Calendar Days after notice has been received; and

- 14.2 The Contractor and the County shall continue their performance hereunder regardless of the existence of any claims submitted by the Contractor including claims set forth in Article 8 hereof; and
- 14.3 In the event the Contractor discovers previously concealed and unknown site conditions which are materially at variance from those typically and ordinarily encountered in the general geographical location of the Project, a Supplemental Job Order may, with the approval of the County, be issued. As a condition precedent to the County having any liability to the Contractor due to concealed and unknown conditions, the Contractor must give the County written notice of, and an opportunity to observe, such condition prior to disturbing it. The failure by the Contractor to give the written notice and make the claim as provided by this Subarticle 14.3 and Subarticle 10.1.2 shall constitute a waiver by the Contractor of any rights arising out of or relating to such concealed and unknown condition; and
- 14.4 In the event the Contractor seeks to make a claim for an increase in the Job Order Price, as a condition precedent to any liability of the County therefor, unless emergency conditions exist, the Contractor shall strictly comply with the requirements of Subarticle 14.1 above and such claim shall be made by the Contractor before proceeding to execute any Work for which a claim is made. Failure to comply with this condition precedent shall constitute a waiver by the Contractor of any claim for additional compensation; and
- 14.5 In connection with any claim by the Contractor against the County for compensation in excess of the Job Order Price, any liability of the County for the Contractor's cost shall be limited to those cost categories set forth in Subarticle 16.5 below.

ARTICLE 15 SUBCONTRACTORS

- 15.1 With the Job Order Proposal, the Contractor shall have identify to the County in writing, those parties required to be listed on the proposal form as subcontractors on the Project. Any changes to this list at any time shall be subject to the prior approval of the County. The County shall, in writing, state any objections the County may have to one or more of such subcontractors. The Contractor shall not enter into a subcontract with an intended subcontractor to whom the County objects. The Contractor shall replace any subcontractor the County objects at no additional cost.
- 15.2 Each and every subcontract related to the Project is hereby assigned by the Contractor to the County, contingent upon the termination of the Project or this Contract for default or convenience as provided herein, and only as to those subcontracts which the County accepts in writing directed to the Contractor. This contingent assignment is subject to the prior rights of any surety obligated under a bond related to this Contract. This contingent assignment will operate prospectively from the effective date of assignment and will not obligate the County to any liabilities existing on the effective date of the assignment, or arising from events, acts, failures to act, facts or circumstances existing prior to the effective date of the assignment. The contracts subject to this contingent assignment shall also be further assignable by the County, at the County's sole option. The Contractor shall bear the responsibility of notifying subcontractors of this contingent assignment and including it in all subcontracts in connection with the Project.

ARTICLE 16 CHANGES IN THE WORK

The County may also issue written directions for minor changes in the Work and may issue Construction Change Directives, as set forth below. The Contractor shall proceed with any such changes or Construction Change Directives without delay and in a diligent manner, and same shall be accomplished in strict accordance with the following terms and conditions:

16.1 The County, without invalidating the Job Order, may order changes in the Detailed Scope of Work by adding to, changing, or deleting from the Detailed Scope of Work, by issuing a Supplemental Job Order. All Supplemental Job Orders shall be developed and priced in accordance with the Procedure for Ordering Work contained in these JOC Supplemental Conditions.

16.2 Price Proposals for Supplemental Job Orders shall include credits for deleted Prepriced Tasks and Non-Prepriced Tasks. Deleted tasks shall result in a credit equal to 100% of the value at which those tasks were included in the original Price Proposal.

16.3 The execution of a Supplemental Job Order by the Contractor shall constitute conclusive evidence of the Contractor's responsibility to complete the ordered changes in the Work. The Contractor, by submitting the Job Order Proposal for the Supplemental Job Order, waives and forever releases any claim against the County for additional time or compensation for matters relating to, arising out of or resulting from the Work included within or affected by the executed Supplemental Job Order of which the Contractor knew or should have known.

16.4 The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Supplemental Job Orders if such notice, consent or approval are required by the County, the Contractor's surety or by law. The Contractor's submission of a Job Order Proposal shall constitute the Contractor's warranty to the County that the surety has been notified of, and consents to, such Supplemental Job Order and the surety shall be conclusively deemed to have been notified of such Supplemental Job Order and to have expressly consented thereto.

16.5 Nothing contained in this Article shall be deemed to contradict or limit the terms of Subarticle 8.6 herein.

ARTICLE 17

DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK

17.1 In the event that the Contractor covers, conceals or obscures its work in violation of this Contract or in violation of an instruction from the County, such work shall be uncovered and displayed for review by the County and/or its consultants upon request, and shall be reworked at no cost in time or money to the County.

17.2 If any of the work is covered, concealed or obscured in a manner not covered by Subarticle 17.1 above, it shall, if directed by the County, be uncovered and displayed for the County and/or its consultants. If the uncovered work conforms strictly with this Contract, the costs incurred by the Contractor to uncover and subsequently, replace such work shall be borne by the County. Otherwise, such costs shall be borne by the Contractor.

17.3 The Contractor shall, at no cost in time or money to the County, correct work rejected by the County as defective or failing to conform to this Contract. Additionally, the Contractor shall reimburse the County for all testing, review, inspections and other expenses incurred as a result thereof.

17.4 In addition to its warranty obligations set forth elsewhere herein and any manufacturer's warranties provided on the Project, and in addition to other remedies provided herein or by law to the County, the Contractor shall be specifically obligated to promptly correct any and all defective or nonconforming work, whether obvious or after-discovered, for a period of twelve (12) months following Substantial Completion upon written direction from the County.

17.5 The County may, but shall in no event be required to, choose to accept defective or nonconforming work. In such event, the Job Order Price shall be reduced by the greater of (1) the reasonable costs of removing and correcting the defective or nonconforming work, or (2) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming work. If the remaining portion of the unpaid Job Order Price, if any, is insufficient to compensate the County for the acceptance of defective or nonconforming work, the Contractor shall, upon written demand from the County, pay the County such remaining compensation for accepting

defective or nonconforming work. The Contractor shall have an opportunity to correct any defect or non-conformance prior to the County taking the above actions. The Contractor, upon written notice of any defect or non-conformance, shall have ten (10) Calendar Days to make corrections, unless the County agrees that the correction will require more than ten (10) Calendar Days to correct.

ARTICLE 18

COUNTY'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE

18.1 In addition to the County's rights under Article 11 and elsewhere herein, the County shall have the right at any time to direct the Contractor to suspend its performance, or any designated part thereof when in the interests of the County. If any such suspension is directed by the County, the Contractor shall immediately comply with same.

18.2 In the event the County directs a suspension of performance under this Article, through no fault of the Contractor, if the suspension is lifted other than by termination, the County shall pay the Contractor as full compensation for such suspension, the Contractor's ordinary and reasonable costs, actually incurred and paid, of:

- a) demobilization and remobilization, including such justifiable costs paid to subcontractors (cost categories and markups limited to those set forth in Subarticle 16.5 above); and
- b) preserving and protecting work in place; and
- c) approved storage of materials or equipment purchased for the Project, including insurance thereon; and
- d) substantiated extended field office overhead (no home office overhead).

18.3 The County may order suspension of the Work in whole or in part for such time as deemed necessary because of the failure of the Contractor to comply with any of the requirements of this Contract, and the Contract's completion date shall not be extended on account of any such suspension of Work.

When the County orders any suspension of the Work under this Subarticle 18.3, the Contractor shall not be entitled to any payment for Work which the Contractor performs after notice of suspension and/or during the suspension period and shall not be entitled to any costs or damages resulting from such suspension.

18.4 The County's rights under this Article shall be in addition to those contained elsewhere herein or provided by law.

ARTICLE 19

TERMINATION BY THE COUNTY

19.1 For Convenience

The Purchasing Services Manager, by advance written notice, may terminate this Contract when it is in the best interests of the County. If this Contract is so terminated, the Contractor shall be compensated for all necessary and reasonable direct costs of performing the Work actually accomplished. The Contractor will not be compensated for any other costs in connection with a termination for convenience. The Contractor will not be entitled to recover any damages in connection with a termination for convenience.

19.2 For Default

If the Contractor refuses or fails to perform the Work or any separable part thereof in a timely or workmanlike manner in accordance with the Contract Documents, or otherwise fails, in the sole opinion of the County, to comply with any of the terms and conditions of the Contract Documents deemed, in the sole opinion of the County, to be material (including, without limitation, the requirement that Contractor obtain and maintain in force all necessary permits), such refusal or failure shall be deemed a default under this Contract.

In the event of a default under this Article, the County shall have the right to terminate forthwith this Contract by written notice to the Contractor. In the event of such default, the advance notice period for termination is waived and the Contractor shall not be entitled to any costs or damages resulting from a termination under this Article.

Whether or not the Contractor's right to proceed with the Work is terminated, it and its sureties shall be liable for any damage to the County resulting from Contractor's default. Any wrongful termination for default shall be deemed by the Parties a termination for convenience.

19.3 Non-Appropriation of Funds

The Purchasing Services Manager, by written advance notice, may terminate this Contract in whole or in part in the event that sufficient appropriation of funds from any source (whether a federal, state, County or other source) are not made or sufficient funds are otherwise unavailable, in either case, to pay the charges under this Contract. If this Contract is so terminated, the Contractor shall be compensated for all necessary and reasonable direct costs of performing the Work actually provided to the date of such termination. The Contractor will not be compensated for any other costs in connection with a termination for non-appropriation. The Contractor will not be entitled to recover any damages in connection with a termination for non-appropriation, including, but not limited to, lost profits.

19.4 Rights Cumulative

The rights and remedies of the County provided in this Article are in addition to any other rights and remedies provided by law or under this Contract.

ARTICLE 20 MODIFICATION

The Purchasing Services Manager has the unilateral right to modify this Contract, within the general scope of Work, when the modification is in the best interest of the County, provided however, the Contractor is given written notice of any such modification and the County is responsible for paying the Contractor for any additional expenses incurred by the Contractor which relate to said modification. Subject to the above, the Contractor shall immediately notify the County in writing of any proposed adjustment in its fee. The Contractor is obligated to perform the revised contract when so directed by the Purchasing Services Manager and the County is obligated to pay for the work performed pursuant to the modification.

No claim by the Contractor for an adjustment hereunder shall be allowed if asserted after Final Payment under this Contract.

ARTICLE 21 CONTRACTOR'S WARRANTIES AND REPRESENTATIONS

21.1 The Contractor represents that its staff is knowledgeable about and experienced in performing the Work required in this Contract and warrants that it will use its best skill and attention to provide above described Work in a professional, timely manner.

21.2 The Contractor warrants and represents that it shall be responsible for all subcontractors working directly for it, as well as for their work product, as though Contractor had performed the Work itself.

21.3 If equipment, materials and supplies are to be a part of the service provided, all equipment, materials, and supplies incorporated in the Work covered by the bid and provided by the Contractor are to be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in the Contract, reference

to any equipment, material, supply or patented process, by trade name, make or catalog number, shall not be construed as limiting competition. When requested, the Contractor shall furnish to the County for approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature and rating of the machinery and mechanical and other equipment which the Contractor contemplates incorporating in the Work. When required by the Contract or when called for by the County, the Contractor shall provide full information concerning the material or supplies which Bidder contemplates incorporating in the Work. Machinery, equipment, material and supplies installed or used without the required prior approval shall be at the risk of subsequent rejection.

21.4 Any and all manufacturers' warranties on any equipment or materials will be passed on to the County and copies of said warranties will be furnished by the Contractor to the County upon completion and final acceptance of the Work.

21.5 The Purchasing Services Manager may, in writing, require the Contractor to remove from the Work Site any employee the Manager deems incompetent, careless or otherwise objectionable.

21.6 In addition to any manufacturer's warranties, all labor and materials are warranted to be free from defects for a period of twenty-four (24) months after the date of Final Payment by the County.

ARTICLE 22 INSURANCE REQUIREMENTS

The Contractor, at its own expense, shall at all times during the term of this Contract maintain insurance as specified in the Invitation for Bids previously incorporated by reference in Article 1. The County may contact the Contractor's insurer(s) or insurer(s)' agent(s) directly at any time regarding Contractor's coverages, coverage amounts, or other such relevant and reasonable issues related to this Contract. The Contractor shall also require any sub-contractors to carry the same coverages in the same amounts. The County must be advised immediately of any changes in required coverages.

ARTICLE 23 SURETY BONDS

The Contractor shall furnish separate performance and payment bonds to the County, as required by the Invitation for Bids previously incorporated by reference in Article 1. Each bond shall set forth a penal sum in an amount not less than the Job Order Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Job Order Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in form suitable to the County and shall be executed by a surety, or sureties, reasonably acceptable to the County.

ARTICLE 24 PROJECT RECORDS

All documents relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the Contractor, or any subcontractor of the Contractor, shall, upon written request by the County, be made available to the County, its consultants, any state grantor agency, federal grantor agency, any other regulatory authority, any assignee or any of their duly authorized representatives for review, inspection, auditing and copying. Said records include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the Project, its design, and its construction. Said records expressly include those documents reflecting the cost of construction to the Contractor. The Contractor shall maintain and protect these documents for no less than three (3) years from the date of Final Payment, or until the end of any audit, or the closure of all pending matters under this Contract, or for any longer period of time as may be required by law or good construction practice, whichever is later. The Contractor further agrees to include these provisions in any subcontracts issued in connection with this Contract.

ARTICLE 25 CONTROLLING LAW

The laws of South Carolina shall govern this Contract. All litigation arising under this Contract shall be litigated only in a nonjury hearing in the Court of Common Pleas, First Judicial Circuit, Dorchester County, South Carolina.

ARTICLE 26 SUCCESSORS AND ASSIGNS

Each Party binds itself, its successors, assigns, executors, administrators or other representatives to the other Party hereto and to successors, assigns, executors, administrators or other representatives of such other Party in connection with all terms and conditions of this Contract. The Contractor shall not assign this Contract without prior written consent of the County. The Contractor shall not assign any money due or to become due under this Contract without the prior written consent of the County.

ARTICLE 27 COMPLIANCE WITH LEGAL REQUIREMENTS

27.1 All applicable federal, state and local laws, ordinances, and rules and regulations of any authorities (including, but not limited to, any laws, ordinances or regulations relating to the S.C. Department of Revenue or the S.C. Board of Contractors) shall be binding upon the Contractor throughout the pendency of this Work/of these Services. The Contractor shall be responsible for compliance with any such law, ordinance, rule or regulation, and shall hold the County harmless and indemnify same in the event of non-compliance as set forth in the Contract.

27.2 The Contractor certifies that it will comply with the applicable requirements of Title 8, Chapter 14 of South Carolina Code of Laws and agree to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to the Contractor and its subcontractors or sub-subcontractors or (b) that the Contractor and its subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14.

Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony and, upon conviction, must be fined within the discretion of the Court or imprisoned for not more than five years, or both."

The Contractor agrees to include in any contracts with subcontractors, language requiring subcontractors to (a) comply with applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14.

The Contractor agrees to and shall certify agreement to abide by the requirements under Title VI of the Civil Rights Act of 1964, and other non-discrimination authorities under Federal Executive Order Number 11246, as amended, and specifically the provisions of the equal opportunity clause.

The Contractor shall comply with all federal, state and local laws, ordinances, rules and regulations of any authorities throughout the duration of this Contract. The Contractor shall be responsible for compliance with any such law, ordinance, rule or regulation, and shall hold County harmless and indemnify same in the event of non-compliance.

ARTICLE 28
NON-DISCRIMINATION

The Contractor agrees to and shall certify agreement to abide by the requirements under Title VI of the Civil Rights Act of 1964. The Contractor shall abide by the requirements under Federal Executive Order Number 11246, as amended, including specifically the provisions of the equal opportunity clause.

ARTICLE 29
DRUG-FREE WORKPLACE ACT

The Contractor shall comply with the South Carolina Drug-free Workplace Act, Section 44-107-10 et seq., South Carolina Code of Laws, 1976, as amended.

ARTICLE 30
STATE AND LOCAL TAXES

30.1 Except as otherwise provided, Job Order Prices shall include all applicable state and local taxes.

30.2 The Contractor shall calculate that portion of the Contract which is subject to the seven percent (7%) South Carolina sales and/or use tax, which amount shall be itemized and shown on all invoices, and shall be paid to South Carolina Department of Revenue (SCDOR) by Contractor. If the Contractor is a non-South Carolina company, the County will withhold said amount from all invoices and remit payment to the SCDOR, unless the Contractor furnishes County with a valid South Carolina Use Tax Registration Certificate Number.

30.3 The Contractor shall indemnify and hold harmless the County for any loss, cost or expense incurred by, levied upon or billed to the County as a result of the Contractor's failure to pay any tax of any type due in connection with this Contract.

30.4 The Contractor shall ensure that the above sections are included in all subcontracts and sub-subcontracts and shall ensure withholding on out of state sub and sub-subcontractors to which withholding is applicable.

ARTICLE 31
GRATUITIES AND KICKBACKS

31.1 Gratuities

It shall be unethical for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement of a contract or subcontract, or to any solicitation or proposal therefore.

31.2 Kickbacks

It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor, or to hire any subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

31.3 Violation of this clause may result in Contract termination.

ARTICLE 32
NOTICES

Any and all notices to the County required to be sent under this Contract or otherwise shall be sent to the following:

Dorchester County Purchasing Division
201 Johnston Street
Saint George, South Carolina 29477

Any and all notices to the Contractor required to be sent under this Contract or otherwise shall be sent to the address indicated on the Form P104 submitted by the Contractor in response to the Invitation for Bids.

ARTICLE 33
ENTIRE CONTRACT

This Contract constitutes the entire understanding and contract between the Parties and supersedes all prior and contemporaneous written and oral contracts between the Parties and their predecessors in interest regarding the subject matter of this Contract. This Contract may not be changed, altered, amended, modified, or terminated orally, except as specifically provided, and any such change, alteration, amendment, or modification must be in writing and executed by the Parties.

ARTICLE 34
SEVERABILITY

Should any part of this Contract be determined by a Court of competent jurisdiction to be invalid, illegal, or against public policy, the offending section shall be void and of no effect and shall not render any other section, nor this Contract as a whole, invalid.

Any terms which, by their nature, should survive the suspension, termination or expiration shall be deemed to survive.

ARTICLE 35
WAIVER

Any waiver of any default by either Party to this Contract shall not constitute waiver of any subsequent default, nor shall it operate to require either Party to waive, or entitle either Party to a waiver of, any subsequent default under this Contract.

ARTICLE 36
TERM

The term of the Contract shall commence on January 15, 2023 and continue to December 31, 2023, with the option to renew for up to four (4) additional one-year terms.

Contract Signature Form

The undersigned hereby proposes and agrees to furnish Products & Services in strict compliance with the terms, specifications, and conditions contained within this RFP and the Final Contract at the prices proposed within the submitted proposal unless noted in writing. The undersigned further certifies that he/she is an officer of the company and has authority to negotiate and bind the company named below and has not prepared this proposal in collusion with any other Bidder and that the contents of this proposal as to prices, terms or conditions of said proposal have not been communicated by the undersigned nor by any employee or agent to any person engaged in this type of business prior to the official opening of this proposal.

IN WITNESS WHEREOF, the Parties have executed this Contract under their respective seals the day and year first written above.

COUNTY OF DORCHESTER, SOUTH CAROLINA

SIGNATURE: Jason L. Ward

PRINT: Jason L. Ward

TITLE: County Administrator

WITNESS: Susan W. Bricker

WITNESS: Laura Motley

CONTRACTOR TUPCO Inc.

SIGNATURE: Edward H. Tupper

PRINT: Edward H. Tupper

TITLE: President

WITNESS: Natalie H. Brewer

WITNESS: Nancy C. McKen

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