

JAN 09 2023

Approved

REQUEST FOR AGENDA PLACEMENT FORM

Submission Deadline - Tuesday, 12:00 PM before Court Dates

SUBMITTED BY: Ralph McBroom
TODAY'S DATE: December 29, 2022

DEPARTMENT: Purchasing

DEPARTMENT HEAD: Ralph McBroom

REQUESTED AGENDA DATE: January 9, 2023

SPECIFIC AGENDA WORDING: Consideration and award of IFB 2022-221 Chambers Creek Repairs to Lyness Construction in the amount of \$38,325.00. Seventy five percent totaling \$28,743.75 will be funded by Natural Resources Conservation Service (NRCS) and twenty five percent totaling \$9,581.25 will be funded by Johnson County.

PERSON(S) TO PRESENT ITEM: Ralph McBroom C.P.M.

SUPPORT MATERIAL:

TIME: 5 min	ACTION ITEM: X
(Anticipated number of minutes needed to discuss item)	WORKSHOP
	CONSENT:
	EXECUTIVE:

STAFF NOTICE:

COUNTY ATTORNEY:	IT DEPARTMENT:
AUDITOR:	PURCHASING DEPARTMENT: X
PERSONNEL:	PUBLIC WORKS:
BUDGET COORDINATOR:	OTHER:

*****This Section to be completed by County Judge's Office*****

ASSIGNED AGENDA DATE: _____

REQUEST RECEIVED BY COUNTY JUDGE'S OFFICE _____

COURT MEMBER APPROVAL _____ Date _____

PART I - GENERAL PROVISIONS
CONTRACT AGREEMENT

THIS AGREEMENT, made the 5th day of January, 2023, by and between Johnson County, Texas (hereinafter called Owner) and Lyness Construction LP (hereinafter called Contractor).

WITNESSETH:

THAT WHEREAS: in accordance with law, Owner had contract documents prepared and an Invitation for Bids published, for and in connection with the repairs of flood retarding structure Chambers Creek Johnson County, Texas; and

WHEREAS, Contractor, in response to the Invitation for Bids, has submitted to Owner, in the manner and at the time specified, a sealed bid in accordance with Instructions to Bidders; and

WHEREAS, Owner, in the manner prescribed by law, has publicly opened, examined, and canvassed the bids submitted, and has determined Contractor to be the lowest responsible bidder for the work and duly awarded to Contractor a contract therefor, for the sum or sums named in Contractor's bid.

NOW, THEREFORE, in consideration of the compensation to be paid to Contractor and of the mutual agreements herein contained, the parties have agreed and hereby agree, Owner for itself and its successors and assigns, and its, his/her, or their executors and administrators, as follows:

ARTICLE I. Contractor shall perform all work, including the assumption of all obligations, duties and responsibilities necessary to the successful completion of the contract and the furnishing of all materials and equipment required to be incorporated in and form a permanent part of the work; tools, equipment, supplies, transportation, facilities, labor, superintendence and services required to perform the work; and bonds, insurance and submittals; all as indicated or specified in the contract documents to be performed or furnished by Contractor for the work included in and covered by Owner's official award of this contract to Contractor, such award being based on the acceptance by Owner of Contractor's bid.

ARTICLE II. Owner shall pay to Contractor for performance of the work embraced in this contract, and Contractor shall accept as full compensation therefor, the sum (subject to adjustment as provided in the contract documents) of thirty eight thousand three hundred twenty five Dollars (\$38,325⁰⁰) for all work covered by and included in the contract award and designated in the foregoing Article I; payment thereof to be made in current funds in the manner provided in the contract documents.

ARTICLE III. The Contractor shall complete all work within sixty-five (65) calendar days from the date Contractor receives written Notice to Proceed.

ARTICLE IV. The contract documents that comprise the Contract between Owner and Contractor, attached hereto and made a part hereof, consist of the following:

This Contract Agreement:

- (1) Contractor's Bid: Exhibits A - F.
- (2) Addenda Numbers 2
- (3) Post-bid information and supplementary information submitted by Contractor prior to execution of this Contract Agreement.
- (4) Notice of Award.
- (5) PART II — General Conditions.
- (6) PART III — Supplemental Conditions.
- (7) PART IV — Construction Specifications.
- (8) PART V — Drawings No.
- (9) PART VI — Prevailing Wage Rates Determination.
- (10) PART VII — Storm Water Pollution Prevention Plan
- (11) Notice to Proceed.
- (12) Any modifications (change orders) duly delivered or supplemental agreements duly entered into after execution of this Contract Agreement.
- (13) Notices of Final Completion and Acceptance.

IN WITNESS WHEREOF, the parties hereto have executed this Contract Agreement the day and year first above written.

OWNER
Johnson County

CONTRACTOR

By [Signature]

Lyness Construction LP
By Loraine Pittenger Loraine L Pittenger

Contracting Officer
Johnson County

Title GP

(CORPORATE SEAL)

Attest [Signature]

Attest _____

Address for giving notices:
Johnson County
1102 E. Kilpatrick St.
Cleburne Texas 76031

Address for giving notices
1501 S Main, Ste B
Cleburne, TX 76033

This action authorized at an official meeting
of Johnson County on
1-9-23, Cleburne Texas

License No. _____

Agent for service of process:

(if CONTRACTOR is a corporation, attach
evidence of authority to sign.)

PART II - GENERAL CONDITIONS

ARTICLE 1 — DEFINITIONS

Terms used or referred to herein and elsewhere in the contract documents are defined as follows:

- (a) **Johnson County:** The organization or agency awarding the contract. Johnson County is the Contracting Local Organization, also referred to as Authority, Government, and Owner.
- (b) **Contracting Officer (CO):** The person who is designated and authorized to enter into and administer this contract on behalf of Johnson County or his/her duly appointed successor or alternate. No other person has authority to act for the Contracting Officer as stated in these General Conditions or elsewhere in the contract documents unless such person has been delegated authority by the Contracting Officer in writing, also referred to as Owner's Representative.
- (c) **Engineer:** The person or his/her representative who is responsible for determining that the Contractor's work conforms to the technical requirements as set forth in the drawings and specifications, also called Project Engineer, Contracting Officer's Representative (COR).
- (d) **Inspector:** The person who performs daily inspection services for the CLO at the construction site and maintains accurate daily records of the work accomplished and the factors affecting its progress and quality, also called NRPS Construction Inspector.
- (e) **USDA-NRCS,** United States Department of Agriculture, Natural Resources Conservation Service — the Federal agency providing engineering and inspection services for this contract.
- (f) **Quality Assurance (QA),** NRPS Construction Inspector (onsite).
- (g) **Quality Control (QC),** Contractor's Construction Inspector (onsite).

ARTICLE 2 — SPECIFICATIONS AND DRAWINGS

The Contractor shall keep on the worksite a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy either in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at his/her own risk and expense. The Contracting Officer shall furnish from time to time such detail drawings and other information as considered necessary, unless otherwise provided.

ARTICLE 3 — CHANGES

(a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the contract, including but not limited to changes:

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) Johnson County-furnished facilities, equipment, materials, services, or site; or
- (4) Directing acceleration in the performance of the work.

(b) Any other written order or an oral order (which terms as used in this paragraph (b) shall include direction, instruction, interpretation, or determination) from the Contracting Officer, which causes any such change, shall be treated as a change order under this article, provided that the

Contractor gives the Contracting Officer written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a change order.

(c) Except as herein provided, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this article or entitle the Contractor to an equitable adjustment hereunder.

(d) If any change under this article causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any order, an equitable adjustment shall be made and the contract modified in writing accordingly: *Provided, however,* That except for claims based on defective specifications, no claim for any change under (b) above shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as therein required: *And provided further,* That in the case of defective specifications for which Johnson County is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective specifications.

(e) If the Contractor intends to assert a claim for an equitable adjustment under this article, Contractor must, within 30 days after receipt of a written change order under (a) above or the furnishing of a written notice under (b) above, submit to the Contracting Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the Contracting Officer. The statement of claim hereunder may be included in the notice under (b) above.

(f) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

ARTICLE 4 — DIFFERING SITE CONDITIONS

(a) The Contractor shall promptly, and before such conditions are disturbed, notify the Contracting Officer in writing of (1) subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or (2) 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 this contract. The

Contracting Officer shall promptly investigate the conditions, and if he/she 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 under this contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the contract modified in writing accordingly.

(b) No claim of the Contractor under this article shall be allowed unless the Contractor has given the notice required in (a) above; provided, however, the time prescribed therefor may be extended by the Contracting Officer.

(c) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

ARTICLE 5 — TERMINATION FOR DEFAULT, DAMAGES FOR DELAY, TIME EXTENSIONS

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, Johnson County may, by written notice to the Contractor, terminate Contractor's right to proceed with the work or such part of the work as to which there has been delay. In such event Johnson County may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is

terminated, Contractor and his/her sureties shall be liable for any damage to Johnson County resulting from his/her refusal or failure to complete the work within the specified time.

(b) If Johnson County so terminates the Contractor's right to proceed, the resulting damage will consist of such actual damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned Johnson County in completing the work.

(c) If Johnson County does not so terminate the Contractor's right to proceed, the resulting damage will consist of such actual damages until the work is completed or accepted.

(d) The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

(1) The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of Johnson County in its contractual capacity, acts of another contractor in the performance of a contract with Johnson County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any such delay (unless the Contracting Officer grants a further period of time before the date of final payment under the contract), notifies the Contracting Officer in writing of the causes of delay.

The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his/her judgment, such an extension is justified.

(e) The rights and remedies of Johnson County provided in this article are in addition to any other rights and remedies provided by law or under this contract.

(f) As used in paragraph (d)(1) of this article, the term "subcontractors and suppliers" means subcontractors and suppliers at any tier.

ARTICLE 6 — CLAIMS

Any claim by the Contractor arising by virtue of this contract which is not disposed of by agreement shall be submitted in writing, together with any written and oral evidence in support thereof, to the Contracting Officer for decision. Before making a decision, the Contracting Officer shall notify the Contractor that any additional written and/or oral evidence in support of the claim may be presented to the Contracting Officer within 30 days from receipt by the Contractor of such notification, or within such further period of time as may be granted by the Contracting Officer. The Contracting Officer shall make a decision in writing and mail or otherwise furnish a signed copy thereof to the Contractor. Pending the decision of the Contracting Officer the Contractor shall proceed diligently with the performance of this contract. *[See Also: PART III, Supplemental Conditions, Article 91— Disputes/Alternative Dispute Resolution]*

ARTICLE 7 — PAYMENTS TO CONTRACTOR / INVOICING REQUIREMENTS

(a) Johnson County will pay the contract price as hereinafter provided.

(b) Johnson County will make regular progress payments as the work proceeds at intervals payment based on final quantities as approved by the Contracting Officer.

(c) "Properly Executed Invoice" Requirements

(1) The original and one copy of each invoice are to be delivered to the Contracting Officer at the designated payment office.

(2) One copy of each invoice and complete documentation of computations and supporting data as required by PART IV, Construction Specification 7 are to be submitted to the Engineer.

(3) The following must be attached to the original invoice submitted to the Contracting Officer and to the copy submitted to the Engineer:

- (i) A complete remittance address along with vendor's tax identification number.
- (ii) Billing period.
- (iii) Itemization of payment requests by Contract Item Number (CIN) as shown in PART I, Subpart C, Exhibit B—Bid Schedule, of the contract. Invoice will include the quantity performed that is being invoiced, the unit price (if applicable) and the CIN total price, and a sum total of amount of payment requested. Invoice will also include the cumulative quantities and amount by CIN.

(e) Designated Payment Office Contact Point. The contact point described below coordinates

the issuance of payments under this contract:

Name: Johnson County Purchasing
Title: Kristi Shaw, Assistant Purchasing Agent
Address: 1102 E Kilpatrick St., Cleburne, Texas 76031
Telephone: 817-556-6382

(f) Final Payment Request

- (1) Johnson County shall pay the amount due the Contractor under this contract after--
 - (i) Completion and acceptance of all work;
 - (ii) Presentation of a properly executed invoice; and
 - (iii) Presentation of release as indicated in (g)(3) below.
- (2) The FINAL invoice billing shall include the following information:
 - (i) All documentation called for in the contract documents, and
 - (ii) Consent of the surety, if required, to final payment.
 - (iii) Complete and legally effective releases or waivers (satisfactory to Johnson County) of all liens arising out of or filed in connection with the work. In lieu thereof and as approved by Johnson County, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the work for which Johnson County or his/her property might in any way be responsible, have been paid or otherwise satisfied. If any subcontractor, manufacturer, fabricator, supplier, or distributor fails to furnish a release of receipt in full, Contractor may furnish a bond or other collateral satisfactory to Johnson County to indemnify Johnson County against any lien per TX Property Code, Chapter 53.
- (3) The FINAL invoice shall also contain the following RELEASE OF CLAIMS statement: "I, [Name of Contractor], do hereby release Johnson County Cleburne Texas, from any and all claims of any character whatsoever arising under and by virtue of contract number [Identify Contract] dated [Date] as amended, except as herein stated [LIST any Exceptions].

(Date of Release)

(Signature of Contractor)

(4) Releases may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under Article 25 of these General Conditions — Assignment, of this contract.

(h) This contract is subject to regulations incorporated in Texas Government Code, Subtitle F, Chapter 2251 — Payment for Goods and Services, regarding payment due dates, late payment interest, and claims and disputes. These regulations include, but are not limited to, payments made by Johnson County, Contractor, and subcontractors for any work, goods, services, etc. provided under this contract.

ARTICLE 8 — MATERIAL AND WORKMANSHIP

(a) Unless otherwise specifically provided in this contract, all equipment, material, and articles incorporated in the work covered by this contract are to be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in this contract, reference to any equipment, material, article, or patented process, by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and the Contractor may, at his/her option, use any equipment, material, article, or process which in the judgment of the Contracting Officer, is equal to that named. The Contractor shall furnish to the Contracting Officer for his/her 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 this contract or when called for by the Contracting Officer, the Contractor shall furnish the Contracting Officer for approval full information concerning the material or articles which Contractor contemplates incorporating in the work. When so directed, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles installed or used without required approval shall be at the risk of subsequent rejection.

(b) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may, in writing, require the Contractor to remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

ARTICLE 9 — INSPECTION, ACCEPTANCE AND LIQUIDATED DAMAGES.

(a) All work (which term includes but is not restricted to materials, workmanship, and manufacture and fabrication of components) shall be subject to inspection and test by Johnson County at all reasonable times and at all places prior to acceptance. Any such inspection and test are for the sole benefit of Johnson County and shall not relieve the Contractor of the responsibility of providing quality control measures to assure that the work strictly complies with the contract requirements. No inspection or test by Johnson County shall be construed as constituting or implying acceptance. Inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of Johnson County after acceptance of the completed work under the terms of paragraph (f) of this article, except as herein above provided.

(b) The Contractor shall, without charge, replace any material or correct any workmanship found by Johnson County not to conform to the contract requirements, unless in the public interest Johnson County consents to accept such material or workmanship with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

- (c) If the Contractor does not promptly replace rejected material or correct rejected workmanship, Johnson County (1) may, by contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed in accordance with the article of this contract entitled "Termination for Default - Damages for Delay — Time Extensions."
- (d) The Contractor shall furnish promptly, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspection and test as may be required by the Point of Contact. All inspection and test by Johnson County shall be performed in such manner as not unnecessarily to delay the work. Special, full size, and performance tests shall be performed as described in this contract. Johnson County reserves the right to charge to the Contractor any additional cost of inspection or test when material or workmanship is not ready at the time specified by the Contractor for inspection or test or when reinspection or retest is necessitated by prior rejection.
- (e) Should it be considered necessary or advisable by Johnson County at any time before acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, the Contractor shall, on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect, due to the fault of the Contractor or his/her subcontractors, Contractor shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, an equitable adjustment shall be made in the contract price to compensate the Contractor for the additional services involved in such examination and reconstruction and, if completion of the work has been delayed thereby, Contractor shall, in addition, be granted a suitable extension of time.
- (f) Unless otherwise provided in this contract, acceptance by Johnson County shall be made as promptly as practicable after completion and inspection of all work required by this contract, or that portion of the work that the Point of Contact determines can be accepted separately. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Johnson County's rights under any warranty or guarantee.
- (g) If the work is not completed within the time stipulated in the provided contract, the Contractor shall pay to the Locality actual liquidated damages incurred by the CLO and its Quality Assurance technical engineer and inspector for each calendar day of delay, until work is completed. The Contractor and his sureties shall be liable to Johnson County for the amount thereof.
- (h) Any amount due to Johnson County as a result of Liquidated Damages shall be deducted from the final payment due to the contractor.

ARTICLE 10 — SUPERINTENDENCE BY CONTRACTOR

The Contractor, at all times during performance and until the work is completed and accepted, shall give his/her personal superintendence to the work or have on the work a competent superintendent, satisfactory to the Contracting Officer and with authority to act for the Contractor.

ARTICLE 11 — PERMITS AND RESPONSIBILITIES

The Contractor shall, without additional expense to Johnson County, be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal,

State, and municipal laws, codes, and regulations, in connection with the prosecution of the work. Contractor shall be similarly responsible for all damages to persons or property that occur as a result of his/her fault or negligence. He/she shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. He/she shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction thereof which theretofore may have been accepted.

ARTICLE 12 — CONDITIONS AFFECTING THE WORK

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional expense to Johnson County. Johnson County assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this contract, unless such understanding or representations by Johnson County are expressly stated in the contract.

ARTICLE 13 — OTHER CONTRACTS

Johnson County may undertake or award other contracts for additional work, and the Contractor shall fully cooperate with such other contractors and Johnson County employees and carefully fit his/her own work to such additional work as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Johnson County employees.

ARTICLE 14 — PATENT INDEMNITY

Except as otherwise provided, the Contractor agrees to indemnify Johnson County and its officers, agents and employees against liability, including costs and expenses, for infringement upon any Letters Patent of the United States (except Letters Patent issued upon an application which is now or may hereafter be, for reasons of national security, ordered by the Government to be kept secret or otherwise withheld from issue) arising out of the performance of this contract or out of the use or disposal by or for the account of Johnson County of supplies furnished or work performed hereunder.

ARTICLE 15 — ADDITIONAL BOND SECURITY

If any surety upon any bond furnished in connection with this contract becomes unacceptable to Johnson County, or if any such surety fails to furnish reports as to its financial condition from time to time as requested by Johnson County, or if the contract price is increased to such an extent that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of Johnson County and of persons supplying labor or materials in the prosecution of the work contemplated by this contract.

ARTICLE 16 — REAL PROPERTY RIGHTS

(a) Adequate real property rights needed in order to perform the work under this contract have been acquired by or on behalf of Johnson County. The right to enter, remove, or otherwise make use of adjacent property, roads, utility lines, fences, and other improvements

not included within the real property rights provided shall be the sole responsibility of the Contractor.

(b) Where ingress and egress are not defined on the drawings, the Contracting Officer shall designate the right-of-way to be used.

(c) The Contractor shall obtain owner's advance written approval if he/she plans to enter, remove, or otherwise make use of adjacent property, roads, utility lines, fences, and other improvements not included within the real property rights provided by Johnson County. A copy of the written approval must be submitted to the Contracting Officer. The Contractor is responsible for any and all expenses associated with these items.

ARTICLE 17 — RECORDS OF TEST PITS AND BORINGS

Johnson County does not represent that the available records show completely the existing conditions and does not guarantee any interpretation of these records. The Contractor assumes all responsibility for deductions and conclusions as to the nature of rock and other materials to be excavated, the difficulties of making and maintaining the required excavations and of doing other work affected by the geology of the site of the work, and for the final preparation of the foundations for the spillway, dikes, and other structures.

ARTICLE 18 — MATERIALS TO BE FURNISHED BY THE CONTRACTOR

(a) Unless otherwise specified in this contract, the Contractor shall furnish all materials required for the completion of the contract.

(b) Unless otherwise waived in writing by the Contracting Officer, the Contractor shall furnish Johnson County with certifications dated and signed by the manufacturer and/or supplier to the effect that the items listed therein meet the requirements of this contract. Such certifications shall be furnished prior to the use of the material in any part of the construction and shall identify the project on which the material is to be used.

ARTICLE 19 — WATER

Unless otherwise specified in this contract, the Contractor shall provide and maintain at his/her own expense an adequate supply of water suitable for purposes of performing the work.

ARTICLE 20 — WORKWEEK—CONSTRUCTION SCHEDULE

(a) Unless furnished prior to contract award, the Contractor shall, prior to commencement of work, submit to the Contracting Officer for approval: (1) a construction schedule showing the order in which he/she proposes to carry on the work indicating the periods during which he/she will perform work on each item listed in the bid schedule; and (2) the hours and days in which he/she proposes to carry on the work.

(b) If, in the opinion of the Contracting Officer, the Contractor falls behind the approved construction schedule, the Contractor shall take such steps as may be necessary to improve his/her process and the Contracting Officer may require him/her to either increase the number of shifts, days or hours of work, or the amount of construction plant, or all of them, and to submit for approval such revised construction schedule as may be deemed necessary to show the manner in which the agreed rate of progress will be regained, all without additional cost to Johnson County. If the Contractor fails to submit a revised construction schedule within the time specified by the Contracting Officer, the Contracting Officer may withhold approval of progress payments and/or take such other actions as provided in this contract until such time as the Contractor submits the required construction schedule.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this article shall be grounds for determination by the Contracting Officer that the Contractor is not prosecuting the work with such diligence as will ensure completion within the time specified. Upon such determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part thereof, in accordance with Article 5 of the General Conditions.

(d) The maximum workweek that will be approved is:

Monday through Saturday, up to 11 hours per day, less Federal Shutdown days listed below:

Christmas Holiday: December 23 & 26, 2022 — January 2, 2023 (if needed)
Work is permitted during "daylight" hours only.

ARTICLE 21 — SUBCONTRACTORS

(a) Work shall not be subcontracted in whole or in part without the prior written approval of the Contracting Officer. The request shall be in writing with the name of the proposed subcontractor and a description of the work to be done.

(b) If at any time the Contracting Officer determines that any subcontractor is incompetent or undesirable, he/she shall notify the Contractor accordingly and the Contractor shall take immediate steps for cancellation of the subcontract.

(c) Subcontracting by subcontractors shall be subject to the above requirements.

(d) Nothing contained in this contract shall create any contractual relationship between any subcontractor and Johnson County.

(e) Any subcontract awarded under this contract will not be awarded to any official of Johnson County or Central Texas SWCD #509 (all in the State of Texas), or to any firm in which any official or any member of such official's immediate family of these entities has direct or indirect interest in the pecuniary profits or contracts of such firms.

ARTICLE 22 — SURVEYS

See PART IV, Construction Specification 7 — Construction Surveys.

ARTICLE 23 — SUSPENSION OF WORK

(a) The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he/she may determine to be appropriate for the convenience of Johnson County.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Contracting Officer in the administration of this contract, or by his/her failure to act within the time specified in this contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this article for any suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted by any other cause including the fault or negligence of the Contractor or (2) for which an equitable adjustment is provided for or excluded under any other provision of this contract.

(c) No claim under this article shall be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to

act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and

(2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the contract.

ARTICLE 24 — CLEANUP WORK

(a) During performance of the work the Contractor shall keep the work site, areas adjacent to the work site and access roads in an orderly condition, free and clear from debris and discarded materials. Care shall be taken to prevent spillage when hauling is being done. Any spillage or debris resulting from the Contractor's operations shall be immediately removed.

(b) Upon completion of the work the Contractor shall remove from the work site, areas adjacent to the work site and access roads: all plant, buildings, debris, unused materials, concrete forms and other like material belonging to Contractor or used under his/her direction during the construction. Contractor shall grade all access roads, other than public, removing wheel tracks and smoothing up such roads.

ARTICLE 25 — ASSIGNMENT

The Contractor shall not assign in whole or in part this contract without the prior written consent of Johnson County. The Contractor shall not assign any moneys due or to become due to him/her under this contract without the prior written consent of Johnson County.

ARTICLE 26 — WEATHER

(a) The Contracting Officer may order suspension of the work in whole or in part, commencing with the day after receipt of the Notice to Proceed by the Contractor, due to weather or the effects of weather at the site, for such time as he/she considers it unfavorable for satisfactory prosecution of the work.

(b) When the Contracting Officer orders suspension under (a) of this article, the contract completion date shall be extended a full calendar day for each calendar day during suspension of the work if:

(1) All work is suspended except minor items as may be designated in this contract or as approved during the suspension period by the Contracting Officer at his/her sole discretion on a case-by-case basis (work of an emergency, protective or maintenance nature may be performed at any time); and

(2) The hours lost in any one workday of the authorized workweek through suspension equal one-half or more of the hours of an authorized workday.

(c) If the Contracting Officer orders suspension of work as provided in (b) of this article and the hours lost in the workday immediately preceding a non-workday equal one-half or more of the hours in an authorized workday, the contract completion date shall be extended a full calendar day for each non-workday during suspension of the work.

(d) When the Contracting Officer orders any suspension of the work under this article, the Contractor shall not be entitled to any cost or damages resulting from such suspension.

(e) When the contract completion date is extended under this article, the contract shall be modified in writing accordingly.

ARTICLE 27 — NONCOMPLIANCE WITH CONTRACT REQUIREMENTS

(a) The Contracting Officer may order suspension of the work in whole or in part for such time as he/she deems necessary because of the failure of the Contractor to comply with any of the requirements of this contract, and the contract completion date shall not be extended on account of any such suspension of the work.

(b) When the Contracting Officer orders any suspension of the work under (a) of this article, the Contractor shall not be entitled to any costs or damages resulting from such suspension.

(c) The rights and remedies of Johnson County provided in this article are in addition to any other rights and remedies provided by law or under this contract.

ARTICLE 28 — QUANTITY VARIATIONS

(a) Where the quantity of work shown for an item in the bid schedule, including any modification thereof, is estimated, no adjustment of the contract price nor of the performance time shall be made for overruns or underruns which are within 25 percent of the estimated quantity of any such item.

(b) For overruns of more than 25 percent, the Contracting Officer shall re-estimate the quantity for the item, establish an equitable contract price for the overrun of more than 25 percent, adjust contract performance time equitably, and modify the contract in writing accordingly; this article to thereafter be applicable to the total re-estimated item quantity.

(c) For underruns of more than 25 percent, the Contracting Officer shall determine the quantity for the item, establish an equitable contract price therefor, adjust contract performance time equitably, and modify the contract in writing accordingly.

ARTICLE 29 — FEDERAL, STATE, AND LOCAL TAXES

(a) Except as otherwise provided, contract unit prices shall include all applicable Federal, State, and local taxes.

(b) Texas State, County, and Municipal Sales and Use Tax. (1) Johnson County is an exempt entity per §151.309(5) of the Limited Sales, Excise, and Use Tax Act (Texas Tax Code Chapter 151 — Limited Sales, Excise, and Use Tax)

and will issue the Contractor an affidavit as proof of this exemption. This contract is a "lump-sum contract" as defined by Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter 0 — State Sales and Use Tax, Rule §3.291 (Contractors).

(2) When purchased by the Contractor for use in performance of this contract, certain tangible personal property and taxable services are exempt from State Sales and Use Tax under Texas Tax Code §151.311, and in most cases are also exempt from County and Municipal Sales and Use Tax. Contractor is subject to tax responsibilities in Texas Administrative Code Rule §3.291, section (c), and is responsible to issue a properly completed exemption certificate to a supplier in accordance with section (c)(5).

(3) Contractor is solely responsible to be adequately familiar with and comply with all requirements of Texas Tax Code, Texas Administrative Codes, and any other State/local regulations when claiming tax exemption for purchase of items for use in the performance of this contract.

(4) "Contractor" as used in this paragraph (b) includes subcontractors as defined in Texas Administrative Code Rule §3.291, section (a)(3).

ARTICLE 30 — SHOP DRAWINGS

(a) The term "shop drawings" includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract.

(b) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate his/her approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate his/her approval or disapproval of the shop drawings and if not approved as submitted shall indicate his/her reasons therefor. Any work done prior to such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (c) below.

(c) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation(s), he/she shall issue an appropriate contract modification, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.

ARTICLE 31 — TERMINATION FOR CONVENIENCE OF JOHNSON COUNTY

The Contracting Officer, by written notice, may terminate this contract in whole or in part, when it is in the interest of Johnson 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. In addition, the Contractor shall be paid 10 percent for overhead expenses based on said direct costs, and 5 percent for profit based on the total of direct costs and overhead costs. From this will be deducted any payments or reimbursements previously paid and salvage value of materials paid for by Johnson County but not used. Provided however, no profit shall be paid if the Contractor would have incurred a loss had the entire contract been completed.

ARTICLE 32 — PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place.

If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(b) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site, and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

ARTICLE 33 — OPERATIONS AND STORAGE AREAS

(a) The Contractor shall confine all operations (including storage of materials) on Johnson County premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save Johnson County, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.

(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to Johnson County. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

ARTICLE 34 — USE AND POSSESSION PRIOR TO COMPLETION

(a) Johnson County shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that Johnson County intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. Johnson County's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While Johnson County has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from Johnson County's possession or use, notwithstanding the terms of Article 11 (Permits and Responsibilities) of these General Conditions. If prior possession or use by Johnson County delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

ARTICLE 35 — LAYOUT OF WORK

See *PART IV, Construction Specification 7 — Construction Surveys*.

ARTICLE 36 — PRECONSTRUCTION CONFERENCE

If the Contracting Officer decides to conduct a preconstruction conference, the successful offeror will be notified and will be required to attend. The Contracting Officers notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

ARTICLE 37 — CONTRACTOR RECORDS

(a) Access to Records. Contractor shall provide access by Johnson County or USDA-NRCS, or any of their duly authorized representatives, to any books, documents, papers, and

records of the Contractor which are directly pertinent to the contract for the purpose of making audit, examination, excerpts, and transcriptions.

(b) Retention of Records. Contractor shall retain all records requiring access per paragraph (a) above for three (3) years after Johnson County makes final payment under the contract and all other pending matters between Johnson County and the Contractor under the contract are closed.

ARTICLE 38 — ARCHEOLOGICAL OR HISTORIC SITES

If a previously unidentified archeological or historic site(s) is encountered, the Contractor shall discontinue work in the general area of the site(s) and notify the Contracting Officer immediately.

ARTICLE 39 — CONTROL OF EROSION, SEDIMENTATION, AND POLLUTION

(a) Operations shall be scheduled and conducted to minimize erosion of soils and to prevent silting and muddying of streams, rivers, irrigation systems, and impoundments (lakes, reservoirs, etc.).

(b) Pollutants such as fuels, lubricants, bitumens, raw sewage, and other harmful materials shall not be discharged on the ground; into or nearby rivers, streams, or impoundments; or into natural or man-made channels. Wash water or waste from concrete or aggregate operations shall not be allowed to enter live streams prior to treatment by filtration, settling, or other means sufficient to reduce the sediment content to not more than that of the stream into which it is discharged.

(c) Mechanized equipment shall not be operated in flowing streams without written approval by the Contracting Officer.

ARTICLE 40 — [RESERVED]

ARTICLE 41 — ACCIDENT PREVENTION AND SAFETY

(a) The Contractor shall provide and maintain work environments and procedures which will:

- (1) Safeguard the public and Johnson County personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities;
- (2) Avoid interruptions of Johnson County operations and delays in project completion dates; and
- (3) Control costs in the performance of this contract.

(b) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Johnson County personnel, the

(c)

Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this article.

(d) The Contractor shall insert this article, including this paragraph (c), with appropriate changes in the designation of the parties, in subcontracts.

(e) Before commencing the work, the Contractor shall--

(1) Submit a written proposed plan for implementing this article. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and

(2) Meet with representatives of the Contracting Officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

(e) In the event there is a conflict between the requirements contained in the specifications, Contractor's safety program, and U.S. Department of Labor construction safety and health standards, the more stringent requirement will prevail.

(f) Contractor shall comply with OSHA (Occupational Safety and Health Administration) Parts 1910 and 1926 Construction Industry Standards and Interpretations, and with the supplement below:

Supplement to OSHA Parts 1910 and 1926 Construction Industry Standards and Interpretations

Requests for variances or waiver from this supplement are to be made to the Contracting Officer in writing supported by evidence that every reasonable effort has been made to comply with the contractual requirements. A written request for a waiver or a variance shall include--

- (1) Specific reference to the provision or standard in question;
- (2) An explanation as to why the waiver is considered justified; and
- (3) The Contractor's proposed alternative, including technical drawings, materials, or equipment specifications needed to enable Contracting Officer to render a decision.

No waiver or variance will be approved if it endangers any person. The Contractor shall not proceed under any requested revision of a provision until the Contracting Officer has given written approval. The Contractor is to hold and save harmless the United States

Department of Agriculture, Natural Resources Conservation Service, and Johnson County free from any claims or causes of action whatsoever resulting from the Contractor or Subcontractors proceeding under a waiver or approved variance.

Copies of OSHA Parts 1910 and 1926, Construction Industry Standards and Interpretations, may be obtained from:

Superintendent of Documents
U.S. Government Printing Office
Washington, DC 20402

A. GENERAL CONTRACTOR REQUIREMENTS

(1) SAFETY PROGRAM. Each Contractor is to demonstrate that he or she has facilities for conducting a safety program commensurate with the work under contract. The Contractor is to submit in writing a proposed comprehensive safety program to the Contracting Officer for approval before the start of operations. The program is to specifically state what provisions the Contractor proposes to take for the health and safety of all employees, including subcontractors and rental equipment operators. The program shall be site specific and provide

details relevant to the work to be done, the hazards associated with the work, and the actions that will be necessary to minimize the identified hazards.

(2) **PRECONSTRUCTION SAFETY MEETING.** Representatives for the Contractor are to meet with the Contracting Officer or the CO's Representative before commencing work to discuss the safety program and the implementation of all health and safety standards pertinent to the work under this contract.

(3) **JOINT SAFETY POLICY COMMITTEE.** The Contractor or designated on-site representative is to participate in monthly meetings of a joint Safety Policy Committee, composed of Contracting Officer, CLO Engineer and/or Inspector, and Contractor supervisory personnel. At these meetings the Contractor's project manager and the Contracting Officer will review the effectiveness of the Contractor's safety effort, resolve current health and safety problems, and coordinate safety activities for upcoming work.

(4) **SAFETY PERSONNEL.** Each Contractor is to designate a competent supervisory employee satisfactory to Contracting Officer to administer the safety program.

(5) **SAFETY MEETINGS.** A minimum of one "on-the-job" or "toolbox" safety meeting is to be conducted each week by all field supervisors or foremen and attended by mechanics and all personnel at the jobsite. The Contractor is to also conduct regularly scheduled supervisory safety meetings at least monthly for all levels of job supervision.

(6) **SAFETY INSPECTION.** The Contractor shall perform frequent and regular safety inspections of the jobsite, materials, and equipment, and shall correct deficiencies.

(7) **FIRST AID TRAINING.** Every Contractor foreman's work crew must include an employee who has a current first aid certificate from the Mine Safety and Health Administration, American Red Cross, or other state-approved organization.

(8) **REPORTS.** Each contractor is to maintain an accurate record of all job-related deaths, diseases, or disabling injuries. The records shall be maintained in a manner approved by the Contracting Officer. A copy of all reports is to be provided to the Contracting Officer. All fatal or serious injuries are to be reported immediately to the Contracting Officer, and every assistance is to be given in the investigation of the incident, including submission of a comprehensive narrative report to the Contracting Officer. Other occurrences with serious accident potential, such as equipment failures, slides, and cave-ins, must also be reported immediately. The Contractor is to assist and cooperate fully with the Contracting Officer in conducting accident investigations. The Contracting Officer is to be furnished all information and data pertinent to investigation of an accident.

(9) **CERTIFICATION OF INSURANCE.** Contractors are to provide the Contracting Officer with certificates of insurance before the start of operations indicating full compliance with State Worker's Compensation statutes, as well as other certificates of insurance required under the contract. *[See PART III — Supplemental Conditions, Articles 1, 2, and 3.1*

B. FIRST AID AND MEDICAL FACILITIES

(1) **FIRST AID KITS.** A 16-unit first aid kit approved by the American Red Cross is to be provided at accessible, well-identified, locations at the ratio of at least 1 kit for each 25 employees. The first aid kits are to be moisture proof and dust tight, and the contents of the kits are to be replenished as used or as they become ineffective or outdated.

(2) EMERGENCY FIRST AID. At least one employee certified to administer emergency first aid must be available on each shift and duly designated by the Contractor to care for injured employees. The names of the certified employees shall be posted at the jobsite.

(3) COMMUNICATION AND TRANSPORTATION. Prior to the start of work, the Contractor is to make necessary arrangements for prompt and dependable communications, transportation, and medical care for injured employees. At least one stretcher and two blankets shall be readily available for transporting injured employees.

(4) FIRST AID AND MEDICAL REPORTS. The Contractor is to maintain a record system for first aid and medical treatment on the jobsite. Such records are to be readily available to the Contracting Officer and are to include--

(a) A daily treatment log listing chronologically all persons treated for occupational injuries and illnesses;

(b) Cumulative record of injury for each individual;

(c) Monthly statistical records of occupational injuries, classified by type and nature of injury; and

(d) Required records for worker's compensation.

(5) SIGNS AND DIRECTIONAL MARKINGS. Adequate identification and directional markers are to be provided to readily denote the location of all first aid stations.

(6) EMERGENCY LISTING. A listing of telephone numbers and addresses of doctor, rescue squad, hospital, police, and fire departments is to be provided at all first aid locations.

C. PHYSICAL QUALIFICATIONS OF EMPLOYEES

(1) GENERAL REQUIREMENTS. Persons employed throughout the contract are to be physically qualified to perform their assigned duties. Employees must not knowingly be permitted or required to work while their ability or alertness is impaired by fatigue, illness, or any other reason that may jeopardize themselves or others.

(2) HOIST OPERATORS. Operators of cranes, cableways, and other hoisting equipment shall be examined annually by a physician and provided with a certification stating that they are physically qualified to safely operate hoisting equipment. The Contractor is to submit a copy of each certification to the Contracting Officer.

(3) HEAVY EQUIPMENT OPERATORS. It is recommended that operators of trucks and heavy equipment be given physical examinations to determine if they are physically qualified to perform their assigned work without endangering themselves or others.

(4) MOTOR VEHICLE OPERATORS. Operators of motor vehicles engaged primarily in the transportation of personnel are to be 18 years of age or older and have a valid state operator's permit or license for the equipment being operated.

(5) D. PERSONAL PROTECTIVE EQUIPMENT

(1) HARD HAT AREAS. The entire jobsite, with the exception of offices, shall be considered a hard hat area. All persons entering the area are, without exception, required to wear hard hats. The Contractor shall provide hard hats for visitors entering hard hat areas.

(2) LABELS. Hard hats shall bear a manufacturer's label indicating design compliance with the appropriate ANSI (American National Standards Institute) standard.

(3) POSTING.

(a) Signs at least 3 by 4 feet worded as follows with red letters (minimum 6 inches high) and white background shall be erected at access points to designated hard hat areas:

CONSTRUCTION AREA - HARD HATS
REQUIRED BEYOND THIS POINT

(b) These signs are to be furnished and installed by the Contractor at entries to shops, service yards, and job access points.

(4) SAFETY GOGGLES (DRILLERS). DRILLERS AND HELPERS. Drillers and helpers operating pneumatic rock drills must wear protective safety goggles.

E. MACHINERY AND MECHANIZED EQUIPMENT

(1) SAFE CONDITION. Before any machinery or mechanized equipment is initially used on the job, it must be inspected and tested by qualified personnel and determined to be in safe operating condition and appropriate for the intended use. Operators shall inspect their equipment prior to the beginning of each shift. Any deficiencies or defects shall be corrected prior to using the equipment. Safety equipment, such as seatbelts, installed on machinery is to be used by equipment operators.

(2) TAGGING AND LOCKING. The controls of power-driven equipment under repair are to be locked. An effective lockout and tagging procedure are to be established, prescribing specific responsibilities and safety procedures to be followed by the person or persons performing repair work. Mixer barrels are to be securely locked out before permitting employees to enter them for cleaning or repair.

(3) HAUL ROADS FOR EQUIPMENT

(a) ROAD MAINTENANCE. The Contractor shall maintain all roadways, including haul roads and access roads, in a safe condition so as to eliminate or control dust and ice hazards. Wherever dust is a hazard, adequate dust-laying equipment shall be available at the jobsite and utilized to control the dust.

(b) SINGLE-LANE HAUL ROADS. Single-lane haul roads with two-way traffic shall have adequate turnouts. Where turnouts are not practical, a traffic control system shall be provided to prevent accidents.

(c) TWO-WAY HAUL ROADS. On two-way haul roads, arrangements are to be such that vehicles travel on the right side wherever possible. Signs and traffic control devices are to be employed to indicate clearly any variations from a right-hand traffic pattern. The road shall be wide enough to permit safe passage of opposing traffic, considering the type of hauling equipment used.

(d) DESIGN AND CONSTRUCTION OF HAUL ROADS. Haul road design criteria and drawings, if requested by the Contracting Officer, are to be submitted for approval prior to road construction. Sustained grades shall not exceed 12 percent and all curves shall have open-sight line with as great a radius as practical. All roads shall be posted with curve signs and maximum speed limits that will permit the equipment to be stopped within one-half the minimum sight distance.

(e) OPERATORS. Machinery and mechanized equipment shall be operated only by authorized qualified persons.

(f) **RIDING ON EQUIPMENT.** Riding on equipment by unauthorized personnel is prohibited. Seating and safety belts shall be provided for the operator and all passengers.

(g) **GETTING ON OR OFF EQUIPMENT.** Getting on or off equipment while the equipment is in motion is prohibited.

(h) **HOURS OF OPERATION.** Except in emergencies, an equipment operator shall not operate any mobile or hoisting equipment for more than 12 hours without an 8-hour rest interval away from the job.

(4) POWER CRANES AND HOISTS (TRUCK CRANES, CRAWLER CRANES, TOWER CRANES, GANTRY CRANES, HAMMERHEAD CRANES, DERRICKS, CABLEWAYS, AND HOISTS)

(a) **PERFORMANCE TEST.** Before initial on-site operation, at 12-month intervals, and after major repairs or modification, power cranes, derricks, cableways, and hoists must satisfactorily complete a performance test to demonstrate the equipment's ability to safely handle and maneuver the rated loads. The tests shall be conducted in the presence of a representative of the Contracting Officer (the Engineer and/or Inspector). Test data shall be recorded and a copy furnished to the Contracting Officer.

(b) **PERFORMANCE TEST--POWER CRANES (CRAWLER MOUNTED, TRUCK MOUNTED, AND WHEEL MOUNTED).** The performance test is to be carried out as per ANSI requirements. The test is to consist of raising, lowering and braking the load and rotating the test load through 360° at the specified boom angle or radius. Cranes equipped with jibs or boom tip extensions are to be tested using both the main boom and the jib, with an appropriate test load in each case.

(c) **PERFORMANCE TEST--DERRICKS, GANTRY CRANES, TOWER CRANES, CABLEWAYS, AND HOISTS, INCLUDING OVERHEAD CRANES.** This equipment is to be performance tested as per with ANSI requirements.

(d) **BOOM ANGLE INDICATOR.** Power cranes (including draglines) with booms capable of moving in the vertical plane shall be provided with a boom angle indicator in good working order.

(e) **CRANE TEST CERTIFICATION.** The performance test required by (4)(b) and (c) is fulfilled if the Contractor provides the Contracting Officer a copy of the certificate of inspection made within the past 12 months by a qualified person or by a government or private agency satisfactory to the Contracting Officer.

(f) **POSTING FOR HIGH VOLTAGE LINES.** A notice of the 10-foot (or greater) clearance required by OSHA 1926.550, Subpart N, shall be posted in the operator's cab of cranes, shovels, boom-type concrete pumps, backhoes, and related equipment.

(g) **BOOM STOPS.** Cranes or derricks with cable-supported booms, except draglines, shall have a device attached between the gantry of the A-frame and the boom chords to limit the elevation of the boom. The device shall control the vertical motions of the boom with increasing resistance from 83° or less, until completely stopping the boom at not over 87° above horizontal.

(h) **SAFETY HOOKS.** Hooks used in hoisting personnel or hoisting loads over construction personnel or in the immediate vicinity of construction personnel shall be forged steel equipped with safety keepers. When shackles are used under these conditions, they shall be of the locking type or have the pin secured to prohibit turning.

(5) ROLLOVER PROTECTIVE STRUCTURES (ROPS)

(a) ROLLOVER PROTECTIVE STRUCTURES. OSHA 1926, Subpart W, Overhead Protection, Sections 1001 and 1002 are applicable regardless of the year in which the equipment was manufactured and regardless of the struck capacity of the equipment.

(b) EQUIPMENT REQUIRING ROPS. The requirement for ROPS meeting (5)(a) above applies to crawler and rubber-tired tractors such as dozers, push-and-pull tractors, winch tractors, tractors with backhoes, and mowers; off-highway, self-propelled, pneumatic-tired earthmovers, including scrapers, motor graders and loaders; and rollers, compactors, water tankers (excluding trucks with cabs). These requirements shall also apply to agricultural and industrial tractors and similar equipment.

(c) EQUIPMENT REQUIRING SEATBELTS. The requirements for seatbelts as specified in OSHA Subpart O, Motor Vehicles, Mechanized Equipment, and Marine Operations, Section 1926.602 shall also apply to self-propelled compactors and rollers, and rubber-tired skid-steer equipment.

F. LADDERS AND SCAFFOLDING

(1) LADDERS. OSHA 1926, Subpart L - Section 450. Ladders shall be used as work platforms only when use of small hand tools or handling of light material is involved. No work requiring lifting of heavy materials or substantial exertion shall be done from ladders.

(2) SCAFFOLDING. OSHA 1926, Subpart L - Section 451. Scaffolds, platforms or temporary floors shall be provided for all work except that which can be done safely from the ground or similar footing.

(3) SAFETY BELTS, LIFELINE, AND LANYARDS. OSHA 1926, Subpart E, Section 104. Lifelines, safety belts and lanyards independently attached or attended, shall be used when performing such work as the following when the requirements of F (1) or (2) above cannot be met.

(a) Work on stored material in hoppers, bins, silos, tanks, or other confined spaces.

(b) Work on hazardous slopes, structural steel, or poles; erection or dismantling of safety nets, tying reinforcing bars; and work from Boatswain's chairs, swinging scaffolds, or other unguarded locations at elevations greater than 6 feet.

(c) Work on skips and platforms used in shafts by crews when the skip or cage does not block the opening to within 1 foot of the sides of the shaft, unless cages are provided.

PART III - SUPPLEMENTAL CONDITIONS

ARTICLE 1 — TYPES AND LIMITS OF INSURANCE

Satisfactory certificates of insurance shall be filed with Johnson County prior to commencement of any work on this contract. Insurance requirements stated below do not establish limits of the Contractor's liability.

(a) Workmen's Compensation and Employer's Liability Insurance

(1) Contractor shall provide workmen's compensation and employee's liability insurance at own expense. This insurance shall protect Contractor against all claims under applicable state workmen's compensation laws. Contractor shall also be protected against claims for injury, disease, or death of employees which, for any reason, may not fall within the provisions of a workmen's compensation law.

(2) The liability limits shall be not less than:

Workmen's Compensation Statutory	
Employer's Liability	\$500,000

(b) Comprehensive Automobile Liability Insurance

(1) Contractor shall provide comprehensive automobile liability insurance at own expense. This insurance shall be written in comprehensive form and shall protect Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on or off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired.

(2) Policy shall list CLO as additional named insured per Article 1(f).

(3) The liability limits shall be not less than:

Bodily injury	\$250,000 each person
	\$500,000 each occurrence

Property damage \$250,000 each occurrence

(c) Comprehensive General Liability Insurance

(1) Contractor shall provide comprehensive general liability insurance at own expense. This insurance shall be written in comprehensive form and shall protect Contractor against all claims arising from injuries to persons other than his/her employees or damage to property of Johnson County or others arising out of any act or omission of Contractor or his/her agents, employees, or subcontractors. The policy shall also include protection against claims insured by usual personal injury liability coverage, such as a "protective liability" endorsement to insure the contractual liability assumed by Contractor.

(2) To the extent that Contractor's work, or work under his/her direction, may require blasting, explosive conditions, or underground operations, the comprehensive general liability coverage shall contain no exclusion relative to blasting, explosion, collapse of building, or damage to underground property.

(3) Policy shall list CLO as additional named insured per Article 1(f).

(4) The liability limits shall be not less than:

Bodily injury \$500,000 each occurrence

Property damage \$250,000 each occurrence

Aggregate \$1 million

(d) Umbrella Liability Policy. If aggregate of Comprehensive General Liability Insurance in (c)(4) above does not equal or exceed \$1 million, the Contractor shall provide umbrella liability

policy at its own expense. This insurance shall protect Contractor against all claims in excess of the limits provided under the workmen's compensation and employer's liability, comprehensive automobile liability, and general liability policies. The liability limits of the umbrella liability policy shall not be less than \$1,000,000. The policy shall list CLO as additional named insured per Article 1(f).

(e) Policy Cancellation. Each policy shall contain a provision that the coverage afforded will not be canceled or materially changed until at least 30-days prior written notice has been given to Johnson County or Contracting Officer.

(f) Additional Named Insured. Johnson County shall be listed as an additional named insured on Comprehensive Automobile Liability, Comprehensive General Liability, and Umbrella Liability policies.

(g) Waiver of Subrogation. All policies of insurance shall waive all rights of subrogation against Johnson County, its officers, employees and agents.

ARTICLE 2 — SETTLEMENT OF INSURANCE CLAIMS

Losses insured under policies that include Johnson County, as a named insured, shall be adjusted with Johnson County and made payable to Johnson County as trustee for the insureds, as their interests may appear.

ARTICLE 3 — WORKERS' COMPENSATION INSURANCE COVERAGE

Contractor shall provide worker's compensation insurance coverage as specified below at own expense.

(a) Definitions. (1) Certificate of coverage ("certificate")—A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Workers' Compensation Commission (TWCC), or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

(2) Duration of the project—Includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by Johnson County.

(3) Persons providing services on the project ("subcontractor" in §406.096, Texas Labor Code) includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person

contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project.

"Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project.

"Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

(b) The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all employees of the Contractor providing services on the project, for the duration of the project.

(c) The Contractor must provide a certificate of coverage to the Johnson County prior to being awarded the contract.

(d) If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with Johnson County showing that coverage has been extended.

(e) The Contractor shall obtain from each person providing services on a project, and provide to Johnson County:

(1) A certificate of coverage, prior to that person beginning work on the project, so Johnson County will have on file certificates of coverage showing coverage for all persons providing services on the project, and

(2) No later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

(f) The Contractor shall retain all required certificates of coverage for the duration of the project and then in accordance with PART II, General Conditions, Article 37, Contractor Records.

(g) The Contractor shall notify Johnson County in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

(h) The Contractor shall post on each project site a notice [see paragraph (l) of this Article], in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

(i) The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

(1) Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all of its employees providing services on the project, for the duration of the project;

(2) Provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) Provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(4) Obtain from each other person with whom it contracts, and provide to the Contractor:

(i) a certificate of coverage, prior to the other person beginning work on the project; and

(ii) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) Retain all required certificates of coverage on file for the duration of the project and then in accordance with PART II — General Conditions, Article 37 — Contractor Records;

(6) Notify Johnson County in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(7) Contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

(j) By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to Johnson County that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with TWCC's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

(k) The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles Johnson County to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from Johnson County.

(l) Posting of Notice: "REQUIRED WORKER'S COMPENSATION COVERAGE"

"The law requires that each person working on this site or providing services related to this construction project must be covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee.

Call the Texas Workers' Compensation Commission at 512/804-4345 to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage."

ARTICLE 4 — POST-AWARD INFORMATION

(a) Contractor shall fully execute two (2) counterparts of the Contract Agreement including all the contract documents upon receipt of Notice of Award.

(1) Copy of all insurance certificates required in Articles 1, 2, and 3 of these Supplemental Conditions.

(2) Major equipment schedule per PART II, General Conditions, Article 8(a). A firm commitment in writing from all suppliers of equipment that will be leased shall be provided. Equipment shall be open to inspection prior to award of the contract or commencement of work to verify soundness and reliability.

(3) Contractor's proposed workweek (days and clock hours) per PART II, General Conditions, Article 20

(4) For a nonresident bidder who is a corporation, limited partnership, or limited liability company: a current Certificate of Authority from Texas Secretary of State, if not yet provided.

(5) Contractor's Pollution Control Plan per Construction Specification 5, Pollution Control).

(b) Within five (5) workdays after receipt of Notice of Award, Contractor shall submit to the Contracting Officer the following post-award information:

- (1) Performance and payment bonds as specified in Article 13 of these Supplemental Conditions.
- (2) List of proposed subcontractors required in PART II, General Conditions, Article 21(a).

ARTICLE 5 — PERFORMANCE OF WORK BY CONTRACTOR

The Contractor shall perform on the site, and with its own organization, work equivalent to at least twenty (20) percent of the total amount of work to be performed under the Contract. This percentage may be reduced by a supplemental agreement to this contract if, during the performance of the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of Johnson County.

ARTICLE 6 — COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK

(a) Contractor shall be required to:

- (1) Commence work under this contract within ten (10) calendar days from the date of receipt of written Notice to Proceed. Prosecute the work diligently; and
- (2) Complete the entire work ready for use not later than sixty-five (65) calendar days from receipt of Notice to Proceed. The ten calendar days for mobilization is included in the sixty-five calendar days.

(b) The time stated for completion shall include final cleanup of the premises.

ARTICLE 7 — VENUE

This contract shall be governed, construed and interpreted under the laws of the State of Texas. This contract is performable in Johnson County, Texas. The Johnson County has domicile in Johnson County, Texas, and any legal action must be filed in Johnson County, Texas.

ARTICLE 8 — WAGES / BENEFITS

8.1 General

Contractor shall pay or cause to be paid, without cost or expense to Johnson County, all Social Security, Unemployment and Federal Income Withholding Taxes of all such employees, and all such employees shall be paid wages and benefits as required by Federal and/or State law (including but not restricted to unemployment compensation coverage) and per wage rates requirements in Article 8.2 below. In accordance with Texas Labor Code §61.012, Contractor shall post in conspicuous places in the workplace notices indicating the paydays.

8.2 Laborers and Mechanics — Prevailing Wage Rates

(a) This contract requires the Contractor and any of his/her subcontractors at any tier to pay prevailing wage rates as specified in this article and to follow requirements contained in Texas Government Code, Chapter 2258, Prevailing Wage Rates.

(b) A copy of the Prevailing Wage Rates Determination that must be followed is included in PART VI of the contract.

(c) A worker employed or working upon the site of the work shall be paid the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) computed at rates not less than those contained in the Prevailing Wage Rates Determination for regular work and for legal

holiday and overtime work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such workers. "Worker" includes laborers or mechanics.

(d) Workers shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill. Those performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(e) The wage determination shall be posted at all times by the Contractor and subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by workers.

(f) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(g) The Contractor or subcontractor shall insert in any subcontracts this Article 8, and also a clause requiring subcontractors to include Article 8 in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with this article.

() Payroll records. A Contractor and subcontractor shall keep a record showing: (i) the name and occupation of each worker (includes a laborer or mechanic) employed by the Contractor or subcontractor in the construction of the public work; and (ii) the actual per diem wages paid to each worker. The record shall be open at all reasonable hours to inspection by the officers and agents of Johnson County and others as required by PART II, General Conditions, Article 37 (Contractor Records).

(a) A Contractor or subcontractor who violates this article shall pay to Johnson County a penalty of \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated.

ARTICLE 9 — ETHICS I CONFLICTS OF INTEREST

(a) Texas Local Government Code Chapter 171 provisions apply to award of this contract.

(b) A bidder and/or Contractor shall not offer or accept gifts or anything of value nor enter into any business arrangement with any employee, official or agent of Johnson County or USDA-NRCS.

ARTICLE 10 — PROTESTS

(a) Any actual or prospective bidder, offeror, proposer, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to the Contracting Officer. Such protests must be in writing and received by the Contracting Officer within vi working days after such aggrieved person knows, or should have known, of the occurrence of the action which is protested. Formal protests must conform to the requirements

of this article and subsection (c) of this article, and shall be resolved in accordance with the procedure set forth in subsections (d) and (e) of this article. Copies of the protest must be mailed or delivered by the protesting person to the project manager, if any, and other interested persons. For the purposes of this section, "interested persons" means all vendors who have submitted bids or proposals for the contract involved.

(b) In the event of a timely protest or appeal under this section, Johnson County shall not proceed further with the solicitation or with the award of the contract unless the Contracting Officer makes a written determination that the award of a contract without delay is necessary to protect substantial interests of the state.

(c) A formal protest must be sworn and notarized and contain:

- (1) a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;
- (2) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in paragraph (1) of this subsection;
- (3) a precise statement of the relevant facts;
- (4) an identification of the issue or issues to be resolved;
- (5) argument and authorities in support of the protest; and
- (6) a statement that copies of the protest have been mailed or delivered to other identifiable interested persons.

(d) The Contracting Officer may settle and resolve the dispute concerning the solicitation or award of a contract by mutual agreement with the protesting person. The Contracting Officer may solicit written responses to the protest from other interested persons.

(e) If the protest is not resolved by mutual agreement, the Contracting Officer will issue a written determination on the protest.

(1) If the Contracting Officer determines that no violation of rules or statutes has occurred, he or she shall inform the protesting person and other interested persons by letter which sets forth the reasons for the determination.

(2) If the Contracting Officer determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, he or she shall inform the protesting person and other interested persons by letter that sets forth the reasons for the determination and the appropriate remedial action.

(3) If the Contracting Officer determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, he or she shall inform the protesting person and other interested persons by letter which sets forth the reasons for the determination, and the appropriate remedial action, which may include ordering the contract void.

(f) After the Contracting Officer's determination has been made, the aggrieved person or interested persons may request reconsideration of the Contracting Officer's determination to be made by Johnson County Chairman or his/her designee. Such request must be in writing and must be received in the Board office no later than ten working days after the date of the Contracting Officer's determination, which shall be calculated from the date the Contracting Officer's letter is hand-delivered, delivered by a nationally recognized courier service, or mailed by certified or registered mail. The request shall be limited to review of the Contracting Officer's determination. Copies of the request must be mailed or delivered by the aggrieved person to other interested persons. The request must contain an affidavit that such copies have been provided.

(g) Johnson County Judge shall issue a final determination on the protest within 15 days after receipt of the aggrieved person's request for reconsideration.

(h) A decision issued in writing by Johnson County Judge in response to a request for reconsideration shall be the final administrative action of the Board.

(i) Unless good cause for delay is shown or the Contracting Officer or Johnson County Judge determines that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed timely will not be considered.

Q) In the event of a protest, all documents collected by Johnson County Commissioners Court as part of a solicitation, evaluation, and/or award of a contract shall be retained by the Commissioners Court for a period of four years to include the current fiscal year and three additional fiscal years.

ARTICLE 11 — DISPUTES / ALTERNATIVE DISPUTE RESOLUTION

(ADR) This article supplements PART II, General Conditions, Article 6 — Claims. 11.1 Claims

(a) Johnson County's policy is to try to resolve all contractual issues in controversy by mutual agreement at the Contracting Officer's level. Reasonable efforts should be made to resolve controversies prior to the submission of a claim. Use of ADR procedures to the maximum extent practicable is encouraged.

(b) Initiation of a claim. (1) Contractor claims shall be submitted, in writing, to the Contracting Officer for a decision no later than the 180th day after accrual of a claim. The claim must state with particularity the nature of the breach, the amount the Contractor seeks as damages, and the legal theory of recovery. The Contracting Officer shall document the contract file with evidence of the date of receipt of any submission from the Contractor deemed to be a claim by the Contracting Officer. The Contracting Officer must assert, in a writing delivered to the Contractor, any counterclaim not later than the 90th day after the date of receipt of Contractor's written claim.

(2) Johnson County shall issue a written decision on any Johnson County claim initiated against a Contractor no later than the 180th day after accrual of the claim. This time period shall not apply to a Johnson County claim based on a Contractor claim involving fraud.

(c) Contractor certification. Contractor shall provide the certification specified below when submitting any claim exceeding \$100,000, or regardless of the amount claimed when using ADR procedures. The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim. The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim. The certification shall state as follows:

"I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes Johnson County is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(d) Johnson County shall pay interest on a Contractor's claim on the amount found due and unpaid from the date that the Contracting Officer receives the claim (certified if required by Article 11.1(c) above); or payment otherwise would be due, if that date is later, until the date of

payment. If a claim has a defective certification, interest shall be paid from the date that Johnson County receives a proper certification. Amount of interest due will be per Texas and local law and regulation.

11.2 Alternative Dispute Resolution (ADR)

(a) The objective of using ADR procedures is to increase the opportunity for relatively inexpensive and expeditious resolution of issues in controversy. Essential elements of ADR include:

- (1) Existence of an issue in controversy,
- (2) A voluntary election by both parties to participate in the ADR process,
- (3) An agreement on alternative procedures and terms to be used in lieu of formal litigation,
- (4) Participation in the process by officials of both parties who have the authority to resolve the issue in controversy, and
- (5) Certification by the Contractor in accordance with Article 11.1(c) when using ADR procedures to resolve all or part of a claim.

(b) If either party rejects a request for ADR from the other party, the rejecting party shall inform the other party in writing of the specific reasons for rejecting the request, including but not limited to why ADR procedures are inappropriate for the resolution of the dispute.

(c) ADR procedures may be used at any time that the Contracting Officer has authority to resolve the issue in controversy. If a claim has been submitted, ADR procedures may be applied to all or a portion of the claim. When ADR procedures are used subsequent to the issuance of a Contracting Officer's final decision, their use does not constitute a reconsideration of the final decision.

(d) When appropriate, a neutral person may be used to facilitate resolution of the issue in controversy using the procedures chosen by the parties.

(e) The rights of Johnson County and Contractor to exercise such rights or remedies as either party may otherwise have under the contract or by laws or regulations in respect of any claims, disputes, and other issues in controversy are not affected by action taken under this Article.

(f) ADR procedures must be consistent with Chapter 154, Texas Civil Practice and Remedies Code, and Chapter 2009, Texas Government Code, Alternative Dispute Resolution for Use by Governmental Bodies.

11.3 Definitions

(a) Accrual of a claim occurs on the date when all events, which fix the alleged liability of either Johnson County or the Contractor and permit assertion of the claim, were known or should have been known. For liability to be fixed, some injury must have occurred. However, monetary damages need not have been incurred.

(b) Alternative dispute resolution (ADR) means any procedure or combination of procedures voluntarily used to resolve issues in controversy without the need to resort to litigation. These

procedures may include, but are not limited to, assisted settlement negotiations, conciliation, facilitation, mediation, fact-finding, mini-trials, and arbitration.

(c) Claim as used in this Article means a written demand or written assertion by one of the contracting parties seeking as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the contractor seeking the payment of money exceeding \$100,000 is not a claim under this Article until certified as required by Article 11.1(c) above. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by written notice to the Contracting Officer within time limits in section 11.1(b) of this Article, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) Defective certification as used in this Article means a certificate which alters or otherwise deviates from the language in this Article or which is not executed by a person duly authorized to bind the Contractor with respect to the claim. Failure to certify shall not be deemed to be a defective certification.

(e) Issue in controversy means a material disagreement between Johnson County and the Contractor which:

- (1) May result in a claim, or
- (2) Is all or part of an existing claim.

(f) Misrepresentation of fact as used in this Article means a false statement of substantive fact, or any conduct which leads to the belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

(g) Neutral person as used in this Article means an impartial third party, who serves as a mediator, fact finder, or arbitrator, or otherwise functions to assist the parties to resolve the issues in controversy. A neutral person may be a permanent or temporary officer or employee of Johnson County, or the Federal government, or any other individual who is acceptable to the parties. A neutral person shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral person may serve. An "impartial third party" must possess the qualifications required under Section 154.052, Texas Civil Practice and Remedies Code.

ARTICLE 12 — INDEMNIFICATION CLAUSE

The Contractor shall defend, indemnify, and hold harmless Johnson County, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of Contractor or any agent, employee, subcontractor, or supplier of Contractor in the execution of performance of this contract.

ARTICLE 13 — PERFORMANCE AND PAYMENT BONDS

13.1 General

(a) This contract requires performance and payment bonds as outlined in 13.2 below. Such bonds are due within five (5) workdays after receipt of Notice of Award (see Article 4 of these Supplemental Conditions). Johnson County will attach to the Notice of Award the bond forms to be used.

(b) Bonds shall be made payable to: Johnson County 1102 E Kilpatrick St. Cleburne, Texas 76031.

(c) Bonds are subject to requirements stated in this Article and requirements of Texas Government Code, Chapter 2253, Public Work Performance and Payment Bonds, and must be executed by a corporate surety in accordance with Texas Insurance Code, Chapter 3503 (Surety Bonds and Related Instruments), Subchapter A.

13.2 Performance and Payment Bonds—Construction

(a) *Definitions.* As used in this clause-- "Contract price" means the award price of the contract. "Government" means Johnson County.

(b) The successful offeror shall be required to furnish performance and payment bonds to the Contracting Officer as follows:

(1) *Performance Bond:*

(i) The penal amount of performance bond shall be 100 percent of the original contract price.

(ii) The Government may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price.

(iii) The Government may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(2) *Payment Bond:*

(i) The penal amount of payment bond shall be 100 percent of the original contract price.

(ii) The Government may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price.

(iii) The Government may secure additional protection by directing the Contractor to increase the penal sum of the existing bond or to obtain an additional bond.

(c) The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in 13.1 above.

(d) A bond may be executed only by a corporate surety company that is authorized and admitted to write surety bonds in the State of Texas.

(e) For both the Performance bond and Payment bond, the surety must (i) hold a certificate of authority from the United States Secretary of the Treasury to qualify as a surety on obligations permitted or required under federal law; or (ii) have obtained reinsurance for any liability in excess of \$1,000,000 from a reinsurer that is an authorized reinsurer in the State of Texas or is a holder of a certificate of authority from the United States Secretary of the Treasury to qualify as a surety or reinsurer on obligations permitted or required under federal

law. U.S. Treasury Department Circular 570 is published in the *Federal Register* and lists Treasury approved surety companies and their underwriting limitations.

(f) All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

(g) A bond required under this Article must clearly and prominently display on the bond or on an attachment to the bond: (1) the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or (2) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.

ARTICLE 14 — EQUAL OPPORTUNITY (FEDERALLY ASSISTED CONSTRUCTION)

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity (Federally Assisted Construction) clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(c) The Contractor will send to each labor union or representative of workers, with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with

procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulations, or order of the Secretary of Labor, or as provided by law.

(g) The Contractor will include this Equal Opportunity (Federally Assisted Construction) clause in every subcontract or purchase order, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 15 — NOTICE TO PROSPECTIVE FEDERALLY ASSISTED CONSTRUCTION CONTRACTORS

(a) A Certification of Nonsegregated Facilities (included in PART I — General Provisions, Subpart C, Bid Forms, Exhibit H, Section F) must be submitted prior to the award of a federally assisted construction contract which is not exempt from the provisions of the Equal Opportunity clause (Article 14 of these Supplemental Conditions).

(b) Contractors receiving federally assisted construction contract awards not exempt from the provisions of the Equal Opportunity clause will be required to forward the following notice to prospective subcontractors for supplies and construction contracts where the subcontracts and are not exempt from the provisions of the Equal Opportunity clause (Article 14 of these Supplemental Conditions).

Notice to Prospective Subcontractors of Requirement for Certification of Nonsegregated Facilities

(a) A Certification of Nonsegregated Facilities shown below must be submitted prior to the award of a subcontract which is not exempt from the provisions of the Equal Opportunity clause.

(b) Contractors receiving subcontract awards not exempt from the provisions of the Equal Opportunity clause will be required to forward this notice to prospective subcontractors for supplies and construction contracts where the subcontracts are not exempt from the provisions of the Equal Opportunity clause.

Certification of Nonsegregated Facilities

[Applicable to federally assisted construction contracts and related subcontracts not exempt from the Equal Opportunity clause (Article 14 of PART III - Supplemental Conditions)]

The federally assisted construction Contractor certifies they do not maintain or provide for their employees any segregated facilities at any of their establishments, and that they do not permit their employees to perform services at any location, under their control, where segregated facilities are maintained. The federally assisted construction Contractor certifies further that they will not maintain or provide for their employees any segregated facilities at any of their

establishments, and that, they will not permit their employees to perform services at any location, under their control, where segregated facilities are maintained. The federally assisted construction Contractor agrees that a breach of this section is a violation of the Equal Opportunity clause in this contract. As used in this caption, the term "segregated facilities" means any waiting rooms, work areas, restrooms, washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin or because of habit, local custom, or otherwise. The federally assisted construction Contractor agrees that (except where they have obtained identical certifications from proposed subcontractors for specific time periods) they will obtain identical certifications from proposed subcontractors prior to the award of subcontracts which are not exempt from the provisions of the Equal Opportunity clause, and that they will retain such certifications in their files.

NOTE: Penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

ARTICLE 16 — STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

(1) As used in these specifications:

(a) "Covered area" means the geographical area described in the solicitation from which this contract resulted.

(b) "Director" means Director, Office of Federal Contract Act Compliance Program, United States Department of Labor, or any person to whom the Director delegates authority.

(c) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 94 1.

(d) "Minority" includes: (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin); (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban Central or South American or other Spanish Culture or origin, regardless of race); (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract, in excess of \$10,000, the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation which is set forth in the solicitations from which the contract resulted.

(3) If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and

compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO Clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractors or Subcontractors failure to take good faith efforts to achieve the Plan goals and timetables.

(4) The Contractor shall implement the specific affirmative action standards provided in Paragraphs (7)(a) through (7)(p) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or Federally assisted construction contract shall apply the minority and female goals established for the geographic area where the work is being performed. Goals are published periodically in the *Federal Register* in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs or from Federal Procurement Contracting Officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

Notice for IFB No. 2022-221

Covered Area is Johnson County, Texas.

CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS IN ACCORDANCE WITH CODE OF FEDERAL REGULATIONS (CFR) 200.321

(A) Johnson County must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(B) Affirmative steps must include:

(a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(b) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(e) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(f) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (B) (a) through (f) of this section.

(5) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under the specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

(6) In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(7) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

(a) Ensure and maintain a working environment free of harassment, intimidation and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

(b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

(d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor; or, when the Contractor

has other information that the union referral process had impeded the Contractor's efforts to meet its obligations.

- (e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under paragraph (7)(b) above.
- (f) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- (g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions, including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (h) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.
- (i) Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of the applications for apprenticeship or other training by any recruitment sources the Contractor shall send written notification, to organizations such as the above, describing the openings, screening procedure, and tests to be used in the selection process.

Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

- (k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

- (l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - (m) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - (n) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - (o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - (p) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- (8) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of the affirmative action obligations [paragraphs (7)(a) through (7)(p)]. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under paragraphs (7)(a) through (7)(p) of the specifications, provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
- (9) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
- (0) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (1) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

(12) The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

(13) The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (7) of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

(14) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

(15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

ARTICLE 17 — CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS *[Applicable to offers of \$25,000 or more]*

Per Contractor's certification given in PART I, Subpart C, Exhibit H, Section G, this Article shall be included, without modification, in all lower tier covered transactions (subcontracts) and in all solicitations for lower tier covered transactions.

(b) Instructions for Certification

(1) By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

(2) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

(3) The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

(4) The terms herein are as defined in 2 CFR Part 180, OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).

(5) The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 Code of Federal Regulations (CFR) part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

(6) The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions of \$25,000 or more and in all solicitations for lower tier covered transactions.

(7) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Office of Federal Compliance Programs electronic roster at the System for Award Management (SAM) website: www.sam.gov (2 CFR Part 25).

(8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(9) Except for transactions authorized under paragraph (5) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility and
Voluntary Exclusion — Lower Tier Covered Transactions**

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this offer.

NOTE: Penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

**ARTICLE 18 — CERTIFICATION REGARDING LOBBYING CERTIFICATION FOR
CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS**

[Applicable to a subcontract of \$100,000 or more at any tier under a Federal grant.] Per Contractor's certification given in PART I, Subpart C, Exhibit H, Section G, the language of the following certification shall be included in the award documents for all subcontracts at all tiers and that all subcontractors shall certify and disclose accordingly:

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

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

(5) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

ARTICLE 19 — CLEAN AIR AND WATER CLAUSE / CERTIFICATION

[Applicable to all contracts and subcontracts that exceed \$150,000 --OR-- if facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S. C. 1857c-8(c)(1) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA --OR-- if the contract/subcontract is not otherwise exempt.]

(a) The Contractor under this contract/subcontract agrees as follows:

(1) To comply with all the requirements of section 114 of the Clean Air Act as amended (42 U.S.C. 1857, et seq., as amended by Public Law 91-604) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq., as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the signing of this contract by Johnson County.

(2) That no portion of the work required by this contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was signed by Johnson County unless and until the EPA eliminates the name of such facility or facilities from such listing.

(3) To use their best efforts to comply with clean air standards and clean water standards at the facilities in which the contract is being performed.

(4) To insert the substance of the provisions of this article in any nonexempt subcontract, including this subparagraph (a)(4).

(b) The terms used in this article have the following meanings:

(1) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Public Law 91-604).

(2) The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-55).

(3) The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1857c-5(d)), and approved implementation procedure or plan under section 111(c) or section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d)), or an approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).

(4) The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standards, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by a local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (3 U.S.C. 1317).

(5) The term "compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with the scheduled or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or any air or water pollution control issued pursuant thereto.

(6) The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location or site of operations, owned, leased or supervised by a sponsor, to be utilized in the performance of a contract or subcontract. Where a location of site of operations contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are collated in one geographical area.

[end of clause]

Per Contractor's certification given in PART I, Subpart C, Exhibit H, Section I, the certification below (and the above Clean Air and Water Clause) shall be included in every nonexempt subcontract and all subcontractors shall certify accordingly:

Clean Air and Water Certification

[Applicable if subcontract exceeds \$150,000—OR-- if facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA --OR-- if any subcontract is not otherwise exempt.]

Subcontractor certifies as follows:

(4) Any facility to be utilized in the performance of work described in this subcontract [**IS** / **IS NOT**] listed on the Environmental Protection Agency List of Violating Facilities.

(5) Prior to the signing of a subcontract, to promptly notify Johnson County under the prime contract of the receipt of any communication from the Director, Office of Federal Activities, U.S. Environmental Protection Agency, indicating that any facility which he/she proposes to

use for the performance of the subcontract is under consideration to be listed on the Environmental Protection Agency List of Violating Facilities.

(6) To include substantially this certification, including this subparagraph (3), in every nonexempt subcontract.

ARTICLE 20 — SUBCONTRACTOR CERTIFICATION (TPDES)

All subcontractors at any tier who perform work that may impact pollution control measures per PART IV, Construction Specification 5 (Pollution Control) must complete and submit, prior to performing any work on the project, a "Subcontractor Certification" form regarding Texas Pollutant Discharge Elimination System (TPDES) permit. This form is included in Appendix A attachment to Construction Specification 5.