

AGREEMENT (CONTRACT)
BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT is dated as of the 19th day of August in the year 2013 by and between Town of Jupiter (hereinafter called OWNER) and Johnson-Davis (hereinafter called CONTRACTOR). OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK. CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Perform miscellaneous Utility infrastructure maintenance, repairs and/or improvements for the Town's Water and Stormwater systems under an hourly priced contract for the provisions of crews with equipment. Crews and equipment shall be available on as needed basis with no guarantee by the Town of the amount of usage. Work may include non-emergency and emergency work. The Town will direct purchase materials for non-emergency work with the Contractor providing the materials list. For emergency work, Contractor will purchase the materials after providing the Owner with an estimate of such. In both cases, the Contractor will be responsible for material delivery, schedule and coordination with the material vendor. This is a two year contract with the provision for contract extensions as described in the bid documents.

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

ON-CALL CONTRACT
FOR
UTILITY INFRASTRUCTURE REPAIRS & IMPROVEMENTS
(W 13-08)
FOR
TOWN OF JUPITER UTILITIES
JUPITER, FLORIDA

Article 2. ENGINEER.

The Contract has been assembled by the Town of Jupiter Utilities in cooperation with:

Kimley-Horn and Associates, Inc.
1920 Wekiva Way
Suite 200
West Palm Beach, FL 33411

The Town of Jupiter will administer the contract during the construction phase.

Article 3. CONTRACT TIME.

- 3.1. The Work will have a substantial completion date after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions, and as outlined below. The work will be completed and ready for substantial and final payment in accordance with Article 14 of the General Conditions and as outlined below:

Substantial Completion: 730 calendar days from Notice to Proceed

Final Completion: 730 calendar days from Notice to Proceed

- 3.2 Unless extended or terminated, the period of performance of this CONTRACT shall commence upon the effective date of execution by the OWNER and continue for a period of 2 years or seven hundred and thirty calendar days (730 days). Written Notice to Proceed and Work Order duration will be mutually agreed upon by both the CONTRACTOR and OWNER and provided in Work Orders outlining work. The CONTRACTOR shall not proceed with work under this CONTRACT until a Work Order with written Notice to Proceed is received from the OWNER.
- 3.3 The initial term of the Contract will be two years (730 calendar days) from the date of Notice to Proceed. Owner may at Owner's sole discretion renew this Contract for one (1) additional two (2) year term and one (1) additional (1) year term for a total Contract period of five (5) years. It is solely the responsibility of the Contractor to initiate any renegotiation of the Unit Prices of the Contract sixty (60) days prior to the expiration date of the Contract. Failure to initiate renegotiation of rates sixty (60) days prior to the expiration date will result in the continuation of the Unit Prices in the Contract until the next expiration date. Owner reserves the right to terminate negotiations and continue work under existing rates or terminate the Contract. Regardless of anything to the contrary, this Contract may be terminated by the Owner at any time and for any reason. Further, the Contractor agrees that it will not be entitled to any claims and/or damages resulting from such termination, including, but not limited to, lost profits, direct or indirect damages, and consequential special or punitive damages.
- 3.4 The parties agree that the TIME IS OF THE ESSENCE, in the performance of each and every obligation under this CONTRACT. The CONTRACT may be changed only by a change order to the CONTRACT Work Order amendments to individual Work Orders must be completed in writing and signed and dated by Contractor and Owner.
- 3.5 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not substantially complete within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not

substantially complete on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (But not as a penalty) CONTRACTOR shall pay OWNER Seven Hundred and Fifty 00/100 dollars (\$750.00) for each day that expires after the time specified in Paragraph 3.1 for substantial completion until the Work is substantially complete, and Five Hundred 00/100 dollars (\$500.00) for each day that expires after the time specified in Paragraph 3.1 from the date of final completion until the work has reached final completion. Final completion includes demobilization from the site. Owner may withhold payment to compensate for liquidated damages either by increasing the amount of money being held in retainage or deduct the amount due in Liquidated Damages from the final payment application. Liquidated damages under this Contract apply to each individual substantial completion date and the final completion date.

- 3.6 This provision of Liquidated Damages for delay shall in no manner affect the TOWN's right to terminate the CONTRACT. The OWNER'S exercise of the right to terminate shall not release the CONTRACTOR from his obligation to pay Liquidated Damages. It is further agreed that the OWNER may deduct from the balance of the CONTRACT sum held by the OWNER the Liquidated Damages stipulated herein or such portions as said balance will cover.

Article 4. CONTRACT PRICE.

- 4.1 OWNER shall pay CONTRACTOR for performance of the Work in accordance with the Contract Document in current funds accordance to the Proposal Unit Prices.
- 4.2 No guarantee is expressed or implied as to the total quantity of commodities/services to be purchased under any open end Contract. Estimated quantities will be used for Bid comparison purposes only. The Owner reserves the right to issue Work Orders as and when required for proposed work for any or all bid items or any combination thereof. Work under this Contract is subject to fiscal appropriation by the Jupiter Town Council in either or both the Town's Community Investment Program (CIP) and fiscal year operating budgets. Estimated funding budgets anticipated to be available for the original two year contract term and subsequent two year and one year renewal terms are provided in the table below.

**Estimated Annual Funding Budgets
Anticipated for Town of Jupiter Utilities
On-Call Contract for Utility Infrastructure Repairs & Improvements (W13-08)**

Fiscal Year	Project Location	Project Description	Estimated Value
2013	Various Locations	Emergency and Other Unexpected Repairs	\$65,500
2013 Total			\$65,500
2014	Seabrook Place	Replace 2" service valves	\$40,000
2014	US Highway 1	Replace Valve #10-10	\$15,000
2014	Seashore/US 1	Loop Seashore Drive to US Highway 1	\$42,000
2014	Various Locations	Emergency and Other Unexpected Repairs	\$50,000
2014 Total			\$147,000
2015	Old Dixie/Venus/Evernia	Replace Valves #06-163, #06-177 & #06-46	\$35,000
2015	Seabrook Place	Replace 2" service valves	\$40,000
2015	Celestial Way	Replace Valves #85-09 & #85-10	\$35,000
2015	Various Locations	Emergency and Other Unexpected Repairs	\$50,000
2015 Total			\$160,000
2016	Hugh St. /Perry Ave.	Replace Valves #06-137 & 06-178	\$20,000
2016	Cypress Drive	Replace Valve #90-25	\$12,500
2016	US Highway 1	Add Isolation Valve on US 1 at Juno Tank	\$25,000
2016	Various Locations	Emergency and Other Unexpected Repairs	\$50,000
2016 Total			\$107,500
2017	Bella Vista	Replace Valve #11-117	\$15,000
2017	Ocean Pines Terrace	Replace Valves #24-41 & #24-42	\$25,000
2017	Central Blvd/Jupiter Park Dr.	Replace Valves #01-09 & #21-15	\$132,000
2017	Various Locations	Emergency and Other Unexpected Repairs	\$50,000
2017 Total			\$222,000
2018	Indiantown Rd.	Replace Nine Hydrants (# 06-12, 09-01, 09-07, 09-08, 09-72, 11-09, 11-77, 11-06, 11-05)	\$45,000
2018	Choctaw/Todd Street	Replace Valves (# 03-70, 03-70, 03-74) & Hydrants (# 03-30, 03-31)	\$50,000
2018	Elm/Oak Circle	Replace Valves (# 03-11, 03-15, 03-05,) & Hydrants (# 03-36, 03-37)	\$50,000
2018	Various Locations	Emergency and Other Unexpected Repairs	\$50,000
2018 Total			\$195,000
5 Year Grand Total			\$897,000

- 4.3 The Owner reserves the right to purchase commodities/services specified herein through contracts established by other governmental agencies or through separate procurement actions due to unique or special needs. If an urgent delivery is required within a short period than the delivery time specified in the Contract, and if the seller is unable to comply therewith, the Owner reserves the right to obtain such delivery from others without penalty or prejudice to the Owner or to the Bidder.

Article 5. PAYMENT PROCEDURES.

- 5.1 Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for payment will be processed by OWNER as provided in the General Conditions.
- 5.2 The undersigned, acknowledges that payments made by the Town of Jupiter will be made via electronic funds transfer (EFT) and vendor will provide the Town of Jupiter with the information required to make EFT payments.
- 5.3 Progress Payments. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment within 30 days of receipt of each monthly approved application for payment during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the agreed upon schedule of values provided for in paragraph 14.01 of the General Conditions.
- 5.4. Prior to 50% Completion of the work, progress payments will be made in an amount equal to: 90% of the Work completed, and 90% of materials and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made.
- 5.5. Upon 50% completion of work, OWNER, will pay an amount sufficient to increase total payments to CONTRACTOR to 95% of the work completed. Owner may elect to withhold a greater percentage if work is determined, by Owner, to be insufficient or incomplete until Final Completion.
- 5.6. Upon achievement of Substantial Completion CONTRACTOR may request, in writing, that total payments be increased to 98% of the contract price. OWNER may or may not approve this request at their own discretion.
- 5.7. Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as provided in said paragraph 14.07 unless liquidated damages are due.

Article 6. INTEREST. Not applicable.

Article 7. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

- 7.1. CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.
- 7.2. CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.
- 7.3. CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 7.2 as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by CONTRACTOR for such purposes.
- 7.4. CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.
- 7.5. CONTRACTOR has given OWNER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof is acceptable to CONTRACTOR.

Article 8. CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR are attached to this Agreement, made a part hereof and consists of the following:

- 8.1. Index
- 8.2. Table of Contents-Specifications & Appendices
- 8.3. Advertisement for Bids
- 8.4. Instructions to Bidders
- 8.5. Proposal

- 8.6. Contractor Safety Qualification/Requirements
- 8.7 Sworn Statement
- 8.8. Bid Bond
- 8.9. Trench Safety
- 8.10 Notice of Intent to Award
- 8.11. Notice of Award
- 8.12. This Agreement (pages 41 to 46, inclusive)
- 8.13. Payment and Performance Bond
- 8.14. Opinion of Town Attorney
- 8.15. Notice to Proceed
- 8.16. General Conditions (pages 0700-0 to 0700-41, inclusive)
- 8.17. Supplementary Conditions (pages SC-1 to SC-7, inclusive)
- 8.18 Any Modifications, including Change Orders, duly delivered after execution of Agreement.
- 8.19 Technical Specifications including Appendices bearing the title:
On-Call Contract for Utility Infrastructure Repairs & Improvements (W13-08)
- 8.20 Drawings bearing the title:
Town of Jupiter Engineering/Public Works & Utility Construction Standards and
Details (available at the Town of Jupiter website).

Drawings provided to the Contractor explain the scope of work for work orders issued under this contract.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in Section 1 of the General Conditions).

Article 9. MISCELLANEOUS

- 9.1. Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.
- 9.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may

become due and moneys that are due may be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

- 9.3. OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.4 The Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this Contract and in furtherance thereof may demand and obtain records and testimony from the Contractor and its subcontractors and lower tier subcontractors. The Contractor understands and agrees that in addition to other remedies and consequences provided by law, the failure of the Contractor or its subcontractors or lower tier subcontractors to fully cooperate with the Office of Inspector General of Palm Beach County when requested may be deemed by the municipality to be a material breach of this contract justifying its termination. The Office of Inspector General in Palm Beach County is established by Palm Beach County Code, Section 2-421 - 2-440. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and be punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.
- 9.5 The risk of loss or destruction to the project, or any Work Order or portion and/or element thereof, regardless of the cause of the casualty, shall be borne solely by the CONTRACTOR until all goods and materials to be used in the work are incorporated into the Project/Work Order at the Project/Work Order site for its intended purpose and use and final inspection, acceptance and payment for the Project/Work Order has been made by the OWNER. Title to the goods shall pass to the OWNER upon delivery and final acceptance of the entire Project/Work Order by the OWNER, notwithstanding the fact that periodic payments may have been made during the course of the CONTRACT.

IN WITNESS WHEREOF, the parties hereto have signed two (2) copies of this Agreement. At least one counterpart each has been delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR.

OWNER

Town of Jupiter
210 Military Trail
Jupiter, FL 33458

By:

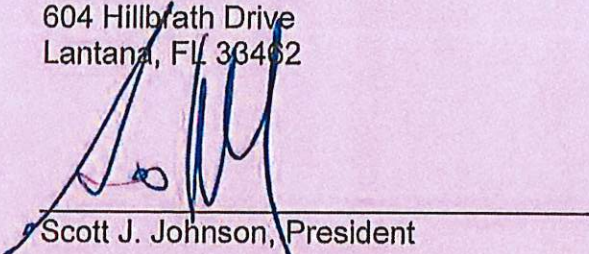


Karen J. Golonka, Mayor

(TOWN SEAL)

CONTRACTOR


Johnson-Davis, Inc.
604 Hillbath Drive
Lantana, FL 33462



Scott J. Johnson, President

(CORPORATE SEAL)

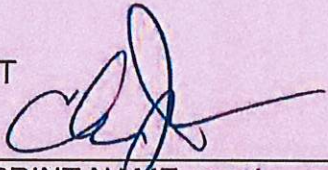
ATTEST



Sally M. Boylan, Town Clerk



ATTEST



PRINT NAME *CHRIS JOHNSON,*
SECTY. / TREASURER