

**CONTRACT FOR CONTINUING SERVICES FOR CULVERTS –  
CONSTRUCTION, REPLACEMENT, MAINTENANCE, REPAIRS,  
AND INDIVIDUAL PROJECTS (INCLUDING THOSE OVER \$300,000)  
IFB # 2025-01 BETWEEN THE TOWN OF LOXAHATCHEE GROVES,  
FLORIDA AND JOHNSON-DAVIS INC.**

**THIS CONTRACT** for Continuing Services for Culverts – Construction, Replacement, Maintenance, Repairs, and Individual Projects (Including Those Over \$300,000) (“Contract”) is by and between the **Town of Loxahatchee Groves**, a Florida municipal corporation (“Town”) and **Johnson-Davis Inc.**, a Florida Corporation, with its principal address at 604 Hillbrath Drive, Lantana, Florida 33462 (“Contractor”).

WHEREAS, the Town issued Invitation For Bid # 2025-01 for Continuing Services for Culverts – Construction, Replacement, Maintenance, Repairs, and Individual Projects (Including Those Over \$300,000) (“IFB”); and

WHEREAS, the Contractor submitted a bid in response to the IFB; and

WHEREAS, the Town desires to award the IFB to the Contractor on a non-exclusive basis for the Continuing Services for Culverts – Construction, Replacement, Maintenance, Repairs, and Individual Projects (Including Those Over \$300,000) (“Culvert Program”); and

WHEREAS, the Town finds awarding the IFB to the Contractor as described herein serves a valid public purpose.

NOW THEREFORE, the Town hereby engages the services of the Contractor, and in consideration of the mutual promises herein contained, the sufficient of which is hereby acknowledged by both parties, the parties agree as follows:

**Article 1. GENERAL INFORMATION.**

1.1 **Scope of Services.** The Contractor shall provide the services requested by the Town and required under a Town approved work order as described herein. The general nature of the services to be provided by the Contractor under this Contract are construction services for the Culvert Program as described in detail in the IFB (incorporated herein as if set forth in full) and as included in any Work Order hereunder.

1.2 **Contract Documents.** The Contract Documents are incorporated herein by reference as if set forth in this Contract and comprise the entire agreement between the Town and Contractor. The Contract Documents consist of this Contract, the IFB (including, but not limited to, the addenda, attachments, exhibits and any plans issued therewith); the bid submitted by the Contractor; and any duly executed and issued work orders, change orders and Contract amendments relating thereto. If, during the performance of the work, the Contractor finds an ambiguity, error or discrepancy in the Contract Documents, the Contractor shall so notify the Town, in writing, within five (5) business days and before proceeding shall obtain a written interpretation or clarification. Failure to obtain a written interpretation or clarification will be deemed a waiver of the ambiguity, error or discrepancy by the Contractor. The Town will not be responsible for any oral instructions, clarifications, or other communications except those provided in writing in response to Contractor's request for clarification of an ambiguity, discrepancy or error. The use of the terms Contract and Contract Documents will be used interchangeably herein.

In resolving conflicts in any of the Contract Documents, the order of precedence shall be as follows:

- First Priority: Fully executed Change Orders or Contract amendments
- Second Priority: This Contract
- Third Priority: Fully executed Work Orders
- Fourth Priority: IFB
- Fifth Priority: Contractor's Bid

1.3 **Contract Administrator.** Whenever the term Contract Administrator is used herein, it is intended to mean **the Town Manager or designee, Town of Loxahatchee Groves, Florida**. In the administration of this Contract, all parties may rely upon instructions or determinations made by the Contract Administrator except that all requests and/or determinations that result in an increase in change in time of completion and/or an increase in the price shall require a formal change order or contract amendment executed by the Town Manager or the Town Council (depending on the authority set forth in the Town's Procurement Code).

1.4 **Work Orders.** This non-exclusive Contract does not guarantee that the Town will utilize the Contractor in any capacity or for any services hereunder. When the Town identifies a need for the Contractor's services, the Town will request a proposal from the Contractor to provide the services requested. The Town will provide the Contractor with a general scope of services, if any, in order for the Contractor to develop its proposal. The Contractor's proposal shall be submitted in the format of the sample work order, attached hereto and incorporated herein as **Exhibit A** along with a copy of the Contractor's proposal and shall be based on the unit prices set forth in the Contractor's bid to the IFB (or as may be amended under section 1.6 below). Upon receipt of the Contractor's proposed work order and proposal, the Town shall decide in its sole discretion whether to award the work order to the Contractor. Depending on the lump sum amount of each work order, the work order may be awarded by the Town Manager (if within his/her purchasing authority) or the Town Council. If the work order is approved by the Town, the Contractor shall commence the identified services upon the Town's approval of the work order for the services and issuance of a notice to proceed. The Town reserves the right to reject any and all proposals submitted by the Contractor. A Town- approved work order shall include (by reference) the plans, if any, provided by the Town to the Contractor.

1.5 **Term.** This non-exclusive Contract shall become effective upon approval by the Town Council. Unless earlier terminated as provided for herein, the initial term of this Contract shall be for **two (2) years** from the effective date **with three (3) one (1) year renewal options**. The Town, through the Town Manager, may exercise the renewal options provided that the Town has approved funding for said renewal options. Each fiscal year of this Contract and any renewals shall be subject to the availability of funds lawfully appropriated for its purpose by the State of Florida (if applicable) and the Town.

1.6 **Unit Prices.** The unit prices stated in the Contractor's bid shall remain fixed for the initial two (2) year term of this Contract. If requested in writing by the Contractor, the unit prices will be reviewed prior to the third year of this Contract. If due to applicable and established price escalations and/or reductions in materials which impact the Contractor's unit prices, the Town and Contractor may execute a written amendment to this Contract to establish new unit prices one (1) time during the three (3) renewal periods of the Contract, unless additional unit price changes are otherwise agreed to by the Town.

**Article 2. CONTRACT TIME; LIQUIDATED DAMAGES.**

2.1 **Timely Services.** All services to be provided under a Town-approved work order shall be provided in a timely manner.

2.2 **Liquidated Damages.** **The Town and Contractor recognize that time is of the essence under this Contract and that the Town will suffer financial loss if the work described in the Contract Documents is not completed within the times specified in the applicable work order. The Town and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the Town would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the work within the time specified. Accordingly, instead of requiring any such proof, the Town and Contractor agree**

**that as liquidated damages for delay (but not as a penalty) Contractor shall pay the Town five hundred dollars (\$500.00) for each day that expires after the time specified in the applicable work order.**

**Article 3. PAYMENT PROCEDURES.**

3.1 **Generally.** The Contractor shall submit invoices on a monthly basis detailing all work accomplished in the prior month and all materials installed and used in the Culvert Program pursuant to Town approved work order. Contractor's invoices shall be submitted to:

Town of Loxahatchee Groves  
Attn: Project Coordinator  
155 F Road  
Loxahatchee Groves, Florida 33470

The Town's Contract Administrator or designee will review each invoice submitted by the Contractor. If approved, the Town will make payment in accordance with the Contract Documents. If not approved, the Town will notify the Contractor within twenty (20) business days of the Town's receipt and identify the action necessary to correct the invoice or a deficiency.

3.2 **Payments.** Payment to the Contractor shall be made pursuant Florida's Local Government Prompt Payment Act (for construction services), section 218.735, Florida Statutes and as otherwise provided herein. With regard to any contract for construction services, the Town may withhold from each progress payment made to the Contractor an amount not exceeding five percent (5%) of the payment as retainage. If the Town makes any payment of retainage to the Contractor which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the Contractor must timely remit payment of such retainage to those subcontractors and suppliers.

3.3 **Substantial Completion.** Upon substantial completion, the Contractor shall notify the Town the work is substantially complete and request an inspection. Within five (5) business days thereafter, the Contractor and Town shall make an inspection of the work and begin the development of a draft punch list of items that must be completed by the Contractor prior to the Contractor submitting its final payment request ("Punch List Walkthrough"). The Town shall submit the punch list to the Contractor within fifteen (15) days of the Punch List Walkthrough and the Contractor shall have ten (10) days to agree to the same. If the Contractor wishes to revise the punch list, it must send the revised punch list to the Town no later than thirty (30) days after reaching substantial completion. Thereafter the parties shall agree on the final punch list no later than thirty (30) days after reaching substantial completion. The punch list shall include every remaining item required to render complete, satisfactory, and acceptable services to the Town and the estimated cost to complete each remaining item. The final agreed upon punch list shall be sent to the Contractor five (5) days after the punch list is finalized. In no event may the Contractor request payment of final retainage until the Contractor has completed all items on the punch list. All items that require correction under the Contract which are identified after the preparation and delivery of the punch list remain the obligation of the Contractor. The failure to include any corrective work or pending items not yet completed on the list does not alter the responsibility of the Contractor to complete all the construction services purchased pursuant to the Contract.

3.4 **Final Payment.** Upon final completion and acceptance of the work in accordance with the IFB and this Contract (including all punch-list items) and final inspection by the appropriate agency with jurisdiction over the Culvert Program (if other than the Town), the Contractor shall submit a "final invoice" to the Town. In order for both parties to close their books and records, the Contractor will clearly state "FINAL" on the Contractor's final invoice. This certifies that all work under the applicable work order has been properly completed and all charges have been invoiced to the Town. Since this account will thereupon be closed, any and other further charges if not properly included in this final invoice are waived by the Contractor. If the Contractor's Final Invoice is approved as set forth above, the Town shall pay the remainder of the work order price including any amount held as retainage.

3.5 **Good Faith Disputes.** Notwithstanding the foregoing, the Town shall not be required to pay or release any amount of retainage that is subject of a good faith dispute, the subject of a claim brought pursuant to section 255.05, Florida Statutes, or otherwise the subject of a claim or demand by the Town.

3.6 **Final Payment.** Final payment shall not become due until the Contractor and all of its subcontractors submit to the Town releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Contract Documents or otherwise related to the Culvert Program.

3.7 **Waiver of Claims.** Acceptance of final payment by the Contractor or a subcontractor shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final invoice.

#### **Article 4. SUBCONTRACTS.**

The Contractor represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Town. All of the services required hereunder shall be performed by the Contractor or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. The Contractor shall furnish services in a manner consistent with industry standards and to a level of professional skill generally acceptable in the industry with regard to services of this kind. The Contractor shall comply with all applicable laws in the provision of services under this Contract. The Contractor agrees that it is fully responsible to the Town for the acts and omissions of subcontractors and of persons either directly or indirectly employed by the Contractor. Nothing contained herein shall create any contractual relationship between any subcontractor and the Town. All of the Contractor's personnel (and all subcontractors) while on Town premises, will comply with all Town requirements governing conduct, safety, and security. The Town reserves the right to request replacement of any of subcontractor or subcontractor's personnel furnished by the Contractor upon written notice by Town to Contractor of the cause for such replacement. All work performed by a subcontractor will be at cost to the Town without any mark-up by the Contractor. All subcontractors must provide the same level and type of insurance as required of the Contractor under this Contract prior to commencing any services. The Contractor shall submit the subcontractors' proof of insurance upon receipt of a notice to proceed.

#### **Article 5. INDEMNITY; INSURANCE.**

5.1 **Indemnity.** The parties recognize that the Contractor is an independent contractor. The Contractor agrees to indemnify and hold harmless the Town, its officers, employees, and representatives of, from, and against all liabilities, damages, losses and costs, including, but not limited to reasonable attorneys' fees (including but not limited to all trials and appeals), to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor, its agents, officers, contractors, subcontractors, employees, or anyone else utilized by the Contractor in the performance of this Contract. The Contractor's liability hereunder shall include all attorney's fees and costs incurred by the Town in the enforcement of this indemnification provision. This also includes claims made by the employees of the Contractor against the Town and the Contractor hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Contract and shall not be limited by the amount of any insurance required to be obtained or maintained under this Contract.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.06, Florida Statutes, as amended. The Contractor expressly agrees that it will not claim, and waives any claim, that this indemnification violates Section 725.06, Florida Statutes. Nothing contained in the foregoing indemnification or any other provision in the Contract Documents shall be construed as the Town's consent to be sued, nor as a waiver of any immunity or limitation of liability the Town may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes, as amended from time to time. The limitations and provisions set forth in Section 768.28, Florida Statutes, are deemed to apply to this Contract to claims or actions arising in tort and/or contract.

5.2 **Insurance.** Contractor shall obtain and maintain in force at all times during the term of the Contract insurance coverage as required herein. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Certificates shall clearly indicate that the Contractor has obtained insurance

of the type, amount, and classification as required for strict compliance with this provision and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the Town. Compliance with the foregoing requirements shall not relieve the Contractor of its liability and obligations under the Contract.

- A. The Contractor shall maintain, during the life of the contract, commercial general liability, including public and contractual liability insurance in the amount of \$1,000,000.00 per occurrence (\$2,000,000.00 aggregate) to protect the bidder from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under the contract, whether such operations be by the bidder or by anyone directly or indirectly employed by or contracting with the bidder.
- B. The selected bidder shall maintain general automobile liability insurance for owned and hired vehicles (optional / per case basis) of at least \$1,000,000 combined single limit.
- C. The selected bidder shall carry Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes.

All insurance, other than Workers' Compensation, to be maintained by the selected bidder shall specifically include the "Town of Loxahatchee Groves, its elected officials, employees and representatives" as an "Additional Insured". The Contractor shall agree to a Waiver of Subrogation for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss contract to waive subrogation without an endorsement then the selected contractor shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy where a condition to the policy specifically prohibits such an endorsement, or voids coverage should the Contractor enter into such a contract on a pre-loss basis. All deductible amounts shall be paid for and be the responsibility of the Contractor for any and all claims under this Contract. It shall be the responsibility of the Contractor to ensure that all subcontractors, if authorized, comply with the same insurance requirements herein.

**Article 6. REIMBURSEMENT OF ENGINEER EXPENSES.**

Should the completion of a work order be delayed beyond the specified or adjusted time limit, Contractor shall reimburse the Town for all expenses of engineering and inspection incurred by the Town during the period between said specified or adjusted time and the actual date of final completion. All such expenses for engineering and inspection incurred by the Town will be charged to Contractor and be deducted from payments due Contractor as provided by this Contract. Said expenses shall be further defined as engineer charges associated with the construction contract administration, including resident project representative costs. All such expenses shall be separate from and in addition to any Liquidated Damages as provided for herein.

**Article 7. PUBLIC CONSTRUCTION BOND.**

If the Town approves a work order which exceeds \$200,000, the Contractor must provide the Town with a public construction bond in accordance with section 255.05, Florida Statutes. Said bond must be recorded in the Official Records in and for Palm Beach County and a certified copy of the recorded bond must be provided to the Town prior to the Contractor providing any services under the work order. The Town reserves the right to request a bond for any work order which is less than \$200,000. The cost of the bond shall be a direct pass through cost to the Town without any mark-up by the Contractor. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of work or the provisions of the Contract Documents (including but not limited to the Contract price or times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

The public construction bond shall be on forms attached hereto as **Exhibit B** or substantially similar as approved by the Town. The bond shall be in an amount not less than the total Work Order price and shall incorporate by reference the terms of the Contract Documents in their entirety.

To be acceptable to the Town, a Surety Company shall comply with the following provisions:

- (a) The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida Department of Insurance, authorizing it to write surety bonds in the State of Florida.
- (b) The Surety Company shall have a currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
- (c) The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
- (d) The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the Contractor submits its Work Order for Town approval.
- (e) The Surety Company shall have at least the ratings of A-/Class V in the latest issue of Best's Key Rating Guide.

**Article 8. TERMINATION.**

1.1 **Termination by Town.** The Town may terminate any work order, the Contract and/or the Contract Documents if the Contractor is in default as follows:

- (a) Refuses or fails to supply enough properly skilled workers or proper materials to timely and competently complete the work;
- (b) Fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;
- (c) Disregards or takes action contrary to any laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- (d) Takes action, short of declaring bankruptcy, evidencing insolvency;
- (e) Fails or refuses to provide and/or maintain insurance or proof of insurance as required by the Contract Documents; or,
- (f) Otherwise is in breach of a provision of the Contract Documents.

When any of the above reasons exist, the Town, may without prejudice to any other rights or remedies of the Town and after giving the Contractor and the Contractor's surety (if applicable), three (3) days' written notice, and five (5) days to cure, terminate the work order, Contract and/or Contract Documents and may:

- (a) Take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by or paid for by the Town; and,
- (b) Finish the work by whatever reasonable method the Town may deem expedient.

The Contractor and its surety shall be liable for any damage to the Town, including additional attorney and engineering/architectural fees, resulting from the Contractor's termination under this provision by the Town, including but not limited to, and any increased costs incurred by the Town in completing the work. When the Town terminates the Contract for one of the reasons stated above, the Contractor shall not be entitled to receive further payment, if any, until the work is finished. Should it be determined by a mediator or a court of competent jurisdiction that the Town wrongfully terminated the Contract, then the Contractor agrees to treat such termination as a termination for convenience.

1.2 **Termination by the Town for Convenience.** The Town may, at any time, terminate the Contract and Contract Documents for the Town's convenience and without cause. Upon receipt of written notice from the Town of such termination for the Town's convenience, the Contractor shall:

- (a) Cease operations as directed by the Town in the notice;
- (b) Take actions necessary, or that the Town may direct, for the protection and preservation of the work; and
- (c) Except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

In case of such termination for the Town's convenience, the Contractor shall be entitled to receive payment for work satisfactorily completed in accordance with the Contract Documents.

**Article 9. MISCELLANEOUS.**

9.1 **Successors and Assigns.** The Town and Contractor each binds itself, its partners, its successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

9.2 **Changes.** Additional work, changes to the work order price or time, is subject to the Town's prior written approval. The engineer or Contractor has no authority to approve such changes and has no authority to waive the requirement of prior written authorization for extra work, changes in the scope or time.

9.3 **Headings.** The headings contained in this Contract are inserted for convenience of reference only and shall not be a part or control or affect the meaning hereof. All references herein to Articles are to the Articles of this Contract. All references herein to Exhibits are to the exhibits hereto, each of which shall be incorporated into and deemed to be a part of this Contract.

9.4 **Counterparts.** This Contract may be executed in two or more counterparts (and may be signed electronically, i.e., digitally, via pdf or email, etc.), each of which shall be deemed to be an original, but all of which shall be deemed to be an original, but each of which together shall constitute one and the same instrument.

9.5 **Entire Agreement; Amendments; Waiver.** This Contract (together with the other Contract Documents) supersedes any and all prior negotiations and oral or written agreements heretofore made relating to the subject matter hereof and, except for written agreements, if any, executed and delivered simultaneously with or subsequent to the date of this Contract, constitutes the entire agreement of the parties relating to the subject matter hereof. This Contract may not be altered or amended except by a writing signed by the parties hereto. No waiver of any of the terms or conditions of this Contract shall be effective unless in writing and executed by the party to be changed therewith. No waiver of any condition or of the breach of any term, covenant, representation, warranty or other provision hereof shall be deemed to be construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term, covenant, representation, warranty or other provision contained in this Contract.

9.6 **Binding Effect.** This Contract shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns.

9.7 **Applicable Laws; Venue.** This Contract shall be governed by and construed and interpreted in accordance with the laws of the State of Florida. Each of the parties hereto (a) irrevocably submit itself to the exclusive jurisdiction of the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida for state actions and jurisdiction of the United States District Court for the Southern District of Florida, Palm Beach Division, for the purposes of any suit, action or other proceeding arising out of, or relating to, this Contract; (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense of otherwise, in any suit, action or other proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever; and (c) to the extent permitted by applicable law, any claim that such suit, action or proceeding by any part hereto is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper or that this Contract or the subject matter hereof may not be enforced in or by such courts.

9.8 **No Third Party Beneficiary.** This Contract shall create no rights or claims whatsoever in any third party.

9.9 **Severability.** If any one or more of the provisions of the Contract shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

9.10 **Effective Date.** The effective date of this Contract is the date the Contract is approved by the Town Council.

9.11 **Public Records.** The Contractor shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the Town as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- (a) Keep and maintain public records required by the Town to perform the service.
- (b) Upon request from the Town's custodian of public records or designee, provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Contract and following completion of this Contract if the Contractor does not transfer the records to the Town.
- (d) Upon completion of this Contract, transfer, at no cost, to the Town all public records in possession of the Contractor or keep and maintain public records required by the Town to perform the service. If the Contractor transfers all public records to the Town upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town's custodian of public records or designee, in a format that is compatible with the information technology systems of the Town.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT (561) 793-2418, [VOAKES@LOXAHATCHEEGROVESFL.GOV](mailto:VOAKES@LOXAHATCHEEGROVESFL.GOV), or 155 F ROAD, LOXAHATCHEE GROVES, FL 33470.**

9.12 **Preparation.** This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

9.13 **Palm Beach County Inspector General.** In accordance with Palm Beach County ordinance number 2011-009, the Contractor acknowledges that this Contract may be subject to investigation and/or audit by the Palm Beach County Inspector General. The Contractor has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

9.14 **Delays.** Except where specifically provided for in the Contract Documents, the Contractor shall not be entitled to an increase in the price or payment or compensation of any kind from the Town for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever. Provided, however, and subject to sovereign immunity under section 768.28, Florida Statutes, that this provision shall not preclude recovery or damages by the Contractor for hindrances or delays due solely to fraud, bad faith or active interference on the part of the Town. Otherwise, the Contractor shall be entitled only to extensions of the contract times as the sole an exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

9.15 **Remedies; Enforcement Costs; Waiver of Jury Trial; Limitation of Liability.** No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof. Except as otherwise set forth in this Contract, if any legal action or other proceeding is brought for the enforcement of this Contract or the Contract Documents, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract or the Contract Documents, each party shall be responsible for their own attorney's fees at all levels. **EACH PARTY ALSO AGREES AND VOLUNTARILY WAIVES ANY RIGHT TO A JURY TRIAL ARISING OUT OF**



**ALLEGED DISPUTE, BREACH, DEFAULT, MISREPRESENTATION OR ANY OTHER CLAIM IN CONNECTION WITH OR ARISING FROM ANY PROVISION OF THIS CONTRACT OR THE CONTRACT DOCUMENTS.** The Town shall not be liable to the Contractor for any special, incidental, or consequential damages of any kind whether or not caused by the Town's negligence even if the parties have been advised of the possibility of such damages.

9.16 **Compliance with Laws.** Each of the parties agrees to perform its obligations under the Contract Documents in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of the work and under the Contract Documents.

9.17 **Ownership of Documents.** All documents, including but not limited to drawings, specifications, plans, reports, other items and data or programs stored in hard-copy, electronically or otherwise (collectively referred to as "Documents" hereafter), prepared by the Contractor or its subcontractors under this Contract shall be considered a "Work for Hire" and the exclusive property of the Town. To the extent such Documents may not be deemed a "Work for Hire" under applicable law, Contractor and Contractor's Subcontractors will assign to the Town all right, title and interest in and to Contractor and/or Contractor's Subcontractors' copyright(s) for such Documents. Contractor shall execute and deliver to Town such instruments of transfer and take such other action that Town may reasonable request, including, without limitation, executing and filing, at Town's expense, copyright applications, assignments and other documents required for the protection of Town's right to such Documents. The Contractor shall retain copies of the Documents for a period of three (3) years from the date of completion of the Culvert Program. The Town grants to the Contractor and Contractor's subcontractors the right and/or limited license to use a portion of the Documents prepared by the Contractor or the Contractor's subcontractors in future projects of the Contractor or Contractor's subcontractors with said right and/or limited license to use a portion at Contractor's or Contractor's subcontractor's own risk and without any liability to Town. Any modifications made by the Town to any of the Contractor's Documents, or any use, partial use or reuse of the Documents without written authorization or adaptation by the Contractor will be at the Town's sole risk and without liability to the Contractor.

9.18 **Survivability.** Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

9.19 **Notice.** Any notice required to be given under the Contract Documents shall be sent by certified mail (return receipt requested) or by nationally recognized overnight courier as follows to the Town:

Town of Loxahatchee Groves  
Attn: Town Manager  
155 F Road  
Loxahatchee Groves, FL 33470

and to the Contractor as follows:

Johnson-Davis Inc.  
Attn: William Cryer, Vice President  
604 Hillbrath Drive  
Lantana, FL 33462

Either party may amend this provision by written notice to the other party.

9.20 **Conflicts of Interest.** The Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes, the Palm Beach County Code of Ethics, and the Town of Loxahatchee Groves Code of Ethics for Public Officers. The Contractor further represents that no person having any such conflicting interest shall be employed for said performance. The Contractor shall promptly notify the Town's representative, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the Contractor's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Contractor may undertake and request an opinion of the Town as to whether the association, interest or circumstance would, in the opinion of the Town, constitute a conflict of interest if entered

into by the Contractor. The Town agrees to notify the Contractor of its opinion within thirty (30) days of receipt of notification by the Contractor. If, in the opinion of the Town, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Contractor, the Town shall so state in the notification and the Contractor shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the Town by the Contractor under the terms of this Contract.

9.21 **Discrimination.** The Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, political affiliation, marital status, handicap, or sexual orientation. Further, Contractor shall not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, color, sex, religion, political affiliation, natural origin, ancestry, marital status, sexual orientation or handicap.

9.22 **Warranty.** Contractor warrants and guarantees to the Town that all work, including but not limited to all equipment, materials, parts and workmanship, will be in accordance with the requirements and technical specifications of the IFB and resulting Contract and not be defective. Contractor warrants that all materials and parts supplied under each work order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies). Contractor warrants that all work performed under each work order will be free from defects for one (1) year from the final completion of all work. If, at any time prior to the expiration of the one (1) year warranty period, the Town discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from Town or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of the Town or its drainage systems (and those of any dependent district). In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the Town's notice or the Contractor's discovery of the same, the Town may undertake such corrective action at the Contractor's expense. The Contractor's obligations under this section shall be limited to the cost of repair of the defective condition. The warranties herein are in addition to and not in lieu of any applicable implied warranties.

9.23 **Non-exclusive Contract.** This Contract is not intended to be and shall not be construed as an exclusive agreement, and the Town may employ additional or other contractors to perform services contemplated by this Contract without liability to the Town.

9.24 **Scrutinized Companies.** Contractor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. If this Contract is for goods or services in the amount of one million dollars or more, the Contractor certifies that it and its subcontractors are not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies with Activities in the Iran Terrorism Sectors List, or engaged in business operations in Cuba or Syria. Pursuant to section 287.135, Florida Statutes, the Town may immediately terminate this Contract at its sole option if the Contractor or any of its subcontractors are found to have submitted a false certification; or if it or any of the Contractor's subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or are engaged in a boycott of Israel, or are placed on the Scrutinized Companies with activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies with Activities in the Iran Terrorism Sectors List or are or have been engaged with business operations in Cuba or Syria during the term of this Contract.

The Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Contract. The Contractor agrees that the certifications in this section shall be effective and relied upon by the Town for the term of this Contract, including any and all renewals. The Contractor agrees that if any of its subcontractors' status changes in regards to any certification herein, the Contractor shall immediately notify the Town of the same. As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions, then they shall become inoperative.

9.25 **E-Verify.** Pursuant to Section 448.095(5), Florida Statutes, the Contractor shall:

1. Register with and use the E-Verify system to verify the work authorization status of all new employees and require all subcontractors (providing services or receiving funding under this Contract) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' new employees;
2. Secure an affidavit from all subcontractors (providing services or receiving funding under this Contract) stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien;
3. Maintain copies of all subcontractor affidavits for the duration of this Contract;
4. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
5. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Contract; and
6. Be aware that if the Town terminates this Contract under Section 448.095(5)(c), Florida Statutes, the Contractor may not be awarded a public contract for at least 1 year after the date on which the Contract is terminated and will be liable for any additional costs incurred by the Town as a result of the termination of the Contract.

9.26 **Human Trafficking.** Contractor, by signing this Contract (through an authorized representative) as set forth below, attests under penalty of perjury that the Contractor does not use coercion for labor or services as defined in Section 787.06 Florida Statutes.

9.27 **United States-Produced Iron and Steel Requirement.** Contractor acknowledges and agrees that any iron or steel product permanently incorporated in the project must be produced in the United States.

9.28 **Public Entity Crimes.** As provided in Sections 287.132-133, Florida Statutes, as amended from time to time, by entering into the Contract, Contractor certifies that it and its affiliates who will perform hereunder have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof.

9.29 **Access and Audits.** The Contractor shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the services for at least three (3) years after completion of the Contract. The Town shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours and upon reasonable prior notice, at the Contractor's place of business. In no circumstances will Contractor be required to disclose any confidential or proprietary information regarding its products and service costs.

9.30 **Taxes.** The Town is exempt from the payment of Florida State Sales and Use Tax.

9.31 **Confidential and Proprietary Information.** Each party ("Receiving Party") will keep confidential and not disclose to any other person or entity or use (except as expressly and unambiguously authorized by this Contract) information, technology, or software ("Confidential Information") obtained from the other party ("Disclosing Party"); provided, however, that the Receiving Party will not be prohibited from disclosing or using information (that at the time of disclosure is publicly available or becomes publicly available through no act or omission of the Receiving Party, (ii) that is or has been disclosed to the Receiving Party by a third party who is not under, and to whom the Receiving Party does not owe, an obligation of confidentiality with respect thereto, (iii) that is or has been independently acquired or developed by the Receiving Party without access to the Disclosing Party's Confidential Information, (iv) that is already in the Receiving Party's possession at the time of disclosure, or (v) that is required to be released by law.

9.32 **Export Administration.** Each party agrees to comply with all export laws and regulations of the United States ("Export Laws") to assure that no software deliverable, item, service, technical data, or any direct product thereof arising out of or related to this Contract is exported directly or indirectly (as a physical export or a deemed export) in violation of Export Laws.

IN WITNESS WHEREOF, the Town and Contractor have caused this Contract for Continuing Services for Culverts – Construction, Replacement, Maintenance, Repairs, and Individual Projects (Over \$300,000) to be executed the day and year last executed below.

TOWN OF LOXAHATCHEE GROVES

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Anita Kane, Mayor

ATTEST:

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Valerie Oakes, Town Clerk

\_\_\_\_\_  
Glen J. Torcivia, Town Attorney

CONTRACTOR: Johnson-Davis Inc.

[Corporate Seal, if required]

By: \_\_\_\_\_  
*(Signature)*

Print Name: William Cryer

Title: Vice President

STATE OF Florida )  
COUNTY OF Palm Beach )

THE FOREGOING instrument was acknowledged before me by means of  physical presence or  online notarization on this 26 day of March, 2025, by William Cryer, as Vice President of Johnson-Davis Inc., a Florida Corporation, authorized to do business in the State of Florida and who is personally known to me or who has produced the following as identification: \_\_\_\_\_, and who did take an oath that the facts stated with regard to section 787.06, Florida Statutes, as amended from time to time, are true and correct, and that he or she is duly authorized to execute the foregoing instrument and to bind Johnson-Davis Inc. to the same.

[Notary Stamp]

\_\_\_\_\_  
*(Signature)*  
Signature of Notary Public



