**MASTER AGREEMENT FOR SERVICES BETWEEN CITY OF STUART AND CONTRACTOR FOR REQUEST FOR QUALIFICATION #2019-300 UNDERGROUND UTILITY SERVIES**

**CONTRACTOR: JOHNSON-DAVIS, INC.**
**863 S. KINGS HWY**
**FT. PIERCE, FLORIDA 34945**

## AGREEMENT FOR SERVICES

THIS AGREEMENT, hereinafter "Contract," made and entered into the ____ day of _____, 2018 by and between **JOHNSON-DAVIS, INC.**, hereinafter referred to as "Contractor" and the City of Stuart, Florida, a municipal corporation, 121 S.W. Flagler Avenue, Stuart, Florida 34994, hereinafter referred to as "City", for and in consideration of the following terms, conditions and covenants.

## I. PURPOSE OF AGREEMENT

City intends to enter into a contract with Contractor for provision of Underground Utility Construction Services by the Contractor and the payment for those services by City as set forth below.

## II. SCOPE OF SERVICES

The Contractor shall provide Underground Utility Construction Services in all phases of any project for which a WORK ORDER REQUEST has been issued by the City pursuant to this Agreement as hereinafter provided. These services will include Underground Utility Construction Services as described in the Work Order Request. The detailed scope of services to be performed and schedule of fees for those services shall be detailed in each Work Order Request.

Low pressure sewer system installation in designated areas of the City of Stuart. Project services shall include, but not be limited to, furnishing all labor, equipment and materials necessary for the installation of underground utilities through the City of Stuart.

## III. AGREEMENT PROVISIONS

### Section 1. Period of Service

### 1.1 Term of Agreement

Upon award of this Agreement, the effective date of this Agreement shall be the date of execution of this Agreement by both City and Contractor. Term of this agreement shall

be for an initial period of one (1) year with the option of two (2) additional one-year renewal periods, upon the mutual agreement of the parties. Extension of the contract for additional thirty (30) day periods, not to exceed 6 months, for the convenience of either party shall be permissible at the mutual consent of both parties.

Consideration of price increases at each renewal period will be given provided such escalations are justified, reasonable and acceptable to the City. Any price increases must be documented and approved by the City of Stuart only when a written request is received a minimum of ninety (90) days prior to the renewal date. It is also expected that de-escalation of prices will be extended to the City if the market so reflects.

### 1.2 Work Order Request (WOR)

Each "WOR" shall include the notice of solicitation; date issued, due date and time, a brief description of the installation to be done, including address/location of work, completion time. The work order request will be accompanied with the Bid Schedule for the project.

## Section 2. Compensation and Method of Payment

### 2.1 Bid Schedule

CITY will compensate Contractor for services under each WOR. The fee due to the Contractor shall be quoted by the successful Contractors as provided on a per project basis by WOR, and awarded to the lowest most responsive and responsible bidder as set forth in each WOR to this Agreement.

### 2.2 Invoices

Contractor shall submit invoices to the City for work accomplished and accepted by the City under this Contract. Each invoice shall be detailed and include, but not be limited to, a legible copy of the estimate approved by the City Representative, and the date work was completed and accepted by the City.

### 2.3 Payment

Payment for services rendered is due within thirty days of receipt and approval of invoice by City. Payment is delinquent 30 days following receipt and approval of invoice by City, unless Contractor accepts the Visa Pcard.

If Contractor acknowledges acceptance of purchasing VISA card, all payments for services rendered shall be compensated within 10 days of invoice approval by the City. City shall not pay any service charges or fees for Pcard transactions.

For any utility (water, sewer or drainage) or roadway construction and/or repair work that would require the contractor to perform a density test per the City of Stuart specifications, all hard copies of the density test reports performed within the requested pay

period must be submitted with the payment application. Failure to provide the required documents may result in a delay of payment.

## Section 3. Guarantee

The Contractor guarantees to repair, replace or otherwise make good to the satisfaction of the City any defects in workmanship or material appearing in the work within twelve (12) months after the day the work is accepted by the Project Manager of the City. Contractor further guarantees the successful performance of the work for the service intended. Neither inspection nor payment, including final payment by the City shall relieve the Contractor from his or its obligations to do and complete the work in accordance with this contract. If the City deems it inexpedient to require the Contractor to correct deficient installation or repairs, an equitable deduction from the contract price shall be made therefore or in the alternative the City may sue for damages, or both.

## Section 4. Audit

The Contractor agrees that the City or any of its duly authorized representatives shall, until the expiration of three years after expenditure of funds under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this Agreement. The Contractor agrees that payment(s) made under this Agreement shall be subject to reduction for amounts charged thereto which are found on the basis of audit examination not to constitute allowable costs under this Agreement. The Contractor shall refund by check payable to the City the amount of such reduction of payments. All required records shall be maintained until an audit is completed and all questions arising therefrom are resolved, or three years after completion of the project and issuance of the final certificate, whichever is sooner.

## Section 5. Contractor Responsibility

### 5.1 Independent Contractor

The Contractor is an independent contractor and is not an employee or agent of the City. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor, between the City and the Contractor, its employees, agents, subcontractors, or assigns, during or after the performance of this Agreement.

### 5.2 Responsibility for Work

The Contractor shall take the whole responsibility of the Agreement Work and shall bear all losses resulting to him because of bad weather, or because of errors or omissions in his or its bid on the Agreement price, or except as otherwise provided in the Agreement Documents because of any other causes whatsoever.

The Contractor shall assign a Supervisor and identify assigned personnel to the City account. Supervisor is responsible to keep the City informed of the contractor's activities and have in place a dispatch method available at all times who can be contacted by the City by radio, beepers, cellular phones etc. This assigned Supervisor will be responsible for

overseeing all work performed. If at any time the assigned supervisor is replaced during the term of this contract, the Contractor must provide all updated information and details as requested and must be approved by the City. Any change in Contractor's assigned staff must also have prior approval by the City.

The Contractor is responsible to submit a proposed schedule to the City consisting of planned work to be accomplished. The Public Works Director; or his designee, shall have approval authority over the proposed schedule. Contractor may not change the schedule without the prior written authorization of the Public Works Director, or his designee. The City reserves the right to change the schedule, with adequate notification, so the best benefit of the work can be achieved

### 5.3 Contractor's Records

As a condition precedent to Contractor filing any claim against City, Contractor shall make available to City all of Contractor's books and records (directly or indirectly related to the claim of Contractor's business) requested by City. Refusal to do so shall constitute a material breach of this contract and cause for dismissal of any litigation.

### 5.4 Liquidated Damages

The Contractor shall pay to the party of the first part, as damages for non-completion of the work within the time stipulated for its completion, one thousand dollars ($1,000.00) for each and every day which may exceed the stipulated time for its completion, is hereby agreed upon, fixed and determined by the parties hereto as liquidated damages that the party of the first part will suffer by reason of such default and not by way of penalty.

The party of the first part is hereby authorized to deduct the said sum of one thousand dollars ($1,000.00) per day from the moneys which may be due or become due said Contractor for the work under this contract, or as much thereof as the Owner may, at its own option, deem just and reasonable.

## Section 6. Additional Services

The City may require additional services of a similar nature, but not specifically identified in the contract. The Contractor agrees to provide such items/services, and shall provide the City prices on such additional items or services based upon a formula or method which is the same or similar to that used in establishing the prices in this proposal. If the price(s) offered are not acceptable to the City, and the situation cannot be resolved to the satisfaction of the City, the City reserves the right to procure those items/services from other vendors or to cancel the contract. Furthermore, the City reserves the right to delete or revise items and services under this proposal at any time during the contract period when and where deemed necessary. Deletions may be made at the sole discretion of the City at any time during the contract period. Items revised must be mutually agreed upon in writing by the Contractor.

## Section 7. Termination

### 7.1 Termination for Convenience

Either party upon a thirty (30) day written notice to the other party may terminate this Contract. In the event of any termination, Contractor shall be paid for all services rendered to the date of termination.

### 7.2 Termination for Cause

The performance of the Contract may be terminated by the City of Stuart in accordance with this clause, in whole or in part, in writing, whenever the City shall determine that the contractor has failed to meet performance requirement(s) of the Contract. If the successful bidder should be adjudged bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should fail to provide properly skilled personnel or proper service in the sole discretion of the City, then the City can, after giving the successful bidder seven (7) days written notice, and without prejudice to any other right or remedy, terminate this Contract.

### 7.3 Disqualification

Contractors must attend the mandatory pre-bid meeting to address the scope of work and questions about the project. Failure to attend three meetings per contract year may be cause for disqualification / termination of your agreement.

### 7.4 Default

In the event that the Contractor cannot respond adequately to the needs of the City by reason of equipment failure or any other reason, the Contractor shall advise the City, as soon as possible, and further advise as to the length of said inability. The City may then consider said inability to be a breach of this Contract and may undertake the necessary work through the remaining prequalified Contractors or its own services.

## Section 8. City's Obligations

### 8.1 Designated Representative

The Designated Representative of the City to act with authority on the City's behalf with respect to all aspects of the Project shall be identified in each Project Authorization.

## Section 9. Persons Bound by Agreement

### 9.1 Parties to the Contract

The persons bound by this Contract are the Contractor and the City and their respective partners, successors, heirs, executors, administrators, assigns and other legal representative.

### 9.2 Assignment of Interest in Contract

This Contract and any interest or services associated with this Contract may not be

assigned, sublet or transferred to another by either party without the prior written consent of the other party. Contractor will not be permitted to subcontract any of the work requirements to be performed of the services hereunder.

### 9.3 Inspection

The project will be inspected by the Project Manager for the City and will be rejected if it is not to conformity with the Agreement provisions. Rejected work will be immediately corrected by the Contractor. When the work is substantially completed, the Contractor shall notify the City in writing that the work shall be ready for inspection on a definite date, at least five (5) business days following the completion of work, which shall be stated in such notice.

### 9.4 Start of Work and Time for Completion

It is hereby understood and mutually agreed by and between parties hereto that the time of completion is an essential condition of this contract. By submitting a bid response to WOR, Contractor agrees to start the work within ten (10) days of issuance of Notice to Proceed. Contractor is to prosecute the work uninterrupted in such a manner, with sufficient labor, equipment and/or materials so as to insure work is completed within designated completion time. In the event the Contractor, due to circumstances beyond his/her control, cannot complete the project within this time frame, he/she shall immediately make this fact known to the Project Manager or designee.

The Contractor shall, within Two (2) business days from the beginning of such delay, notify Project Manager, in writing, with copy to the Procurement Manager, of the cause(s) of the delay. If the Contractor shall be delayed in the completion of its work by reason of unforeseeable causes beyond its control and without fault or negligence, including, but not restricted to, acts of God or neglect of any other contractor, the period herein specified above specified for the completion of delivery shall be extended by such time as shall be approved by the Project Manager.

### 9.5 Rights and Benefits

Nothing herein shall be construed to give any rights or benefits arising from this Contract to anyone other than Contractor and the City.

## Section 10. Indemnification of City

Contractor assumes the entire responsibility and liability for all damages or injury to all persons, and to all property, caused by the Contractor or Contractor’s employees, agents, consultants or sub-contractors, and Contractor shall to the fullest extent allowed by law, indemnify and hold harmless the CITY, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, omission, or intentional conduct of the Contractor and other persons employed or utilized by the Contractor in the performance of the contract. Specific consideration for this indemnity is $10.00, the receipt and sufficiency of which are hereby acknowledged by Contractor.

Contractor shall obtain, maintain and pay for general liability insurance coverage to insure the provisions of this paragraph.

## Section 11. Insurance

### 11.1. Requirements

Contractor shall procure and maintain insurance, in the amounts noted in Item 5.2 of the Request for Qualification and included in "**Exhibit C**" of this Contract, which names the Contractor, its officers, board members, employees and agents as additional insured on General Liability and Automobile Liability insurance policies. Such certificate must contain a provision for notification of the City 30 days in advance of any material change or cancellation. The City by and through its Risk Manager, reserves the right to review, modify, reject or accept any required policies of insurance, including limits coverages or endorsements, herein from time to time throughout the term of this contract. All insurance carriers must have an A.M. Best Rating of at least A:VII or better. When a self-insured retention or deductible exceeds $5,000, the City reserves the right, but not the obligation, to review and request a copy of contractor's most recent annual report or audited financial statement. All contractors, including any independent contractors and subcontractors utilized, must comply with the insurance requirements as set forth in the documents identified and listed in "**Exhibit C**" attached hereto.

### 11.2 Certificate of Insurance

Certificates of all insurance required from the Contractor shall be attached to this agreement and shall be subject to the City's approval for adequacy.

### 11.3 Status of Claim.

The Contractor shall be responsible for keeping the City currently advised as to the status of any claims made for damages against the Contractor resulting from services performed under this Contract. The Contractor shall send notice of claims related to work under this Contract to the City. Copies of the notices shall be sent by fax, hand delivery or regular mail to:

Public Works, City of Stuart
121 S.W. Flagler Avenue
Stuart, Florida 34994
FAX: (772) 288-5381

## Section 12. Contractors Standards

All work performed by Contractor will be in accordance with the same degree of care, skill, and diligence in the performance of the work as is ordinarily provided by a contractor under similar circumstances and contractor shall, at no additional cost to the City, correct any deficiency which fails to satisfy the foregoing standard of the highest professional standards and in accordance with all applicable governmental regulations.

## Section 13. Non-Appropriation

This Contract is deemed effective only to the extent of the annual appropriations available.

## Section 14. General Conditions

### 14.1 Venue in Martin County

Jurisdiction and venue for any lawsuit to enforce the terms and obligations of this Contract shall lie exclusively in the County Court or the Circuit Court in and for Martin County, Florida.

### 14.2 Laws of Florida

The validity, interpretation, construction, and effect of this Contract shall be in accordance with and governed by the laws of the State of Florida.

### 14.3 Attorney's Fees and Costs

In the event the Contractor defaults in the performance of any of the terms, covenants and conditions of this Contract, the Professional agrees to pay all damages and costs incurred by the City in the enforcement of this Contract, including reasonable attorney's fees, court costs and all expenses, even if not taxable as court costs, including, without limitation, all such fees, costs and expenses incident to appeals incurred in such action or proceeding.

### 14.4 Mediation as Condition Precedent to Litigation

Prior to the initiation of any litigation by the parties concerning this Contract, and as a condition precedent to initiating any litigation, the parties agree to first seek resolution of the dispute through non-binding mediation. Mediation shall be initiated by any party by serving a written request for same on the other party. The parties shall, by mutual agreement, select a mediator within 15 days of the date of the request for mediation. If the parties cannot agree on the selection of a mediator then the City shall select the mediator who, if selected solely by the City, shall be a mediator certified by the Supreme Court of Florida. The mediator's fee shall be paid in equal shares by each party to the mediation.

### 14.5 Contract Amendment

No modification, amendment or alteration in the terms or conditions contained in this Contract shall be effective unless contained in a written documents executed with the same formality and of equal dignity herewith. No verbal agreement by the City or the City's representative identified herein shall be binding or enforceable against the City.

### 14.6 Contractual Authority

**By signing this Contract the Contractor swears or affirms, under penalty of perjury, that this is a valid act of the Contractor,** and that no later claim shall be made by the CONTRACTOR that the Contract is invalid or an *ultra vires* act, by reason of a failure

to have the proper authority to execute the Contract. In the event that a court of competent jurisdiction later determines that the Contract is or would be null and void for failure of the signatory to have proper or complete authority, this Contract shall nonetheless be deemed valid under the theory of "apparent authority," or in the sole alternative of the City, shall be deemed to be the act of the signatory, as an individual, who shall be fully responsible for its complete performance.

### 14.7 Sovereign Immunity

Nothing contained herein shall be construed or interpreted as a waiver of the sovereign immunity liability limits established under chapter 768.20 Florida Statutes as amended.

## Section 15. Public Records

**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 office of the City Clerk as the custodian of Public Records for the City of Stuart, and all the respective departments at 772-288-5306 or PublicRecordsRequest@ci.stuart.fl.us, City of Stuart, City Clerk 121 SW Flagler Avenue, Stuart, Fl. 34994 per F.S. 119.12.**

Public Records Relating to Compliance, Request for Records; Noncompliance, & Civil Action with F.S. 119.0701 the Contractor shall:

Keep and maintain public records required by the public agency to perform the service.

Upon request from the public agency's custodian of public records, provide the public agency 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 this chapter or as otherwise provided by law.

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 the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.

Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency 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 public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the contractor of the request, and the contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.

If a contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.

A contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under F.S. 119.10.

If a civil action is filed against a contractor to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the contractor the reasonable costs of enforcement, including reasonable attorney fees, if:

- The court determines that the contractor unlawfully refused to comply with the public records request within a reasonable time; and
- At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the contractor has not complied with the request, to the public agency and to the contractor.

A notice complies with subparagraph above, if it is sent to the public agency's custodian of public records and to the contractor at the contractor's address listed on its contract with the public agency or to the contractor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

A contractor who complies with a public records request within eight (8) business days after the notice is sent is not liable for the reasonable costs of enforcement.

## Section 16. Scrutinized Companies List

Pursuant to Sections 287.135, 215.4725, and 215.473, of the Florida Statutes which prohibits agencies from contracting with any company, principals, or owners on the Scrutinized Companies with Activities in Sudan List, participation in the Boycott of Israel, the Scrutinized Companies with Activities in the Iran Petroleum Energy List, and is not engaged in business operations in Cuba or Syria are prohibited from contracting for goods or services in any amount at the time of submitting to this ITB through the term of this contract, including renewals or extensions.

By signature of this agreement, Contractor certifies and attests that firm is not on any list, engaged in any business operations, or participates in activities as specified in this section. If firm is found negligent, contract shall be terminated; and submission of a false certification may subject firm to civil penalties, attorney's fees, and/or costs.

**Section 17. Exhibits**

The following Exhibits are attached to and made a part of this Contract:

"**Exhibit A**" - "Proposal as Submitted by Contractor and Accepted by City"

"**Exhibit B**" - "Original Request for Qualification as Issued by City, including all Addenda"

"**Exhibit C**" - "Insurance and Indemnification"

"**Exhibit D**" - "Evidence of Bond ability, and/or a Letter of Credit from Surety"

IN WITNESS WHEREOF, the CITY and the Professional have made and executed this Contract the day and year first above written:

ATTEST:

**CITY OF STUART, FLORIDA**

MARY R. KINDEL
CITY CLERK

KELLI GLASS LEIGHTON
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL MORTELL
CITY ATTORNEY

WITNESSES:

**CONTRACTOR**

(Signature)

(Signature)

(Signature)

Printed Name

Title