

Loxahatchee River District

Water Reclamation | Environmental Education | River Restoration


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D. Albrey Arrington, Ph.D., Executive Director

MEMORANDUM

TO: GOVERNING BOARD
FROM: D. ALBREY ARRINGTON, Ph.D. 
DATE: NOVEMBER 13, 2015
SUBJECT: NEIGHBORHOOD SEWERING – JUPITER INLET COLONY

On March 21, 2014 the LRD Governing Board approved the Interlocal Agreement Between Jupiter Inlet Colony, the Loxahatchee River Environmental Control District, and the Village of Tequesta for Joint Participation And Project Funding of the Jupiter Inlet Colony Neighborhood Rehabilitation. The Interlocal Agreement was fully executed by Jupiter Inlet Colony and the Village of Tequesta in April, 2014.

In order to accommodate Jupiter Inlet Colony's desire to move the lift station from Como Park to 50 Colony Road, the LRD Governing Board approved the amended and restated agreement on April 16, 2015.

Presently, the Village of Tequesta brought forth some requested revisions to address their concerns regarding how change orders will be handled and clarifying a few details that have now been more fully worked out. I worked with Clint Yerkes, Kris Dean, and Curt Shenkman to review the proposed changes and draft suggested revisions. The changes are shown in the attached, marked-up version. Mark-ups are as follows: text inserted by the Village of Tequesta; ~~text deleted by the Village~~; text inserted by LRD; ~~text inserted by the Village but deleted by LRD~~.

The Jupiter Inlet Colony and Village of Tequesta Counsels have both unanimously approved the Second Amended and Restated Interlocal Agreement between the Town of Jupiter Inlet Colony, Florida; and the Loxahatchee River Environmental Control District; and the Village of Tequesta, Florida for Joint Participation and Project Funding of the Town of Jupiter Inlet Colony Neighborhood Rehabilitation Project. Mr. Shenkman has reviewed the Second Amended and Restated Interlocal Agreement, and found it to be legally sufficient.

Therefore, I recommend the following motion for approval:

“THAT THE GOVERNING BOARD authorize the Board Chairman to execute the Second Amended and Restated Interlocal Agreement Between Jupiter Inlet Colony, Florida; and the Loxahatchee River Environmental Control District; and the Village of Tequesta, Florida for Joint Participation And Project Funding of the Town of Jupiter Inlet Colony Neighborhood Rehabilitation Project.”

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Gordon M. Boggie
Board Member

Dr. Matt H. Rostock
Board Member

Stephen B. Rockoff
Chairman

Harvey M. Silverman
Board Member

James D. Snyder
Board Member

**SECOND AMENDED AND RESTATED INTERLOCAL AGREEMENT BETWEEN
THE TOWN OF JUPITER INLET COLONY, FLORIDA; AND
THE LOXAHATCHEE RIVER ENVIRONMENTAL CONTROL DISTRICT; AND
THE VILLAGE OF TEQUESTA, FLORIDA
FOR JOINT PARTICIPATION AND PROJECT FUNDING OF THE TOWN OF JUPITER INLET COLONY
NEIGHBORHOOD REHABILITATION PROJECT**

THIS SECOND AMENDED AND RESTATED Interlocal Agreement (hereinafter “Agreement”), is made as of the ____ day of November, 2015, by and among the Town of Jupiter Inlet Colony, a municipal corporation of the State of Florida (hereinafter “TOWN”), the Loxahatchee River Environmental Control District, a special district independent governmental entity existing under the laws of the State of Florida (hereinafter “DISTRICT”), and the Village of Tequesta, a municipal corporation of the State of Florida (hereinafter “VILLAGE”), each constituting a public agency as defined in part I of Chapter 163, *Florida Statutes*. This Agreement amends and modifies the Amended and Restated Interlocal Agreement between the Parties for joint participation and funding of the Jupiter Inlet Colony Neighborhood Rehabilitation Project, which is dated June 11, 2015. Notation in this Agreement that a particular provision “Shall remain in full force and effect as previously agreed” shall refer to the language contained in the June 11, 2015 Amended and Restated Interlocal Agreement.

WHEREAS, the Loxahatchee River is a federally designated wild and scenic river protected by Federal law, State law and local law; and

WHEREAS, the Town of Jupiter Inlet Colony is a municipal corporation existing under the laws of the State of Florida; and

WHEREAS, the Loxahatchee River Environmental Control District is a multicounty, independent special district of the State of Florida created by Chapter 71-822, *Laws of Florida*, with a general objective of preserving and protecting environmental health and public health throughout the Loxahatchee River Watershed; and

WHEREAS, the Village of Tequesta is a municipal corporation existing under the laws of the State of Florida, which provides potable water to the Town of Jupiter Inlet Colony; and

WHEREAS, neighborhood sewerage is an important component of the comprehensive approach needed to address river water quality, ground water quality, and the health of the community and natural resources in the Loxahatchee River Watershed.

NOW THEREFORE, in consideration of the mutual covenants, promises and representations contained herein, the parties agree as follows:

Section 1. Recitals:

[Shall remain in full force and effect as previously agreed]

Section 2. Project and Work to be completed by the DISTRICT:

DISTRICT shall provide design, permitting, construction and administrative services to the Jupiter Inlet Colony Neighborhood Rehabilitation Project (“PROJECT”), which will include (a) construction of a gravity

sewer system including one on-site lift station, (b) replacement of the existing potable water system, (c) rehabilitation of and improvements to the existing stormwater system, (d) road restoration, and (e) reconfiguration of the entry road. The PROJECT is ~~will be~~ more specifically described in ~~a forthcoming~~ the set of Bid Documents ~~which has been produced pursuant to Section 4. B. of this Agreement, and which is attached hereto and incorporated herein as Exhibit A.~~ Nothing contained in the description of the Work to be completed by the DISTRICT shall be construed as preventing or prohibiting the VILLAGE or the TOWN from auditing and approving or rejecting proposed construction change orders ~~to their~~ respective infrastructure as contemplated by Section 4. H. of this Agreement.

Section 3. Project Scope:

[Shall remain in full force and effect as previously agreed]

Section 4. Responsibilities and Duties:

- A. DISTRICT ~~has executed~~ ~~shall execute~~ a single Engineering Services Contract with ARCADIS U.S., Inc. The scope of this contract ~~has been~~ ~~shall be~~ mutually agreed ~~agreeable~~ to by the DISTRICT, the TOWN, and the VILLAGE, and encompasses the full Project scope. ~~TOWN and VILLAGE will use their best efforts to provide written approval of, or suggested revisions to, the Engineering Services Contract within thirty (30) days of receipt of all required documents. Approval shall not be unreasonably withheld.~~ The Engineering Services Contract ~~includes~~ ~~shall include~~ Plans and Contract Documents for the Project construction and/or rehabilitation of gravity sewer, potable water, stormwater, and road work, and ~~specifies~~ ~~shall specify~~ costs for the DISTRICT, the TOWN and the VILLAGE.
- B. DISTRICT ~~has produced~~ ~~shall produce~~ Bid Documents based upon the Plans and Contract Documents from the Engineering Services Contract, which ~~shall~~ encompass the full Project scope. The ~~District's standard 'front end'~~ Bid Documents have been reviewed and approved by the TOWN and the VILLAGE, and are attached as Exhibit A.
- C. [Shall remain in full force and effect as previously agreed]
- D. DISTRICT shall administer, construct, and inspect the Project in accordance with the Bid Documents. Nothing contained in the description of the Responsibilities and Duties of the DISTRICT shall be construed as preventing or prohibiting the VILLAGE or the TOWN from auditing and approving or rejecting proposed construction change orders ~~to their respective infrastructure~~ as contemplated by Section 4. H. of this Agreement.
- E. Costs shall be based upon actual contract costs using contract unit prices, actual constructed quantities, and/or equitable pro rata distribution of such costs (e.g., for general conditions, mobilization, maintenance of traffic, etc). Equitable pro rata distribution shall mean 50% District; 35% Village; 15% Town unless otherwise agreed to in writing. Quantities will be measured by the DISTRICT with concurrence by the TOWN and/or the VILLAGE. The Revised Agreement Reapportioning Bid Costs between the DISTRICT, the TOWN and the VILLAGE further defines and clarifies the actual dollar amounts for which the DISTRICT, the TOWN and the VILLAGE are to be responsible, ~~notwithstanding change orders per Section 4H.~~ In the event of any conflict between the Revised Reapportionment Agreement and any other documented figures or expenses contained in this Agreement, the Bid

Documents, the lowest responsive, responsible bid, the Construction Contract, or any other documentation that is associated with the Project, the Revised Agreement Reapportioning Bid Costs shall govern. The Revised Agreement Reapportioning Bid Costs is attached hereto and incorporated herein as Exhibit C.

F. TOWN shall reimburse the DISTRICT any costs attributable to the stormwater system improvements in accordance with Sections 4E and 6. TOWN shall reimburse the DISTRICT any costs attributable to reconfiguration of the entry way. VILLAGE shall reimburse the DISTRICT any costs attributable to potable water rehabilitation in accordance with Sections 4E and 6.

G. [Shall remain in full force and effect as previously agreed]

H. DISTRICT shall obtain advance written approval from the TOWN ~~for change order costs that are attributed to the construction of the gravity sewer system as more fully described in Section 3A of this Agreement and~~ for change order costs that are attributed to the stormwater system improvements as more fully described in Section 3C of this Agreement that increase the cost attributable to said Work to an amount greater than specified in the Revised Agreement Reapportioning Bid Costs~~contracted amount~~. The VILLAGE shall not be responsible for any such change orders.

Likewise, the DISTRICT shall obtain advance written approval from and/or the VILLAGE, through and by the Village Manager or his designee, for change order costs that are attributed to the replacement of the existing potable water infrastructure as more fully described in Section 3B of this Agreement in advance of any change orders that increase the cost attributable to the TOWN's and/or VILLAGE's Work to an amount greater than specified in the Revised Agreement Reapportioning Bid Costs~~contracted amount~~. The TOWN and the DISTRICT shall not be responsible for any such change orders.

Approval by either the TOWN or the VILLAGE shall not be unreasonably withheld. The TOWN and/or the VILLAGE shall be responsible only for their respective change order costs as described above, including any costs associated with the TOWN'S and/or the VILLAGE'S respective failure to approve change orders in a timely manner.

Notwithstanding anything contained in this Agreement to the contrary, The VILLAGE shall only be responsible for change order costs that are attributed to the VILLAGE's Work to replace the existing potable water infrastructure, as more fully described in Section 3B.

Additionally, and notwithstanding anything contained in this Agreement to the contrary, the TOWN and the VILLAGE shall have the right to review and audit any change order requests that increase the cost attributable to their own respective Work as contemplated by this Agreement, and to revise such change order requests in order to reduce or eliminate such cost increases, based on the documented professional opinion of the TOWN's or the VILLAGE's respective engineers~~or other professionals~~, as applicable, that establishes a cost savings alternative to the proposed change order that does not compromise the quality of the Project as contemplated by the Construction Contract. Any such documented revision shall not be deemed to be an unreasonable withholding of approval.

I. [Shall remain in full force and effect as previously agreed]

J. [Shall remain in full force and effect as previously agreed]

K. [Shall remain in full force and effect as previously agreed]

Section 5. Planning and Implementation:

A. Through and including M. [Shall remain in full force and effect as previously agreed]

N. DISTRICT will make all reasonable efforts to begin construction in April, 2016 ~~July, 2015~~.

P. through and Including Q. [Shall remain in full force and effect as previously agreed]

Section 6. Payments/Invoicing and Reimbursement:

The DISTRICT will invoice the TOWN and/or the VILLAGE on a periodic basis during construction of the Project. The TOWN and the VILLAGE agree to provide to the DISTRICT reimbursement funding for documented costs for the Project pursuant to cost responsibilities established in Sections 3 and 4. Upon the DISTRICT'S submission of acceptable documents needed to substantiate their costs for the Project, the TOWN and/or the VILLAGE will use their best efforts to provide said funds to the DISTRICT on a reimbursement basis within thirty (30) days of receipt of all required documents. The DISTRICT shall submit all invoices to the TOWN and/or the VILLAGE identifying the work completed, including the DISTRICT'S total expenditure for the Project, and identifying the amount attributable to the work completed based upon the executed Construction Contract. The DISTRICT shall supply any further documentation such as copies of paid receipts, canceled checks, invoices and other documents deemed necessary by the TOWN and/or the VILLAGE within fourteen (14) calendar days of request by the TOWN and/or the VILLAGE. Invoices received from the DISTRICT will be reviewed and approved by the TOWN and/or the VILLAGE to insure that expenditures have been made in conformity with this Agreement. Invoices will normally be paid within thirty (30) days following approval.

The Project will be administered by the DISTRICT. Costs relating to the Project are eligible for reimbursement by the TOWN and/or the VILLAGE pursuant to the terms and conditions hereof. Additionally, any cost savings attributable to unit pricing overestimates or any other reason, relative to construction of the ~~gravity sewer system or~~ stormwater system shall be the sole benefit of the TOWN. Likewise, any cost savings attributable to unit pricing overestimates or any other reason, relative to construction of the potable water system shall be the sole benefit of the VILLAGE.

In the event the DISTRICT ceases or suspends the Project for any reason, the TOWN and/or the VILLAGE will reimburse the DISTRICT for the work completed for the Project; provided, the DISTRICT shall cease or suspend the Project only in the event of an act of God or some other unforeseen or catastrophic event.

Section 7. Sewer Assessment:

[Shall remain in full force and effect as previously agreed]

Section 8. Credits, Grants and Fees:

[Shall remain in full force and effect as previously agreed]

Section 9. Connection to Sewer:

[Shall remain in full force and effect as previously agreed]

Section 10. Definitions:

[Shall remain in full force and effect as previously agreed]

Section 11. Access and Audits:

[Shall remain in full force and effect as previously agreed]

Section 12. Independent Contractor:

[Shall remain in full force and effect as previously agreed]

Section 13. Personnel:

[Shall remain in full force and effect as previously agreed]

Section 14. Further Litigation and Legal Challenges:

[Shall remain in full force and effect as previously agreed]

Section 15. Indemnification:

[Shall remain in full force and effect as previously agreed]

Section 16. Annual Appropriation:

[Shall remain in full force and effect as previously agreed]

Section 17. Breach and Opportunity to Cure:

[Shall remain in full force and effect as previously agreed]

Section 18. Enforcement Costs:

[Shall remain in full force and effect as previously agreed]

Section 19. Notice:

[Shall remain in full force and effect as previously agreed]

Section 20. Modification and Amendment:

[Shall remain in full force and effect as previously agreed]

Section 21. Remedies:

[Shall remain in full force and effect as previously agreed]

Section 22. No Waiver:

[Shall remain in full force and effect as previously agreed]

Section 23. Joint Preparation:

[Shall remain in full force and effect as previously agreed]

Section 24. Equal Opportunity:

[Shall remain in full force and effect as previously agreed]

Section 25. Execution:

[Shall remain in full force and effect as previously agreed]

Section 26. Recording:

[Shall remain in full force and effect as previously agreed]

Section 27. Termination:

[Shall remain in full force and effect as previously agreed]

Section 28. Public Entities Crime Certification:

[Shall remain in full force and effect as previously agreed]

Section 29. Severability:

[Shall remain in full force and effect as previously agreed]

Section 30. Entirety of Agreement:

[Shall remain in full force and effect as previously agreed]

Section 31. Survival:

[Shall remain in full force and effect as previously agreed]

Section 32. Term:

[Shall remain in full force and effect as previously agreed]

IN WITNESS WHEREOF, the undersigned parties have executed this Second Amended and Restated Interlocal Agreement on the date first written above.

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

TOWN OF JUPITER INLET COLONY
BY ITS TOWN COMMISSION

LOXAHATCHEE RIVER DISTRICT
BY ITS GOVERNING BOARD

Dr. Daniel J. Comerford, III
MAYOR

Stephen B. Rockoff
CHAIRMAN

ATTEST:

ATTEST:

TOWN CLERK

D. Albrey Arrington, PhD
DISTRICT CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

William P. Doney, Esq.
TOWN ATTORNEY

Curtis Shenkman, Esq.
DISTRICT ATTORNEY

TOWN Date: _____, 2015

DISTRICT Date: _____, 2015

VILLAGE OF TEQUESTA
BY ITS VILLAGE COUNCIL

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

Abby Brennan
MAYOR

Keith W. Davis, Esq.
VILLAGE ATTORNEY

ATTEST:

VILLAGE Date: _____, 2015

VILLAGE CLERK

Exhibit A:

Project Bid Documents ~~The District's standard 'front end' bid documents~~ are incorporated herein by reference.

Exhibit B:

[Shall remain in full force and effect as previously agreed]

Exhibit C:

The Revised Agreement Reapportioning Bid Costs is incorporated herein by reference.