

Loxahatchee River District

Water Reclamation | Environmental Education | River Restoration

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

MEMORANDUM

TO: D. ALBREY ARRINGTON, Ph.D., Executive Director
FROM: CLINTON R. YERKES, Deputy Executive Director
DATE: NOVEMBER 6, 2015
SUBJECT: JUPITER INLET COLONY NEIGHBORHOOD REHABILITATION-Engineering Contract
Approval of First Amendment

The Jupiter Inlet Colony Neighborhood Rehabilitation project design, permitting and bidding were recently completed and bids were received in August. It is anticipated that this project will be awarded under other agenda items at this month's meeting.

As mentioned last month, the District was advised by ARCADIS US, INC. that Tom Jensen, P.E., project manager for the Jupiter Inlet Colony project, would no longer be working with ARCADIS. However, Mr. Jensen and ARCADIS have expressed a desire to maintain their respective commitments to the project, and proposed an arrangement to avoid additional costs, maintain the time commitments made in the original contract, and avoid questions of responsibility.

Mr. Jensen has joined the engineering firm of Kimley-Horn & Associates, who have agreed to work with ARCADIS to allow Mr. Jensen to complete his commitment to this project. ARCADIS has attempted to address District concerns in a forthright manner as indicated in correspondence and discussions. During the CCNA selection process, Mr. Jensen's experience, qualifications, and commitment were determined to be essential to the success of the project.

District staff have reviewed the various options to proceeding with the Engineering Services on this contract. Under the conditions set forth in the First Amendment to the Contract for Engineering Services for the Jupiter Inlet Colony Neighborhood Rehabilitation, we believe that the ARCADIS/Kimley-Horn option provides the greatest opportunity for maintaining costs and success of completion. The "First Amendment" and "Indemnification" documents were prepared by District legal counsel.

This item is being presented to the Board for approval since the original contract was approved by the Governing Board and this is a change to the contract as it was originally presented.

The following motion is suggested for approval of this change:

"THAT THE DISTRICT GOVERNING BOARD authorize execution of the First Amendment to the Professional Engineering Services Contract for the Jupiter Inlet Colony Neighborhood Rehabilitation project between the District and ARCADIS US, INC."

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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

**First Amendment to Loxahatchee River Environmental Control District Contract for
Professional Engineering Services
Jupiter Inlet Colony Neighborhood Rehabilitation**

THIS FIRST AMENDMENT TO LOXAHATCHEE RIVER ENVIRONMENTAL CONTROL DISTRICT CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES FOR JUPITER INLET COLONY NEIGHBORHOOD REHABILITATION (herein "Amendment") is made and entered into on this ____ day of _____, 20__, by and between LOXAHATCHEE RIVER ENVIRONMENTAL CONTROL DISTRICT ("District") and ARCADIS US, INC. ("Arcadis"). The District and Arcadis shall be collectively referred to herein as the "Parties."

RECITALS

- A. On September 18, 2015, the District entered into the Contract for Professional Engineering Services Jupiter Inlet Colony Neighborhood Rehabilitation with Arcadis ("Contract") to provide professional engineering services related to the design, permitting, bidding and construction management services for the Jupiter Inlet Colony Neighborhood Rehabilitation Project ("Project").
- B. Following execution of the Contract, Tom Jensen, the design Engineer of Record, for the Project ended his employment with Arcadis and commenced employment with Kimley-Horn and Associates, Inc. ("Kimley-Horn").
- C. Because of the nature of the Project and the expertise required, the Parties have agreed that the Contract should be amended to allow Arcadis to enter a subconsultant agreement with Kimley-Horn to continue to use Tom Jensen, the design Engineer of Record, to perform construction contract administration services for the District.
- D. It is the desire of the Parties to amend the Contract to allow Arcadis to use Kimley-Horn as a subconsultant, and to provide that both Arcadis and Kimley-Horn shall indemnify the District for claims arising from the services provided by both.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration paid, the Parties hereby amend the Contract as follows:

1. The foregoing Recitals are true and complete are incorporated into this Amendment and made a part hereof.

2. Arcadis shall remain responsible to the District for the proper performance of Arcadis's obligations under the Contract, with no change to the project schedule or the compensation provisions of the Contract. Arcadis shall have exclusive responsibility for ensuring that all involvement by Kimley-Horn shall be in accordance with the terms and conditions of the

Contract. Arcadis shall ensure that all obligations of the Contract are appropriately imposed on Kimley-Horn and Tom Jensen by written agreement.

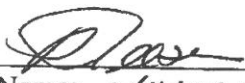
3. The District shall pay Arcadis compensation in accordance with the terms and conditions of the Contract. The District shall not have any liability for any additional expenses or costs incurred by Kimley-Horn as part of the services provided as a subconsultant to Arcadis.

4. Arcadis and Kimley-Horn shall indemnify and hold harmless the District from all claims relating to the Contract, as described in the Indemnity Agreement attached hereto as "Exhibit A."

5. In all other respects, the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the day and year first above written:

ARCADIS U.S., INC., a Delaware Corporation

By: 
Print Name: WILLIAM D. REESE
Title: V. PRES.

**LOXAHATCHEE RIVER ENVIRONMENTAL
CONTROL DISTRICT, a Special District of the
State of Florida**

By: _____
Print Name: _____
Title: _____

**AGREEMENT BETWEEN KIMLEY-HORN AND ASSOCIATES, INC. AND ARCADIS U.S.,
INC. REGARDING THE JUPITER INLET COLONY NEIGHBORHOOD
REHABILITATION PROJECT**

This agreement is entered into and effective this 2nd day of November 2015 by and between Kimley-Horn and Associates, Inc. (hereinafter referred to as "Kimley-Horn"), and Arcadis U.S., Inc. (hereinafter referred to as "Arcadis"), collectively referred to as "the Parties." This agreement is related to professional engineering services provided by Kimley-Horn to Arcadis for the Jupiter Inlet Colony Neighborhood Rehabilitation Project currently being performed by Arcadis for the Loxahatchee River Environmental Control District (the "District").

WHEREAS, Arcadis currently has a contract with the District to supply professional engineering services related to the design, permitting, bidding, and construction management services for the Jupiter Inlet Colony Rehabilitation Project designed by Arcadis (hereinafter referred to as "the Contract"); and

WHEREAS, the Design Engineer of Record for the project has ended his employment with Arcadis and commenced employment with Kimley-Horn; and

WHEREAS, the Parties and the District have agreed it is in the best interest of the project that the engineering services, during construction, be provided by the Design Engineer of Record; and,

WHEREAS, the Parties have agreed on the form of an arrangement between the Parties that will allow Arcadis to provide the design Engineer of Record to perform contract administration services to the District through a subcontract with Kimley-Horn; and,

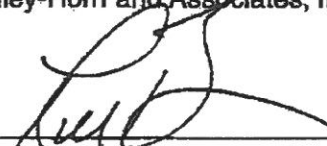
WHEREAS, the District has expressed a desire to be indemnified against any actions between Arcadis, and Kimley-Horn, that may result from the provision of engineering services by Kimley-Horn to Arcadis on the Jupiter Inlet Colony Rehabilitation Project.

NOW, THEREFORE, it is agreed between the Parties:

1. Arcadis and Kimley-Horn agree to protect, indemnify, release, pay on behalf of, and hold harmless the District, its officers, directors, agents, and employees from liabilities, damages, judgments, losses, liens, fines, penalties, expenses, claims and costs, including, but not limited to, reasonable attorney's fees and court costs, including appeals for which the District, its officers, directors, agents, and employees can or may be held liable, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the Parties (including actions or disputes between Arcadis and Kimley-Horn, arising from the provision of engineering services by Kimley-Horn to Arcadis on the Jupiter Inlet Colony Rehabilitation Project), and other persons employed, contracted, or utilized by the Parties in the performance of the Contract.

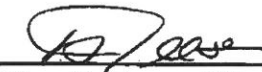
2. Nothing contained in the Contract shall create a contractual relationship with or a cause of action in favor of a third party against either the District or the Parties, nor shall the Contract be construed as a waiver of the sovereign immunity beyond the limited waiver provided in Section 768.28, Florida Statutes.
- 3 Upon completion of all services, obligations, and duties provided for in the Contract, or in the event of termination of the Contract, for any reason, the terms and conditions of this agreement shall survive.
4. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

Kimley-Horn and Associates, Inc.

By: 

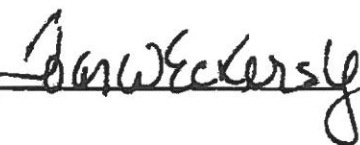
Russell Barnes,
PE Principal

Arcadis U.S., Inc.

By: 

William D. Reese, PE
Vice President

Date: 11/2/2015

Attest: 

Date: 11/3/2015

Attest: 