

3120170017016 RECORDED IN THE RECORDS OF JEFFREY R. SMITH, CLERK OF CIRCUIT COURT INDIAN RIVER CO FL  
 BK: 3011 PG: 2468, 4/3/2017 10:17 AM

Return to: COUNTY ATTORNEY'S OFFICE  
 INDIAN RIVER COUNTY  
 1801 27th Street  
 Vero Beach, Florida 32960

THIRD AMENDED AND RESTATED FELLSMERE WATER CONTROL DISTRICT – INDIAN RIVER COUNTY  
 INTERLOCAL AGREEMENT

This Third Amended and Restated Fellsmere Water Control District – Indian River County Interlocal Agreement (“Restated Agreement”) is executed this 30 day of March, 2017 (the “Effective Date”), by and between Indian River County, a political subdivision of the State of Florida, (the “County”) and the Fellsmere Water Control District, a Water Control District formed in 1919 by the Circuit Court of St. Lucie (now Indian River) County and currently operated as a Special District and state agency under Chapter 298 of the Florida Statutes (the “District”).

Whereas, on October 29, 1974, the District granted to the County an easement (the “Easement”) so that the County would have the right to maintain specifically described rights-of-way within the District; and

Whereas, in the Easement, the District reserved the fee simple title to those rights-of-way described in the Easement and the right to alter or construct canals, ditches, drains, bridges and other drainage facilities within such rights-of-way; and

Whereas, on September 10, 1975, County and District entered into an Interlocal Agreement in which the parties agreed that the County would have the right to maintain certain roads within the District (the “Interlocal Agreement”); and

Whereas, the Interlocal Agreement was twice amended in 1997 and 2003, to include additional rights-of-way (the Interlocal Agreement and the two amendments and this Restated Amendment shall collectively be referred to as the “Agreement”); and

Whereas, the County desires to add additional roads for grading to Grader Route No. 3; and

Whereas, the County desires to cooperate with the District to continue to grade certain roadways described in the Agreement and also to grade those additional roadways described in this Restated Agreement; and

Whereas, while the County has agreed to provide stabilizing material, as needed, for the additional roadways for grading purposes, the District will be responsible for providing adequate drainage necessary for the County to continue future grading;

**NOW, THEREFORE**, in consideration of the foregoing and the mutual benefits, undertakings and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1. The foregoing “Whereas” clauses are true and correct and are incorporated herein.

Section 2. Historically, County has performed some maintenance on the roads designated in the Agreement and is willing to continue providing grading service to the residents of the Water Control District, contingent upon the availability of County equipment, cooperation from the District, including, but not limited to providing drainage from roadways, whether in the District right of way or not, and the necessary funding to meet the road grading requirements. Secondary drainage is the responsibility of the landowner, whether a city lot, 5 acre tract or 5,000 acre farm. Secondary drainage is the drainage from

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BK: 3011 PG: 2469

the landowner's property to the District sub-lateral system. All secondary drainage must enter the District system via culvert or pipe from adjacent property, approved and permitted by the Water Control District.

Section 3. The parties agree that County will grade only roads that are existing and are currently utilized by the District for maintenance purposes as set out in Exhibit "A." The burden will be on the District and property owners within District to move any encroachments on said roads and to assist County wherever feasible to facilitate the grading operation.

Section 4. The term of this Restated Agreement shall be for three years, commencing on the Effective Date of this Restated Agreement. The parties may agree to two additional one year renewal terms of the Restated Agreement, by agreeing in writing at least 90 days prior to the expiration of the initial or renewal term. The parties to this Restated Agreement understand that this Restated Agreement may be terminated by either at any time in the future for any reason. The purpose of this Restated Agreement is simply to satisfy the need within District for grading service through the cooperation of two governmental bodies.

Section 5. Solely to the extent permitted by law, and for tort actions, in no event greater than the limits set forth in Florida Statutes, Section 768.28, if the District is an agency of subdivision under Florida Statutes, Section 768.28, the District agrees to indemnify County, its agents, officers, supervisors and employees against all claims, losses and liabilities, (specifically excluding attorneys' fees and expenses) caused solely by the negligent acts of the District, its employees, and elected officials arising from performance under this Restated Agreement. Nothing herein shall be deemed or construed to provide, directly or indirectly, an indemnity from the District for any negligent acts or omissions of the County, its agents and employees arising out of, under, or in connection with this Restated Agreement.

Similarly, the County agrees to indemnify the District its agents, officers, supervisors and employees against all claims, losses and liabilities, (specifically excluding attorneys' fees and expenses) caused solely by the negligent acts of the County, its employees, and elected officials performance under this Restated Agreement.

Section 6. Except as otherwise expressly provided herein, this Restated Agreement is solely for the benefit of the named parties, and no enforceable right or cause of action shall accrue hereunder to or for the benefit of any entity or individual not a named party hereto.

Section 7. Any notice required hereunder shall be in writing and shall be delivered by personal delivery, courier, express or overnight mail, or certified mail, return receipt requested, addressed to the appropriate party as follows:

If to County: Public Works Director  
Indian River County  
1801 27th Street  
Vero Beach, Florida 32960

If to District: Fellsmere Water Control District  
Superintendent of Plant and Operations  
PO Box 438  
Fellsmere FL 32948

IN WITNESS THEREOF, the parties have set their hands and seals the date entered below.

Signed, sealed and delivered  
in the presence of:

Teri M. Weyandt  
Print Name: Teri M. Weyandt  
Allyson A. Frantz  
Print Name: Allyson A. Frantz

**Fellsmere Water Control District**, a  
water control district existing under  
Chapter 298 of Florida Statutes

By: [Signature]  
Richard Carnell, President  
Board of Supervisors

ATTEST: Jeffrey R. Smith, Clerk of Court  
and Comptroller

By: [Signature]  
Deputy Clerk

**Indian River County, Florida**

By: [Signature]  
Joseph E. Flescher, Chairman  
Board of County Commissioners

BCC approved: 2/21/17

Approved as to form and legal sufficiency:

By: [Signature]  
Dylan Reingold, County Attorney



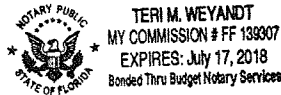
[Handwritten initials]

BK: 3011 PG: 2471

STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this 27 day of March, 2017 by Richard Carnell, as President of the Board of Supervisors of Fellsmere Water Control District, a water control district existing under Chapter 298 of the Florida Statutes, who is personally known to me or who has produced \_\_\_\_\_ as identification.

SEAL

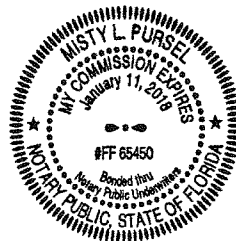


Teri M. Weyandt  
Notary Public, State of Florida  
Print Name: Teri M. Weyandt  
My Commission Expires: 7-17-18  
My Commission Number is: 139307

STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this 30 day of March, 2017 by Joseph E. Flescher, Chairman of the Board of County Commissioners of Indian River County, a political subdivision of the State of Florida, who is personally known to me.

SEAL

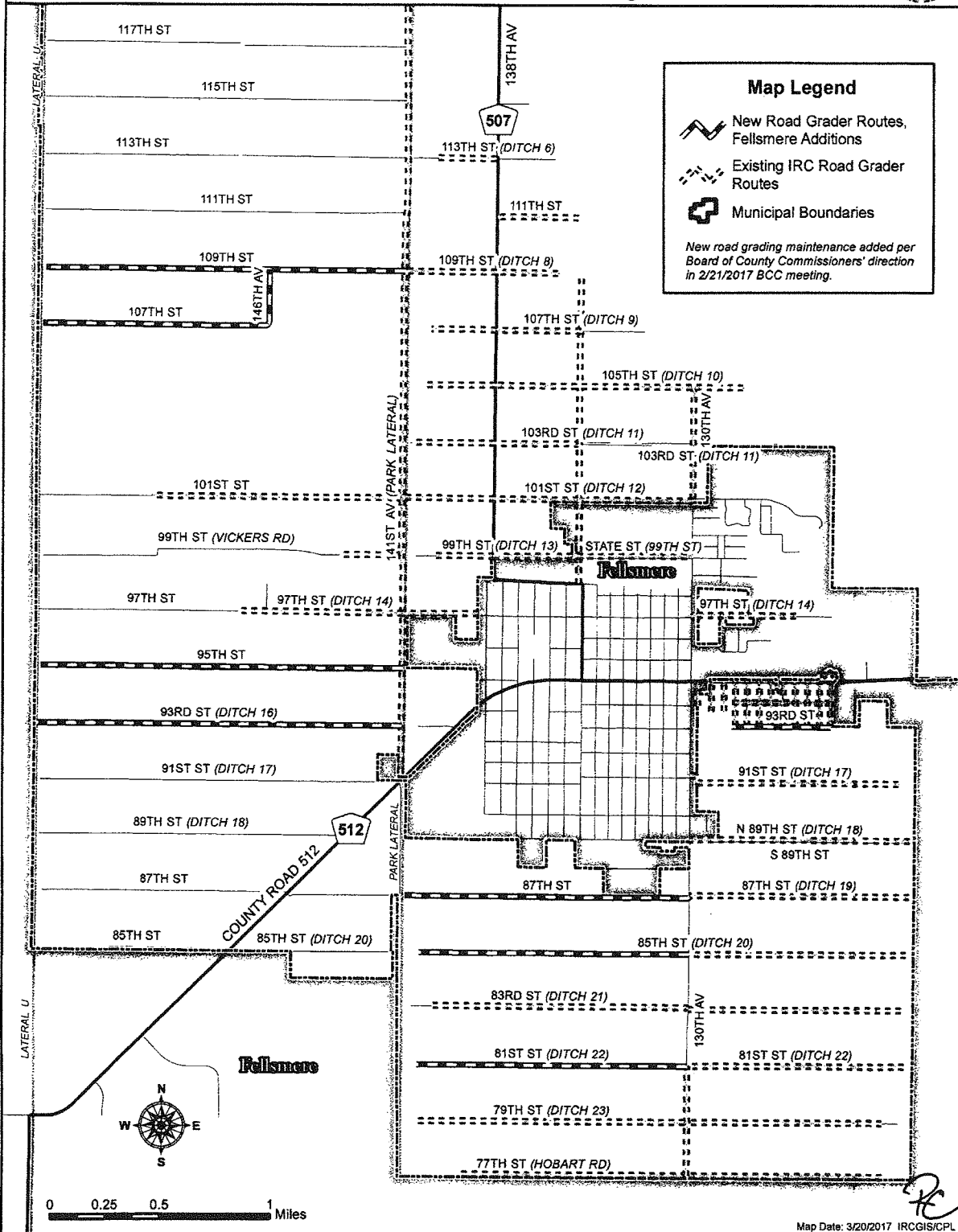


Misty L. Pursel  
Notary Public, State of Florida  
Print Name: Misty L. Pursel  
My Commission Expires: January 11, 2018  
My Commission Number is: FF65450

*FC*

# EXHIBIT A: ROAD GRADER ROUTES IN FELLSMERE

Indian River County Public Works Department, Road and Bridge Division



Path: U:\Projects\GIS\Maps\StreetMap\Road\_Grader\_Routes\RoadGraderRoutes\_Fellsmere\_2017\_0310\_v6.mxd