

Third Amendment to Fellsmere Water Control District - Indian River County Inter-Governmental Agreement

This third amendment ("Third Amendment") to the Inter-Governmental Agreement, dated September 10, 1975, (the "Interlocal Agreement") is entered into this ___ day of _____, 2016, (the "Effective Date") 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 is currently operated under Chapter 298 of 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 the Interlocal Agreement in which the parties agreed that the County would have the continuous right to maintain certain roads within the District subject to the same rights and conditions as the preceding agreement; and

Whereas, in such Interlocal Agreement, the District agreed to provide the County with the necessary marl need of by the County in order to properly maintain the rights-of-way, and the parties hereby acknowledge that the source of marl there referenced has ceased to exist; and

Whereas, in the Interlocal Agreement the parties acknowledged that the County was willing to continue providing maintenance service for the roads to within the District contingent upon the availability of equipment and funding, and cooperation from the District; and

Whereas, in the Interlocal Agreement, the parties agreed that either party could terminate the Interlocal Agreement at any time and for any reason; and

Whereas, the Interlocal Agreement has been twice amended in 1997 and 2003, to include additional rights-of-way (the Interlocal Agreement and the two amendments and this Third Amendment shall collectively be referred to as the "Agreement"); and

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

Whereas, the District has been advised by Florida's Attorney General's opinion ~~taken the position that it cannot under law maintain the rights-of-way and thus has sought and will continue to seek approval from the State of Florida to become an improvement district in order to maintain such rights-of-way~~; and

Whereas, the District understands that in 2013 the governor recently vetoed a bill that would authorize authorizing the District to become an improvement dDistrict, as described in Florida Statutes, Chapter 189~~because the bill contained requests for powers such as community development, transit, mosquito control, fire control, and emergency medical services; and~~

Whereas, the District ~~again may seek to support a request from the State of Florida to be an Improvement District with more limited powers; and~~

Whereas, the County desires to cooperate with the District by continuing to maintain certain roadways described in the Interlocal Agreement and the previous amendments thereof and also starting to maintain those additional roadways described in this Third Amendment, until ~~while the District transitions to becoming an Improvement District under Florida law;~~

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. Adoption of "Whereas" Clauses. The foregoing "Whereas" clauses are true and correct and are incorporated herein.

Section 2. Term. The term of the Agreement shall be for five ~~three~~-years, commencing on the Effective Date of this Third Amendment. The parties may agree to two additional one-year renewal terms of the Agreement, by agreeing in writing at least ninety (90) days prior to the expiration of the initial or renewal term.

Section 3. In addition to the rights-of-way already described in the Agreement, the District agrees to grant an easement attached hereto as "Exhibit A" for those roadways described in Exhibit A and the District and the County agree that the roadways described in Exhibit A shall be added to the County's North County Grader Route No. 3.

Section 4. The District will authorize,s by the appropriate FWCD culvert connection permit, the direct discharge of untreated-stormwater runoff into District ditches from the grassed roadside swales lying parallel to the roads and rights-of-way maintained by the County within the District, so long as the St. Johns River Water Management District and the State Department of Environmental Protection may permit such discharges. These swales may lie on private property, over which District has no authority or control, as may be the case due to limited right of way width.

Section 5. The District may shall seek, and the County shall take all reasonable efforts to support, the District's efforts to obtain approval from the State of Florida to become an improvement district with the following enumerated powers:

(a) To sue and be sued in its name in any court of law or in equity, to make contracts, to adopt and use a corporate seal, and to alter the same at pleasure.

(b) To acquire by purchase, gift, or condemnation real and personal property, either or both, within or without the district, and to convey and dispose of such real and

personal property, either or both, as may be necessary or convenient to carry out any of the purposes of this act and chapter 298, Florida Statutes.

(c) To finance, fund, plan, establish, construct, equip, operate, and maintain canals, ditches, drains, levees, lakes, ponds, control structures, or similar devices for water control and diversion and other works for water management and control purposes.

(d) To acquire, purchase, finance, fund, plan, establish, equip, operate, and maintain pumps, plants, and pumping systems for water management and control purposes.

(e) To finance, fund, plan, establish, construct, equip, operate, and maintain irrigation works, machinery, and plants.

(f) To finance, fund, plan, establish, construct, improve, pave, equip, operate, and maintain roadways and roads necessary and convenient for the exercise of any of the powers or duties of said district or the supervisors thereof and to include parkways, bridges, landscaping, irrigation, drainage, bicycle and jogging paths, street lighting, traffic signals, road striping, and all other customary elements of a modern road system as a component of such roadways and roads.

(g) Sanitary sewer collection and treatment systems, systems for the treatment and distribution of potable water, and similar urban infrastructure and systems.

(h) To finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for parks and facilities for indoor and outdoor recreational, cultural, and educational uses.

(i) To levy non-ad valorem assessments; to prescribe, fix, establish, and collect rates, fees, rentals, fares, or other charges; and to revise the same from time to time for the facilities and services furnished or to be furnished by the district and to recover the cost of making connections to any district facility or system.

(j) To enter into agreements with any person, firm, or corporation for the furnishing by such person, firm, or corporation of any facilities and services of the type provided for in this agreement;

(k) To enter into impact fee credit agreements with local general purpose governments. In the event the district enters into an impact fee credit agreement with a local general purpose government where the district constructs or makes contributions for public facilities for which impact fee credits would be available, the agreement may provide that such impact fee credits shall inure to the landowners within the district in proportion to their relative assessments.

(l) To finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for conservation areas, mitigation areas, and wildlife habitat, including the maintenance of any plant or animal species, and any related interest in real or personal property.

(m) To borrow money and issue negotiable or other bonds of said district as hereinafter provided: to borrow money, from time to time, and issue negotiable or other notes of said district therefor, bearing interest at not exceeding the maximum interest allowable by law, in anticipation of the collection of levies and assessments or revenues of said district; to pledge or hypothecate such levies, assessments, and revenues to secure such bonds, notes or obligations; and to sell, discount, negotiate, and dispose of the same.

Section 6. Although the County has the right to maintain the roads within the rights-of-way described in the Agreement, the District still has the responsibility to alter, construct and maintain canals, ditches, drainage pipes, bridges and other drainage facilities within such rights-of-way.

Section 7. Solely to the extent permitted by law, and 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 fully defend, indemnify, protect and hold harmless the County, its agents, officials and employees from any actions, claims or demands which anyone (individual or corporation) may hereafter bring or assert on account of any damages or claims of any type whatsoever which may arise from this Agreement including, but not limited to, claims for contribution, indemnification, subrogation or for pro rata share of responsibility pursuant to the Tort Reform and Insurance Act of 1986 and subsequent amendments including all attorneys' fees, interest, and costs of any kind (not limited to taxable costs) associated with said lawsuits or claims and expressly agrees to pay all costs and attorneys' fees incurred in defending said lawsuits or claims and any resulting awards or judgments in full arising out of said lawsuits or claims, including interest thereon.

Section 87. Except as otherwise expressly provided herein, this 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 98. 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

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