




Office of  
**INDIAN RIVER COUNTY  
ATTORNEY**

Dylan Reingold, County Attorney  
William K. DeBaal, Deputy County Attorney  
Kate Pingolt Cotner, Assistant County Attorney

**MEMORANDUM**

**TO:** Board of County Commissioners

**FROM:** Dylan Reingold, County Attorney 

**DATE:** November 16, 2016

**SUBJECT:** Fellsmere Water Control District Interlocal Agreement for Maintaining Unpaved Roads

**BACKGROUND**


On June 27, 2016, the Indian River County Board of County Commissioners (the "Board") conducted a workshop at the Fellsmere City Hall concerning the maintenance of unpaved roads within the Fellsmere Water Control District (the "FWCD"). At the workshop, the consensus of the Board was to direct Public Works to expand their grading schedule without the need of hiring additional personnel or purchasing an additional grader; to provide a preliminary list of six or ten additional miles of roads in the FWCD that could be added to the grading schedule, and to draft an amendment to the Interlocal Agreement between Indian River County and FWCD, which would provide that the Interlocal Agreement would sunset once the FWCD became an improvement district under Florida Statutes within the next five years.

On July 12, 2016, the Board voted to direct the County Administrator to add additional unmaintained unpaved roadways to the current grader route within the FWCD. The Board also directed staff to prepare a budget amendment in the amount of \$210,925 to fund additional stabilized material for such unpaved roadways. Finally, the Board directed the County Attorney's Office to prepare a revised Interlocal Agreement between Indian River County and the FWCD, which contained the following:

*Approved for November 22, 2016 BCC Meeting  
County Attorney's Matters*



COUNTY ATTORNEY

Indian River Co.	Approved	Date
Admin.		
Co. Atty.		11/16/16
Budget		
Department		
Risk Management	---	---

- (a) Language concerning indemnity and hold harmless protections for Indian River County for all claims related to the drainage right-of-way for access;
- (b) Clarify definitions for roadway maintenance as maintenance of the FWCD access road for drainage canals/ditches;
- (c) Authorization for the direct discharge of untreated stormwater runoff from the unpaved roadways into the FWCD ditch system;
- (d) Clarification concerning the maintenance responsibilities for culverts and bridges within the FWCD right-of-way;
- (e) Requirement that FWCD pursue State approval for the FWCD to become an improvement district, so that roadway maintenance will be the responsibility of FWCD to maintain;
- (f) Addition of the roadways selected for maintenance for a three to five-year period.

The Board authorized County staff to begin maintenance of the roadways selected, once the Interlocal Agreement between Indian River County and the FWCD was complete.

On August 1, 2016, the County Attorney's Office sent a draft of the Third Amendment to Fellsmere Water Control District - Indian River County Inter-Governmental Agreement (the "Third Amendment") to the FWCD. A copy of the proposed Third Amendment is attached. On September 1, 2016, FWCD sent a revised Third Amendment to the County Attorney's Office. The revised Third Amendment included five significant changes: 1) extending the Interlocal Agreement from a three year term with two one year renewals to a five year initial term with two one year renewals; 2) eliminating the requirement that FWCD seek State approval to become an improvement district; 3) increasing the powers to be sought by FCWD from the State to include development of a) sanitary sewer collection and treatment systems and systems for the treatment and distribution of potable water, b) facilities for parks and facilities for indoor and outdoor recreational, cultural, and educational uses, and c) facilities for conservation areas, mitigation areas, and wildlife habitat; 4) eliminating all indemnity and hold harmless language; and 5) requiring FWCD a culvert connection permit and a permit from either the St. Johns River Water Management District (the "SJRWMD") or the State Department of Environmental Protection (the "FDEP") for treated direct discharge of stormwater runoff into FWCD ditches from the grassed roadside swales parallel to the roads and rights-of-way. The revised Third Amendment is attached.

There is currently inadequate drainage along the access roads proposed to be graded by Indian River County. The most cost effective solution to ensure that access roads are not submerged in water during the rainy season is to install small drainage pipes to allow a direct drainage connection to the FWCD canals from the access roads. The agreement as proposed by FWCD includes drainage/treatment swales and permitting of all drainage improvements through the SJRWMD or FDEP. It is anticipated that these requirements will require funding in excess of \$1,000,000 to design and construct. Additional funding will be necessary to acquire right-of-way to construct the treatment systems, as most of the access roads slated to be maintained by Indian River County are not completely within the FWCD right-of-way and therefore right-of-way to provide treatment for the stormwater runoff does not exist at this time.

The County Attorney's Office believes that the proposed revised Third Amendment is inconsistent with the Board's direction. Since receiving the revised Third Amendment, the County Attorney's Office has had several communications with counsel for the FWCD. At this point, the County Attorney's Office seeks guidance from the Board on how it wishes to proceed.

### **FUNDING**

Based upon the FWCD requirements, the cost of design and construction of stormwater treatment facilities is anticipated to exceed \$1,000,000. Additional funding would also be necessary to acquire right-of-way for such treatment systems. This is in addition to the \$210,925 already needed for additional material for the roadways. Funding for such improvements would come from Secondary Road Cash Forward, Account No. 109039-389040.

### **RECOMMENDATION**

County staff is at an impasse with the FWCD staff and recommends that the Board provide guidance as to how to proceed in discussions with FWCD.

### **ATTACHMENT(S).**

Proposed Third Amendment  
Revised Third Amendment