

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 _____ (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 right to maintain certain roads within the District; and

Whereas, such Interlocal Agreement, the District agreed to provide the County with the necessary marl need by the County in order to properly maintain the rights-of-way; and

Whereas, in the Interlocal Agreement the parties acknowledged that the County was willing to continue providing maintenance service for the roads to 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 to Grader Route No. 3;

Whereas, the District has 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 the governor recently vetoed a bill authorizing the District to become an improvement district, because the bill contained requests for powers such as community development, transit, mosquito control, fire control, and emergency medical services; and

Whereas, the District supports a request from the State of Florida to be an improvement 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 and starting to maintain those roadways described in this Third Amendment, 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 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 authorizes the direct discharge of untreated stormwater runoff into District ditches from the roads and rights-of-way maintained by the County within the District.

Section 5. The District 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.

Section 6. Although the County has the right to maintain the roads within the rights-of-way described in the Agreement, the District still 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 8. 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 9. 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:

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