

Meeting Date
November 1, 2016



AGENDA	
Section	Consent
Item No.	II.A.3

**AGENDA REPORT**  
**BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**

SUBJECT:	BOARD APPROVAL RE: TRANSPORTATION IMPACT FEE REIMBURSEMENT AGREEMENT REGARDING BARNES BOULEVARD (DISTRICT 4)
DEPT/OFFICE:	PLANNING AND DEVELOPMENT DEPARTMENT

Requested Action:  
 It is requested that the Board of County Commissioners consider approval of the Transportation Impact Fee Reimbursement Agreement regarding Barnes Boulevard between the County and The Viera Company; authorize the Chairman to execute the agreement; and authorize the Budget Office to execute any budget changes necessary to implement the proportionate share payment.

Summary Explanation & Background:  
 The Amended and Restated Development Order for the Viera Development of Regional Impact requires The Viera Company to donate \$12,290,000 to Brevard County to partially fund the construction of Barnes Boulevard as part of the mitigation required for the Viera Phase 3 Development Program traffic impacts. Chapter 380.06(16), Florida Statutes mandates that developers that are subject to development exactions must receive impact fee credits to offset the financial impacts of such exactions.  
 Under the terms of the attached agreement, the development within the Viera DRI will pay transportation impact fees to the County and the County will reimburse The Viera Company for the financial contributions to Barnes Boulevard construction using the transportation impact fees as they are collected. Currently, there are existing Transportation Impact Fee Reimbursement Agreements for the Pineda Interchange on I-95 and the Wickham Road Widening Project. Reimbursements to the Barnes project would begin after the previously approved projects have been fully reimbursed.  
 Fiscal Impact: FY17 – No reimbursements specific to Barnes Boulevard will occur in FY17. Reimbursements will be made on a quarterly basis using transportation impact fees collected in the Viera DRI in the preceding quarter.  
 Staff Contact: Stephen M. Swanke (321) 633-2069

Clerk to the Board instruction:  
 Chair to execute two originals and return one to the Department for the Viera Company.

Exhibits Attached:  
 Transportation Impact Fee Reimbursement Agreement regarding Barnes Boulevard

Contract /Agreement (If attached):	Reviewed by County Attorney	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
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County Manager	Assistant County Manager	Department Director / Extension
Stockton Whitten		Robin M. DiFabio, AICP 5-2069



THE VIERA COMPANY

7380 Murrell Road, Suite 201 | Viera, Florida 32940  
P: 321.242.1200 | F: 321.253.1800 | [VIERA.com](http://VIERA.com)

October 12, 2016

**VIA HAND DELIVERY**

Mr. Stephen M. Swanke, Program Manager  
Brevard County Planning and Development Department  
Building A, Room 114  
2725 Judge Fran Jamieson Way  
Viera, FL 32940

Re: Viera Development of Regional Impact (“Viera DRI”) – Transportation Impact Fee Reimbursement Agreement Regarding Barnes Boulevard (the “Impact Fee Credit Agreement”) between Brevard County (the “County”) and The Viera Company (“TVC”)

Dear Mr. Swanke:

The Viera DRI Development Order requires that TVC share in the cost of widening Barnes Boulevard as part of TVC’s overall traffic mitigation. TVC previously commenced making monetary contributions in connection with such work and continues to make such contributions to the County as work progresses pursuant to periodic invoices from the County. Such funding by TVC is eligible for impact fee credits/reimbursement pursuant to the Viera DRI Development Order and the Brevard County Code of Ordinances.

TVC and the County Attorney’s office have cooperated in preparing the above-referenced Impact Fee Credit Agreement for consideration by the Brevard County Board of County Commissioners (the “County Commission”). Therefore, enclosed are two duplicate originals of the Impact Fee Credit Agreement executed on behalf of TVC. TVC requests that the enclosed Impact Fee Credit Agreement be placed on the County Commission’s agenda for its November 1<sup>st</sup> meeting for consideration and approval.

Once approved by the County Commission and signed on behalf of the County, please return a fully executed duplicate original to the undersigned for TVC’s files.

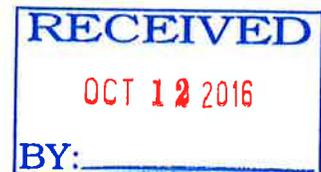
I sincerely appreciate the County’s consideration of TVC’s request. Please let me know if you have any questions or require additional information regarding this matter.

Sincerely,

Todd J. Pokrywa  
Senior Vice President

TJP/jad  
Enclosure

Cc: Stockton Whitten, County Manager (via hand delivery w/enclosure)  
Eden Bentley, Esq. (via hand delivery w/enclosure)  
Stephen L. Johnson  
Jay A. Decator III, Esq.  
R. Mason Blake, Esq. (via electronic delivery w/enclosure)





Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Tammy.Rowe@brevardclerk.us

November 2, 2016

To: Robin DiFabio, Planning and Development Director          Attn: Steve Swanke  
Re: Item II.A.3., Transportation Impact Fee Reimbursement Agreement with The Viera Company for Barnes Boulevard

The Board of County Commissioners, in regular session on November 1, 2016, executed Transportation Impact Fee Reimbursement Agreement regarding Barnes Boulevard between the County and The Viera Company; and authorized the Budget Office to execute any budget changes necessary to implement the proportionate share payment. Enclosed is a fully-executed Agreement.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/cm

Encl. (1)

cc: Contracts Administration  
Finance  
Budget

TRANSPORTATION IMPACT  
FEE REIMBURSEMENT AGREEMENT REGARDING  
BARNES BOULEVARD

THIS TRANSPORTATION IMPACT FEE REIMBURSEMENT AGREEMENT REGARDING BARNES BOULEVARD is made and entered into as of the 1st day of Nov., 2016 by and between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as the "County"), and THE VIERA COMPANY, a Florida corporation (hereinafter referred to as "Viera").

RECITALS:

- A. Viera is the owner and developer of that certain so-called "new town", mixed-use development located in Brevard County, Florida known as the Viera Development of Regional Impact (hereinafter referred to as the "Viera DRI").
- B. On November 13, 1990 the County Commission adopted Resolution 90-432 approving an initial development order for the Viera DRI (hereinafter referred to as the "Initial Development Order").
- C. The Initial Development Order was amended by virtue of Resolution 95-106 adopted by the County Commission on April 5, 1995, Resolution 98-222 adopted by the County Commission on September 15, 1998, Resolution 99-288 adopted by the County Commission on November 9, 1999, Resolution 01-014 adopted by the County Commission on December 12, 2000, Resolution 01-309 adopted by the County Commission on September 6, 2001, Resolution 01-391 adopted by the County Commission on October 30, 2001, Resolution 02-314 adopted by the County Commission on December 5, 2002, Resolution 04-115 adopted by the County Commission on May 18, 2004, Resolution 04-200 adopted by the County Commission on August 24, 2004, Resolution 08-188 adopted by the County Commission on August 28, 2008, Resolution 09-272 adopted by the County Commission on December 15, 2009, Resolution 10-105 adopted by the County Commission on May 27, 2010, Resolution 14-120 adopted by the County Commission on July 22, 2014, Resolution 15-110 adopted by the County Commission on July 21, 2015, and Resolution 16-126 adopted by the County Commission on August 23, 2016 (the Initial Development Order as modified, amended and restated by such amendments is hereinafter referred to as the "Development Order").
- D. The Development Order contains various conditions with respect to the development of the Viera DRI. Under condition 92 of the Development Order (hereinafter referred to as "Condition 92"), Viera was required to construct or provide funding for the construction of various off-site roadway and related improvements as mitigative measures for the transportation impacts of the Viera DRI. Under Condition 92 (specifically footnote 3 to Condition 92 set forth on page 51 of Resolution 09-272, as amended by subparagraph 1(c) of Resolution 14-120), Viera is required to contribute \$12,290,000.00 towards the widening of Barnes Boulevard (hereinafter referred to as the "Barnes Boulevard Widening Project"). Prior to the date of this Agreement, Viera has made payments to the County under Condition 92 for the Barnes Boulevard Widening

Project totaling \$8,741,860.04 (consisting of \$4,325,738.05 paid on September 1, 2015 and ten subsequent payments totaling \$4,416,121.99 ). The remaining amount required to be paid to the County under Condition 92 for the Barnes Boulevard Widening Project is \$3,548,139.96.

E. Condition 92 provides that Viera shall be eligible for impact fee credits for all improvements required to be constructed or paid for by it under Condition 92 as provided by state law and Brevard County Ordinance. Section 163.3180, Florida Statutes, further provides that where an applicant for a development-of-regional-impact development order enters into a binding agreement to pay for or construct its proportionate share of required improvements, such applicant shall receive a credit for impact fees payable in the future for the applicable project. Section 62-801 et seq. of the Brevard County Code (hereinafter referred to as the "Transportation Impact Fee Ordinance") provides for the imposition of transportation impact fees by Brevard County and further provides for credits and reimbursements to be granted where capital improvements to arterial and collector roads are required by the County from a developer under a County approved development order.

F. Viera is requesting reimbursement of the funds expended rather than impact fee credits. The County will identify the amount of impact fee credits authorized as stated herein, and provide reimbursement up to that amount, if, and only if, impact fees are collected in that amount.

G. Viera and the County desire to enter into this Transportation Impact Fee Credit Agreement for the purpose of memorializing their agreement with respect to the administration of transportation impact fee credit/reimbursement which Viera will receive for the Barnes Boulevard Widening Project.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The recitals set forth hereinabove are true and correct in all respects and are incorporated herein by reference as if set forth herein verbatim.

2. Transportation Impact Fee Credits. Pursuant to section 163.3180, Florida Statutes, Viera shall ultimately be entitled to transportation impact fee credits for the Barnes Boulevard Widening Project in the amount of \$12,290,000.00 if all such funds are paid. At any time prior to the payment of the entire \$12,290,000.00 amount due pursuant to Condition 92, Viera shall only be entitled to transportation impact fee credits totaling an amount equal to the amount actually paid by Viera at the time the County commences to reimburse Viera pursuant to this Agreement (for example, as of the date of this Agreement, Viera is entitled to transportation impact fee credits and reimbursement totaling up to \$8,741,860.04) .

3. Reimbursement of Funds through Impact Fee Collection. Currently, the County has instituted a moratorium on the assessment and collection of transportation impact fees. Viera acknowledges that the County is not currently

collecting transportation impact fees and that unless and until transportation impact fees are assessed and collected by the County, the County is not liable for reimbursement of Viera's funding for the Barnes Boulevard Widening Project, in lieu of Viera receiving impact fee credits therefor, pursuant to this Agreement. If and when the County re-imposes and begins to again collect transportation impact fees on new construction in Brevard County, the County shall thereafter provide reimbursement to Viera, in an amount equal to the amount of transportation impact fees credits which Viera would be entitled to for the Barnes Boulevard Widening Project as provided in paragraph 2 hereinabove, based on impact fees collected within the boundary of the Viera DRI as hereafter provided. Such payments with respect to the Barnes Boulevard Widening Project shall be pursuant to section 62-815(c)(1) of the Transportation Impact Fee Ordinance (or any successor provision of the Brevard County Code), which reimbursement payments shall commence as hereinafter provided. Impact fee funds collected by the County for improvements constructed within the boundary of the Viera DRI are subject to the requirements of several pre-existing agreements between the parties regarding impact fee reimbursement. Based on those agreements and the anticipated completion dates for those projects, impact fees collected in the Viera DRI boundaries shall be reimbursed first to the Pineda Interchange Commitments and Transportation Proportionate Share Agreement until the creditable amount is fully reimbursed, then to the Wickham Road Widening Project pursuant to the Transportation Impact Fee Credit/Reimbursement Agreement Regarding Wickham Road until that project is fully reimbursed and then to the project completed next until that project is fully reimbursed, and then to any additional projects entitled to impact fee credits in the order in which they are completed until all such projects are fully reimbursed.

4. Miscellaneous Provisions.

(a) Notices. Any notices or other communications which may be required or desired to be given under the terms of this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, if sent by facsimile transmission, if sent by overnight courier service (e.g. Federal Express) or if mailed by United States certified mail, return receipt requested, postage prepaid, addressed to the respective party at the addresses set forth below:

To County Commission: County Commissioners of Brevard County, Florida  
Brevard County Government Center  
2725 Judge Fran Jamieson Way  
Viera, Florida 32940  
Attn: County Manager

To Viera: The Viera Company  
7380 Murrell, Suite 201  
Viera, FL 32940  
Attn: Stephen L. Johnson  
Jay A. Decator, III, Esq.

With copy to: Laura M. Young, Esq.  
Dean Mead

8240 Devereux Drive, Suite 100  
Viera, Florida 32940

Any notice so given, delivered or made shall be deemed to have been duly given, delivered or made (i) on the date the same is sent by facsimile transmission or deposited in the United States mail in the manner specified hereinabove (ii) the date of receipt if sent by overnight courier service as evidenced by the courier service airbill or (iii) if hand delivered, the date of actual receipt of the same by the addressee. Any notice which is not given, delivered or made by United States mail in the manner specified above shall be deemed to have been duly given, delivered or made upon actual receipt of the same by the party to whom the same is to be given, delivered or made. Either party may change the address to which notices are to be sent to such party by written notice to the other party specifying such change of address.

(b) Attorney's Fees. In connection with any litigation, including appellate proceedings, arising out of or under this Agreement, each party shall bear its own out-of-pocket costs and reasonable attorneys' fees.

(c) Venue. The venue of any litigation arising out of this Agreement shall be Brevard County, Florida.

(d) Paragraph Headings. The paragraph headings herein contained are inserted for convenience of reference only and shall not be deemed to be a part of this Agreement; the paragraph headings shall be ignored in construing and interpreting this Agreement.

(e) Singular and Plural Usages. Whenever used herein, the singular number includes the plural, the plural the singular, and the use of any gender includes all genders.

(f) Construction of Agreement. The fact that one of the parties to this Agreement may be deemed to have drafted or structured any provision of this Agreement shall not be considered in construing or interpreting any particular provision of this Agreement, either in favor of or against such party.

(g) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

(h) Successors and Assigns. The terms and provisions of this Agreement shall bind, and inure to the benefit of, the parties hereto and their respective successors and assigns.

(i) Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes any and all prior or contemporaneous agreements, whether written or oral. No covenants, agreements, terms, provisions, undertakings, statements,

representations or warranties, whether written or oral, made or executed by any party hereto or any employee or agent thereof, shall be binding upon any party hereto unless specifically set forth in this Agreement.

(j) Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement, or the application thereof, to any person or circumstance shall for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the maximum extent possible.

(k) Modification and Waiver. This Agreement may not be changed, amended or modified in any respect whatsoever, nor may any covenant, agreement, condition, requirement, provision, warranty or obligation contained herein be waived, except in writing signed by both parties.

(l) Governing Law. This Agreement and the interpretation and enforcement thereof shall be governed by and construed in accordance with the laws of the State of Florida.

[The balance of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly qualified as of the day and year first above written.

ATTEST:



SCOTT ELLIS, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA,

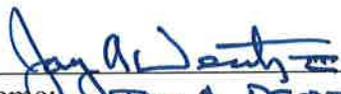
By:



TIM BARFIELD, Chairperson

THE VIERA COMPANY, a Florida  
corporation

ATTEST:



Name: JAY A. DECATOR III

Title: SECRETARY

By:



Name: Stephen L. Hanson

Title: VAS