

Meeting Date
February 21, 2017



AGENDA	
Section	CONSENT
Item No.	II.A.14

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

SUBJECT:	Adopt Resolution and Release Performance Bond: Viera Preserve FKA Sandhill Crossings of Brevard Developer: Viera Preserve Dev., LLC      Fiscal Impact: None      District 4
DEPT/OFFICE:	Public Works Department

Requested Action:

In accordance with Section 62-2844(b), it is requested that the Board of County Commissioners adopt the attached Resolution and authorize the Chairman to sign the Resolution releasing the Contract and Surety Performance Bond dated July 26, 2016 for the above referenced project.

Summary Explanation & Background:

Viera Preserve FKA Sandhill Crossings of Brevard is located on the south side of Viera Boulevard, approximately 1000 feet west of Highway 1. The subdivision contains 98 detached single family lots on approximately 45.37 acres.

The Viera Preserve FKA Sandhill Crossings of Brevard subdivision received preliminary plat and final engineering plans on May 28, 2015, and final plat and contract approval on July 26, 2016. The developer posted a Surety & Cash Performance Bond for guarantee of the completion of the infrastructure improvements according to the approved plans.

As of January 4, 2017, Viera Preserve FKA Sandhill Crossings of Brevard subdivision infrastructure improvements have been completed. We are requesting the Board of County Commissioners adopt the attached Resolution to Release the Contract and Surety Performance Bond back to the Developer.

Reference: 14SD-00766

Fiscal Impact: FY 16/17

Clerk to the Board instruction:  
 Please forward the Board action to the Public Works Department. Provide 2 originals of the Resolution.

Exhibits Attached: Resolution, Subdivision Infrastructure Contract (copy), and Surety Performance Bond (copy)

Contract /Agreement (If attached)		Reviewed by County Attorney	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	PR <input type="checkbox"/>
County Manager		Assistant County Manager		Department Director / Extension John P. Denninghoff, Public Works, Director Ext. 56524 			
Stockton Whitten							



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

February 22, 2017

MEMORANDUM

TO: John Denninghoff, Public Works Director

RE: Item II.A.14., Resolution and Release of Performance Bond for Viera Preserve FKA Sandhill Crossings of Brevard – Viera Preserve Development, LLC

The Board of County Commissioners, in regular session on February 21, 2017, adopted Resolution No. 17-022, releasing Contract and Surety Performance Bond dated July 26, 2016, for Viera Preserve FKA Sandhill Crossings of Brevard – Viera Preserve Development, LLC. Enclosed are two fully-executed Resolutions.

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

Encls. (2)

cc: Contracts Administration  
Finance  
Budget

**RESOLUTION 17 -022**

WHEREAS, the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, and Viera Preserve Development, LLC entered into a contract to guarantee the construction of improvements on property commonly known as Viera Preserve FKA Sandhill Crossings of Brevard Subdivision.

WHEREAS, by execution of the Contract, the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA agreed to accept said improvements for both public and private use at such time as said improvements were satisfactorily completed; and

WHEREAS, Viera Preserve Development, LLC completed all of the infrastructure improvements and has requested that the executed contract approved on July 26, 2016 be released and release of all undisbursed funds referenced in the Contract hereinabove described.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, that:

1. The BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, hereby acknowledges that there is satisfactory completion of all improvements to that certain real property commonly known as the Viera Preserve FKA Sandhill Crossings of Brevard Subdivision.
2. The BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, hereby releases the contract and performance bond executed on July 26, 2016.
3. This Resolution shall take effect immediately upon adoption.

DONE, ORDERED, AND ADOPTED in Regular Session the 21<sup>st</sup> day of February, 2017.

ATTEST:

  
\_\_\_\_\_  
Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS  
BREVARD COUNTY, FLORIDA

By:   
\_\_\_\_\_  
Curt Smith, Chairman

As approved by the Board on February 21, 2017

Subdivision No. 14SD-00766

Project Name Sandhill Crossing of Brevard

**Subdivision Infrastructure  
Contract**

THIS CONTRACT entered into this 26th day of July, 2016, by and between the Board of County Commissioners of Brevard County, Florida, hereinafter referred to as "COUNTY," and Viera Preserve Development, LLC, hereinafter referred to as "PRINCIPAL."

WITNESSETH:

IN CONSIDERATION of the mutual covenants and promises herein contained, the parties hereto agree as follows:

1. The PRINCIPAL agrees to construct the improvements described below:

and all other improvements depicted in subdivision number 14SD-00766. A copy of said plat to be recorded in the Plat Books of the Public Records of Brevard County.

2. Principal agrees to construct the improvements strictly in accordance with the plans and specifications on file in the Land Development Division (which construction is hereinafter referred to as the "Work"). Such plans and specifications (hereinafter referred to as the "Plans") are hereby incorporated into this Agreement by reference and made a part hereof. Principal warrants to County that the Work will conform to the requirements of the Plans and other requirements specified in the County's approval of the Work. Principal also warrants to County that the Work will be free from faults and defects. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered to be defective. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this paragraph 2.

If within two (2) years after approval and acceptance of the improvements by County, any Work is found to be defective, Principal shall promptly, without cost to County, either correct such defective Work, or, if it has been rejected by County, remove it from the site and replace it with nondefective Work. If Principal does not promptly comply with the terms of such instructions, County may elect any of the remedies provided for in paragraph 6 herein below. Corrective Work shall be warranted to be free from defects for a period of six (6) months. Any defect in such Work shall be corrected again by Principal promptly upon notice of the defect from County. In the event the maintenance bond given by Principal in connection with County's acceptance of the improvements is extended, the two (2) year warranty period provided for herein shall be extended for a like period.

To the extent assignable, Principal assigns to County all of Principal's warranty rights under its construction contract with the contractor constructing the improvements (including all warranties provided by law of in equity with respect to such construction contract), which warranties may be asserted by County on behalf of Principal in the event Principal fails to perform its warranty obligations hereunder. Where warranties granted hereunder overlap, the more stringent requirement shall control."

3. The PRINCIPAL agrees to complete said construction on or before the 31st day of December, 2016.

4. In order to guarantee performance of PRINCIPAL'S obligations herein contained, PRINCIPAL shall furnish cash, letter of credit, certificate of deposit or surety bond in a form approved by the COUNTY, in the amount of \$ 848,694.56 . If such bond is a cash bond or a certificate of deposit, said amount shall be deposited with the Board of County Commissioners. Said bond shall be 125% of the estimated cost of construction, as determined by the Land Development Division. PRINCIPAL shall maintain such records and accounts, including property, personnel, financial records, as are deemed necessary by the COUNTY to ensure proper accounting for all funds expended under the agreement. Said records shall be made available upon request for audit purposes to Brevard County and its auditors.
5. The COUNTY agrees to accept said plat above described for recording in the public records of Brevard County, Florida and to accept the areas depicted thereon as dedicated for public use, including but not limited to streets and parks, at such time as said improvements are satisfactorily completed. Satisfactory completion in accordance with the plans and specifications shall be determined by written approval of the County Development Engineer or designated assistant.
6. In the event, PRINCIPAL fails to complete said improvements within the time prescribed, the COUNTY may elect to take all or any of the following actions:
  - A. Vacate all or part of such recorded plat where improvements have not Been completed in accordance with the plans and specifications,
  - B. Complete the improvements utilizing COUNTY employees and materials and request payment from the bond or the PRINCIPAL,
  - C. Request the surety on said performance bond to complete such improvements, or
  - D. Contract for completion of said improvements.
7. The PRINCIPAL and Surety on said performance bond shall be liable for all costs, expenses, and damages incurred by the COUNTY, including attorney's fees, in the event the PRINCIPAL defaults on this contract.
8. In the performance of this Agreement, the PRINCIPAL shall keep books, records, and accounts of all activities, related to the agreement, in compliance with generally accepted accounting procedures. Books, records and accounts related to the performance of this agreement shall be open to inspection during regular business hours by an authorized representative of the Office and shall be retained by the PRINCIPAL for a period of three years after termination of this agreement. All records, books and accounts related to the performance of this agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119 of the Florida Statutes.
9. No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this agreement shall be subject to copyright by PRINCIPAL in the United States or any other country.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

[Signature]  
\_\_\_\_\_  
Scott Ellis, Clerk

[Signature]  
\_\_\_\_\_  
Jim Barfield, Chairman

STATE OF FLORIDA  
COUNTY OF BREVARD  
This is to certify that the foregoing  
is a true and current copy of \_\_\_\_\_  
and official seal this 2 day of  
August 2016  
SCOTT ELLIS, Clerk of Circuit Court

As approved by the Board on: July 26<sup>th</sup>, 2016.

BY [Signature] D.C.  
WITNESSES:

PRINCIPAL: Viera Preserve Develop, LLC

Kathi A. Shotwell  
Ron J. Br...

Coy A. Clark  
\_\_\_\_\_  
, as ~~President~~  
Manager  
July 26, 2016  
DATE

State of: Florida

County of: Brevard

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of July 2016, by  
Coy A. Clark who is personally known to me or who has produced  
\_\_\_\_\_ as identification and who did (did not) take an oath.

My commission expires:

Kathi A. Shotwell  
\_\_\_\_\_  
Notary Public

S E A L

Commission Number:

Kathi A. Shotwell  
\_\_\_\_\_  
Notary Name printed, typed or stamped



116300009

BOND #1143638

**SURETY PERFORMANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS:**

That we, Viera Preserve Development, LLC., hereinafter referred to as "Owner" and, Lexon Insurance Company, hereinafter referred to as "Surety", are held and firmly bound unto the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, hereinafter referred to as "County", in the sum of \$ 863,969.56, for the payment of which we bind ourselves, our heirs, executors, successors and assigns, jointly and severally, firmly by these presents:

WHEREAS, Owner has entered into a contract with the County dated the 26th day of July, 20 16, which contract is made a part hereof by reference.

NOW THEREFORE, the condition of this obligation is such that If Owner shall promptly and faithfully perform said contract and complete the work contemplated therein by July 26th, 20 17, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

If the Owner shall be declared in default of said contract by the County, the Surety shall have sixty (60) days from the date of said default within which to take whatever action it deems necessary in order to insure performance. If, at the expiration of sixty (60) days from the date of said default, no arrangements have been made by the Owner or surety satisfactory to the County for the completion of said contract, then the County shall have the right to complete said contract and the Owner and Surety jointly and severally, shall pay all costs of completing said contract to the County, including but not limited to engineering, legal and other costs, together with any damages, either direct or consequential, which the County may sustain on account of the Owner's default of said contract. After the expiration of the aforesaid grace period, the County shall have the additional right to contract for the completion of said contract upon which the Owner has defaulted and upon the County's acceptance of the lowest responsible bid for the completion of said contract, the Owner and Surety shall become immediately liable for the amount of said bid and in the event the County is required to commence legal proceedings for the collection thereof, interest shall accrue at the rate of six percent (6%) per annum beginning with the commencement of such legal proceedings. The County, in its discretion, may permit the Surety to complete said contract, in the event of Owner's default.

In the event that the County commences suit for the collection of any sums due hereunder, the obligors and each of them agree to pay all costs incurred by the County, including attorney's fees.

EXECUTED this 29th day of July, 20 16.

OWNER:Viera Preserve Development, LLC.

Coy A. Clark  
Coy A. Clark, Managing Member of  
SURETY:Lexon Insurance Development, LLC.

Brad Quiri  
Brad Quiri, Attorney-in-Fact

POWER OF ATTORNEY

LX- 282498

Lexon Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that LEXON INSURANCE COMPANY, a Texas Corporation, with its principal office in Louisville, Kentucky, does hereby constitute and appoint: Brad Quiri, Jessica Evans its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of LEXON INSURANCE COMPANY on the 1st day of July, 2003 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed \$2,500,000.00, Two Million Five Hundred Thousand dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, LEXON INSURANCE COMPANY has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 5th day of August, 2015.

LEXON INSURANCE COMPANY



BY [Signature] David E. Campbell President

ACKNOWLEDGEMENT

On this 5th day of August, 2015, before me, personally came David E. Campbell to me known, who be duly sworn, did depose and say that he is the President of LEXON INSURANCE COMPANY, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.



AMY TAYLOR Notary Public- State of Tennessee Davidson County Mv Commission Expires 07-08-19

BY [Signature] Amy Taylor Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of LEXON INSURANCE COMPANY, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the forgoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Seal at Mount Juliet, Tennessee this 29th Day of July, 2016.



BY [Signature] Andrew Smith Assistant Secretary

WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."