



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

Telephone: (321) 637-2001  
Fax: (321) 264-6972

September 4, 2015

MEMORANDUM

TO: Stockton Whitten, County Manager

RE: Item VII.A., Letter of Credit from The Viera Company for Barnes Boulevard Widening Project

The Board of County Commissioners, in regular session on September 3, 2015, approved accepting a fax presentation option for Letter of Credit from The Viera Company for the Barnes Boulevard Widening Project, subject to insertion of language in the Letter of Credit stipulating that the venue is in the State of Florida for litigation purposes.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

✓ Tammy Etheridge, Deputy Clerk

cc: Deputy County Attorney Bentley

VII. A.  
Stockton Reports

Stockton's report

**Whitten, Stockton E**

**From:** Bentley, Eden  
**Sent:** Thursday, September 03, 2015 3:40 PM  
**To:** Whitten, Stockton E  
**Subject:** FW: Letter of Credit for The Viera Company for the Barnes Blvd. Obligation

I have been emailing Jay Decator today about a concern we had regarding litigation out of state. (Our staff is only licensed in Florida and litigation occurs in NC, we cannot represent the Board.) Wells Fargo has agreed to add language to the LOC providing that in the event of litigation, venue will be in the State of Florida. If the Board decides to interpret the DO to allow fax presentation we would like to ask that they require venue language as well. Here is some proposed language if the Board chooses that route.

Motion under 305.5 report

Accept fax presentation option for Letter of Credit from TVC for Barnes widening project subject to insertion of language in the letter of credit stipulating that venue is in the State of Florida for litigation purposes.

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**From:** Whitten, Stockton E  
**Sent:** Thursday, September 03, 2015 11:10 AM  
**To:** CGroup  
**Cc:** Lewis, Sally A; Bentley, Eden; Knox, Scott L; Jay Decator (Jay.Decator@duda.com); Todd J. Pokrywa <Todd.Pokrywa@duda.com> (Todd.Pokrywa@duda.com)  
**Subject:** FW: Letter of Credit for The Viera Company for the Barnes Blvd. Obligation

Commissioners,

Eden Bentley and I will be bringing this item before you tonight.

*Stockton Whitten*

County Manager  
2725 Judge Fran Jamieson Way, Suite 301  
Viera, FL 32940  
321-633-2001 (Phone)  
321-633-2115 (Fax)



Please Note: Florida has a very broad public records law. Most written communications to or from county employees regarding county business are public records and available to the public and media upon request. Your email communications may therefore be subject to public disclosure.

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**From:** Knox, Scott L  
**Sent:** Thursday, September 03, 2015 9:18 AM  
**To:** Bentley, Eden; Whitten, Stockton E  
**Cc:** Jay Decator (Jay.Decator@duda.com)  
**Subject:** RE: Letter of Credit for The Viera Company for the Barnes Blvd. Obligation

Stockton/Eden:

I suggest the matter be brought up at tonight's meeting and, after an explanation that where the L/C terms provide for fax presentation of the L/C (from Florida) once all conditions specified in the L/C have been met, it is arguable that the D.O. has been satisfied and the BCC can accept that form of compliance with the D.O. L/C provision.

Scott L. Knox, Brevard County Attorney  
2725 Judge Fran Jamieson Way  
Melbourne, FL 32940  
(321) 633-2090

**The State of Florida has a broad public records law and a request made under the authority of that Public Records law may require the disclosure and copying of any email sent to this office unless exempt, privileged or confidential under state law .**

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**From:** Bentley, Eden  
**Sent:** Wednesday, September 02, 2015 5:35 PM  
**To:** Whitten, Stockton E  
**Cc:** Knox, Scott L  
**Subject:** RE: Letter of Credit for The Viera Company for the Barnes Blvd. Obligation

Yes, the DO specifies presentment in Florida. I can't change that provision. The requirement has been in the DO for quite some time (over a year) , and the County has received Letters of Credit that can be collected locally in the past. If the BCC wanted to change the DO requirement, they can. Are you wanting to interpret the local fax to NC as sufficient to meet the in state requirement?

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**From:** Whitten, Stockton E  
**Sent:** Wednesday, September 02, 2015 2:32 PM  
**To:** Knox, Scott L; Bentley, Eden  
**Subject:** FW: Letter of Credit for The Viera Company for the Barnes Blvd. Obligation

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**From:** Todd J. Pokrywa [<mailto:Todd.Pokrywa@duda.com>]  
**Sent:** Tuesday, September 01, 2015 12:21 PM  
**To:** Whitten, Stockton E  
**Subject:** FW: Letter of Credit for The Viera Company for the Barnes Blvd. Obligation

Stockton,

The wire is being initiated today for the \$4,325,738.05 payment from TVC to Brevard County as it relates to the Barnes Boulevard project. The remaining TVC obligation is to be addressed in form of a LOC in the amount of \$7,964,261.95.

Pursuant to our discussion about the LOC, please see the emails between Jay Decator and Eden Bentley below.

As discussed, the Viera DRI Development Order (attached) included language that the Developer shall issue a letter of credit in favor of Brevard County that can be presented for payment in the State of Florida.

Well Fargo does not have an office in Florida that offers presentment and TVC does not have an alternate issuer. Wells Fargo can provide presentment by facsimile with confirmation by email.

TVC is requesting that the County accept this LOC that expressly provides drawings by facsimile which is the equivalent of local presentment. TVC believes that this can be found to be consistent with the DO. Please let me know whether you agree or if Commission needs make some finding that it is consistent or waive local presentment.

I appreciate your assistance in this matter so that LOC can be issued.

Thanks,

Todd J. Pokrywa  
Senior Vice President,  
Land Use Planning and Development  
The Viera Company

Phone: 321-242-1200, Ext. 4573

**From:** Jay Decator  
**Sent:** Tuesday, September 1, 2015 10:14 AM  
**To:** Steve Johnson; Todd J. Pokrywa  
**Cc:** Tracy Duda Chapman; Mark Engwall  
**Subject:** FW: Letter of Credit for The Viera Company for the Barnes Blvd. Obligation

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**From:** Bentley, Eden [<mailto:Eden.Bentley@brevardcounty.us>]  
**Sent:** Tuesday, September 01, 2015 8:21 AM  
**To:** Jay Decator  
**Cc:** Knox, Scott L  
**Subject:** RE: Letter of Credit for The Viera Company for the Barnes Blvd. Obligation

Jay-I do not have the authority to alter or waive the DO. I have attached it for your convenience. There is a sticky note on the section that applies.

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**From:** Jay Decator [<mailto:Jay.Decator@duda.com>]  
**Sent:** Monday, August 31, 2015 5:01 PM  
**To:** Bentley, Eden  
**Subject:** FW: Letter of Credit for The Viera Company for the Barnes Blvd. Obligation

Eden: Below is Wells Fargo's response regarding local presentment – it's declined to revise its letter to accommodate local presentment, emphasizing that the letter allows drawings by facsimile. Please note that TVC's last LOC accepted by Brevard County in connection with the Pineda Extension was issued by SunTrust and specified presentment in Atlanta.

TVC does not have an alternative issuer and worked with WF on its last loan modification to increase applicable limits to allow issuance of this LOC. I understand that the Development Order provides that the letter can be "presented for payment in the State of Florida" and, frankly, I'm surprised that Wells Fargo does not have an office in Florida for presentment, but arguably, allowing drawings by facsimile as expressly provided in the LOC is equivalent to local

presentment, if not more convenient. All that is required is for the County to fax a copy of the LOC and its statement to Wells Fargo and confirm the fax by telephone. The fax number and telephone number will be provided in the LOC.

TVC requests that the County accept a letter of credit issued by Wells Fargo expressly allowing drawings by facsimile in lieu of presentment in Florida. If your office is not the correct office to consider this request, please let me know to whom the request should be made. In the meantime, I'll prepare a revised draft with the "statement" language you requested since Wells Fargo requires that all revisions be submitted as a completed draft (see below).

Jay

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**From:** [Callie.Pugh@wellsfargo.com](mailto:Callie.Pugh@wellsfargo.com) [mailto:Callie.Pugh@wellsfargo.com]  
**Sent:** Monday, August 31, 2015 1:55 PM  
**To:** Amy C. Mitchell; Jay Decator  
**Cc:** Mark Engwall; Steve Johnson; Todd J. Pokrywa  
**Subject:** RE: Letter of Credit for The Viera Company for the Barnes Blvd. Obligation

Wells Fargo will not allow for local presentment at any office or branch. In lieu of presenting at our Trade Services locations in Winston Salem, NC or San Leandro, CA (as indicated on the draft), we offer facsimile presentation only.

Any changes to the wording on the draft must be made directly on the draft. The marked up draft should be returned back to my attention so that I may pass on to the Trade Services Analyst for revising the draft.

Thanks,

***Callie A. Pugh***

*Wells Fargo Bank*

*Assistant Vice President /CRE Loan Administration*

*1000 Louisiana St., 16th Floor / Houston, Texas 77002*

*Ph: 713-319-1484 / Fax: 713-739-1077 / MAC: T0002-167*

**[callie.pugh@wellsfargo.com](mailto:callie.pugh@wellsfargo.com)**

**Lewis, Sally A**

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