

Meeting Date
July 11, 2017



AGENDA	
Section	Consent
Item No.	II.A.9

AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Approval RE: Assignment and Assumption of Landscaping and Improvement Agreement with The Viera Company and Arrivas District Association, Inc. – D4 (Fiscal Impact: None)
DEPT/OFFICE:	Public Works Department – Finance and Contracts Administration

Requested Action:

It is requested that the Board of County Commissioners approve and authorize the Chairman to execute the Assignment and Assumption of Landscaping and Improvement Agreement with The Viera Company and Arrivas District Association, Inc.

Summary Explanation & Background:

On May 13, 2014, the Board entered into the Landscaping and Improvement Agreement for Arrivas Village and Rodina Drive Infrastructure Improvements with The Viera Company. The Agreement contained a provision in which all of the rights, obligations and duties of The Viera Company could be assigned to the Strom Park Neighborhood Association, Inc. upon completion of the initial installation of the improvements in the right-of-way. This installation of the signage, hardscape and landscaping improvements is complete. The Viera Company provided written notice of their intent to assign the Agreement. However, the referenced assignment to the Strom Park Neighborhood Association, Inc. was an error and that said reference should have been Arrivas District Association, Inc.

To remedy this mistake, The Viera Company has prepared the Assignment and Assumption of Landscaping and Improvement Agreement and Joinder in which the County would acknowledge and agree that the assignment reference should be Arrivas District Association, Inc. Upon assignment, Arrivas District Association, Inc. shall be responsible for all obligations of the Agreement, including the maintenance of the improvements in the right-of-way. Furthermore, Arrivas District Association, Inc. shall maintain at all times a policy of General Liability insurance and name the County as additional insured.

Fiscal Impact: None

Clerk to the Board Instructions: Please return two (2) fully executed Assignment and Assumption of Landscaping and Improvement Agreement to the Public Works Department.

Exhibits Attached: Three originals Assignment and Assumption of Landscaping and Improvement Agreement

Contract /Agreement (If attached): Reviewed by County Attorney		Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
Interim County Manager	Assistant County Manager	Department Director / Extension					
Frank Abbate	Venetta Valdengo			Andrew J. Holmes, P.E., Interim PW Director / 57202			
	Interim Assistant County Manager						
	John P. Denninghoff						

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT FORM

SECTION I - The following information must be completed on all new contracts submitted to the Board.

1. Contractor:	
2. Fund/Account #:	Department Name: Public Works
4. Contract Description: Assignment and Assumption of Landscaping and Improvement Agreement re: Arrivas Village	
5. Contract Monitor: Jeanette Scott	6. Mail Stop #: EXT 52853
7. Dept./Office Director: Andrew J. Holmes, P.E., Interim Public Works Director	8. Contract Type: Use Agreement
ACTION DATE: 30 days from entry	ACTION REQUIREMENT: Need complete data

SECTION II - The following departments must approve all contracts submitted to the Board:

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	_____	_____	_____	_____
Risk Management	_____	_____	_____	_____
County Attorney	✓	_____	Daf	6/19/2017

If any office denies approval, the package will be returned immediately to the User Agency.

SECTION III - CONTRACT MANAGEMENT DATABASE CHECKLIST

DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund and GL Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status	<input type="checkbox"/>
Contract Title	<input type="checkbox"/>
Contract Type	<input type="checkbox"/>
Contract Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date	<input type="checkbox"/>
Contract Effective Date	<input type="checkbox"/>
Contract Expiration Date	<input type="checkbox"/>
Contract Absolute End Data (No Additional renewals/extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in database (Initial Contract Form with County Attorney/Risk Management Approval; Signed/Executed Contract)	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>
Note: Insurance Certificates uploaded under collapsible/expandable <u>Monitor Bar Section</u> Change Order/Task Order uploaded under collapsible/expandable <u>Monitor Bar Section</u> Contract Renewal documents uploaded under collapsible/expandable <u>Renewal /Bar Section</u>	

NOTE: This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will return the Initial Contract Form, Executed/Attested Contract to department for contract to be entered and uploaded into the Contract Management System. See AO-29 for additional information.



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

July 12, 2017

MEMORANDUM

TO: Andrew Holmes, Interim Public Works Director

RE: Item II.A.9., Assignment and Assumption of Landscaping and Improvement Agreement with The Viera Company and Arrivas District Association, Inc. for Arrivas Village and Rodina Drive Infrastructure Improvements

The Board of County Commissioners, in regular session on July 11, 2017, executed Assignment and Assumption of Landscaping and Improvement Agreement with The Viera Company and Arrivas District Association, Inc. for Arrivas Village and Rodina Drive Infrastructure Improvements. Enclosed are two fully-executed Agreements.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

Encls. (2)

cc: Contracts Administration

**ASSIGNMENT AND ASSUMPTION
OF
LANDSCAPING AND IMPROVEMENT AGREEMENT
(Arrivas Village and Rodina Drive Infrastructure Improvements)**

THIS ASSIGNMENT AND ASSUMPTION OF LANDSCAPING AND IMPROVEMENT AGREEMENT (this “**Assignment**”) is dated as of July 11, 2017 (the “**Effective Date**”) and is between THE VIERA COMPANY, a Florida corporation (“**Assignor**”), as assignor, and ARRIVAS DISTRICT ASSOCIATION, INC., a Florida not-for-profit corporation (“**Assignee**”), as assignee. The BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, , a political subdivision of the State of Florida (the “**County**”), hereby joins in the execution of this Assignment.

RECITALS

A. Assignor and the County entered into that certain Landscaping and Improvement Agreement dated May 13, 2014 relating to Assignor’s installation of signage, hardscape and landscaping, and related improvements along public right-of-way Rodina Drive within the Arrivas Village Neighborhood in Viera, Florida (the “**Agreement**”); and

B. Assignor has completed the installation of the improvements to be installed by Assignor under the Agreement, and now desires to assign its maintenance obligations for such improvements under the Agreement to Assignee as intended under Section 11 of the Agreement.

Now, therefore, in consideration of Ten and 00/100 Dollars (\$10.00), the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted by Assignor and Assignee, Assignor and Assignee hereby agree as follows:

1. Recitals. The above recitals are true and correct and incorporated into this assignment by this reference.

2. Assignment and Assumption. Assignor hereby assigns to Assignee all of Assignor’s rights and interest under the Agreement to Assignee, effective as of the Effective Date. Further, Assignor hereby delegates to Assignee all of Assignor’s duties and obligations under the Agreement that arise from and after the Effective Date. Assignee hereby accepts the above-referenced assignment of rights and delegation of duties and obligations of Assignor under the Agreement and assumes all of the rights, duties, and obligations of Assignor as landlord under the Agreement that arise from and after the Effective Date. The County hereby joins in the execution of this Amendment to evidence its approval of Assignor’s assignment of its rights and interest, and delegation of its duties and obligations, under the Agreement to Assignee. Assignor, Assignee, and the County acknowledge and agree that the reference in Section 11 of the Agreement to an assignment of the Agreement by Assignor to Strom Park Neighborhood Association, Inc. was an error and that said reference should have been to Assignee.

3. Notices. Each notice, request, demand, and other communication delivered by a party under the Agreement to Assignee, as assignee of the Agreement, shall be addressed to Assignee at the following address unless otherwise advised by Assignee in writing:

(See next page for address.)

Arrivas District Association, Inc.
Attention: Ms. Eva M. Rey, President
7380 Murrell Road, Suite 201
Viera, FL 32940

4. Partial Invalidity. If any term or provision of this Assignment or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Assignment or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Assignment shall be valid and enforceable to the fullest extent permitted by applicable law.

5. Governing Law; Submission to Jurisdiction. This Assignment shall be governed by, and construed in accordance with, the law of the State of Florida applicable to contracts made within and to be performed within the State of Florida. The parties hereto agree to submit to personal jurisdiction in the State of Florida in any action or proceeding arising out of this Assignment and, in furtherance of such agreement, the parties hereby agree and consent that without limiting other methods of obtaining jurisdiction, personal jurisdiction over the parties in any such action or proceeding may be obtained within or without the jurisdiction of any court located in the State of Florida. In the event of any action to enforce the terms of this Assignment, each party shall bear its own attorney's fees and any trial shall be a non-jury trial.

6. Counterparts. This Assignment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Any counterpart delivered by electronic transmission shall be deemed an original counterpart from the sending party.

(SIGNATURES ARE ON THE FOLLOWING PAGES)

JOINDER

The County hereby joins in the execution of this Assignment for the purposes of consenting to the terms and conditions of this Assignment.

ATTEST:



Scott Ellis, Clerk

APPROVED AS TO FORM:



Assistant County Attorney

COUNTY:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY FLORIDA,

By: 

Curt Smith, Chairman

As approved by the Board July 11, 2017

IN WITNESS WHEREOF, Assignor and Assignee have signed this Assignment as of the date set forth on the first page of this Assignment:

WITNESSES:

Benjamin E. Wilson

Name: Benjamin E. Wilson

Charlene R. Spangler

Name: Charlene R. Spangler

ASSIGNOR:

THE VIERA COMPANY,
a Florida corporation

By: [Signature]

Name: Stephen L. Johnson

Title: President

Date: 6/12/17

STATE OF FLORIDA)
)
COUNTY OF BREVARD)

The foregoing instrument was acknowledged before me this 12th day of June, 2017, by STEPHEN L. JOHNSON as PRESIDENT of THE VIERA COMPANY, a Florida corporation, on behalf of the corporation. He is personally known to me.



Benjamin E. Wilson

Print Name: Benjamin E. Wilson

Notary Public

Commission No.: FF 032645

My Commission Expires: October 10, 2017

WITNESSES:

Benjamin E. Wilson

Name: Benjamin E. Wilson

Charlene R. Spangler

Name: Charlene R. Spangler

ASSIGNEE:

ARRIVAS DISTRICT ASSOCIATION, INC.,
a Florida not-for-profit corporation

By: [Signature]

Name: Eva M. Rey

Title: President

Date: 6/12/17

STATE OF FLORIDA)
)
COUNTY OF BREVARD)

The foregoing instrument was acknowledge before me this 12th day of June, 2017 by EVA M. REY, as PRESIDENT of ARRIVAS DISTRICT ASSOCIATION, INC., a Florida not-for-profit corporation, on behalf of the corporation. She is personally known to me.



Benjamin E. Wilson

Print Name: Benjamin E. Wilson

Notary Public

Commission No.: FF 032645

My Commission Expires: October 10, 2017

(JOINDER BY THE COUNTY IS ON THE FOLLOWING PAGE.)