



AGENDA REPORT
July 24, 2018

**Approval Re: Intersection Signalization Construction Agreement between
Brevard County, The Viera Company and Dean Mead for the Viera
Boulevard and Holiday Springs Intersection - (District 4) (Fiscal Impact:
\$250,000)**

SUBJECT:

Approval Re: Intersection Signalization Construction Agreement between Brevard County, The Viera Company and Dean Mead for the Viera Boulevard and Holiday Springs Intersection

FISCAL IMPACT:

FY 2017-2018 \$250,000 from LOGT Bond 1163/265160

DEPT/OFFICE:

Public Works

REQUESTED ACTION:

It is requested that the Board of County Commissioners approve the Intersection Signalization Construction Agreement between Brevard County, The Viera Company and Dean Mead for the Viera Boulevard and Holiday Springs Intersection; authorize the Chair to execute the Agreement; and approve any necessary Budget Change Requests associated with this request.

SUMMARY EXPLANATION and BACKGROUND:

The Viera Company is preparing to widen the two lane portion of Viera Boulevard to four lanes. This widening project would involve significant changes to the intersection of Holiday Springs Road including replacement of the temporary signal with a permanent signal. This widening is required, as part of the new interchange at I-95/Viera Boulevard, to be started within six months after the interchange at I-95 is completed.

Brevard County has determined that a traffic signal is warranted at the intersection of Holiday Springs Road and Viera Boulevard, and has determined that a temporary signal could be installed at an estimated cost to Brevard County of \$250,000. This work would be done in advance of the Viera Boulevard widening project, during which a permanent signal would then be installed at Holiday Springs Road. This two-phase construction of the signal would involve disrupting the traffic for construction twice.

County staff approached The Viera Company (TVC) to request that TVC consider advancing the construction schedule for the Holiday Springs Road intersection work, and partnering with the County to get the permanent signalization work done in a single phase. TVC has agreed to advance the schedule for the work, and, provided the BOCC approves, partner with Brevard County on the signalization work. The County contribution to the work would be \$250,000, which is what would have originally been spent on the temporary signal. The public benefit is that the widening work will occur much sooner (projected construction start date approximately 10/1/2018) than originally required, and that the intersection of Holiday Springs Road will be completed in a single phase, greatly reducing the disruption to the users of this intersection. The estimated completion date for the work is July 31, 2019. These benefits will be achieved at no additional cost to the County.

Should the BOCC approve, the County will partner with TVC on the permanent signalization at the intersection by making a financial contribution to TVC toward payment of the cost of the construction in the amount of \$250,000. The County's financial contribution will be held by Dean Mead as the escrow agent for the Agreement. Dean Mead will disburse the funds pursuant to the terms of the Agreement to TVC upon completion of the permanent signal. This partnership will accomplish the permanent traffic signalization and intersection improvements by TVC at no increased cost to the County beyond what would have been expended on the temporary signal.

CLERK TO THE BOARD INSTRUCTIONS:

Please return fully executed Intersection Signalization Construction Agreement (3 originals) to Public Works.

ATTACHMENTS:

Description

- **Intersection Signalization Construction Agreement**

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: The Viera Company/Dean Mead/Brevard County	
2. Fund/Account #:	3. Department Name: Public Works
4. Contract Description: Intersection Signalization Construction Agreement - Holiday Springs	
5. Contract Monitor: Jeanette Scott	7. Contract Type:
6. Dept/Office Director: Andrew J. Holmes, P.E.	CONSTRUCTION

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>
	<u>YES</u>	<u>NO</u>	
User Agency	<input type="checkbox"/>	<input type="checkbox"/>	_____
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	_____
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	_____

SECTION III - REVIEW AND APPROVAL TO EXECUTE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>
	<u>YES</u>	<u>NO</u>	
User Agency	<input type="checkbox"/>	<input type="checkbox"/>	_____
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	_____
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>MDS 7/10/18</i>

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM 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 G/L 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 Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Initial Contract Form with County Attorney/ Risk Management Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>

**INTERSECTION SIGNALIZATION CONSTRUCTION AGREEMENT
(Viera Boulevard & Holiday Springs Road)**

THIS INTERSECTION SIGNALIZATION CONSTRUCTION AGREEMENT (the “**Agreement**”) is made and entered into as of the 24 day of JULY, 2018 (the “**Effective Date**”) by and among THE VIERA COMPANY, a Florida corporation (“**TVC**”), the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (“**County**”), and DEAN MEAD (“**Escrow Agent**”).

WITNESSETH:

WHEREAS, TVC is the master developer of the Viera Development of Regional Impact in Brevard County, Florida (the “**Viera DRI**”), and the Viera DRI is subject to a development order that was originally issued by County on November 13, 1990, with said development order last amended and restated by Resolution 17-205 adopted by County on October 10, 2017, record notice of which was provided by that certain Notice of the Modification of a Development Order dated as of December 18, 2017 and recorded in Official Records Book 8055, Page 1380, of the Public Records of Brevard County, Florida, and as may be further amended from time to time (collectively, the “**Development Order**”);

WHEREAS, under the Development Order, TVC is obligated to cause construction of the expansion of that certain portion of public right-of-way Viera Boulevard (“**Viera Boulevard**”) due east of Interstate 95 that is currently a two lane public right-of-way to a four lane public right-of-way, as more particularly addressed in the Development Order (the “**Viera Boulevard Expansion**”);

WHEREAS, County has determined that traffic signalization is warranted at the intersection of public right-of-way Holiday Springs Road (“**Holiday Springs Road**”) and Viera Boulevard;

WHEREAS, County has determined that temporary signalization at the intersection of Holiday Springs Road and Viera Boulevard could be installed at an estimated cost of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) by the County;

WHEREAS, TVC is anticipating initiating construction of the Viera Boulevard Expansion on or about October 1, 2018 (subject to County’s prior approval of applicable plans and issuance of applicable permits to TVC), and that the Viera Boulevard Expansion project would involve significant changes to the intersection of Holiday Springs Road and Viera Boulevard, necessitating removal of the aforementioned temporary signalization and installation of a permanent traffic signalization (“**Permanent Traffic Signalization**”);

WHEREAS, as the time period between County's completion of the installation of the temporary traffic signalization and the demolition of same in order to reconstruct the intersection in connection with TVC's construction of the Viera Boulevard Expansion would be a relatively short period of time measured in months, County and TVC acknowledge that it makes fiscal sense and efficiency for the design and construction of the permanent improvements to the intersection of Viera Boulevard and Holiday Springs Road to incorporate the Permanent Traffic Signalization, and for County to partner with TVC by making a financial contribution to TVC toward payment of the cost of the construction of the Permanent Traffic Signalization in the amount of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) (the "**Escrow Funds**"), which is the estimated cost of the temporary signalization contemplated by County and referenced above, so that the Permanent Traffic Signalization and intersection improvements will be installed by TVC at no increased cost to County beyond what would have been expended on the temporary signal;

WHEREAS, County has requested TVC to cause construction of the Permanent Traffic Signalization at the intersection of Viera Boulevard and Holiday Springs Road (the "**TVC Work**") to occur in connection with the simultaneous construction of the Viera Boulevard Expansion, and TVC has agreed to do so, even though the TVC Work is not an obligation of TVC under the Development Order (while TVC's construction of the Viera Boulevard Expansion is an obligation of TVC under the Development Order);

WHEREAS, Escrow Agent has agreed to serve as escrow agent for the Escrow Funds in accordance with the terms and conditions of this Agreement; and

WHEREAS, TVC, County, and Escrow Agent desire enter into this Agreement to memorialize their agreement with regard to the constructing of the TVC Work and the holding and disbursement of the Escrow Funds in escrow.

NOW, THEREFORE, for and in consideration of the premises, the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged by the parties, and intending to be legally bound hereby, TVC, County and Escrow Agent hereby agree as follows:

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

2. Performance of the TVC Work. TVC hereby agrees to cause construction of the TVC Work to be completed and obtain all applicable governmental approvals and regulatory permits required in connection therewith. TVC shall cause the TVC Work to be completed in accordance with those certain plans and specifications for the Permanent Traffic Signalization that will be approved by County after the Effective Date (the "**Plans**"), with the Plans to potentially be a part of the overall plans and specifications for the Viera Boulevard Expansion. B.S.E. Consultants, Inc., a Florida corporation shall be the consulting engineer for the TVC Work (the "**Project Engineer**"). TVC intends for

construction of the TVC Work to be a part of the simultaneous and overall construction of the Viera Boulevard Expansion. It is anticipated that TVC shall cause commencement of construction of the TVC Work to occur on or about October 1, 2018 (subject to County's prior approval of the Plans and issuance of applicable permits to TVC), though TVC shall be entitled to, without penalty, (a) commence construction of the TVC Work prior to such October 1, 2018 anticipated commencement date if County has approved the Plans and issued applicable permits to TVC before such anticipated commencement date, or (b) commence construction of the TVC Work after to such October 1, 2018 anticipated commencement date if County has not approved the Plans and issued applicable permits to TVC by such anticipated commencement date; provided, however, that TVC shall cause construction of the TVC Work to be completed no later than completion of the Viera Boulevard Expansion (as evidenced by a certificate of completion or other governmental approval issued by County for such work).

3. Deposit of Funds. County shall deliver the Escrow Funds to Escrow Agent within thirty (30) days after TVC receives County's approval of the Plans. Upon Escrow Agent's receipt of the Escrow Funds and clearance of the Escrow Funds, Escrow Agent shall hold the Escrow Funds in escrow in a federally insured interest bearing account with a national banking association and administer and disburse the Escrow Funds pursuant to, and strictly in accordance with, the terms and conditions of this Agreement. All interest accrued upon the Escrow Funds shall be disbursed by Escrow Agent to the party entitled under this Agreement to receive disbursement of the Escrow Funds.

4. Appointment of Escrow Agent. TVC and County hereby designate, constitute and appoint Escrow Agent as the "escrow agent" under this Agreement, and Escrow Agent hereby accepts such designation and appointment. The parties hereby covenant and agree that in performing any of its duties under this Agreement, Escrow Agent shall not incur any liability to anyone for any losses, costs or damages except for any losses, costs or damages arising out of Escrow Agent's (or its employees' or independent contractors') willful default or negligence. Accordingly, Escrow Agent shall not incur any liability with respect to (a) any action taken or omitted to be taken in good faith upon advice of its counsel given with respect to any questions relating to its duties and responsibilities under this Agreement, or (b) any action taken or omitted to be taken in reliance upon any documents or written notices presented to Escrow Agent by the parties hereunder which Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by a proper person or persons and to conform with the provisions of this Agreement.

5. Indemnity of Escrow Agent. To the extent allowed by Florida law, TVC and County hereby agree to indemnify and hold harmless Escrow Agent against any and all losses, claims, damages, liabilities and expenses including, without limitation, reasonable attorneys' fees, which may be imposed upon or incurred by Escrow Agent in connection with its serving as Escrow Agent hereunder, provided that such losses, claims, damages, liabilities and expenses were not incurred by Escrow Agent as a result of or due to Escrow Agent's (or its employees' or independent contractors') willful default or

negligence. Without limiting the foregoing, TVC and County agree that all fees and costs charged by the Escrow Agent shall be paid by TVC and TVC shall promptly pay all fees and costs upon receipt of the Escrow Agent's invoice. Escrow Agent shall itemize all such fees and costs in a monthly statement sent to TVC and County.

6. Disbursements to TVC upon Completion of the TVC Work. Upon completion of the TVC Work, TVC shall request the disbursement of the Escrow Funds from Escrow Agent to reimburse TVC for a portion of the costs and expenses incurred in completion of TVC's Work. TVC shall deliver a copy of such disbursement request to County. Such disbursement request from TVC shall include, (1) the Project Engineer's certification that the TVC Work is substantially complete in accordance with the Plans and (2) a certificate of completion or the legal equivalent issued by County evidencing the completion of the TVC Work. The parties acknowledge that the certificate of completion or legal equivalent issued by County for completion of the TVC Work may be included as part of an overall certificate of completion or legal equivalent issued by County for completion of the Viera Boulevard Expansion, and in such case, TVC's delivery of such certificate of completion or other legal equivalent issued by County for completion of the Viera Boulevard Expansion to Escrow Agent shall be sufficient for item (2) immediately above. Upon Escrow Agent's receipt of the above-referenced disbursement request and related documents from TVC, Escrow Agent shall cause the Escrow Funds, together with any interest accrued thereon, to be disbursed to TVC within thirty (30) days.

7. Failure of TVC to Complete the TVC Work. If TVC fails to timely cause the TVC Work to be completed as required under this Agreement, and fails to cause the TVC Work to be completed within thirty (30) days after receipt of written notice thereof by County, Escrow Agent shall disburse the Escrow Funds, together with any interest accrued thereon, within thirty (30) days after receipt from County of (a) certificate of completion or legal equivalent issued by County for completion of the Viera Boulevard Expansion and (b) written evidence from the County that TVC has failed to timely complete the TVC Work as required under this Agreement.

8. Interpleader. In the event of a dispute between any of the parties hereto sufficient in the sole discretion of Escrow Agent to justify its doing so, Escrow Agent shall tender into the registry or custody of any court of competent jurisdiction all the Escrow Funds then in escrow pursuant this Agreement, together with such legal pleadings as it deems appropriate, and thereupon be discharged from all further duties and liabilities under this Agreement. Any such legal action may be brought in such court as Escrow Agent shall determine to have jurisdiction thereof.

9. Notices. Any notice, request, demand, instruction or other communication (hereinafter referred to as a "Notice") to be given to any party with respect to this Agreement may be given either by the party or its legal counsel and shall be deemed to have been properly sent and given when delivered by hand or when sent by certified mail, return receipt requested, or by reputable courier service or by email in the manner provided for in this paragraph. If delivered by hand, a Notice shall be deemed to have

been sent, given and received when actually received by the addressee. If sent by certified mail, a Notice shall be deemed to have been sent and given when properly deposited with the United States Postal Service with the proper address and postage paid therewith, and shall be deemed to have been received on the third (3rd) Business Day following the date of such deposit, whether or not actually received by addressee. If sent by courier service, a Notice shall be deemed to have been sent and given when delivered to said courier service with the proper address and delivery charges either prepaid or charged to a proper account, and shall be deemed to have been received when actually received by the addressee. If sent by email, a Notice shall be deemed to have been sent, given and received on the date the sending party receives an electronic delivery receipt for such email, whether or not the emailed notice is actually ready by the receiving party(ies). Any party may change the address to which notices are to be sent to such party by sending a Notice to each other party specifying such change of address. The addresses to which Notices shall be sent are:

To TVC: The Viera Company
7380 Murrell Road, Suite 201
Viera, Florida 32940
Attn: Mr. Todd J. Pokrywa, Sr. Vice President; and
 Jay A. Decator III, General Counsel
Email: todd.pokrywa@duda.com and
vieralegal@duda.com

To County: Brevard County Manager
Attn: Mr. Frank Abbate
2725 Judge Fran Jamieson Way, Bldg. C
Viera, Florida 32940
Email: frank.abbate@brevardfl.gov

With a copy to: Brevard County Public Works Department
Attn. Ms. Jeanette Scott, Contracts Administrator
2725 Judge Fran Jamieson Way, Bldg. A, Room 201
Viera, Florida 32940
Email: jeanette.scott@brevardfl.gov

To Escrow Agent: Dean Mead
7380 Murrell Road
Suite 200
Viera, Florida 32940
Attention: Laura M. Young, Esq.
Email: lyoung@deanmead.com

If any party hereto is represented by legal counsel, such legal counsel is authorized to deliver any Notice directly to the other party on behalf of his or her client, and the same shall be deemed proper notice hereunder if delivered in the manner specified above. If any party designates more than one recipient for Notices, and, pursuant this Agreement, a

Notice is received or deemed to have been received by different recipients at different times, then the Notice shall be deemed to have been given on the earliest date that any required recipient received such Notice

10. Independent Contractor. TVC shall perform the services under this Agreement as an independent contractor and nothing herein shall be construed to be inconsistent with this relationship or status. Nothing in the Agreement shall be interpreted or construed to make TVC or any of its agents or employees to be the agent, employee or representative of County.

11. Successors and Assigns. TVC shall not assign its rights or obligations under this Agreement without the prior written consent of County, which consent shall not be unreasonably withheld, conditioned, or delayed by County. Subject to the foregoing, this Agreement shall apply to, inure to the benefit of and be binding upon and enforceable against the parties hereto and their respective successors and assigns.

12. Right to Audit Records. In the performance of this Agreement, TVC 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 only to the performance of this Agreement (and no other books, records, and accounts of TVC) shall be open to inspection during regular business hours by an authorized representative of County upon written notice to TVC not less than five (5) business days advance notice and shall be retained by TVC for a period of five (5) years after termination of this Agreement. All books, records and accounts related to the performance of this Agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. All records or documents created by TVC or provided to TVC under the terms of this Agreement, are public records and TVC agrees to comply with any request for such public records or documents made in accordance with Section 119.07, Florida Statutes.

13. Waiver. The waiver by County of any of TVC's obligations or duties under this Agreement shall not constitute a waiver of any other obligation or duty of TVC under this Agreement.

14. Entirety and Modifications. This Agreement represents the understanding between the parties in its entirety as to the subject matter of this Agreement and no other agreements, either oral or written, exist between County and TVC as to the subject matter of this Agreement. This Agreement and any exhibits may only be amended, supplemented or canceled by a written instrument duly executed by the parties hereto, except as otherwise provided herein.

15. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

16. Attorney's Fees and Venue. In the event of any legal action to enforce, interpret, or construe the terms of this Agreement, each party shall bear its own attorney's fees and costs except as otherwise provided for Escrow Agent in Paragraph 5 of this Agreement. Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for **Brevard County, Florida, and ANY TRIAL SHALL BE NON-JURY.**

17. Construction of Agreement. The parties hereby agree that they have reviewed this Agreement, have consulted with legal counsel of their choice, have participated in the drafting of this Agreement and that this Agreement is not to be construed against any party as if it were the drafter of this Agreement.

18. Counterparts. This Agreement may be executed in several counterparts, each of which will be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

19. Time of the Essence; Permitted Delays. Time is of the essence of this Agreement and the performing party shall use due diligence and commercial reasonableness to perform and complete the TVC Work in a timely manner hereunder; provided, however that if completion of performance by the performing party shall be delayed at any time by reason of acts of nature, war, civil commotion, riots, work stoppages arising out of collective bargaining strikes, delays caused by the actions (or inactions) of the non-constructing party or its agents, employees, or contractors, moratoriums and similar actions by governmental authorities resulting in a delay or stoppage of the work (provided the governmental action is not caused by the failure of the performing party or its contractor(s) to comply with applicable law), unavailability of materials or damage to work in progress by reason of fire, flood or other casualty or causes beyond the reasonable control of the performing party (other than financial reasons) (individually a "**Force Majeure**"), then the time for performing the TVC Work hereunder and/or achieving any milestone under the Construction Schedule shall be extended by the time of the delay actually caused by the incidence of any such Force Majeure plus fourteen (14) days.

20. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Florida.

(SIGNATURES ARE ON THE FOLLOWING PAGE.)

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed and sealed as of the day, month and year first above written.

WITNESSES:

Cynthia D. McAllister
Name: Cynthia McAllister

Amanda Carl
Name: Amanda Carl

TVC:

THE VIERA COMPANY,
a Florida corporation

By: Todd J. Pokrywa
Name: Todd J. Pokrywa
Title: Senior Vice President

ATTEST:

Scott Ellis
Scott Ellis, Clerk

COUNTY:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: Rita Pritchett
Name: Rita Pritchett
Title: Chair

Approved as to legal form and content:

Matthew S.
County Attorney/Asst. County Attorney

WITNESSES:

Marlaine B. Mattox
Name: Marlaine B. Mattox

Diana M. Templeton
Name: Diana M. Templeton

ESCROW AGENT:

DEAN MEAD

By: Laura Minton Young
Name: Laura Minton Young
Title: Vice-President