

Meeting Date
December 15, 2015



AGENDA	
Section	Consent
Item No.	II A 6

AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Approval Re: Maintenance and Use Agreement for Multi-Use Sidewalk Signage and Marking Improvements with the Central Viera Community Association, Inc. – District 4 Fiscal Impact: None
DEPT/OFFICE:	Public Works Department – Finance & Contracts Administration

Requested Action:

It is requested that the Board of County Commissioners approve and authorize the Chairman to execute the Maintenance and Use Agreement for Multi-Use Sidewalk Signage and Marking Improvements with the Central Viera Community Association, Inc. for the Central Viera community.

Summary Explanation & Background:

The Central Viera Community Association, Inc. (CVCA) desires to designate certain sidewalks as multi-use allowing pedestrian, golf cart and other uses pursuant to the approval by the County. These proposed multi-use sidewalks are located within the public right-of-way of the Central Viera PUD and West Viera PUD, as depicted on Exhibit "A" of the Maintenance and Use Agreement for Multi-Use Sidewalk Signage and Marking Improvements. These sidewalks will require signage and marking improvements to designate them as multi-use. The signage and marking improvements shall be submitted by CVCA to the County as a right-of-way permit application, and issuance of the permit shall be subject to the approval by the County.

The County may allow the use of the public right-of-way for purposes which do not conflict with the interests of the public as set forth in Section 125.01, Florida Statutes. The Community Declaration for the Central Viera community authorizes CVCA to maintain, repair, and replace common improvements and facilities, such as the multi-use sidewalk signage and marking improvements. In accordance with the Agreement, CVCA shall be required to maintain, repair, and replace the permitted signage and marking improvements without cost to the County. Additionally, CVCA is required to provide general liability insurance in an amount not less than one million dollars and name the County as additional insured. The Maintenance and Use Agreement for Multi-Use Sidewalk Signage and Marking Improvements has been reviewed and approved by the County Attorney's Office and Risk Management.

The initial term of this Agreement shall be ten years commencing with the date of execution by the Board and shall automatically renew annually unless terminated by either party with forty-five days' written notice. Upon termination, CVCA shall, at the request of the County, remove all signage and marking improvements from the right-of-way or CVCA shall reimburse the County for the cost of such removal. Furthermore, in the event of termination and the County assumes ownership of the signage and marking improvements, the County does not assume maintenance responsibility unless expressly provided in writing.

Fiscal Impact: FY 2015/2016 None. CVCA is responsible for the maintenance of the permitted signage and marking improvements.

Clerk to the Board Instructions: Return executed Agreement (1 original and 1 certified copy) to the Public Works Department

Exhibits Attached: Maintenance and Use Agreement for Multi-Use Sidewalk Signage and Marking Improvements (2 originals)

Contract /Agreement (If attached):		Reviewed by County Attorney	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR <input type="checkbox"/>
County Manager		Assistant County Manager			Department Director / Extension		
Stockton Whitten		Assistant County Manager			Andrew Holmes, Assistant Public Works Director / 56524		

**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 #:	Division Name: Finance and Contracts Administration
4. Contract Description: Maintenance and Use Agreement for Multi-Use Sidewalk Signage and Marking	
5. Contract Monitor: Jeanette Scott	6. Mail Stop #: 81; ext. 52853
7. Dept./Office Director: Public Works/Andy Holmes, Asst. PW Director	8. Contract Type: Use Agreement
ACTION DATE:	ACTION REQUIREMENT: Please Review

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	<u>X</u>	_____	<u>[Signature]</u>	<u>12/10/2015</u>
Risk Management	<u>✓</u>	_____	<u>[Signature]</u>	<u>12/10/15</u>
County Attorney	<u>X</u>	_____	<u>[Signature]</u>	<u>12/10/2015</u>

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

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 to department for contract to be entered into the Contract Management System. See AO-29 for additional information.



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

December 16, 2015

M E M O R A N D U M

TO: John Denninghoff, Public Works Department Director Attn: Andrew Holmes

RE: Item II.A.6., Maintenance and Use Agreement with Central Viera Community Association, Inc., for the Multi-Use Sidewalk Signage and Marking Improvements for Central Viera Community

The Board of County Commissioners, in regular session on December 15, 2015, approved the Maintenance and Use Agreement for multi-use sidewalk signage and marking improvements with the Central Viera Community Association, Inc. for the Central Viera Community. Enclosed are one fully-executed and one certified copy of the Maintenance and Use Agreement for your action.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

/ds

Encls. (2)

cc: Contracts Administration
 Finance
 Budget

MAINTENANCE AND USE AGREEMENT FOR MULTI-USE SIDEWALK SIGNAGE AND MARKING IMPROVEMENTS
(Central Viera PUD and West Viera PUD)

THIS MAINTENANCE AND USE AGREEMENT FOR MULTI-USE SIDEWALK SIGNAGE AND MARKING IMPROVEMENTS (the "Agreement"), is made and entered into as of the 15 day of DECEMBER, 2015 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 CENTRAL VIERA COMMUNITY ASSOCIATION, INC., a Florida not for profit corporation (hereinafter referred to as "CVCA").

WITNESSETH

WHEREAS, CVCA is the Community Association as described under that certain Declaration of Covenants, Conditions, Easements, Reservations and Restrictions for Central Viera Community, recorded in Official Records Book 3409, page 0624, Public Records of Brevard County, Florida, as amended (hereinafter referred to as the "Community Declaration");

WHEREAS, The Viera Company (hereinafter referred to as "TVC") is the master developer of the Central Viera PUD and the West Viera PUD and from time to time has dedicated or will propose to dedicate to Brevard County, Florida certain right-of-ways within such PUDs as public road right-of-ways (hereinafter collectively referred to as the "Public Right-of-Way");

WHEREAS, certain sidewalks within the Public Right-of-Way may become designated as multi-use sidewalks at CVCA's request allowing pedestrian, golf cart, or other uses as identified on the Multi-Use Sidewalk Exhibit, attached hereto as Exhibit "A" and made a part hereof, pursuant to the approval by the COUNTY;

WHEREAS, the required signage and marking improvements (hereinafter collectively referred to as the "Signage and Marking Improvements") to designate sidewalks as multi-use sidewalks shall be submitted to the COUNTY by CVCA as a right-of-way permit application which shall include applicable signage and marking plans (hereinafter referred to as the "Signage and Marking Plans"), and approved by the COUNTY;

WHEREAS, CVCA desires to maintain and repair the installed Signage and Marking Improvements on behalf of the Central Viera community;

WHEREAS, the COUNTY pursuant to the authority set forth in Section 125.01, Florida Statutes, may allow the use of Public Right-of-Way for purposes which do not conflict with the interests of the public;

WHEREAS, the COUNTY has determined that use of the Public Right-of-Way by CVCA for the maintenance and repair of the Signage and Marking Improvements pursuant to this Agreement will not conflict with the interests of the public; and

WHEREAS, the Community Declaration authorizes and empowers CVCA to maintain, repair and replace common improvements and facilities, such as the Signage and Marking

Improvements, for the use and benefit of the Central Viera community as "Common Area", as such term is defined in the Community Declaration.

NOW THEREFORE, in consideration of the covenants herein contained, it is mutually agreed between the parties as follows:

1. MAINTENANCE OF PROPERTY. CVCA hereby agrees to maintain and repair the permitted Signage and Marking Improvements on behalf of the Central Viera community, in the manner described in this Agreement, located on the Proposed Designated Multi-Use Sidewalk(s) as marked in Exhibit "A" (hereinafter referred to as the "Premises") and as permitted by the COUNTY. This Agreement applies only to the Proposed Designated Multi-Use Sidewalks designated in Exhibit A.

2. TERM. The initial term of this Agreement shall be ten (10) years commencing with the date of the execution of this Agreement and shall thereafter be automatically renewed annually unless terminated by either party, in accordance with paragraph 13 hereinbelow.

3. USE OF PREMISES. CVCA shall use the Premises only in connection with maintaining and repairing the Signage and Marking Improvements located thereon. It is hereby mutually agreed and understood that the Signage and Marking Improvements shall not create traffic hazards. It is specifically further agreed and understood that the use herein set forth shall be the only use consented to by the COUNTY, and that failure to comply with this provision shall be considered a material breach of this Agreement, whereupon the COUNTY shall be entitled to immediately terminate this Agreement.

4. IMPROVEMENTS. All Signage and Marking Improvements permitted and installed on the PREMISES shall be applied for and maintained by CVCA in accordance with all COUNTY specifications and the approved Signage and Marking Plans. It is hereby agreed and understood that any signage and marking placed on or installed on the Premises shall be and remain the property of CVCA and that CVCA retains the right to remove such improvement within forty-five (45) days of the date of termination of this Agreement, whether by breach or by expiration of its natural term. In the event such improvements are not removed within forty-five (45) days of termination, the improvements shall become the property of the COUNTY and the COUNTY may remove the Signage and Marking Improvements. CVCA shall reimburse the COUNTY for the cost of removal within 30 days of receipt of an invoice for such expenses.

5. UTILITIES. All electrical service required in connection with the Signage and Marking Improvements, if any, shall be obtained by CVCA at its cost and expense.

6. REPAIRS AND MAINTENANCE. CVCA shall, at its own expense, actively maintain the Signage and Marking Improvements located on the Premises and make all necessary repairs to and replacements of the Signage and Marking Improvements as reasonably required. If necessary, notification of the need for repair and/or maintenance shall be given by the COUNTY to CVCA by written or electronic communication. CVCA shall make all reasonable efforts to complete any required maintenance or repair within fourteen (14) days of receipt of notification.

Notice of Maintenance shall be given by the COUNTY to CVCA in writing to the office of the Community Manager, 1331 Bedford Dr., Suite 103, Melbourne, Florida 32940 or by electronic

communication to tomdillon@fairwaymgmt.com; or to such other addresses as from time to time provided by written notice from CVCA to the COUNTY.

7. ILLEGAL, UNLAWFUL OR IMPROPER USE. CVCA shall make no unlawful, improper, immoral or offensive use of the Premises, nor will CVCA use the Premises for any purposes other than that hereinabove set forth. Failure of CVCA to comply with this provision shall be considered a material default under this Agreement. In the event any Signage and Marking Improvement is deemed a traffic safety hazard by the COUNTY or Florida Department of Transportation, such use shall be deemed an improper use and CVCA shall either correct or remove such Sign and Marking Improvement upon receipt of notice from the COUNTY.

8. INDEMNIFICATION AND INSURANCE. Except where limited by law, CVCA agrees that it will indemnify and save harmless the COUNTY from any and all liability, claims, damages, expenses, proceedings and causes of action of every kind and nature arising directly and solely out of CVCA's use, maintenance, replacement, and/or repair of the installed Signage and Marking Improvements as provided in this Agreement. CVCA agrees that it will, at its own expense, defend any and all actions, suits or proceedings which may be brought against the COUNTY arising directly and solely out of CVCA's willful breach of this Agreement and failure to cure upon notice in a timely manner. The parties acknowledge specific consideration has been exchanged for the provision.

CVCA further agrees to provide and maintain at all times during the term of this Agreement, without cost or expense to the COUNTY, policies of General Liability Insurance insuring CVCA against any and all claims, demands or causes of action whatsoever for injuries received and damages to property; which policies of insurance shall insure CVCA in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit for each occurrence.. A certificate of such insurance policies shall be filed with the Public Works Department, 2725 Judge Fran Jamieson Way, Bldg. A-201, Viera, Florida, 32940, within ten (10) days of the date of execution of this Agreement. The COUNTY shall be named as an additional insured on the policy that CVCA secures and endorsed with a provision that requires the insurer to endeavor to provide the COUNTY thirty (30) days written notice of any change or cancellation in said policies.

CVCA shall include in any contract for work upon or involving the Premises that the contractor shall indemnify and hold harmless CVCA and the COUNTY from liabilities, damages, losses and costs, including but not limited to attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the contractor and persons employed or utilized by the contractor in the performance of the contract.

All Signage and Marking Improvements maintained on or about the Premises by CVCA shall be at the risk of CVCA and the COUNTY shall not be liable for any damage or loss to the Signage and Marking Improvements located thereon from any cause whatsoever, except the County's own negligence, wrongful act or omission. CVCA agrees and understands that the COUNTY does not and shall not carry liability, theft, or fire insurance on any of the Signage and Marking Improvements to cover CVCA's interests therein.

9. RIGHT OF ENTRY. The COUNTY or its agents may enter in and on the Premises at any time for the purpose of inspecting such property or performing other duties as

are required by law or by the terms of this Agreement. Nothing here in eliminates or reduces the rights of the public to use the sidewalk area within the Public Right-of-Way.

10. COMPLIANCE WITH STATUTES. CVCA shall, upon notice from the COUNTY, promptly comply with all statutes, ordinances, rules, regulations, and requirements of all local, state and federal governmental bodies applicable to the Signage and Marking Improvements, and upon notice correct and abate nuisances or other grievances connected with the Signage and Marking Improvements during the term of the Agreement.

11. BINDING EFFECT; ASSIGNABILITY. This Agreement will inure to the benefit of and will be binding upon the parties hereto and their respective successors and assigns. CVCA shall not assign this Agreement or any of CVCA's rights, obligations, or duties hereunder to any party without the prior written consent of the COUNTY. Such assignment shall be by a written instrument executed with the formality of a deed on behalf of CVCA assigning such rights, obligations and duties to an assignee approved by the COUNTY; which assignee shall assume such rights, obligations and duties. Any such Assignment shall also set forth the address of the assignee for purposes of receiving notices under this Agreement in accordance with paragraph 6 above or paragraph 14 hereinbelow. Upon the execution of such Assignment and its delivery to the COUNTY, the COUNTY agrees that CVCA shall be released from all obligations and duties hereunder and that the COUNTY shall thereafter look solely to the assignee for the performance of such obligations and duties.

12. INDEPENDENT CONTRACTOR. CVCA 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 constitute CVCA or any of its agents or employees to be the agent, employee or representative of the COUNTY.

13. TERMINATION. This Agreement may be terminated with or without cause by either party upon forty-five (45) days' written notice thereof to the other party; provided, however, that upon termination, CVCA shall, at the request of the COUNTY, remove all Signage and Marking Improvements from the Premises, or, in the alternative, reimburse the COUNTY for the cost of such removal. In the event this Agreement is terminated and the County assumes ownership of the Signage and Marking Improvements within the Public Right-of-Way, the County does not assume maintenance responsibility unless expressly provided in writing. Any maintenance performed by the COUNTY will not constitute an assumption of maintenance responsibility as may be otherwise assigned by Florida Statute or County Code.

14. NOTICE; NOTICE OF BREACH. Notice under this Agreement shall be given to the COUNTY at the office of the County Manager, 2725 Judge Fran Jamieson Way, Bldg. C, Viera, Florida 32940, and to CVCA at the office of the Community Manager, 1331 Bedford Dr., Suite 103, Melbourne, Florida 32940 or to such other address as may be periodically provided by written notice from CVCA to the COUNTY. In the event the COUNTY determines that CVCA has breached any term or provision of this Agreement, the COUNTY shall provide written notice of such breach to CVCA and CVCA shall have thirty (30) days after receipt of such notice to cure such breach or, if such breach is of a nature that it cannot reasonably be cured within such thirty (30) day period, then CVCA shall have such longer period to cure the breach as is reasonably necessary provided, however, that CVCA commences reasonable action to remedy

the breach within such thirty (30) day period and diligently and continuously prosecutes such remedy to completion so that such breach is cured in a timely manner.

15. WAIVER. The waiver by the COUNTY of any of CVCA's obligations or duties under this Agreement shall not constitute a waiver of any other obligation or duty of CVCA under this Agreement.

16. ATTORNEY'S FEES AND NON-JURY TRIAL. In the event of any legal action to enforce the terms of this contract, each party shall bear its own attorney's fees and costs and **ANY TRIAL SHALL BE NON-JURY**.

17. ENTIRETY. This Agreement represents the understanding between the parties in its entirety and no other agreements, either oral or written, exist between the COUNTY and CVCA

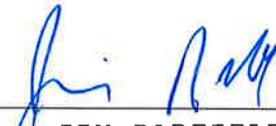
DONE, ORDERED and ADOPTED in Regular Session this 15 day of DECEMBER, 2015

ATTEST



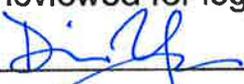
Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

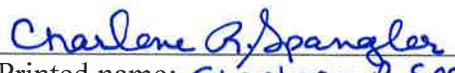


JIM BARFIELD, Chairman
As approved by the Board on DECEMBER 15, 2015

Reviewed for legal form and content:

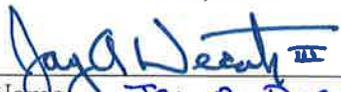


(Assistant) County Attorney


Printed name: Charlene R. Spangler


Printed name: SANDRA PATRICK

CENTRAL VIERA COMMUNITY
ASSOCIATION, INC.



Name: Jay A. Decator III
Title: President

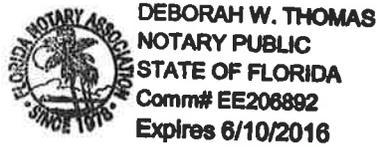
STATE OF FLORIDA }
 }
COUNTY OF BREVARD }

The foregoing instrument was acknowledged before me this 15 day of December, 2015 by Jim Barfield as Chairman of the Board of County Commissioners of Brevard County, Florida, who is personally known to me.

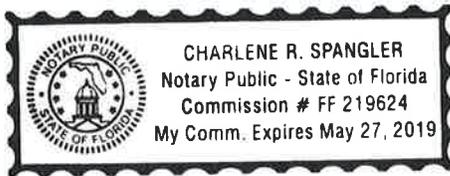
Deborah Thomas
NOTARY PUBLIC

Deborah Thomas
Printed Name

STATE OF FLORIDA }
 }
COUNTY OF BREVARD }



The foregoing instrument was acknowledged before me this 8th day of December, 2015 by Jay A. Decator III, as President of Central Viera Community Association, Inc., a Florida not for profit corporation, who is personally known to me.



Charlene R. Spangler
NOTARY PUBLIC
Charlene R. Spangler
Printed Name

EXHIBIT "A"
MAINTENANCE AND USE AGREEMENT FOR MULTI-USE SIDEWALK SIGNAGE AND MARKING IMPROVEMENTS
MULTI-USE SIDEWALK EXHIBIT

LEGEND

-  = PROPOSED DESIGNATED MULTI-USE SIDEWALK
-  = PROPOSED DESIGNATED MULTI-USE SIDEWALK (TO BE CONSTRUCTED)
-  = CENTRAL VIERA PUD
-  = WEST VIERA PUD

NOTE: IN ACCORDANCE WITH THE MAINTENANCE AND USE AGREEMENT FOR MULTI-USE SIDEWALK SIGNAGE AND MARKING IMPROVEMENTS, EXHIBIT "A" DOES NOT INDICATE APPROVAL OF MULTI-USE SIDEWALK DESIGNATIONS OR SIGNAGE AND MARKING IMPROVEMENTS IN THE COUNTY RIGHT-OF-WAY. APPROVAL OF MULTI-USE SIDEWALK DESIGNATIONS AND SIGNAGE AND MARKING IMPROVEMENTS IN THE COUNTY RIGHT-OF-WAY ARE CONTINGENT UPON PERMITTING AND ACCEPTANCE BY THE COUNTY. EXHIBIT "A" MAY BE CHANGED WITH THE CONSENT AND APPROVAL BY THE COUNTY.

