

Meeting Date
September 19, 2017



AGENDA	
Section	CONSENT
Item No.	II. 2. 10

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Adopt Resolution and Release Performance Bond: Adelaide, Phase 2 Subdivision Developer: The Viera Company 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:

Adelaide, Phase 2 subdivision is located within the Viera DRI on the west side of Stadium Parkway approximately 1/2 mile south of the Fiske Boulevard interchange at Interstate 95 containing contains 8 lots on approximately 7.05 acres.

The Adelaide, Phase 2 subdivision received preliminary plat and final engineering plans on July 21, 2015, and final plat and contract approval on July 26, 2016. The developer posted a Surety Performance Bond for guarantee of the completion of the infrastructure improvements according to the approved plans.

Per Section 62-2809(b)(2), "Construction after final plat recordation: ...the applicant shall provide security required in Section 62-2844 for the performance of such construction..." Section 62-2844(a) states: "An applicant shall be required to secure its performance security of the construction required under this article by a surety bond, letter of credit, savings account, certificate of deposit or execution of a tri-party escrow agreement. Such security shall not be required if a certificate of completion has been issued for all the subdivision improvements prior to final plat recordation. Because the applicant chose to plat the subdivision prior to completion of construction, the applicant entered into Contract with the Board and posted a Surety Performance Bond to guarantee the completion of the infrastructure improvements according to the approved plans.

As of August 16, 2017, the Adelaide, Phase 2 subdivision infrastructure improvements have been completed. We are requesting the Board of County Commissioners adopt the attached Resolution to Release the Contract and Surety Bond back to the Developer.

Reference: 14SD-00425, 16SD00007

Fiscal Impact: FY 16/17

Clerk to the Board Instructions:

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 Frank Abbate		Assistant County Manager John P. Denninghoff		Department Director / Extension Andrew J. Holmes, P.E. Ext. 57202				
		Interim Assistant County Manager Jim Liesenfelt						



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

September 20, 2017

MEMORANDUM

TO: Andrew Holmes, Interim Public Works Department Director

RE: Item II.A.10., Resolution and Release of Performance Bond for Adelaide, Phase 2 Subdivision – The Viera Company

The Board of County Commissioners, in regular session on September 19, 2017, adopted Resolution No. 17-161, releasing the Contract and Surety Performance Bond dated July 26, 2016, for Adelaide, Phase 2 Subdivision – The Viera Company. Enclosed is fully-executed and certified copy of the Resolution for your action.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

for *Donna Scott*
Tammy Rowe, Deputy Clerk

/ds

Encl. (2)

cc: Assistant County Manager Denninghoff
Utility Services Director
Asset Management

RESOLUTION 17 -161

WHEREAS, the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, and The Viera Company entered into a contract to guarantee the construction of improvements on property commonly known as Adelaide, Phase 2 Subdivision.

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

WHEREAS, The Viera Company 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 Adelaide, Phase 2 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 19th day of September, 2017.

ATTEST:



Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

By:



Curt Smith, Chairman

As approved by the Board on September 19, 2017

Subdivision No. 14SD-00425 Project Name ADELAIDE PHASE 2

**Subdivision Infrastructure
Contract**

THIS CONTRACT, entered into this 26 day of JULY 2016, by and between the Board of County Commissioners of Brevard County, Florida, hereinafter referred to as "COUNTY", and THE VERA COMPANY, hereinafter referred to as "OWNER".

WITNESSETH:

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

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

and all other improvements depicted in subdivision number 14SD-00425 A copy of said plat to be recorded in the Plat Books of the Public Records of Brevard County.
2. The OWNER agrees to construct said improvements strictly in accordance with the plans and specifications on file in the office of the Land Development Division, which have been incorporated herein by this reference.
3. The OWNER agrees to complete said construction on or before the 24th day of June 2017.
4. In order to guarantee performance of OWNER'S obligations herein contained, OWNER shall furnish to the COUNTY cash, letter of credit, certificate of deposit or surety bond in a form approved by the COUNTY, in the amount of \$251,128.19 . Said bond shall be 125% of the estimated cost of construction, as determined by the Land Development Division. OWNER 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, OWNER fails to complete said improvements within the time prescribed, the COUNTY may elect to take all or any of the following actions:

**SUBDIVISION INFRASTRUCTURE
CONTRACT
Page 2**

- 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 Owner,
 - C. Request the surety on said performance bond to complete such improvements,
 - D. Contract for completion of said improvements and request payment from the Bond or Owner, or
 - E. Request Letter of Credit, Cash Bond, or Certificate of Deposit.
7. The OWNER 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 OWNER defaults on this contract.
8. In the performance of this Agreement, the Owner 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 Owner 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, 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 Owner 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

Approved by the Board on: 7-26, 2016.

WITNESSES:

PRINCIPAL: The Viera Company

[Signature]
Mary Ellen McKibben

[Signature]
Todd J. Pokrywa, Senior Vice President

[Signature]

7-11-16
DATE

State of Florida
County of Brevard

The foregoing instrument was acknowledged before me this 11th day of July 2016, by Todd J. Pokrywa who is personally known to me and who did not take an oath.

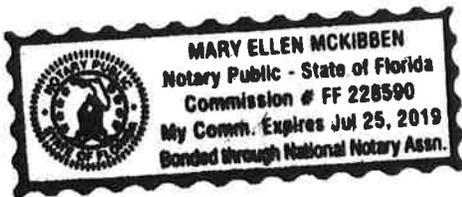
My commission expires:

[Signature]
Notary Public

S E A L

Commission Number:

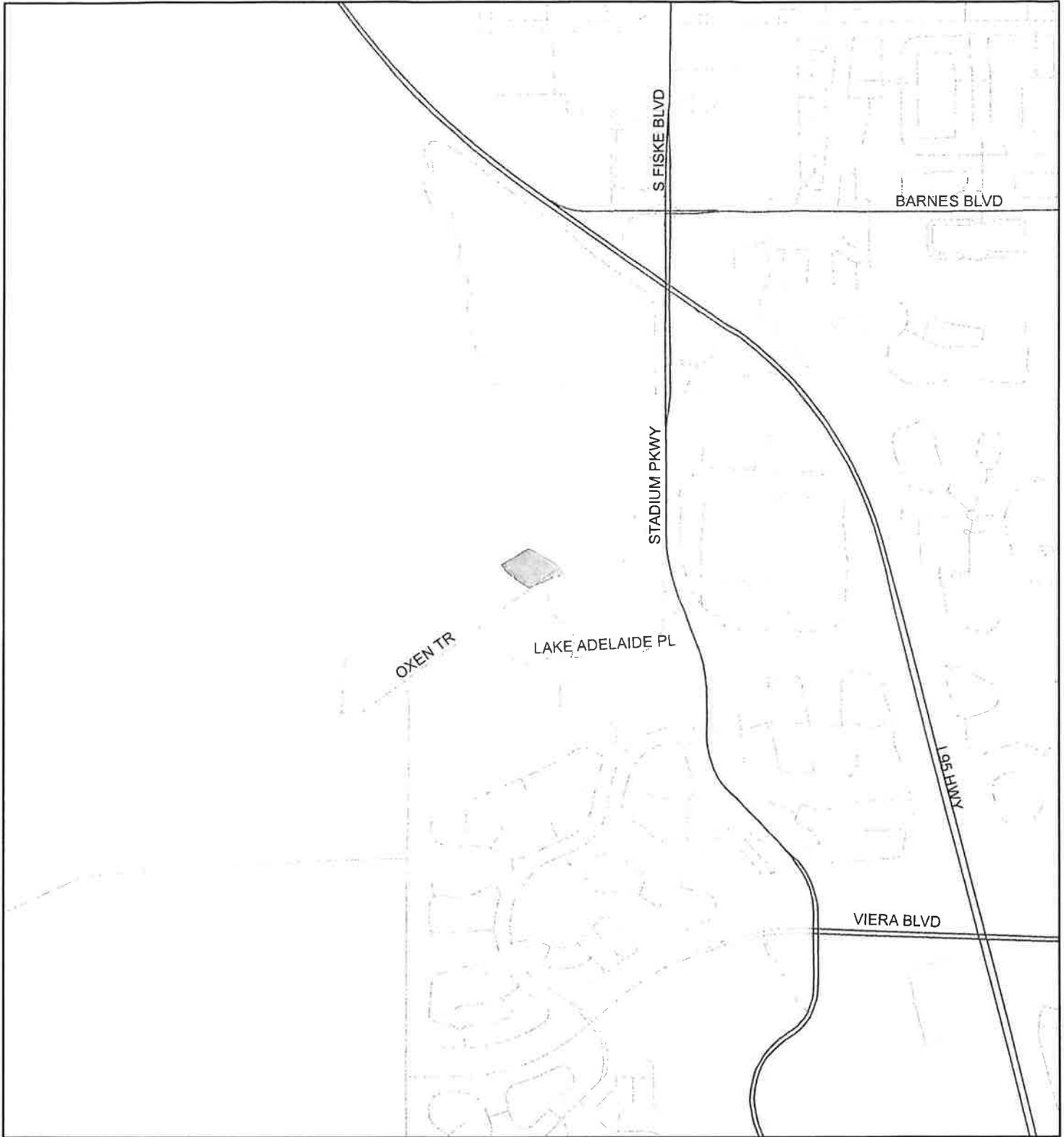
[Signature]
Notary Name printed, typed or stamped



LOCATION MAP

ADELAIDE PHASE 2

16SD00007



1:24,000 or 1 inch = 2,000 feet

 Subject Property

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by the Brevard County Planning and Zoning Office - GIS Section Date: 6/20/2016

SURETY PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, **THE VIERA COMPANY**, hereinafter referred to as "Owner" and, **TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA**, 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 **\$251,128.19** 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 12th day of July, 2016, which contract is made a part hereof by reference.

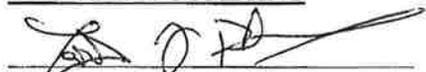
NOW THEREFORE, the condition of this obligation is such that if Owner shall promptly and faithfully perform said contract and complete the work contemplated therein by **June 24, 2017** then this obligation shall be null and void, otherwise it shall remain in full force and effect.

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.

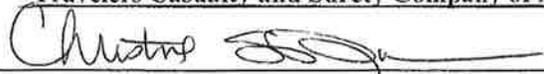
In the event that the County commences suit for the collection of any sums due hereunder, the obligors and each of them agree to pay all costs incurred by the County, including attorney's fees.

EXECUTED this 11th day of July, 2016.

OWNER: THE VIERA COMPANY


Todd J. Pokrywa, Sr. Vice President

SURETY: Travelers Casualty and Surety Company of America

By: 
Christine St John, Attorney-In-Fact



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 229354

Certificate No. 006599408

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Thomas M. Cotton, Irma F. Platt, and Christine St John

of the City of Orlando, State of Florida, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 9th day of December, 2015.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: [Signature]
Robert L. Raney, Senior Vice President

On this the 9th day of December, 2015, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2016.



[Signature]
Marie C. Tetreault, Notary Public