



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.3.

10/6/2020

Subject:

Approval Re: Assignment and Assumption of Right of Way Use Agreement (Stadium Parkway) to the Central Viera Community Association, Inc. - District 4

Fiscal Impact:

None

Dept/Office:

Public Works/Finance and Contracts Administration

Requested Action:

It is requested the Board of County Commissioners approve and authorize the Chair to execute the Assignment and Assumption of Right of Way Use Agreement (Stadium Parkway) from The Viera Company, Inc. to the Central Viera Community Association, Inc.

Summary Explanation and Background:

On October 9, 2012, the Board approved the Right of Way Use Agreement and approved the Amendment on May 23, 2017 for Stadium Parkway with The Viera Company, Inc. The Right of Way Use Agreement allowed for the installation of improvements, such as landscaping, signage, hardscape, irrigation, traffic control devices (excluding traffic signals), and/or other related improvements along a portion of the public right-of-way Stadium Parkway from Judge Fran Jamieson Way to the northern boundary of the Viera Development of Regional Impact. The Right of Way Use Agreement contained an assignability provision that acknowledged upon completion of the installation of the improvements, The Viera Company would assign its rights, duties, and obligations to the Central Viera Community Association, Inc. As such, The Viera Company desires to assign its rights, duties, and obligations to the Central Viera Community Association, Inc. Per the Right of Way Use Agreement, any assignment shall be by a written instrument executed on behalf of The Viera Company assigning such rights, obligations and duties to the Central Viera Community Association, and on behalf of the Central Viera Community Association assuming such rights, obligations and duties. Upon execution of the assignment, The Viera Company will be released from all obligations and duties, and the County will look to the assignee for the performance of the obligations and duties of the Right of Way Use Agreement. Per Administrative Order 29, the County Attorney's Office and Risk Management have reviewed and approved the Assignment and Assumption of the Right of Way Use Agreement (Stadium Parkway).

Clerk to the Board Instructions:

Please return the fully executed Assignment and Assumption of the Right of Way Use Agreement (Stadium Parkway) to the Public Works Department.

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: The Viera Company & Central Viera Community Assoc.		2. Amount: 0.00
3. Fund/Account #: N/A	4. Department Name: Public Works	
5. Contract Description: Assignment and Assumption Agreement re: Stadium Parkway		
6. Contract Monitor: Jeanette Scott, Public Works Contracts Admin.	8. Contract Type:	
7. Dept/Office Director: Marc Bernath, Public Works Director	USE AGREEMENT	
9. Type of Procurement: Other		

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Purchasing	<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

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Thomas-Wood, Tammy <small>Digitally signed by Thomas-Wood, Tammy DN: cn=Thomas-Wood, Tammy, email=Tammy.Thomas-Wood@brevard.gov Date: 2020.09.24 16:51:04 -0400</small>
Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Esseeesee, Alexander <small>Digitally signed by Esseeesee, Alexander Date: 2020.09.24 16:51:04 -0400</small>

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, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and 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 (Contract Form with County Attorney/ Risk Management/ Purchasing 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"/>

BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS

CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

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5. Contract Description: Assignment and Assumption Agreement re: Stadium Parkway			
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7. Dept/Office Director: Marc Bernath, Public Works Director		USE AGREEMENT	
9. Type of Procurement: Other			

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

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Purchasing

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Risk Management

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☐

County Attorney

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☐

SECTION III - REVIEW AND APPROVAL TO EXECUTE

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

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Purchasing

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Risk Management

☒
☐

County Attorney

☐
☐

Lairsey, Matt

Digitally signed by Lairsey, Matt
Date: 2020.09.23 14:08:37 -04'00'

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, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and 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 (Contract Form with County Attorney/ Risk Management/ Purchasing 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"/>



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

October 7, 2020

M E M O R A N D U M

TO: Marc Bernath, Public Works Director

RE: Item F.3., Approval for Assignment and Assumption of Right-of-Way Use Agreement for Stadium Parkway to the Central Viera Community Association, Inc.

The Board of County Commissioners, in regular session on October 6, 2020, approved and authorized the Chair to execute the Assignment and Assumption of Right-of-Way Use Agreement with Stadium Parkway from The Viera Company, Inc. to the Central Viera Community Association, Inc. Enclosed is a fully-executed Agreement.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Kimberly Powell

Kimberly Powell, Clerk to the Board

Encl. (1)

ASSIGNMENT AND ASSUMPTION OF RIGHT OF WAY USE AGREEMENT

(Stadium Parkway: North of Judge Fran Jamieson Way to DRI North Boundary)

THIS ASSIGNMENT AND ASSUMPTION OF RIGHT OF WAY USE AGREEMENT (this "**Assignment**") is dated as of _____ (the "**Effective Date**") and is between THE VIERA COMPANY, a Florida corporation ("**Assignor**"), as assignor, and CENTRAL VIERA COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation ("**Assignee**"), as assignee. 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 Right of Way Use Agreement dated October 9, 2012 and that certain Amendment to Right-of-Way Use Agreement dated May 23, 2017 relating to Assignor's installation of landscaping, signage, hardscape, irrigation, traffic control devices (excluding traffic signals), and/or other related improvements along a portion of public right-of-way Stadium Parkway in Viera, Florida more particularly described in the agreement and amendment, with a copy of that agreement and amendment attached hereto as **Exhibit A** and incorporated herein by this reference (collectively, the "**Agreement**"); and

B. Assignor has completed the installation of the improvements to be installed by Assignor in the Premises, specifically Stadium Parkway from north of Judge Fran Jamieson Way to DRI North Boundary, under the Agreement and Amendment, and now desires to assign its rights, duties, and obligations arising from and after the Effective Date under the Agreement to Assignee as intended under 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:

Section 1 - Recitals

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

Section 2 - Assignment and Assumption

Assignor hereby assigns to Assignee all of Assignor's rights and interest under the Agreement to Assignee that arise from and after 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 under the Agreement that arise from and after the Effective Date. The foregoing assignment and delegation by Assignor to Assignee is in accordance with Section 11 of the Agreement. By its joinder in the execution of this Assignment, the County hereby consents to such assignment and delegation by Assignor to Assignee.

Section 3 - Notice

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:

Central Viera Community Association, Inc.
Attention: Ms. Eva Rey, President
7380 Murrell Road, Suite 201
Viera, FL 32940

Section 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.

Section 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 **exclusively** agree to submit to personal jurisdiction in any court of competent jurisdiction in and for Brevard County, 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.

Section 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.

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: Todd J. Pokrywa
Title: President
Date: September 25, 2020

STATE OF FLORIDA)
COUNTY OF BREVARD)

The foregoing instrument was acknowledged before me by ✓ physical presence or online notarization this 25th day of September 2020 by TODD J. POKRYWA as PRESIDENT of THE VIERA COMPANY, a Florida corporation, on behalf of the corporation. He is personally known to me.



Charlene R. Spangler
Print Name: Charlene R. Spangler
Notary Public, State of Florida
Commission No.: GG341423
My Commission Expires: 6/3/2023

(SIGNATURE OF CVCA IS ON THE FOLLOWING PAGE.)

WITNESSES:

Benjamin E. Wilson

Name: Benjamin E. Wilson

Charlene R. Spangler

Name: Charlene R. Spangler

ASSIGNEE:

CENTRAL VIERA COMMUNITY
ASSOCIATION, INC.,
a Florida not-for-profit corporation

By: Eva M. Rey

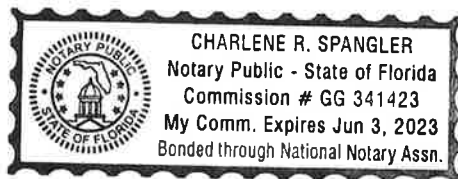
Name: Eva M. Rey

Title: President

Date: 9/25/2020

STATE OF FLORIDA)
COUNTY OF BREVARD)

The foregoing instrument was acknowledged before me by ☒ physical presence or _____
online notarization this 25th day of September 2020 by EVA M. REY, as PRESIDENT of CENTRAL
VIERA COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation, on behalf of the
corporation. She is personally known to me.



Charlene R. Spangler
Print Name: Charlene R. Spangler
Notary Public, State of Florida
Commission No.: GG 341423
My Commission Expires: 6/3/2023

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

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:

A handwritten signature in blue ink, appearing to read "Scott Ellis", is written over a horizontal line.

Scott Ellis, Clerk

COUNTY:

BOARD OF COUNTY COMMISSIONERS OF
BREVARD COUNTY FLORIDA,

By: _____

Bryan Andrew Lober, Chair

As approved by the Board on October 6, 2020

Reviewed for legal form and content for Brevard County

A handwritten signature in black ink, appearing to read "Alex Essee", is written over a horizontal line.

Alex Essee, Assistant County Attorney

Exhibit A

The Agreement



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

May 24, 2017

MEMORANDUM

TO: Andrew Holmes, Public Works Interim Director

RE: Item II.A.13., Amendment to Right-of-Way Use Agreement with The Viera Company, Inc. for Improvements Within the Right-of-Way

The Board of County Commissioners, in regular session on May 23, 2017, approved and authorized the Chairman to execute the Amendment to the Right-of-Way Use Agreement with The Viera Company Inc. for improvements to the right-of-way. Enclosed are two fully-executed Right-of-Way Use Agreements.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/kp

Encls. (2)

cc: Interim County Manager

AMENDMENT TO RIGHT-OF-WAY USE AGREEMENT

THIS AMENDMENT TO RIGHT-OF-WAY USE AGREEMENT (hereinafter referred to as this "Amendment") is made and entered into this 23 day of MAY, 2017 by and between The Viera Company, Inc., a Florida corporation, hereinafter referred to as "TVC," and the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY."

WITNESSETH:

WHEREAS, installation of improvements in a public right-of-way requires a Right-of-Way Use Agreement and County approval through the right-of-way permitting process

WHEREAS, The COUNTY and TVC have previously entered into a Right-of-Way Use Agreement on October 9, 2012, hereinafter referred to as the "Agreement," a copy of which is attached as Exhibit "A" to this Amendment and incorporated herein by this reference; and

WHEREAS, the purpose of the Agreement was to permit improvements in the public right of way on Stadium Parkway, north of Watersong Way; and

WHEREAS, TVC desires to install additional illuminated signage, landscaping, sod, irrigation facilities and related improvements in other portions of the public right-of-way along Stadium Parkway and desires to amend the Agreement to expand the definition of "Premises" to include the portion of Stadium Parkway from the intersection with the public right-of-way Judge Fran Jamieson Way north to the northern boundary of the Viera DRI along Stadium Parkway before the City of Rockledge city limits begin (and the public right-of-way Stadium Parkway becomes the public right-of-way Fiske Boulevard), as more particularly described in the sketch attached hereto as Exhibit "B" and incorporated herein by this reference (the "Additional Premises"); thereby allowing TVC to apply for right-of-way permits as future improvements are planned, such as landscaping, signage and irrigation;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained, the parties hereby agree, as follows:

1. **RECITALS:** The above recitals are true and correct and incorporated into this Amendment by this reference. Any capitalized term not defined in this Amendment shall have the meaning given to such term in the Agreement.
2. **AMENDMENTS:** The Agreement is hereby amended as follows:
 - a. Definitions:
 1. **Premises:** The term "Premises" under the Agreement is hereby amended to include the Additional Premises. All references in the Agreement or this Amendment to the term "Premises" shall include the Additional Premises.
 2. **Landscape Plan:** The term "Landscape Plan" under the Agreement is hereby amended in its entirety to read as follows:

"The set of approved engineered drawings that have been submitted, or may be submitted by TVC and approved by the County in the future, as part of the permitting process for installation of improvements on the Premises and depicting the proposed improvements to be installed on the Premises, including Sheets L1 through L9 (attached hereto as Exhibit "C") submitted pursuant to County Permit #16RW00602, and Drawing No. SN-1.0; LS-1.1 through LS-1.2; HS-1.1 through HS-1.3 more specifically specified as Cover, SN-1.0 Standard Notes and Drawing Symbols, LS-1.1 Landscape Plan, LS-1.2 Landscape Details and Plant List, HS-1.1 Hardscape Plan, HS-1.2 Hardscape Details, and HS-1.3 Hardscape Details/Finish Schedule (AECOM Project #60215790 dated November 7, 2012 prepared by AECOM) together with Irrigation Plans, Drawings Nos. 11129_404_001 through 003, dated 7/16/12 prepared by B.S.E. Consultants, Inc. submitted pursuant to County Permit #12RW00740."

3. Right of Way Improvements: The term "Right-of-Way Improvements" is amended in its entirety to read as follows:

"Those improvements to the Premises that have been or will be installed by TVC in accordance with the Landscape Plan pursuant to the terms of this Agreement. "

- b. Maintenance: Section 1 of the Agreement is hereby amended in its entirety to read as follows:

TVC shall, at its expense, maintain any present and future Right-of-Way Improvements on the Premises in the manner described in this Agreement.

- c. Improvements: Section 4 of the Agreement is hereby amended in its entirety to read as follows:

"4. IMPROVEMENTS. All current and proposed improvements, structures, landscaping and facilities installed or to be installed by TVC on the Premises shall be in accordance with all County specifications, the approved Landscape Plan, and all permitting procedures and requirements. It is hereby agreed and understood that any improvement placed on or constructed on the Premises and permanently attached thereto, shall remain the property of TVC and that TVC 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."

- d. Miscellaneous Amendments:

- i. The following provisions are added as a new Section 17 to the Agreement:

"17. 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. "

ii. The following provisions are added as a new Section 18 to the Agreement:

"18. 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. 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.

3. FULL FORCE AND EFFECT: Except as modified by this Amendment, all terms and conditions of the Agreement remain unmodified and in full force and effect. To the extent of any conflict between the provisions of the Agreement and this Amendment, the applicable provisions of this Amendment shall control.
4. COUNTERPARTS: This Amendment may be executed by TVC and the COUNTY in counterparts.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the date first above written.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA



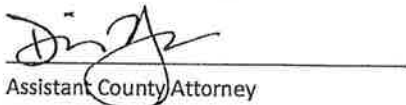
Scott Ellis, Clerk



Curt Smith, Chairman

AS APPROVED BY THE BOARD ON: 5/23/17

APPROVED AS TO LEGAL FORM:



Assistant County Attorney

(SIGNATURE OF THE VIERA COMPANY IS ON THE FOLLOWING PAGE.)

WITNESSES:

THE VIERA COMPANY, a Florida corporation

Benjamin E. Wilson
Name: Benjamin E. Wilson

By: [Signature]
Name: Stephen L. Johnson
Title: President

Karen E. Esposito
Name: Karen E. Esposito

STATE OF FLORIDA)

COUNTY OF BREVARD)

The foregoing instrument was acknowledged before my this 9th day of May, 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
NOTARY PUBLIC, STATE OF FLORIDA



BENJAMIN E. WILSON
MY COMMISSION # FF 032645
EXPIRES: October 10, 2017
Bonded Thru Budget Notary Services

Exhibit "A"

Copy of the Agreement

RIGHT OF WAY USE AGREEMENT
(Portion of Stadium Parkway, North of Watersong Way)

THIS RIGHT-OF-WAY USE AGREEMENT (the "Agreement"), made and entered into this 9 day of October, 2012 by and between the BOARD OF COUNTY COMMISSIONERS OF BREVARD, COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "COUNTY"), and The Viera Company, a Florida corporation (hereinafter referred to as "TVC").

WITNESSETH

WHEREAS, Stadium Parkway has been dedicated to Brevard County, Florida (hereinafter referred to as the "Public Right-of-Way");

WHEREAS, TVC desires to improve the Public Right-of-Way by installing illuminated signage, landscaping, sod, irrigation facilities and related improvements in accordance with the landscape plan which includes the Public Right-of-Way heretofore submitted by TVC to the County, such Landscape Plan (as defined hereinbelow) incorporating Drawing No. SN-1.0; LS-1.1 thru LS-1.2; HS-1.1 thru HS-1.3 more specifically specified as Cover, SN-1.0 Standard Notes and Drawing Symbols, LS-1.1 Landscape Plan, LS-1.2 Landscape Details and Plant List HS-1.1 Hardscape Plan, HS-1.2 Hardscape Details and HS-1.3 Hardscape Details/Finish Schedule (ABCOM Project # 60215790 dated November 7, 2012 prepared by AECOM together with Irrigation Plans, Drawings Nos. 11129_404_001 thru 003, dated 7/16/12 prepared by B.S.E. Consultants, Inc. and upon receipt, "final" County comments (hereinafter collectively referred to as the "Landscape Plan"), as such as such Landscape Plan may be from time to time modified with the consent and approval of the County (hereinafter referred to as the "Right-of-Way Improvements");

WHEREAS the COUNTY owns the Public Right-of-Way, and;

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; and

WHEREAS, the County has determined that use of the Public Right-of-Way by TVC for the operation, maintenance, repair and improvement of the Right-of-Way Improvements pursuant to this Agreement will not conflict with the interests of the public.

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

1. MAINTENANCE OF PROPERTY. TVC hereby agrees to maintain the Right-of-Way Improvements, in the manner described in this Agreement, on the following described property, hereinafter referred to as the "Premises":

SEE ATTACHED 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 Termination herein.

3. USE OF PREMISES. TVC shall use the Premises for landscaping only. It is hereby mutually agreed and understood that the use of any structure, improvement or facility now or hereafter located on the Premises shall be for decorative purposes only and not for human occupancy, nor shall such structures or improvements create traffic hazards. It is specifically 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 improvements, structures, landscaping and facilities maintained by TVC on the Premises shall be in accordance with all COUNTY specifications and the approved Landscape Plan. It is hereby agreed and understood that any improvement placed on or constructed on the Premises and permanently attached thereto, shall remain the property of TVC and that TVC 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.

5. UTILITIES. TVC shall pay all charges for electrical service and other utility services supplied to TVC at the Premises.

6. REPAIRS AND MAINTENANCE. TVC shall, at its own expense, maintain the grounds and all improvements, structures and facilities on the Premises and make all necessary repairs and replacements to the Premises and to any improvements constructed thereon. Such maintenance, repairs and replacements shall be made promptly as and when necessary.

7. ILLEGAL, UNLAWFUL OR IMPROPER USE. TVC shall make no unlawful, improper, immoral or offensive use of the Premises, nor will TVC use the Premises or allow use of the Premises for any purposes other than that hereinabove set forth. Failure of TVC to comply with this provision shall be considered a material default under this Agreement. In the event any structure, improvement or landscaping is deemed a traffic safety hazard by the COUNTY or Florida Department of Transportation, such use shall be deemed an improper use and the agreement shall be subject to immediate termination.

8. INDEMNIFICATION AND INSURANCE. Except where limited by law, TVC 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 out of or connected with the use, occupation, management or control of the Premises or any improvement thereon or any equipment or fixtures used in connection with the Premises. TVC agrees that it will, at its own expense, defend any and all actions, suits or proceedings which may be brought

against the COUNTY in connection with TVC's use of the Premises and that it will satisfy, pay and discharge any and all judgments that may be entered against the COUNTY in any such action or proceedings. The parties acknowledge specific consideration has been exchanged for the provision.

TVC 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 TVC against any and all claims, demands or causes of action whatsoever for injuries received and damages to property in connection with the use, occupation, management and control of the Premises and the improvements thereon. Such policies of insurance shall insure TVC in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) to cover any and all claims arising in connection with any one particular accident or occurrence. A certificate of such insurance policies shall be filed with the Road and Bridge Department, 2725 Judge Fran Jamieson Way, Bldg. A-201, Viera, Florida, 32940, within fifteen (15) days of the date of execution of this Agreement. The COUNTY shall be named as an additional insured on the policy that the Association secures and endorsed with a provision that entitles the COUNTY to thirty (30) days written notice from the insurer of any change or cancellation in said policies.

TVC shall notify the COUNTY immediately in writing of any potentially hazardous condition existing on or about the Premises.

All personal property, equipment, fixtures, structures or improvements constructed or placed on or about the Premises by TVC shall be at the risk of TVC and the COUNTY shall not be liable for any damage or loss to personal property, equipment, fixtures, structures or improvements located thereon for any cause whatsoever. TVC agrees and understands that the COUNTY does not and shall not carry liability, theft, or fire insurance on any of said items or facilities to cover TVC's interests therein.

At the time of execution of this agreement, any existing landscaping installed on the Premises will be the responsibility of TVC. In the event this pre-existing landscaping causes damage to County property, to include but not limited to, sidewalk/roadway/curb and gutter/drainage inlets, TVC will be responsible for immediate repair to County property. If TVC fails to repair the damage, TVC will pay the County all costs incurred by the County to repair the damage.

9. RIGHT OF ENTRY. The COUNTY or its agents may enter in and on the Premises at any reasonable time for the purpose of inspecting such property or performing other duties as are required by law or by the terms of this Agreement.

10. COMPLIANCE WITH STATUTES. TVC shall promptly execute and comply with all statutes, ordinances, rules, regulations, and requirements of all local, state and federal governmental bodies applicable to the Premises, for the correction, prevention and abatement of nuisances or other grievances in, upon, or connected with the Premises 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. Except as otherwise provided hereinbelow, TVC shall not assign this Agreement or any of TVC's rights, obligations, or duties hereunder to any party without the prior written consent of the County. However, the County and TVC agree that upon completing the initial installation of the Right-of-Way Improvements, all of the rights, obligations and duties of TVC under this Agreement shall be assignable by TVC to the Central Viera Community Association, Inc. (hereinafter referred to as the "Community Association"). Such assignment shall be by a written instrument executed with the formality of a deed on behalf of TVC assigning such rights, obligations and duties to the Community Association, and on behalf of the Community Association assuming such rights, obligations and duties. Such Assignment shall also set forth the address of the Community Association for purposes of receiving notices under this Agreement in accordance with paragraph 14 hereinbelow. Upon the execution of such Assignment and its delivery to the County, the County agrees that TVC shall be released from all obligations and duties hereunder and that the County shall thereafter look solely to the Community Association for the performance of such obligations and duties.

12. 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 constitute TVC 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, TVC shall, at the request of the COUNTY, remove all improvements to the Premises, or, in the alternative, reimburse the COUNTY for the cost of such removal.

14. NOTICE. 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 TVC at the office of the Community Manager, 1331 Bedford Dr., Suite 103, Melbourne, Florida 32940.

15. WAIVER. The waiver by the 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.

16. 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 TVC.

DONE, ORDERED and ADOPTED in Regular Session this 9 day of October, 2012.

-signatures next page-

ATTEST

Laurie S. Rice

Laurie S. Rice,
Chief Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Chuck Nelson

Chuck Nelson, Chairman
As approved by the Board on 10-09-2012

THE VIERA COMPANY

Mary Ellen McKibben
Printed name: Mary Ellen McKibben

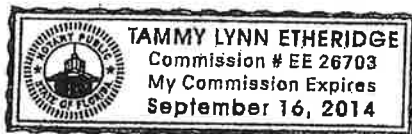
Stephen L. Johnson
Name: Stephen L. Johnson, President
Title: Stephen L. Johnson, President

Charlene R. Spangler
Printed name: Charlene R. Spangler

The Viera Company
STATE OF FLORIDA
COUNTY OF BREVARD
This is to certify that the foregoing
is a true and current copy of Right of Way Use
Agreement witness my hand
and official seal this 20 day of
NOVEMBER 2012
MITCH NEEDELMAN, Clerk of Circuit Court
BY Jennifer P. Parnell D.C.

STATE OF FLORIDA }
COUNTY OF BREVARD }

The foregoing instrument was acknowledged before me this 9 day of October,
2012, by Chuck Nelson, a Chair of the Board of County Commissioners
of Brevard County, Florida, who is personally known to me.



Tammy Lynn Etheridge
NOTARY PUBLIC

Tammy Lynn Etheridge
Printed Name

STATE OF FLORIDA }
COUNTY OF BREVARD }

The foregoing instrument was acknowledged before me this 7th day of November,
2012, by Stephen L. Johnson, as President of The
Viera Company, a Florida corporation, who is personally known to me.

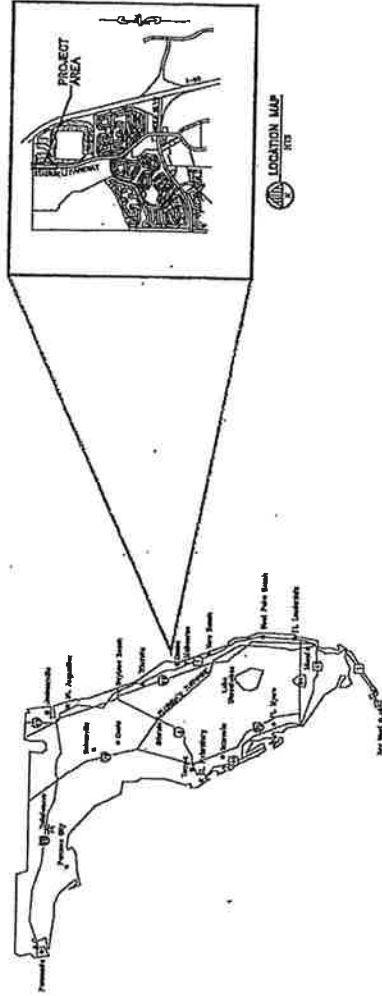
CHARLENE R. SPANGLER
Notary Public, State of Florida
My Commission Expires May 27, 2015
Commission No. EE 84836

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

STADIUM PARKWAY IRRIGATION PLANS

SECTIONS 20 AND 29, TOWNSHIP 25 SOUTH, RANGE 36 EAST
VIERA, BREVARD COUNTY, FLORIDA

SHEET NO.	DATE	DESCRIPTION
1	11/18/84	COVER SHEET
2	11/18/84	PLAN VIEW STADIUM PARKWAY
3	11/18/84	MAINTENANCE OF TRAFFIC DETAILS



THE VIERA COMPANY
7380 MURRELL ROAD, SUITE #200
VIERA, FL 32940

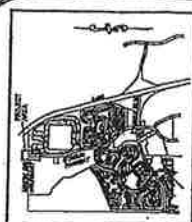
PHONE: (321) 242-1000 FAX: (321) 253-1800

PREPARED BY -

B.S.E. CONSULTANTS, INC.
CONSULTING - ENGINEERING - LAND SURVEYING
312 SOUTH HARBOR CITY BOULEVARD, SUITE 4, MELBOURNE, FLORIDA 32901
PHONE: (321) 725-3574 / FAX: (321) 723-1159
CERTIFICATE OF PROFESSIONAL ENGINEERS BUSINESS AUTHORIZATION: 4905

NOTES: SEE LAMINATE PLANS PROVIDED BY ARCHITECT FOR THE PROJECT AREA. THE ARCHITECT'S LAMINATE PLANS SHALL BE USED FOR THE PROJECT UNIT.

Professional Engineer Seal for B.S.E. CONSULTANTS, INC. License No. 4905, State of Florida. The seal includes the company name, license number, and the state of Florida.



STADIUM PARKWAY
GATEWAY

VIERA, FLORIDA
HARDSCAPE AND LANDSCAPE CONSTRUCTION DOCUMENTS

ISSUED FOR 100% CONSTRUCTION DOCUMENTS:
13 August 2012

Prepared for:
The Viera Company
7380 Murrel Road, St 201
Melbourne, FL 32940
TEL (321) 242-1200
Contact: Mary Ellen McKibben

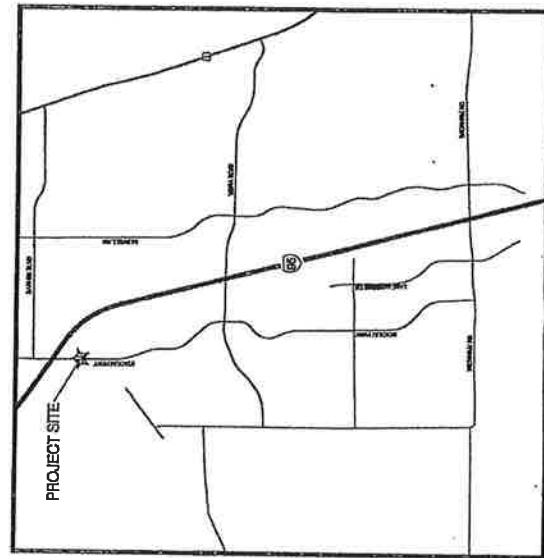
ALCON
Pharmaceuticals and Therapeutics
1651 S. Corporate Ave., Suite 200
Orange, CA 92667
Phone (714) 761-1000
Fax (714) 761-1728
Contact: Susan Wilson, M.A.

ESSE COME LAMINATE
ON Packaging
111 S. Wilson St. Bldg. C
Orange, CA 92667
Phone (714) 761-6411
Fax (714) 761-6411
Contact: Susan Wilson, M.A.

David G. Kinsgill, P.E.
Regulator Engineering
10000 Wilshire Blvd., Suite 1000
Beverly Hills, CA 90210
Phone (310) 441-4467
Fax (310) 441-4468
Contact: David G. Kinsgill, P.E.

SHEETS

80-10	PROPOSED HOUSE & IMPROVEMENT SPECIFICATIONS
10-15	LANDSCAPE PLAN
16-18	LANDSCAPE DETAILS AND PLANT LIST
19-21	PAVING PLAN
22-23	PAVING DETAILS
24-25	PAVING DETAILS (continued)



KEY MAP: N.T.S.

NOT FOR CONSTRUCTION
- REVIEW SET ONLY -

1722N-001140 Rev. 4 08/24/12

1. The following information is for informational purposes only and is not intended to be used for any other purpose.
2. The following information is for informational purposes only and is not intended to be used for any other purpose.
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CONTRACTOR IS RESPONSIBLE FOR OBTAINING ALL PERMITS RELATED TO CONSTRUCTION INCLUDING, BUT NOT LIMITED TO, BUILDING, LANDSCAPE, IRRIGATION, MAINTENANCE OF TRAFFIC, AND RIGHT OF WAY UTILIZATION PERMITS.

NOT FOR CONSTRUCTION
- REVIEW SET ONLY -

AECOM

PROJECT
STADIUM PARKWAY
GATEWAY

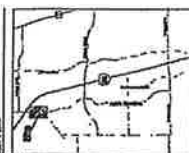
DATE
The Vista Company
7500 North Loop West, Suite 200
Houston, TX 77057
408.214.7288

EXERCISES/ANALYSIS
AECOM
AECOM TECHNICAL SERVICES, INC.
19100 Katy Road, Suite 200
Houston, TX 77058
408.214.7288
www.aecom.com

CONSTRUCTION

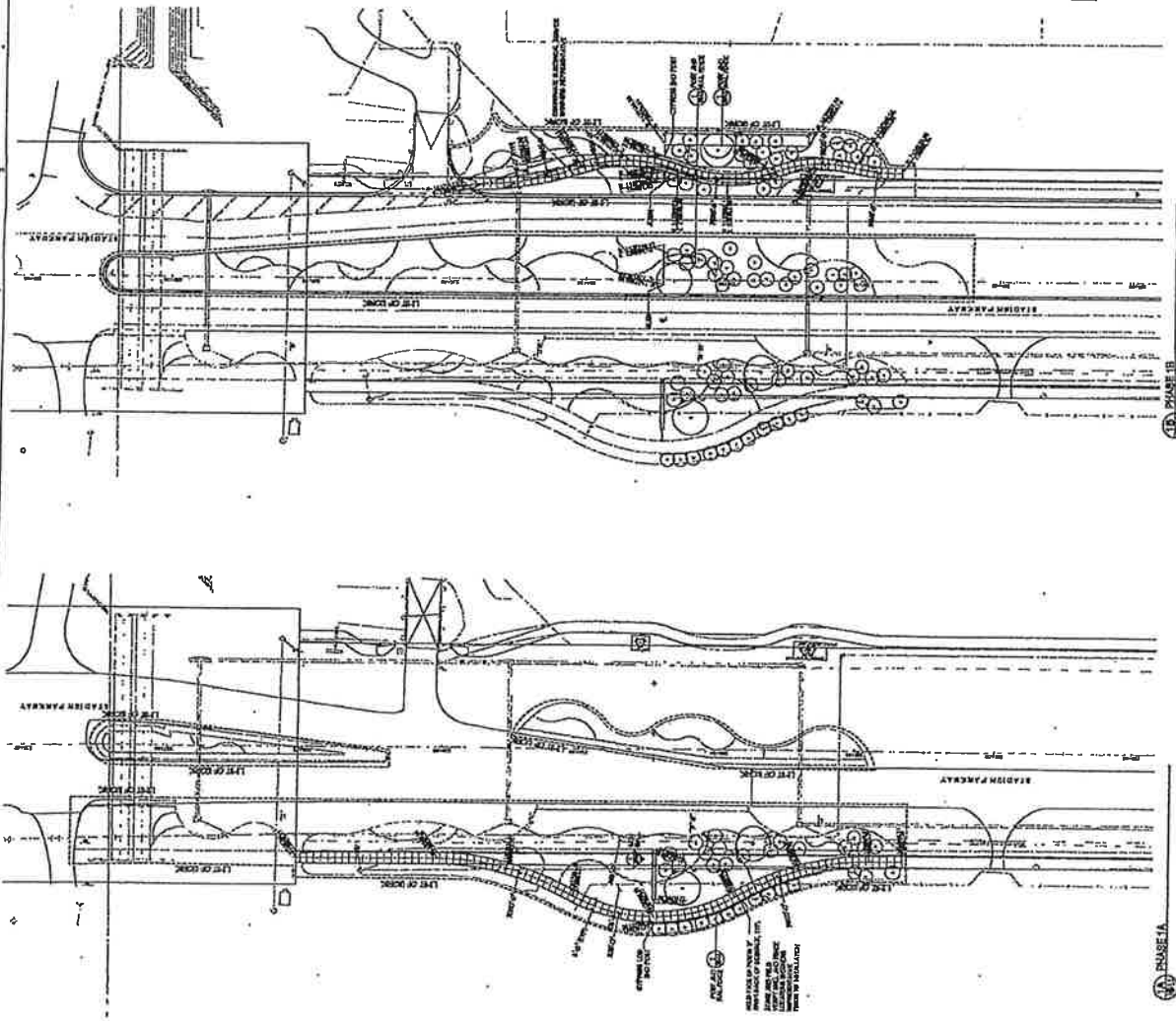
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9	11/11/11	ISSUED FOR PERMIT
10	11/11/11	ISSUED FOR PERMIT



PROJECT NAME
STADIUM PARKWAY
GATEWAY
PROJECT TITLE
HANDSCAPE PLAN
SHEET NUMBER
HS-1.1

DATE/REVISION



GENERAL NOTES:

1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE AECOM STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION, LATEST EDITIONS OF THE AECOM STANDARD SPECIFICATIONS FOR LANDSCAPE ARCHITECTURE, AND THE AECOM STANDARD SPECIFICATIONS FOR TRAFFIC CONTROL DEVICES.
2. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE AECOM STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION, LATEST EDITIONS OF THE AECOM STANDARD SPECIFICATIONS FOR LANDSCAPE ARCHITECTURE, AND THE AECOM STANDARD SPECIFICATIONS FOR TRAFFIC CONTROL DEVICES.
3. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE AECOM STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION, LATEST EDITIONS OF THE AECOM STANDARD SPECIFICATIONS FOR LANDSCAPE ARCHITECTURE, AND THE AECOM STANDARD SPECIFICATIONS FOR TRAFFIC CONTROL DEVICES.
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NOT FOR CONSTRUCTION - REVIEW SET ONLY -

DATE/REVISION

AECOM

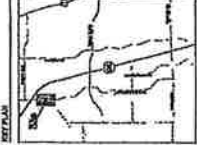
PROJECT
STADIUM PARKWAY
GATEWAY
Vero, FL

CLIENT
The Viera Company
7200 West Lake Dr. Ste. 200
Vero Beach, FL 32909
305.231.1500

LANDSCAPE ARCHITECT
AECOM
AECOM TECHNOLOGICAL CORP.
10000 West Lake Dr. Ste. 200
Vero Beach, FL 32909
305.231.1500

REVISIONS

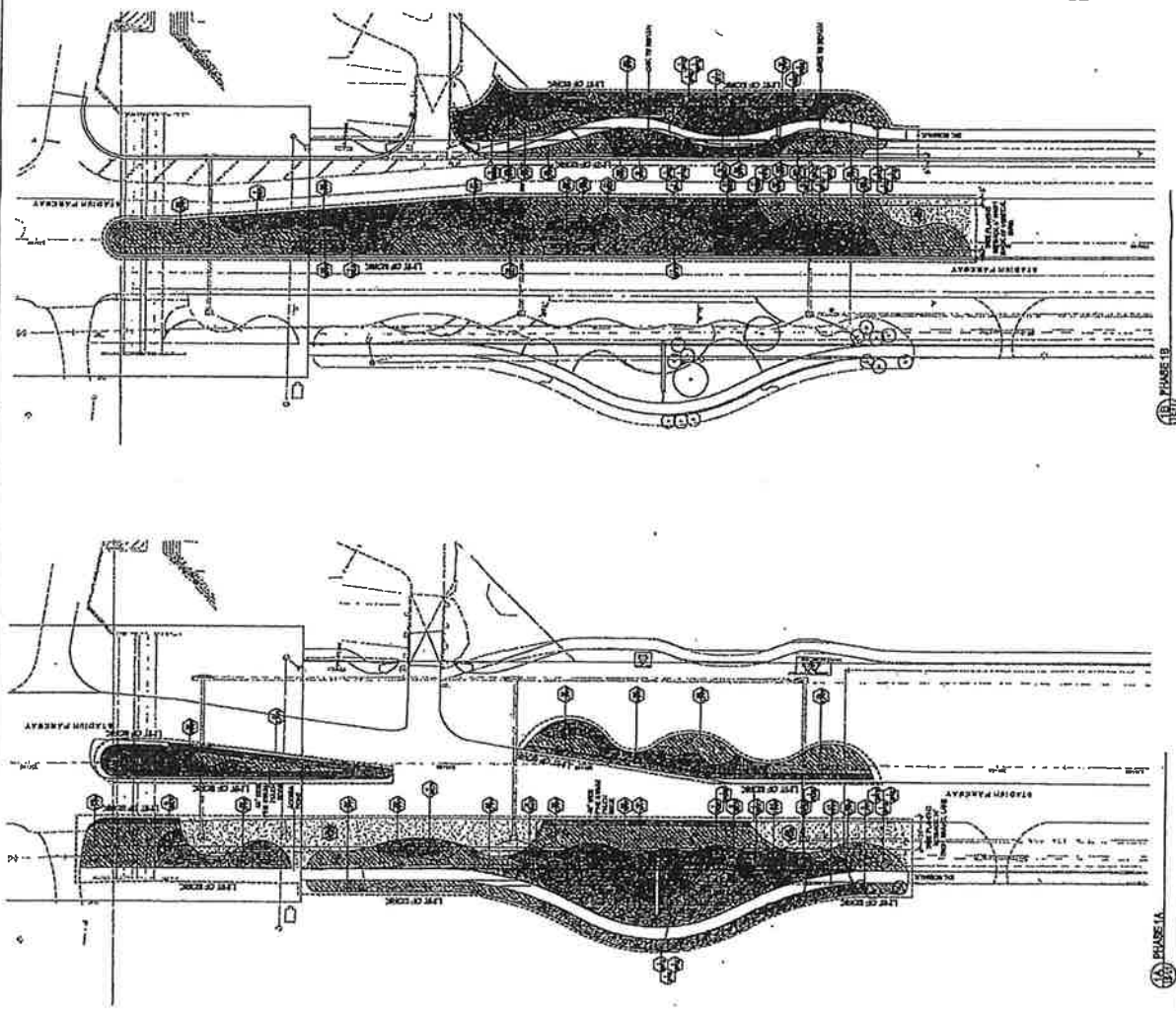
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PROJECT NUMBER
V000000000
SHEET TITLE
LANDSCAPE PLAN
SHEET NUMBER
LS-1.1

100% DESIGN DEVELOPMENT, VERO BEACH, FL

- GENERAL NOTES**
1. REVIEW THE PROJECT LOCATION AND THE LOCATION OF THE PROPOSED IMPROVEMENTS IN THE EXISTING LANDSCAPE.
 2. ALL IMPROVEMENTS SHALL BE DESIGNED TO BE IN ACCORDANCE WITH THE LATEST EDITION OF THE FLORIDA LANDSCAPE ARCHITECTURE CODE (FLAC) AND THE LATEST EDITION OF THE FLORIDA LANDSCAPE ARCHITECTURE CODE (FLAC).
 3. ALL IMPROVEMENTS SHALL BE DESIGNED TO BE IN ACCORDANCE WITH THE LATEST EDITION OF THE FLORIDA LANDSCAPE ARCHITECTURE CODE (FLAC) AND THE LATEST EDITION OF THE FLORIDA LANDSCAPE ARCHITECTURE CODE (FLAC).
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- NOT FOR CONSTRUCTION**
- REVIEW SET ONLY -



PHASE 1A

PHASE 1B

AECOM

**STADIUM PARKWAY
GATEWAY**

CLINCH

The Vista Company

7280 Jones Road, # 201
Atlanta, GA 30328
404.252.1234

AECOM

ARADU TECHNICAL SERVICES, INC.

1715 Peachtree Road, Suite 200
Atlanta, GA 30309
404.525.8822

CONTRACT NO. 1077

REVISION

NO.	DATE	DESCRIPTION
1	10/1/07	ISSUED FOR PERMIT
2	10/1/07	ISSUED FOR PERMIT
3	10/1/07	ISSUED FOR PERMIT
4	10/1/07	ISSUED FOR PERMIT
5	10/1/07	ISSUED FOR PERMIT
6	10/1/07	ISSUED FOR PERMIT
7	10/1/07	ISSUED FOR PERMIT
8	10/1/07	ISSUED FOR PERMIT
9	10/1/07	ISSUED FOR PERMIT
10	10/1/07	ISSUED FOR PERMIT

DETAIL

PROJECT NUMBER

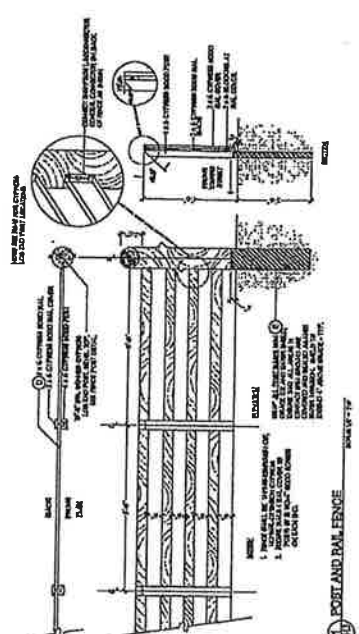
SHEET TITLE

HANDSCAPE DETAIL

FINISH SCHEDULE

HS-1.3

DATE



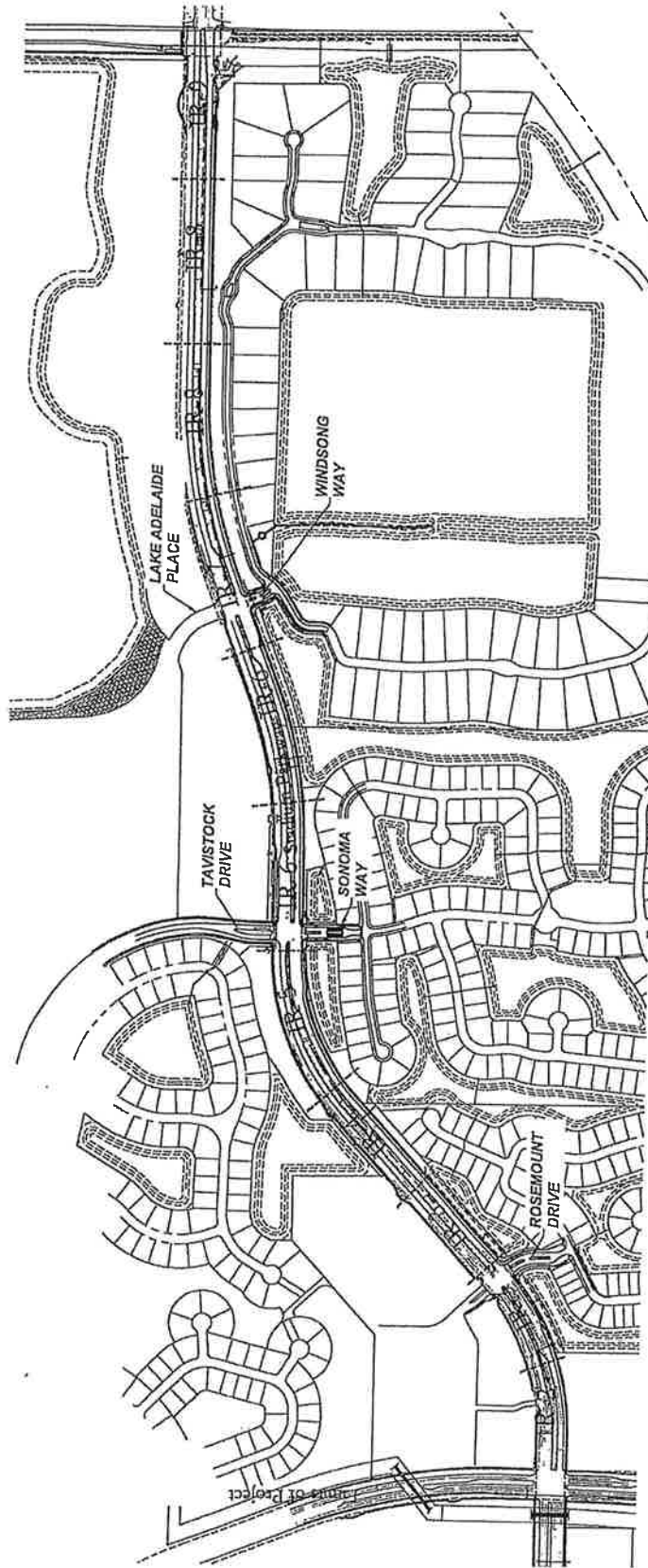
ITEM	DESCRIPTION	QUANTITY	UNIT	PRICE	TOTAL
1	WOOD POST AND RAIL FENCE	100	LINEAL FEET	10.00	1000.00
2	WOOD POST CAP	100	PIECES	1.00	100.00
3	WOOD RAIL CAP	100	PIECES	1.00	100.00
4	WOOD POST BRACKET	100	PIECES	1.00	100.00
5	WOOD RAIL BRACKET	100	PIECES	1.00	100.00
6	WOOD POST BRACKET CAP	100	PIECES	1.00	100.00
7	WOOD RAIL BRACKET CAP	100	PIECES	1.00	100.00
8	WOOD POST BRACKET CAP	100	PIECES	1.00	100.00
9	WOOD RAIL BRACKET CAP	100	PIECES	1.00	100.00
10	WOOD POST BRACKET CAP	100	PIECES	1.00	100.00
11	WOOD RAIL BRACKET CAP	100	PIECES	1.00	100.00
12	WOOD POST BRACKET CAP	100	PIECES	1.00	100.00
13	WOOD RAIL BRACKET CAP	100	PIECES	1.00	100.00
14	WOOD POST BRACKET CAP	100	PIECES	1.00	100.00
15	WOOD RAIL BRACKET CAP	100	PIECES	1.00	100.00
16	WOOD POST BRACKET CAP	100	PIECES	1.00	100.00
17	WOOD RAIL BRACKET CAP	100	PIECES	1.00	100.00
18	WOOD POST BRACKET CAP	100	PIECES	1.00	100.00
19	WOOD RAIL BRACKET CAP	100	PIECES	1.00	100.00
20	WOOD POST BRACKET CAP	100	PIECES	1.00	100.00

NOT FOR CONSTRUCTION
- REVIEW SET ONLY -

Exhibit "B"

Description of the Additional Premises

Exhibit B



NOTE: LANDSCAPING PERFORMANCE STANDARDS PER SEC. 82-4341 AND THE WEST VIERA ALTERNATIVE DEVELOPMENT STANDARDS (ADS) FOR DETACHED SINGLE FAMILY UNITS, ZERO LOT LINE UNITS AND ATTACHED SINGLE FAMILY UNITS WILL BE ADDRESSED AND REVIEWED AT THE TIME OF BUILDING PERMIT REVIEW.

Tropic-Care of Florida
Melbourne, FL 32904
(321) 724-5333

REVISIONS:	No. Date	Description	By
1.			
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4.			

This Drawing and This Drawing Represent
Landscape and Irrigation Proposals
of the Project and are not to be used
for any other purpose without the written permission
of the Designer.

Stadium Parkway
Viera, Florida
Overall Irrigation Plan

North

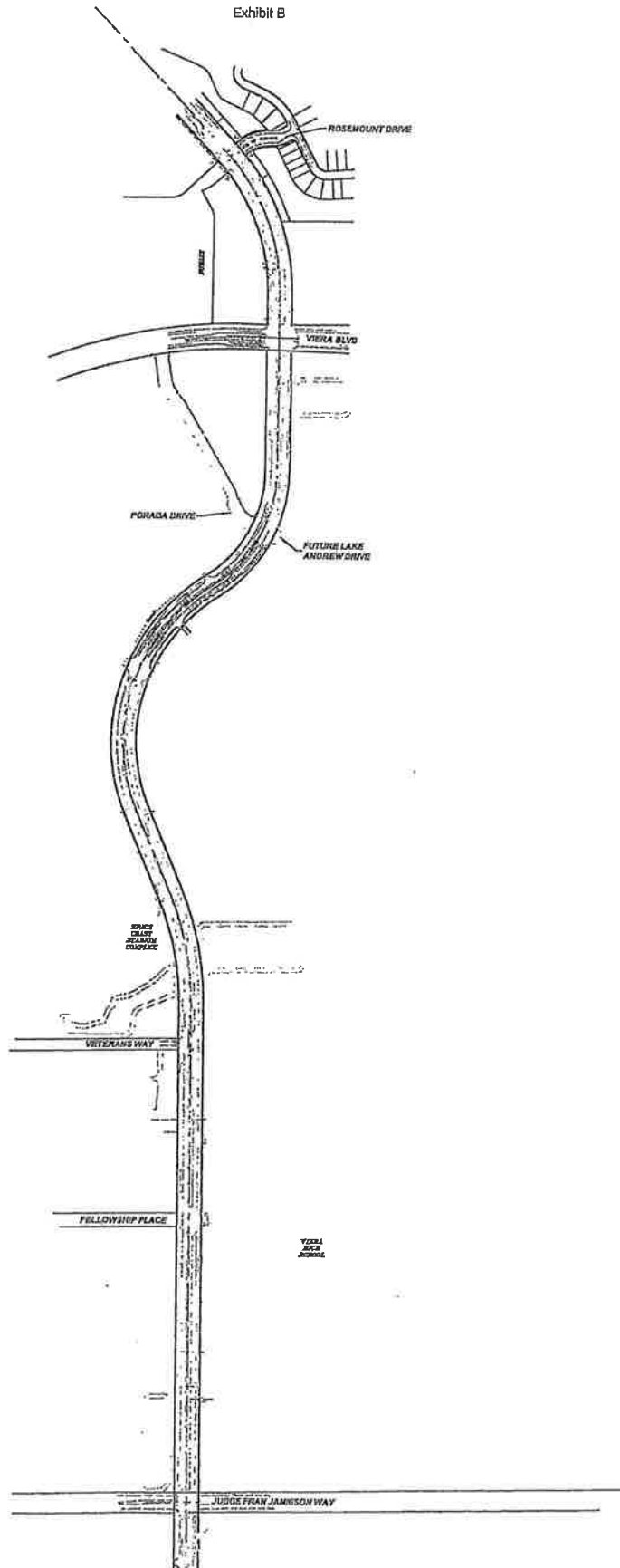
DATE: 07-18-18

SCALE: 1" = 40'

SHEET: 1 of 3

SHEET TITLE: IR-1

Exhibit B

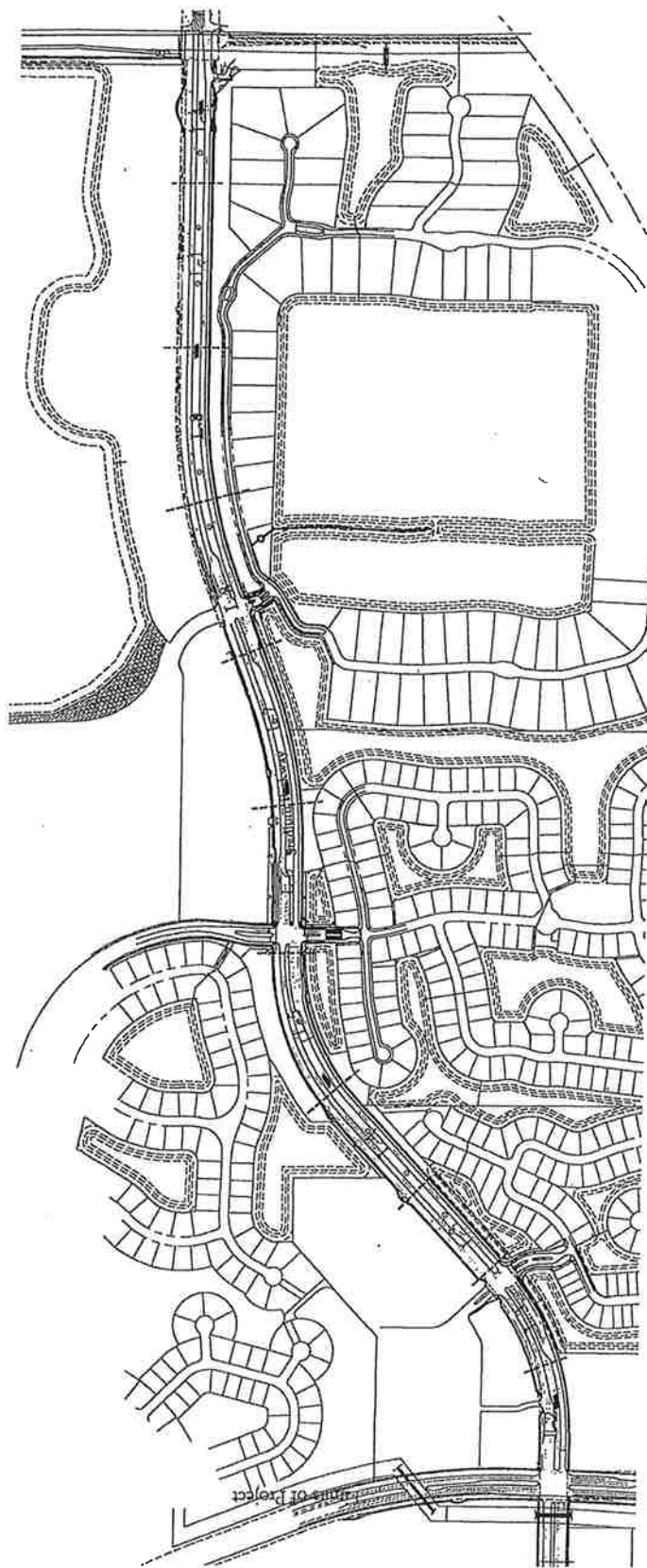


<div data-bbox="386 1942 479 2026"> </div> <div data-bbox="487 1942 625 2026"> <p>B.S.E. CONSULTANTS, INC. CORPORATE - 800-888-8888 LOCAL - 704-444-4444 FAX - 704-444-4444 WWW.BSECONSULTANTS.COM</p> </div>	<p>STADIUM PARKWAY - JUDGE FRAN JAMIESON WAY TO ROSEMOUNT DRIVE</p> <p>LOCATION MAP</p>	<p><small>SOUTH FLORIDA, P.E. & P.L.L.C. STATE OF FLORIDA, No. 00000001</small></p> <p><small>NEELAM A. KANUL, P.E. STATE OF FLORIDA, No. 00000001</small></p>	<p>PROJECT NO. 10780-04</p> <p>DRAWING NO. 1078004_21G</p> <p>SHEET 1 of 1</p>
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Exhibit "C"

Copy of the New Landscaping Plans

Exhibit C



NOTE: LANDSCAPING PERFORMANCE STANDARDS PER SEC. 62-4341 AND THE WEST VERA ALTERNATIVE DEVELOPMENT STANDARDS (ADS) FOR DETACHED SINGLE FAMILY UNITS, ZERO LOT LINE UNITS AND ATTACHED SINGLE FAMILY UNITS WILL BE ADDRESSED AND REVIEWED AT THE TIME OF BUILDING PERMIT REVIEW.

Edward County Natural Resources Management Office

- [illegible]

Stadium Parkway
Viera, Florida
Overall Landscape Plan

Stadium Parkway

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 Items are the Exclusive Property of Topical-
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REVISIONS:

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By

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7635 Progress Cir
Melbourne, FL 32904
(321) 724-5333

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Page 11

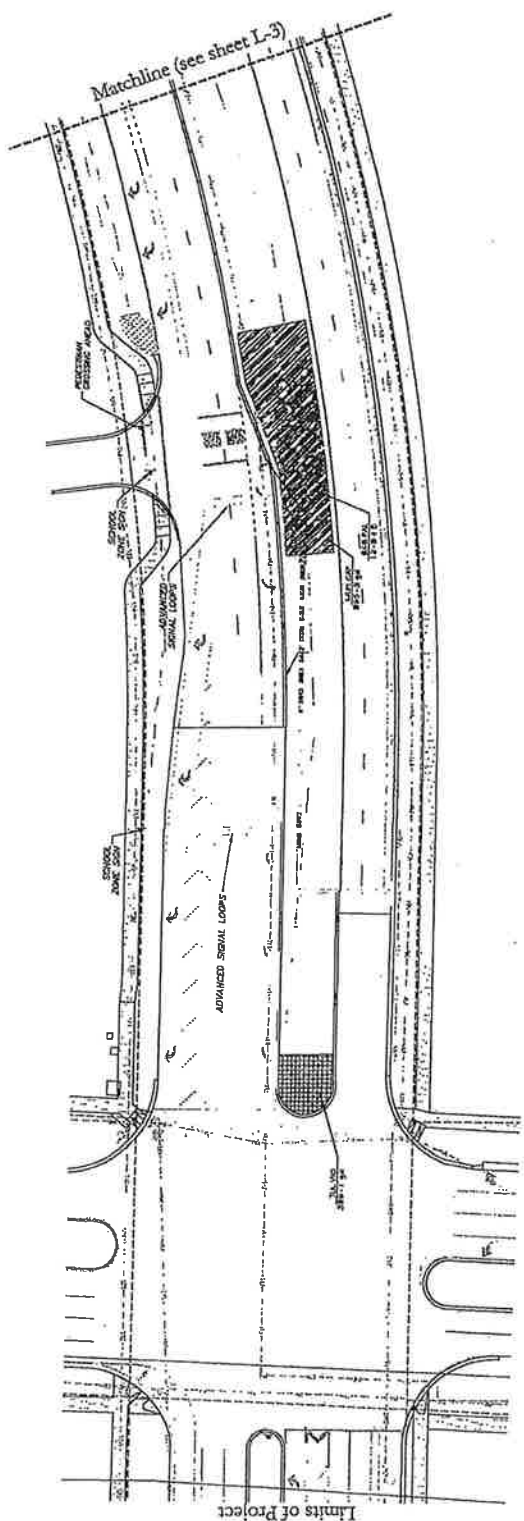
1000

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FORM 12204

12

Environmental Design Services
Landscape and Irrigation Design and Consulting
Phone: (214) 288-6143



Stadium Parkway
Viera, Florida
Landscape Plan

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4.				

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Maitland, FL 32904
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L-2

SHEET NO. I-3

DATE: 7-27-07

SCALE: 1"=50'



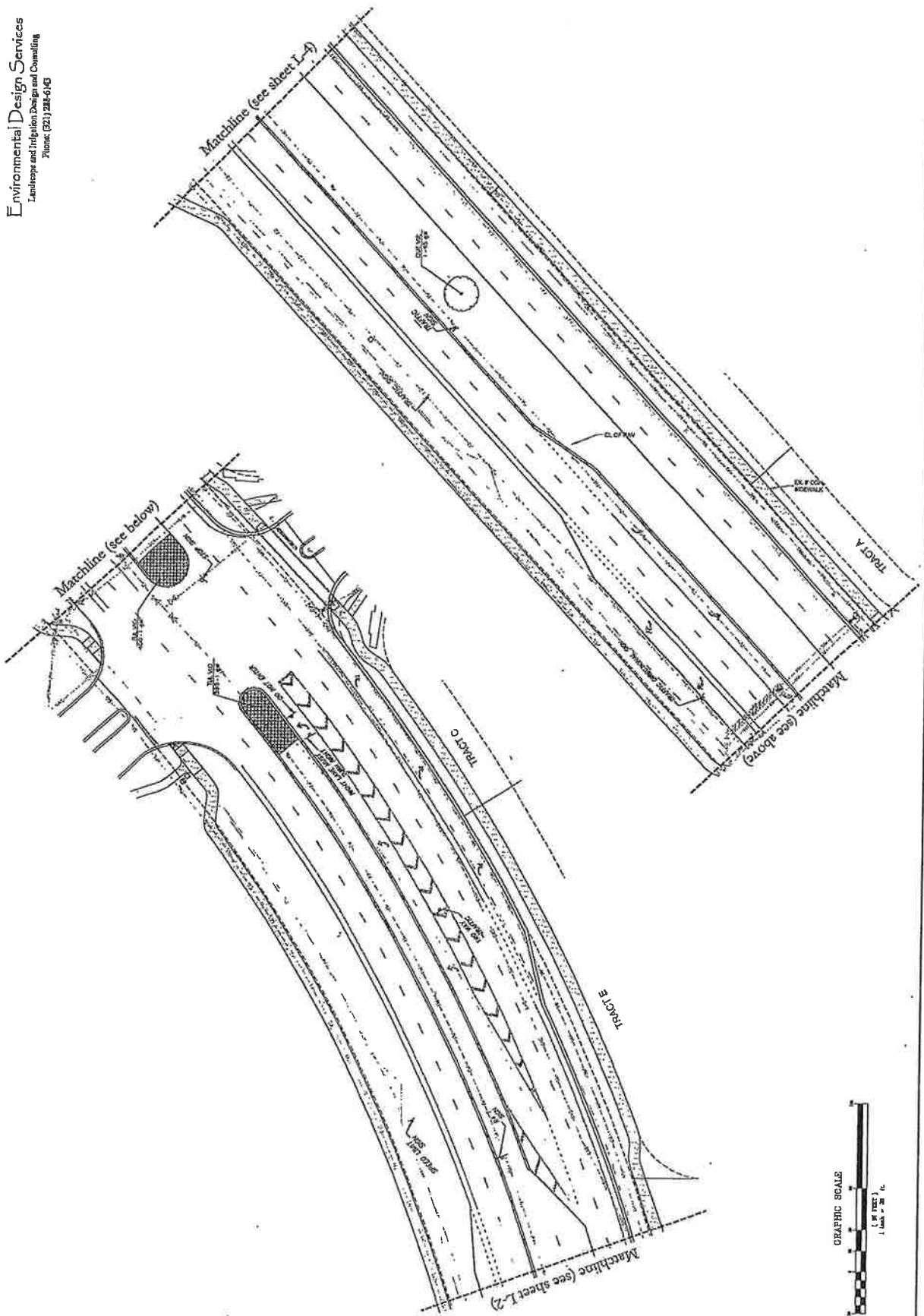
Viera, Florida
Stadium Parkway
Landscape Plan

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Environmental Design Services
Landscape and Irrigation Design and Consulting
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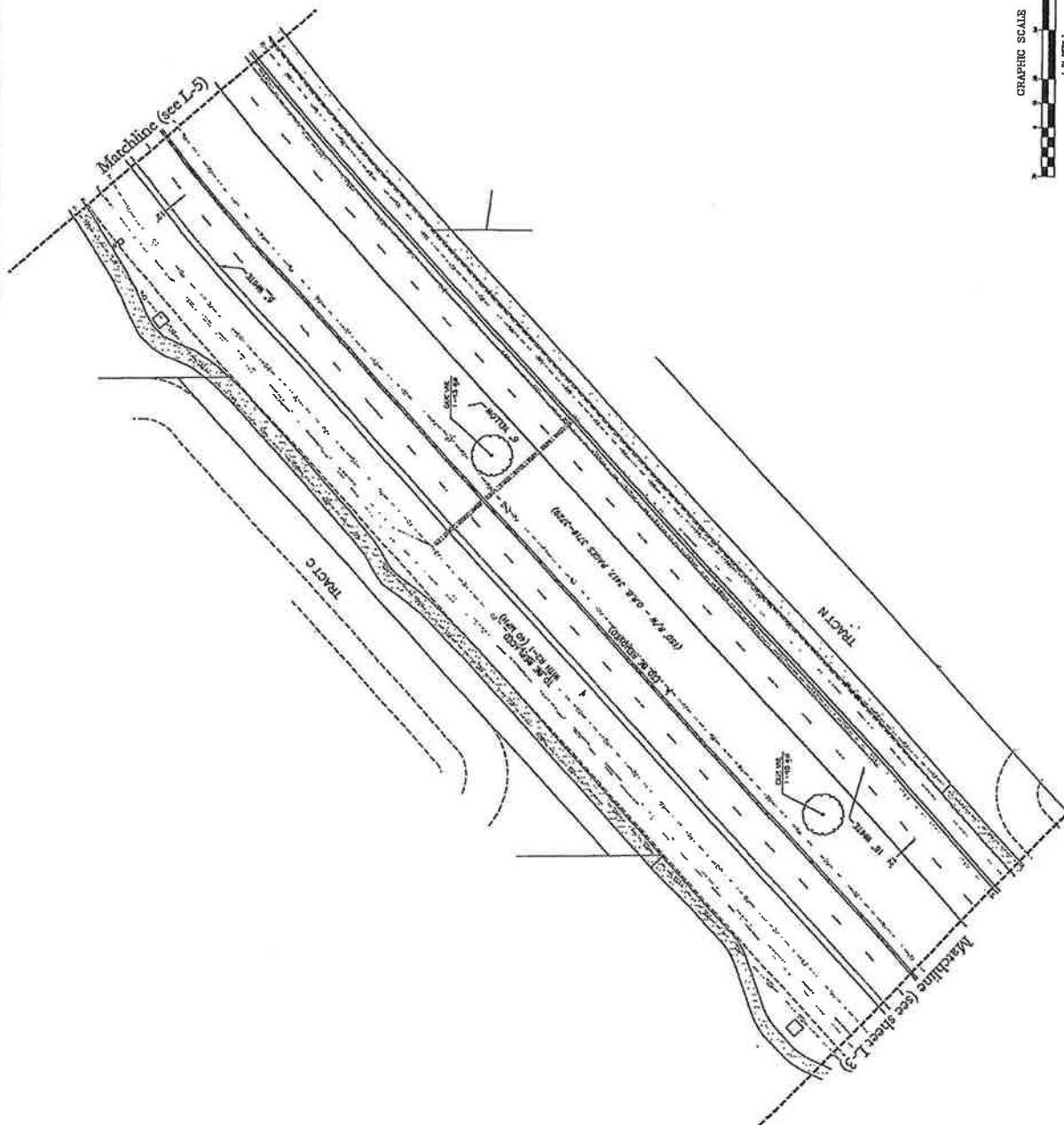


Stadium Parkway
Vienna, Florida
Landscape Plan

The Drawing and The Design Project called
Harris and The Executive Property of English-
Landscape, and they are the Regional, Third,
or the American World, Western Perception.

REVISIONS:		No. Date	Description	By
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4.	_____	_____	_____	_____

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7635 Progress Cir
Melbourne, FL 32904
(321) 724-5333



L-5

SHEET NO.

DATE: 7-23-18

SCALE: 1" = 20'

PROJECT: 18-001

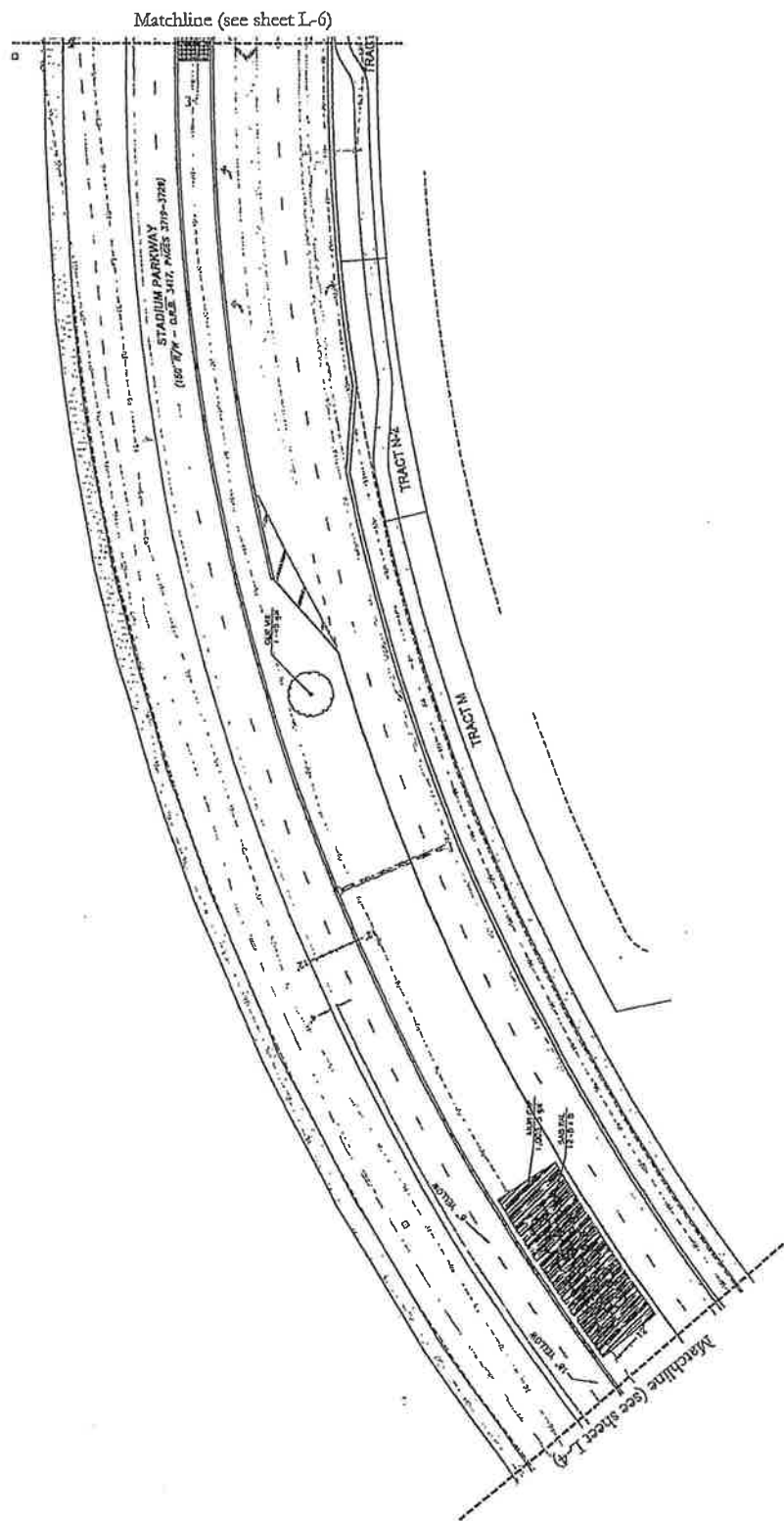


Stadium Parkway
Viera, Florida
Landscape Plan

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STADIUM PARKWAY
Viera, Florida
Landscape Plan

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REVISIONS:

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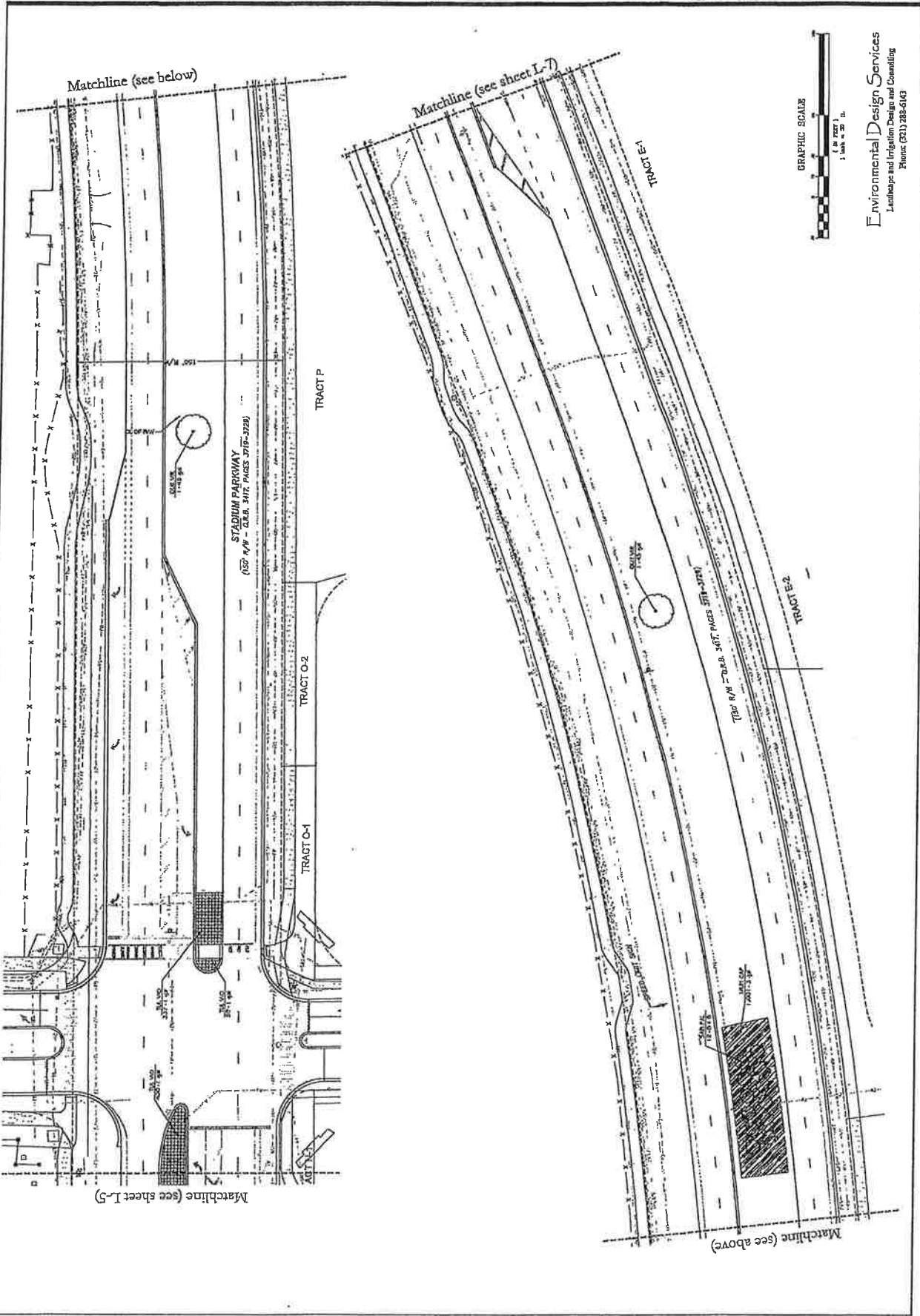
By _____

Tropic-Care of Florida
7635 Rogers Cir
Melbourne, FL 32904
(321) 724-5333

Environmental Design Services
Landscape and Irrigation Design and Consulting
Phone: (321) 288-6163

DATE: 12-27-16
SCALE: 1"=30'
SHEET: 6 of 8
SHEET NO.: L-6

GRAPHIC SCALE
1" = 30'
1" = 60'





DATE: 7-27-18
SCALE: 1"=50'
SHEET: 8 of 8
SHEET NO.: L-8



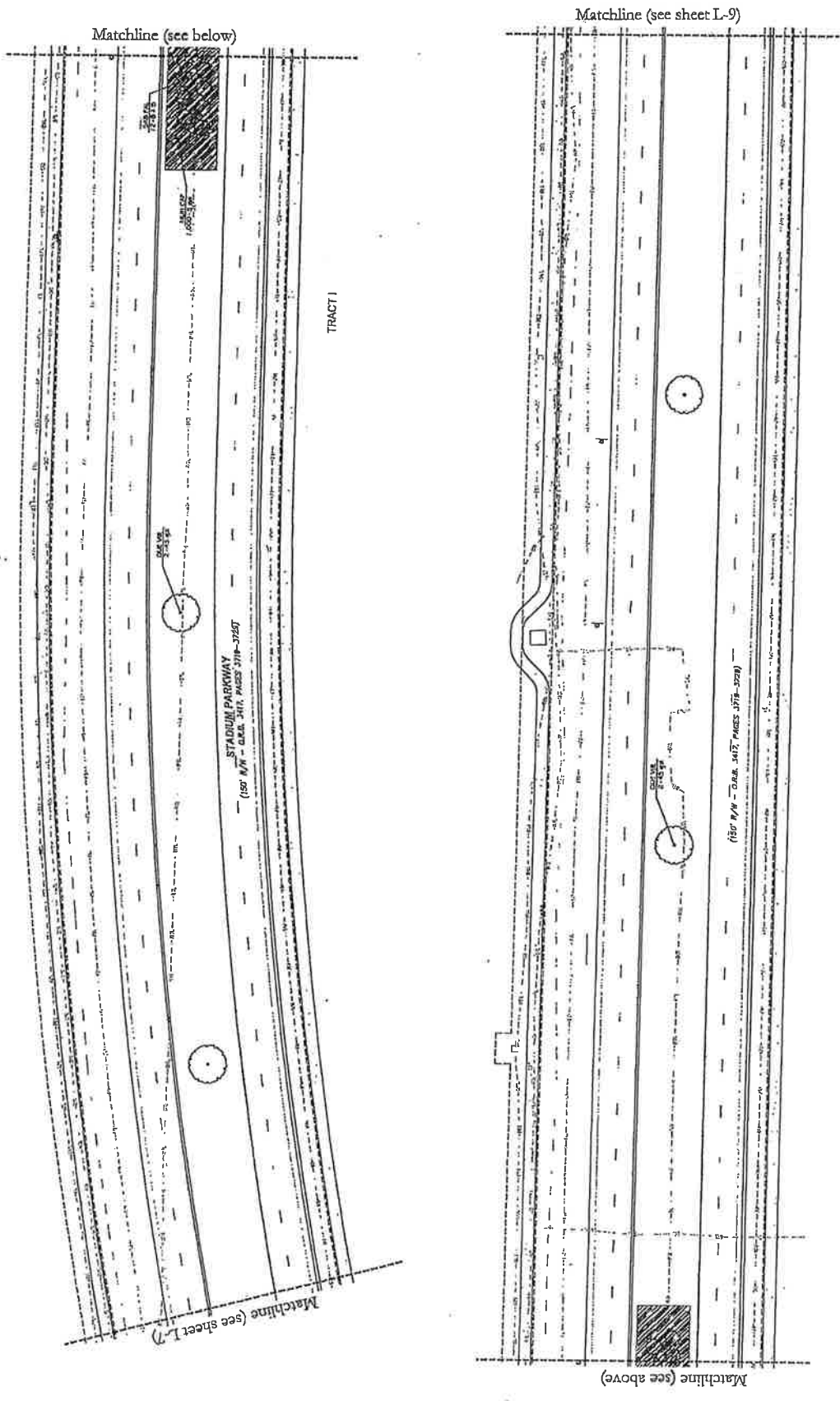
Viera, Florida
Stadium Parkway
Landscape Plan

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Tropic-Care of Florida
7635 Progress Cir
Melbourne, FL 32904
(321) 724-5533





GRAPHIC SCALE

(20 FEET)

1 inch = 20 ft.

[illegible]

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