



Brevard County Board of County Commissioners

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Legislation Text

File #: 1641, **Version:** 1

Subject:

Discussion Re: Right-of-Way Use Agreement with the Suntree Master Homeowner's Association to Supersede Existing Agreement - District 4

Fiscal Impact:

None

Dept/Office:

Public Works Department/Finance and Contracts Administration

Requested Action:

It is requested the Board of County Commissioners discuss and direct staff pertaining to the Right-of-Way Use Agreement with the Suntree Master Homeowner's Association to supersede the existing agreement to permit improvements to be installed and maintained in the Suntree Master Planned Unit Development. Based on the outcome of Board direction, it is requested the Board authorize the Chair to execute the Right-of-way Use Agreement.

Summary Explanation and Background:

On November 13, 2012, Brevard County and the Suntree Master Homeowner's Association entered into the Right-of-Way Use Agreement. The premises in that agreement were not all inclusive of the public rights-of-way of Suntree. The updated Right-of-Way Use Agreement will supersede the existing agreement and will more clearly define the premises to include all the public rights-of-way within the Suntree Master Planned Unit Development. These public rights-of-way within the Suntree Master Planned Unit Development, are depicted on Attachment "A" of the Right-of-Way Use Agreement, which have been dedicated to Brevard County. The Association desires to install and maintain improvements consisting of landscaping, signage, hardscape, irrigation, and related improvements. New improvements will be submitted by the Association to the County as right-of-way permit applications, and issuance of the permits shall be subject to approval by the County. Additionally, the Association desires to improve the public right-of-way at Interlachen Road near its intersection with Wickham Road by installing improvements pursuant to plans and specifications approved by the County in Permit No. 20RW00124. The improvements are depicted in Attachment B of the Agreement.

The County and Association acknowledge and agree that an inventory will be conducted to identify pre-existing improvements upon particular public rights-of-way. It is intended that all of the maintenance responsibilities relating to the pre-existing improvements of interest to the Association be formally assumed by the Association. The County and Association acknowledge that should improvements not be accepted for maintenance by the Association, the Association shall make reasonable effort to facilitate County coordination with a sub-association or other Association member for formal assignment of maintenance obligations. If no entity accepts maintenance responsibility of any existing improvements installed in the public rights-of-way,

those improvements **shall** be removed as provided for in Section 6 of the Right-of-Way Use Agreement. However, the General Manager of the Suntree Master Homeowner's Association expressed concern with the aforementioned "shall" and requested the Board consider "may" in alternative. It is the recommendation of staff and the County Attorney's Office to utilize "shall" which is included in the attached Right-of-Way Use Agreement.

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. In accordance with the Agreement, the Association shall be required to maintain, repair, and replace the permitted improvements without cost to the County. Additionally, the Association is required to provide general liability insurance in an amount not less than one million dollars and name the County as additional insured.

The initial term of the Agreement shall be twenty years commencing with the date of execution by the Board and shall automatically renew annually unless terminated by either party with sixty days' written notice. Upon termination, the Association shall remove all improvements from the public rights-of-way or the Association shall reimburse the County for the cost of such removal. Furthermore, in the event of termination and the County assumes ownership of the improvements, the County does not assume maintenance responsibility unless expressly provided in writing.

In accordance with Administrative Order 29, the attached Right-of-Way Use Agreement, including the use of "shall" in Section 6, has been reviewed and approved by the County Attorney's Office and Risk Management. This Agreement will supersede the Right-of-Way Use Agreement entered into by the County and the Association on November 13, 2012.

Clerk to the Board Instructions:

Please return the fully executed Right-of-Way Use Agreement to the Public Works Department.