



Interoffice Memorandum

Minutes

Florida Mall

Special Roadway Agreement Committee

November 14, 2008

Members Present: Renzo Nastasi – Transportation Planning Division

County Staff Present: Robin Hammel – Engineering Division
Heather Brownlie – Transportation Planning Division
Linda Medeiros – Fiscal and Administration Division
Ray Walls – Office of Management and Budget
Sally Bergman – Purchasing Division
Roberta Alfonso – County Attorney’s Office
Ghulam Qadir – Engineering Division
Sheryl Weinmann – Engineering Division

For Applicant: Scott Thompson – Lowndes, Drosdick, Doster, Kantor & Reed
John Albright – Florida Mall (Simon Properties) [By Teleconference]
Mike Adler – Florida Mall (Simon Properties) [By Teleconference]

Florida Mall

The meeting was called to order at 10:07 a.m.

Mr. Thompson opened the discussion by stating that URS was preparing the bid package.

Ms. Hammel outlined the topics for discussion resulting from her meeting with Finance.

The County is obligated to pay the Developer only – no obligation to the contractor. There will be a private contract between the Developer and the contractor constructing the road project.

The FDOT funds will be utilized first since they are 100% reimbursable funds.

The funding will be set up in the County CIP.

The first invoice will be submitted and the work performed inspected. The Developer will send the invoice to the County with a request for payment. The County will pay the invoice from the CIP and send a check to Developer. Developer will pay contractor, sending Orange County a copy of the check which Orange County will submit to FDOT for reimbursement.

Mr. Thompson suggested writing into the construction contract that it will take 45 days to pay each invoice, since County needs 45-day timeframe to process invoices.

Mr. Albright asked to allow 40 or 42 days in the Memorandum of Understanding so that he can be assured that he gets the payment to the contractor in a timely fashion.

Mr. Albright feels that 45 days is not unreasonable in this economy if the County is funding a portion of the project.

Ms. Hammel pointed out that the LFRA and the JPA have slightly different project limits.
LFRA – Resurfacing funds – Turnpike bridge to OBT
JPA – Reimbursement funds – President’s Drive to OBT
The contractor will have to be sure to bill any work in the area of the Turnpike Bridge to the LFRA.

Ms. Hammel asked about the proportionate fair share amount and how that money was expended for design.

Documentation for the fiscal accountability needs to be provided and the terms of the proportionate fair share agreement will need to be reviewed.

Mr. Thompson delivered two binders of Final Design information.

Ms. Hammel asked about having funds available to complete the project in place before bidding.

Mr. Albright is willing to post a letter of credit and then reduce it as invoices are paid.

Bonding Issue – it may be necessary to have the funding in place.

Mr. Walls asked that the Developer funds be provided up front rather than through a letter of credit.

Mr. Albright does not want to contribute cash to a County account.

Mr. Nastasi offered to expend the Florida Mall dollars first so they are not sitting in our accounts for a year or more.

Mr. Albright offered to put the funds into an escrow account with the Lowndes firm.

Mr. Albright did not want to contribute funds to a County account if he is the one under contract with the contractor and ultimately responsible for paying all of the invoices.

Mr. Nastasi stated that we cannot go back on this issue and need to move forward past this issue.

Mr. Walls noted that the County accounting line may actually be a safer place for the funds than a bank.

Ms. Hammel provided an example of Darden accounts and stated that a letter of credit is not acceptable.

Mr. Nastasi assured the Developers that the County cannot spend money from a specific account for any other project.

Mr. Nastasi pointed out that the Ratification Agreement has not yet gone before the Board of County Commissioners, meanwhile, there is a breach of the original agreements.

The MOU needs to be finalized and sent to the BCC with the Ratification Agreement.

DRC issues remain and the County has made concessions to allow Florida Mall to move forward.

The County needs a single fund with all of the monies in place before going to bid.

Mr. Albright would want assurances that the County funds are all in one place and cannot be spent on anything else or re-directed.

Mr. Nastasi explained that the only way the funds could possibly be diverted would be through the force majeure language if some catastrophic event were to occur.

Mr. Walls reassured the Developers that the funds cannot be spent on anything except the subject road project for which the account is set up.

Mr. Albright was not comfortable being obligated to build a road for \$10 million dollars and enter into a construction contract for that amount and then turn over all of his cash contribution to the County.

Mr. Albright would like to set up his contribution in an escrow account.

Mr. Nastasi pointed out that this was County policy and County process which must be followed.

The topic of the Public Bidding Process was raised, however the discussion of the funding issues continued instead.

Mr. Nastasi asked Ms. Alfonso to review the existing agreements and see what remedies may be available to the County.

Mr. Nastasi will follow up with the DRC issues also.

Mr. Nastasi noted that the timing commitments for this project continue to be pushed out.

Mr. Albright asked why the County cannot build the road project instead and Mr. Nastasi did not want to go backwards at this point.

Ms. Hammel concluded the meeting at 11:15 a.m.