



## Interoffice Memorandum

### Minutes

### Roadway Agreement Committee

February 4, 2009

Members Present: Jim Harrison – Growth Management (Chairman)  
Joe Kunkel – Public Works Department (Vice Chairman)  
Benj Hurt – Real Estate Management Division  
Renzo Nastasi – Transportation Planning Division  
Christine Lofye – Traffic Engineering Division  
Diana Almodovar – Development Engineering Division  
John Smogor – Planning Division

County Staff Present: Roberta Alfonso – County Attorney’s Office  
Susan Martin – Risk Management Division  
Julie Naditz – Highway Construction Division  
Frank Yokiell – Public Works Engineering Division  
Robin Hammel – Public Works Engineering Division  
Heather Brownlie – Transportation Planning Division  
Rita Gonzalez – Transportation Planning Division

Mr. Harrison called the meeting to order at 8:42 a.m.

### Approval of Minutes

The Committee reviewed the minutes from the January 21, 2009 Roadway Agreement Committee Meeting and no changes were requested.

*Mr. Smogor made a motion, with a second by Mr. Kunkel to approve the January 21, 2009 Roadway Agreement Committee Meeting minutes with no changes. Motion carried unanimously.*

The Committee also reviewed the following three (3) Special Roadway Agreement Committee Meetings and changes were requested as follows:

### Innovation Way Road E Special Meeting – January 15, 2009

Page 1 change “Division” to “Department”.

Add Mr. Smogor’s comment stating that the Agreement should state, “comply with Innovation Way Design Guidelines,” and the exhibit should be the transmitted map.

Page 2 line 7 take out the word “placed”.

Page 3 line 2 the BCC cannot commit to improvements outside their jurisdiction. Take out the “scope” portion of the sentence.

Page 3 needs to define MMTD the first time it is used as Multi-Modal Transportation District. Also define MOU as Memorandum of Understanding.

Page 3 line 21 change “asked” to “once again reiterated”.

Page 3 line 25 change “stated the” to “reiterated that”

Page 4 line 22 delete “Orange County cannot purchase additional Right-of-Way into UCF”.

Page 4 Mr. Nastasi requested adding the final resolution of the meeting that Sections 8 & 9 remain in the agreement and that the agreement is changing to a Road Network Agreement. Mr. Harrison stated that it was tentatively agreed upon.

Page 4 after line 26 add “Mr. Nastasi left the room to attend another meeting”.

*Mr. Smogor made a motion, with a second by Mr. Harrison to approve the January 15, 2009 Special Innovation Way Road E Meeting minutes with requested changes. Motion carried unanimously.*

#### **B/W Stillwater (Horizon West) Special Meeting– January 20, 2009**

Page 1 Roman numerals need to line up and be placed at the margins.

*Mr. Nastasi made a motion, with a second by Mr. Harrison to approve the January 20, 2009 Special B/W Stillwater (Horizons West) Meeting minutes with requested changes. Motion carried unanimously.*

#### **Florida Mall MOU Special Meeting – January 26, 2009**

No changes to the minutes were requested.

*Mr. Nastasi made a motion, with a second by Mr. Kunkel to approve the January 26, 2009 Special Florida Mall MOU meeting minutes with requested changes. Motion carried unanimously.*

#### **Activity Update/Summary/Follow-Up Items List**

College Suites: The conveyance was approved by the Board of County Commissioners (BCC) at the February 3, 2009 meeting. The Release of Conservation Easement is almost recorded.

Avalon Amendment: No progress is being made and the final draft of the amendment has not been submitted. There are permitting issues, a lack of complete submittals, and we need the Amendment approved in order to move forward.

Mr. Nastasi suggested that Ms. Hammel send a letter to Mr. Khali and Mr. Marks to outline the issues and request that the Amendment be submitted.

Mr. Harrison offered to request the Amendment be submitted in a separate letter to be sent simultaneously with Ms. Hammel’s letter.

Ms. Hammel and Mr. Harrison are to work on getting the letter

The Committee requested that Turkey Lake be taken off the Activity Update or brought back to the committee at a later date for an Amendment for Real Estate Management for the timing of the conveyance if needed.

**OUC**

Road Affected: Alafaya Trail Widening

Present: Tom Callan

County Staff Present: Juan Curi, Ghulam Qadir, Damian Czapka

Previous RAC: 8/10/2000, 8/30/2000, 10/11/2000, 2/1/2006, 3/15/2006, 4/19/2006, 11/12/2008, 12/10/2008, 1/7/2009, 1/21/2009

Mr. Callan handed out the Exhibits to the Agreement for review.

Exhibit A – is what is owned today

Exhibit B – What is to be acquired (wants the County to provide)

Exhibit County – 259 revised letter from L-tec

Mr. Nastasi concurred with the information in Exhibit C.

Page 1 first Whereas, Ms. Alfonso stated that a Joinder was needed and asked why Exhibit A, Project Location Map and Exhibit B the Legal and Sketch were taken out.

Mr. Callan responded that he would add back in the project location map and change the current Exhibit A to become a new Exhibit B.

Mr. Callan stated that OUC does own the property so they do not need a Joinder and will delete the “and purchase” clause.

Page 2 need to separate out the original agreement and First Amendment into two separate Whereas clauses and reference the ORBook/Page for each.

Page 2 Ms. Alfonso stated that the “Project” needs to be a defined term.

Page 2 Section 2(a) delete “subject to easement of record”.

Page 3 Section 2(b) Ms. Alfonso asked they select by deed or plat and remove the alternative language.

Page 3 Mr. Callan stated that OUC can only provide a Special Warranty Deed. Mr. Hurt confirmed that a Special Warranty Deed would be acceptable.

Page 3 Ms. Lofye asked they change the second “(i)” to “(ii)”, and will need to reference the previous agreements appropriately.

Page 4 change Lake Underhill Road to Curry Ford Road per Mr. Nastasi as was requested previously.

Page 4 need to keep the trip number to 252, even though the Roviario exhibit shows 259.

Page 4 OUC does not want to perform an ESA.

Risk Management has an issue with this since the ESA is needed for review.

Mr. Callan will go back to OUC to discuss further.

Page 6 Section 10 (b)(i) Ms. Alfonso asked to remove “or any common law writ” She stated that the Remedies need to be standard boilerplate and offered to discuss the Remedies further outside the committee with Mr. Callan if necessary.

Page 7 Section 10(b)(iv) strike completely “action at law...”

Page 7 Ms. Alfonso agreed Counterparts could stay in with the addition of the number three as red-lined.

Mr. Hurt asked that the footer come off of the final draft.

Rescheduled for February 18, 2009 and Mr. Callan was informed that the deadline is this Friday for submission of materials.

### **Florida Mall – Sand Lake Road**

Development: Florida Mall DRI

Developer: Florida Mall Associates, LTD

Road Affected: Sand Lake Road

Present: Scott Thompson

County Staff Present: Luis Alvan

BCC agreement: BCC 6/19/2001 (OR 6301/4303), JPA BCC 6/18/2002

Previous RIFCC/RAC: 11/8/2000, 12/13/2000, 1/17/2001, 3/21/2001, 4/4/2001, 5/16/2001, 6/6/2001, 4/21/2004, 5/19/2004, 12/12/2007, 3/5/2008, 5/21/2008, 7/16/2008, 11/14/008

The Ratification Agreement is returning for re-approval. Mr. Thompson explained that there is one date that needs to be revised in the agreement.

Florida Mall has been working on the MOU since July to outline the funding process.

Need to change the January 1, 2009 start date. Mr. Thompson suggested “May 2009” being included in Section 4(a).

Mr. Nastasi agreed that July 1, 2009 would be an acceptable date and Mr. Kunkel concurred.

Mr. Thompson stated that he had also updated the signature pages dates to 2009.

Ms. Hammel had a concern regarding the Railroad costs and CEI being included as project costs. It was requested to include in the definition construction contract, design, permitting, testing, CEI and Rail Road Cost.

Mr. Thompson agreed to add these items to the definition of project costs.

Include the definition in Section 4(b) to list the items to be included but not limited to design, permitting, R/R Crossing, CEI, Testing, Construction contract costs.

Mr. Thompson wanted to add “All Costs”.

Ms. Hammel asked that all future invoices be submitted as they occur and for these to be submitted to Ms. Brownlie’s attention.

Ms. Hammel wants the opportunity to review the bid package before it is finalized.

*Mr. Smogor made a motion, with a second by Mr. Nastasi, to approve the Florida Mall Ratification Agreement with the changes requested at today's meeting, subject to final review and approval by the Committee and the County Attorneys Office, and subject to final review of the Exhibits by the County Surveyor. Motion carried unanimously.*

Discussion by Ms. Hammel regarding the utility relocation costs. Mr. Thompson explained that relocation costs are covered.

Page 6 Section 13 Mr. Hurt asked they add "within 30 days to the recording paragraph.

Mr. Harrison restated the motion.

*Motion by Mr. Hurt, second by Mr. Nastasi to approve the amendment under the original motion as amended with additional change. Motion carried unanimously.*

*Mr. Smogor made a motion, with a second by Mr. Nastasi, to approve the Florida Mall Ratification Agreement with the changes requested at today's meeting, subject to final review and approval by the Committee and the County Attorneys Office, and subject to final review of the Exhibits by the County Surveyor. Motion carried unanimously.*

#### **TRIP-Narcoossee Road**

Development: Eagle Creek and a group of other Developments on Narcoossee Road

Developer: Lake Nona and a group of Narcoossee Road Developers

Road Affected: Narcoossee Road

Present: Craig Langley; Matt Smith, FJ Flynn, Richard Swann

Previous RIFCC/RAC: 9/14/2005, 1/04/2006, 1/18/2006, 2/15/2006, 3/01/2006, 4/05/2006, 4/19/2006, 5/03/2006, 5/17/2006, 6/07/2006, 10/1/2008, 10/15/2008, 11/12/2009

Mr. Nastasi provided an overview of the latest developments.

A meeting with the County Administrator about ten days ago determined that the County cannot contribute funding to cover the MPG shortfall and that the shortfall must be covered elsewhere.

The county is precluded from participation.

The Design plans are complete and the County is in the process of reviewing the conveyance documents.

The project cannot proceed until the MPG shortfall issue is resolved.

Constructing only a portion of the road is not going to work.

TRIP funding requires completion of the project limits.

Allocation of trips cannot be made until the road is completed.

The City may have a proposal to address the MPG shortfall.

The timeframe is very tight and funding requires construction to begin by May 2009 at the latest.

Need to award a construction contract by May to insure FDOT funding.

Mr. Smith discussed Lake Nona's position that the BCC date of February 24, 2009 needs to happen.

Mr. Smith stated that the solution in the short term is to reach the February 24<sup>th</sup> BCC agenda.

Mr. Smith stated that the remedies included in the First Amendment are not favorable to MPG and they would like Section 15 deleted entirely.

This will allow the First Amendment to move forward regardless of the MPG shortfall while that is work out.

Mr. Swann was agreeable to the original remedies since it allows the City/County to withhold building permits.

Mr. Swann explained that Monroe will work through their cash issues and be in a position in the future to fund their shortfall at some point.

Mr. Flynn stated that there was still an opportunity to include this in the 09/10 City of Orlando CIP Budget.

Mr. Flynn asked when the Tri-Party Agreement would need to get to the BCC.

Mr. Nastasi stated that there is enough funding in the escrow account to start construction and for construction to be fully funded.

Mr. Nastasi stated that all participants need to agree that the escrow will cover construction costs. After that, it is up to the City and MPG to work out the details of the Tri-Party Agreement.

Mr. Nastasi asked that the escrow agent to send a letter that the funding is in place to cover the construction contract amount.

Mr. Smith stated that it is not desirable to start a project with the shortfall still outstanding. Need to be responsible as lead developer to make sure there is agreement between all parties.

Mr. Swann stated that the original agreement provided that if there was too much money refunds would be made to each party and it was anticipated that a party might not pay their contribution.

Ms. Alfonso suggested changing Section 15 to include a reference to the Tri-Party Agreement.

Mr. Smith stated that if they make this a condition of the first Amendment then it creates an obstacle to getting this to the BCC and starting construction.

Mr. Nastasi asked if MPG had submitted their conveyance documents.

Mr. Swann responded he has everything signed in escrow and is prepared to provide these to Akerman Senterfitt for processing.

MPG has worked out the tax issues so that the tax certificates would be paid off and then prorated taxes would be paid for the Right-of-Way.

Need Estoppel Letter from the County Tax Collector regarding taxes to be sent to Akerman with checks from MPG.

MPG must get conveyed on Feb 24 since they have calculated the pro-rations through this date already.

Mr. Harrison restated that if the amendment is approved, what needs to happen to get to the Agreement to the February 24<sup>th</sup> Board of County Commissioners meeting.

The City will have their Commissioners meeting on February 23<sup>rd</sup>.

The GOAA Board meets on February 18<sup>th</sup>.

OCPS has a board meeting on February 10 and the revised First Amendment is on the agenda.

Ms. Alfonso asked that Section 12 also be stricken, since it is no longer needed.

Mr. Nastasi stated that only the beneficiary would have been Eagle Creek if Section 12 were to be acted on but this can only occur at the discretion of the County Engineer.

Ms. Alfonso will not sign off on the Amendment with Section 12 remaining for policy reasons.

Mr. Kunkel stated that this is discretionary in nature and he is able to not act on Section 12.

Mr. Nastasi asked that the letter from the escrow agent be submitted before February 24<sup>th</sup>.

Mr. Smith stated that they will work to get everything done.

Mr. Harrison asked that the Tri-Party Agreement be finalized and put on the City agenda on February 23, 2009.

The items which need to be finalized are as follows:

- Tri-Party Agreement
- Escrow Letter
- MPG Conveyance documents
- First Amendment

***Mr. Smogor made a motion, with a second by Mr. Kunkel, to approve the First Amendment with the deletion of Section 15 in its entirety. Motion carried unanimously.***

Mr. Kunkel wanted to discuss the bid package which was reviewed by Highway Construction. The apparent low bidder did not meet the M/WBE requirements.

Mr. Smith stated that the scoring took into account all of the possible points.

Mr. Kunkel and Mr. Smith agreed to meet to discuss this issue further.

### **International Corporate Park**

#### **Innovation Way Beachline Interchange**

Development: Innovation Way/Beachline Interchange Agreement

Developer: International Corporate Park, OOCEA, Orange County

Road Affected: Innovation Way/Beachline Interchange Agreement

Present: Jim Pratt, Lionel Rubio

Previous RIFCC/RAC: 12/14/2005, 2/1/2006, 7/16/2008, 9/17/2008, 10/1/2008

There were many changes made to the agreement since the last meeting with Roadway Agreement Committee in October 2008.

Mr. Pratt provided a redlined agreement which included comments from OOCEA (Orlando-Orange County Expressway Authority), SLR and previous County comments for review.

Mr. Pratt, Mr. Rubio and Ms. Alfonso will meet following this meeting to discuss additional items of interest.

Page 1 Mr. Pratt will include the parties address in the opening paragraph as Ms. Alfonso had requested.

Page 1 Mr. Nastasi questioned Section 3 and the deletion of the word “partial” in relation to the removal of the existing interchange.

Page 1 Section Mr. Rubio will change “June” to “July” as a correct date.

Page 1 add recital to specify the developer obligations and what needs to be included to further define the development of regional impact (DRI) provisions outlined in Section 4.

Mr. Nastasi suggested sending this agreement with the Amendment Development Order (DO) to avoid these issues and not have a disconnect between the DO and these agreements.

Mr. Rubio wants to include certain language regarding the DO requirements in this interchange amendment.

Mr. Nastasi asked Mr. Pratt to provide a copy of the draft DO and responses to the comments made by the County. Mr. Harrison also asked for a copy of this information.

Page 2 Mr. Nastasi asked why the phrase “necessary to support fixed-guideway transit” was included and suggested changing the word “necessary” to “ultimately”.

Page 3 Section 11 Mr. Rubio suggested removing the work “increased” in relation to the cost of the flyover.

Mr. Harrison summarized that OOCEA does not want any responsibility for the Flyover costs.

Page 3 Section 11 Mr. Kunkel suggested changing “from” to “for”.

Page 3 Section 11 separate the last sentence into two separate sentences.

Page 3 Section 15 Mr. Harrison stated that the reference to the Road E Agreement may need to change if the Road E Agreement title changes.

Page 3 Section 15 Mr. Rubio stated that OOCEA does not want this agreement tied to the Road E Agreement in any way since it provides for another reason for termination.

Page 4 Ms. Lofye asked to add a semi-colon at the end of Section (ii) before “(iii)”.

Page 4 Ms. Alfonso asked to add “and contract” just before (2) and change costs to “actual and reasonable”.

Ms. Hammel asked for a draft exhibit 1(a).

Page 6 Mr. Rubio asked that in the Definition of the Flyover to add language to exclude OOCEA from additional costs.

Mr. Nastasi stated cannot define portions of the road separate from ramps to get to those roads.

Mr. Kunkel pointed out that this relates back to Exhibit 1(a) and who is responsible for what improvements.

Page 8 Mr. Nastasi stated that part is not just on the Interchange. West of SR 417 is within the City and that the County is focusing on the Northern quarter. Need a complete description of the North and South Roads, south of SR 417.

Page 7 Ms. Hammel questioned the definition of Imputed Interest. Mr. Pratt stated that SLR pays OOCEA interest on borrowed money and this provision does not apply to the County.

Page 8 Mr. Nastasi stated that the Beachline Interchange Definition needs more information.

Page 9 Ms. Lofye stated that the Road E definition does not match.

Page 10 reference to Road E does not need to be included since it is incorporated by reference and can delete both paragraphs on Road E.

Page 10 Ms. Hammel stated that the definition of Imputed Interest needs to be linked to the SLR contribution.

Page 11 Mr. Nastasi asked for clarification of the definition of the South Road.

Page 12 Mr. Nastasi has concerns with the timing in Section 2.2.2 which provides for a year following execution. He stated that the DO is contingent on both interchanges being built.

Mr. Rubio stated that the ponds are an issue, since OOCEA does not want to be part of the joint use ponds.

Page 13 Section 2.2.5 Ms. Alfonso asked who will acquire the additional Right-of-Way if needed. Mr. Pratt responded that they own everything out there.

Page 13 Mr. Rubio stated the need for further discussion regarding toll facilities on the ramps and who will bear the cost. OOCEA is looking to the Developer.

Page 14 Section 2.4.1, 2.4.10, and 7.4 Mr. Rubio stated that the Right-of-Way must be subject to reservation, but otherwise free and clear.

Page 14 Ms. Hammel asked about Section 2.3.4 she stated that the fees are waived and asked to rephrase. Not required to pay fees to State, County and OOCEA.

Page 14 Section 2.4.3 Mr. Nastasi asked “the Bridge is going to be County property correct”? Mr. Rubio stated there would be a maintenance agreement between OOCEA and Orange County.

Page 15 there were no changes.

Page 16 there were no changes.

Page 17 Section 2.4.10 Ms. Hammel asked why SLR has rights to the Flyover.

Mr. Pratt responded that SLR may want special signage.

Page 18 Section 2.6 Mr. Nastasi stated that the Impact Fee Credits for increased design costs need a provision that if road impact fee credits are provided, that the other developers reimburse the County since it's a requirement for all DRI's.

County contribution is a fixed amount based on percentage of overall costs from the 1989 Development Order per Mr. Harrison.

Mr. Nastasi stated that other DRI's are relying on these improvements to move forward so we need contributions from other developers by proportionate share to include SLR.

Mr. Harrison stated that the fundamental terms need to be resolved before this agreement can move forward.

Mr. Pratt stated that if this gets too expensive in this economy, then SLR may not be able to bear the cost.

Mr. Harrison requested that Mr. Nastasi, Mr. Kunkel, Mr. Pratt, Mr. Florio and himself meet to discuss global economic issues. He also requested that after that meeting return to the Roadway Agreement Committee to discuss Section 2.6.

Page 19 Ms. Hammel objected to the Section 3.3 requirement to construct within 18 months. Mr. Harrison said it was okay since it is between Orange County and OOCEA.

Page 20 Mr. Harrison had an issue with the Section 4.2 language on Innovation Way since the County cannot warrant it has 100% costs funding in place.

Page 21 OOCEA wants a timeframe for SLR to move forward so it is not open ended in Section 5.2.

No changes to Page 22.

Page 23 Mr. Harrison stated that Mr. Nastasi will need to address Sections 6.3 and 6.4 separately if necessary.

Page 24 Ms. Alfonso Section 7.1.1 Unforeseen Changes, the County should have the opportunity to review since we could be responsible for additional costs.

Page 25 Ms. Alfonso objects to Section 7.1.2 where OOCEA has "complete and sole discretion" to determine change orders.

Mr. Pratt stated that OOCEA wants to determine all change orders but SLR and Orange County will bear the costs and have no say in determining change orders.

Page 26 no changes.

Page 27 SLR should not be included in Section 7.4; reduce language and make reference to Right-of-Way Utilization Agreement.

Page 28 Section 7.5 is between SLR and OOCEA and was not discussed.

No changes to Page 29 or Page 30.

Page 31 Ms. Alfonso asked to indemnify the County in Section 7.5.9. Mr. Pratt agreed to make the change.

Page 32 Mr. Rubio stated that OOCEA wanted Orange County to install and maintain separate lighting with separate circuits.

Page 32 Mr. Rubio had a problem with joint use ponds in Section 8.3.

Page 33 Section 9 Road E it was requested to remove a portion if not all of this language.

Page 34 through Page 36 there were no changes.

Page 37 through Page 38 Ms. Alfonso will meet with Mr. Pratt and Mr. Rubio to discuss the Limitation of Remedies.

Page 39 Section 19 Ms. Alfonso wants the last sentence of this language taken out. She stated that the County can withhold permits if SLR does not comply.

Mr. Pratt agrees and will check with his client to see if it can be stricken.

Page 39 Section 20 Ms. Alfonso asked to change “in compliance with” to “not in violation of” and to end the sentence after “Development Order”.

Page 39 Mr. Harrison asked to remove second half of the sentence “shall be permitted ...” in Section 20.

Mr. Rubio has a concern that this agreement will be terminated or lapse and wants to make sure SLR is still on the hook for certain improvements under the amended DO.

Mr. Rubio will review the amended DO and then would like to discuss further.

Page 40 Section 20.2.3 Ms. Lofye should say “approved or provided comments for ...”. Mr. Pratt agreed.

Page 42 Section 20.3.12 Ms. Alfonso asked that County be notified if SLR defaults.

Page 42 Section 20.3.13 Ms. Alfonso noted this section is new and the County needs to review. Mr. Harrison asked for 20.3.13 to reference 20.4 below.

Page 42 Section 20.4 Ms. Alfonso objected to OOCEA providing written approval. Mr. Harrison asked to add “which shall not be unreasonably withheld”.

Page 43 Mr. Harrison asked that a new Section 20.6 be added to address lighting.

Page 44 Ms. Alfonso had issues with Section 26 and will work further with Mr. Pratt and Mr. Rubio. Mr. Pratt will try to rework this section.

Page 45 there were no changes.

Page 46 Mr. Harrison would like to review the Toll Collection in Section 31 in a separate meeting.

Page 46 Section 32 Force Majeure language needs to be further discussed between Ms. Alfonso, Mr. Pratt and Mr. Rubio.

The Signature pages and Exhibits were not reviewed.

Ms. Alfonso to meet separately with Mr. Pratt and Mr. Rubio.

Mr. Harrison will convene a posted meeting next week to discuss the funding structure, road impact fee credits, and change orders.

Reschedule for the February 18, 2009 Roadway Agreement Committee meeting. Mr. Pratt is to provide a redline by Friday, February 6, 2009, and a second redline before the next meeting.

Mr. Pratt is out of town on February 18<sup>th</sup>; so this may need to be rescheduled to the March 4<sup>th</sup> meeting.

Mr. Harrison adjourned the meeting at 1:24 p.m.