



Interoffice Memorandum

Minutes

Florida Mall MOU

Special Roadway Agreement Committee

January 26, 2009

Members Present: Renzo Nastasi – Transportation Planning Division

County Staff Present: Robin Hammel – Engineering Division
Heather Brownlie – Transportation Planning Division
Roberta Alfonso – County Attorney’s Office
Ghulam Qadir – Engineering Division
Luis Alvan – 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 4:18 p.m.

Mr. Thompson made introductions to Mr. Albright and Mr. Adler who attended by teleconference.

The Design of the roadway is complete and Simon is preparing the bid package and construction contract forms.

Two previous meetings were held regarding the MOU which has been redrafted by Scott Thompson.

The format is the same, but some of the language has been changed. A blackline version has been provided for review of the changes made.

Section 1 on Page 2 provides an option for Florida Mall to post a letter of credit or some other funding mechanism to provide their contribution.

Section 2 on Page 2 discusses the road improvement contract and providing financial assurance to meet FDOT requirements.

Section 3 (b) on page 4 changes the language providing for partial payment if an amount is in dispute or not submitted properly.

Section 3 (c) on Page 4 changes the language of the enabling provision so that funds can be refunded to the appropriate party.

Section 4 on page 5 Ms. Alfonso had requested a remedies section to be included and Mr. Thompson has added this language.

Simon Mall retains the liability for entering into the construction contract.

Funding expenditures will be reimbursed from FDOT funds first.

Ms. Hammel asked Mr. Alvan if he had received the design invoices.

Mr. Alvan has looked over the information and discussed the total cost with Ms. Hammel and will need to look closer at all documents.

Ms. Hammel said that it needs to be a reasonable amount for the total project cost for design.

Mr. Nastasi said that if there was ever a change order needed in the future, then there may be additional billing.

Ms. Hammel said that the invoicing is not set up the way we ordinarily invoice design projects.

The cost of design to be applied towards the Proportionate Fair Share owed by Florida Mall.

Mr. Nastasi asked if FDOT had signed off on final design.

Mr. Albright stated that FDOT has signed off.

Mr. Nastasi asked Mr. Albright to obtain a letter from FDOT signing off on final plans.

Ms. Hammel asked if final plans were approved by Engineering.

Mr. Alvan said previous plans were approved but not latest set of plans.

Ms. Hammel asked Mr. Alvan to review the final plans to see if the County can sign off. Mr. Albright will make sure Mr. Alvan gets a set.

Mr. Thompson asked for any additional invoices from July to present for County review also.

Ms. Hammel reviewed the budget items for proportionate share of 1.4 million; design costs will be 900K or so (up to 1 million) leaving 400k balance for construction.

URS to perform CEI functions for construction management.

Mr. Thompson said that there is a need to get bids to come in for construction before we can pin down exact figures.

Ms. Hammel requested the payment and performance bond be provided to FDOT; County is not a party.

Mr. Thompson said as invoices come in, Florida Mall will pay their share of the construction costs.

Mr. Nastasi asked how this would work mechanically (County share/FDOT share/Florida Mall share)

Mr. Thompson requested that invoices be paid first from proportionate share then FDOT reimbursements should come next. County will pay reimbursement amounts.

Mr. Thompson said that the Letter of Credit would be for insurance only, and not meant to be drawn upon unless Florida Mall defaults.

Ms. Alfonso said that there are specific requirements for County Letters of Credit. Ms. Alfonso will send these requirements to John Albright.

Mr. Thompson said the Letter of Credit will not be drawn down on, it serves to provide assurance that the funding is in place.

Ms. Hammel asked that the language for the Letter of Credit be solely for Letter of Credit, not for a bond since the County prefers to have a Letter of Credit.

Ms. Hammel was happy with the agreement terms as discussed, but would like the opportunity to review the documents further.

Mr. Thompson reviewed the timing of providing a Letter of Credit after bidding so the exact total amount is known and he would also need to get CEI costs for URS and any costs needed for post-design services.

Mr. Albright will obtain CEI costs from URS.

Ms. Hammel said to include the CEI costs as part of the MOU so the CEI and post-design services can be included as an exhibit with the MOU document.

Ms. Hammel said URS invoices can then be paid as well as construction invoices.

Mr. Thompson needs an updated budget. Mr. Albright will follow-up to provide this information.

Ms. Hammel asked that all future invoices to be submitted for County review.

Mr. Alvan said the Railroad Crossing Agreement is part of the construction costs.

Mr. Thompson stated that Railroad Crossing is part of construction costs overall.

Ms. Hammel asked to attach a preliminary budget to the MOU.

Mr. Nastasi requested the addition of the Railroad Crossing references to the MOU.

Mr. Qadir asked to see the construction contract before it is executed by Florida Mall.

Ms. Hammel asked to add a special provision to the construction contract that the contractor must coordinate with CSX Railroad.

Mr. Alvan will send special provisions example for Florida Mall to review.

Mr. Thompson and Ms. Alfonso discussed the remedies section further. Ms. Alfonso suggested including mediation and removing attorney's fees.

Mr. Thompson will add a clause expressly not including payment of any costs for utilities.

Mr. Albright needs the County to sign-off on construction contract before sending bid package out.

Timeframe for MOU and Ratification Agreement should be after the construction contract is reviewed.

Mr. Thompson asked how soon this could get to the BCC. Ms. Brownlie stated they were looking at an early March BCC date.

Ratification Agreement needs to go into final review. Check the date it was last approved by Committee.

Check to see if Ratification Agreement still needs to go through final review. It may need to go back to RAC.

MOU does not need RAC approval and may not need Mayor's signature.

Ms. Alfonso said MOU does not need to be executed by County.

February 4, 2009 is the next Roadway Agreement Agenda for the Ratification Agreement to be reviewed.

Meeting adjourned at 5:37 p.m.