



Interoffice Memorandum

Minutes

Florida Mall MOU

Special Roadway Agreement Committee

April 10, 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
Linda Medeiros – Fiscal & Administration Division
Luis Alvan – Engineering Division
Joe Perez – Highway Construction 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 10:20 a.m.

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

Mr. Nastasi explained that FDOT would require a number of items which make it impracticable for the County to takeover the construction of the project including revisions to the FDOT agreements and a preparing a revised bid package.

Mr. Nastasi asked Mr. Thompson if there was a possibility of Florida Mall posting a letter of credit. Mr. Thompson briefly discussed this option with his client, and stated that Florida Mall is willing to provide a letter of credit.

Mr. Nastasi explained that the purpose of the Letter of Credit is to provide security to the County that the construction contract is carried out and construction is completed.

Mr. Albright asked why Orange County would need a letter of credit if the construction contract is between Florida Mall and the General Contractor?

Mr. Thompson indicated that if a Letter of Credit was provided it would not be a typical Letter of Credit but would need to include restrictions on the release of funds.

Mr. Albright stated that if the contractor has an issue during construction they are looking to Florida Mall and not Orange County.

Mr. Nastasi explained that FDOT has agreements with Orange County which requires that Orange County gets the work done by the Florida Mall. Mr. Nastasi referred to the LFRA Agreement and subsequent Amendment which states that the County is responsible for the project being completed.

Mr. Thompson said that on a different type of a project a payment and performance bond may be all that would be needed.

Mr. Albright summarized that a Letter of Credit or a cash escrow are our options at this point.

Ms. Hammel added that for Developer projects Letters of Credit are required by the County. Mr. Perez further explained that a bond only covers non-performance by the contractor and would not cover any default on the part of the Developer.

Ms. Hammel also stated that the CSX costs and the CEI costs are not included as part of the construction contract.

Mr. Albright asked what security he could require from Utilities. Mr. Nastasi asked that the Utilities discussion remain separate for the moment.

Mr. Nastasi outlined that for Public-Private Partnerships, the escrow of funds, and also Right-of-Way, has always been required from Developers and examples could be provided. County policy must be adhered to and Florida Mall needs to select either a Letter of Credit or Cash Escrow Fund mechanism to secure their contribution of funding for the project.

Mr. Nastasi asked if the fee for the letter of Credit was an issue. Mr. Albright responded that the Letter of Credit itself was not the issue, Florida Mall just wants to be treated similarly to all other Developers in the same situation. Mr. Albright asked what his recourse would be against Utilities if they did not relocate in time and delayed the road construction project.

Mr. Nastasi stated that Orange County Utilities needs to remain separate from the road project. Orange County Utilities is an Enterprise Fund. If guarantees are needed, they need to come from Orange County Utilities. These can be included with the JPA if needed.

Mr. Albright's concern is that if Orange County Utilities defaults then the Developer's construction contract could be delayed and Florida Mall could become liable for cost overruns.

Mr. Nastasi stated that if the delay is caused by the County then the County agrees to bear the additional expense due to the delay.

Mr. Nastasi suggested setting another meeting including Utilities as soon as possible.

Mr. Thompson stated that there are bidding issues with Utilities since it is an add-on bid to the road bid. Utilities cannot exceed a 10% contingency without getting BCC approval.

Mr. Nastasi asked that Jason Herrick along with Jose Hernandez and Allen Erickson be included in the next meeting.

Mr. Thompson stated that OUC also needs to have their documents prepared as well.

Mr. Thompson reviewed the Remedies discussion he had with Ms. Alfonso and outlined the remaining issues with the MOU document.

Mr. Thompson reviewed the invoices submitted with Luis Alvan and asked if what had been submitted was approved yet and added that a few small change orders would be forthcoming as well.

Mr. Thompson asked that the County sign off on the current invoices and come up with a final design figure so that everyone knows what the remainder of the Proportionate Fair Share amount will be.

Ms. Hammel suggested that Orange County provide a letter outlining the final design costs approved and the balance due for the Proportionate Fair Share payment.

Mr. Thompson stated that FDOT needs to sign off on the Construction Permit and asked if the County could follow up with Dan McDermott regarding getting the permit issued.

Mr. Nastasi asked that an internal meeting with Utilities be set up followed by a meeting with the Developers, Public Works and Utilities to resolve any remaining issues.

Mr. Thompson will provide a list of the outstanding issues with Utilities for reference.

Meeting adjourned at 11:00 a.m.