

Additional Information for Agenda Item #34

**First and Only Public Hearing to Consider a Proposed
Tri-Party Infrastructure and Conveyance Agreement
Related to the Orchard Pond Parkway Toll Road**

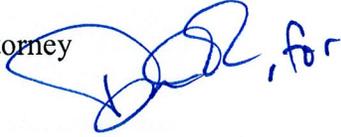
Meeting of Tuesday, July 9, 2013

This document distributed July 9, 2013

BOARD OF COUNTY COMMISSIONERS

INTER-OFFICE MEMORANDUM

TO: Honorable Chairman and Members of the Board of County Commissioners

FROM: Herbert W. A. Thiele, County Attorney 

DATE: July 8, 2013

SUBJECT: Orchard Pond Parkway Toll Road; July 9, 2013 Public Hearing on Tri-Party Infrastructure and Conveyance Agreement

This memorandum informs the Board of revisions to the Tri-Party Infrastructure and Conveyance Agreement (the "Agreement") to be considered by the Board in Agenda Item #34 at the July 9, 2013 public hearing. Upon further review of the final draft of the Agreement (Attachment #1 to Agenda Item #34), the parties have agreed upon the following revisions to be incorporated into the Agreement, as shown below in legislative format:

- In Paragraph 2, Definitions:
 - (q) *Permits* means all permits, licenses, consents, approvals, and agreements that may be required in connection with the construction and installation of the *Road Improvements*—~~and~~, the *Toll Operations Improvements*, and the *Recreational Trails* as contemplated by the *Plans* and as provided for in this Agreement.
 - (r) *Plans* means any and all of the design plans, construction plans, reports, surveys, and other such documents for the design and construction of any improvements comprising either *Road Improvements*—~~or~~, the *Toll Operations Improvements*, or the *Recreational Trails*.
- In Paragraph 3, Purpose:
 - (a) clarify the process by which the County will review the *Plans* for the *Road Improvements*, separate and apart from the County's review for approval of any *Permits*, and make final design recommendations in accordance with Paragraph 8(a)(b) below;
- In Paragraph 5, Scenic Easements and Recreational Trails:
 - At *Closing* in accordance with Paragraph 10(c) below, the Owner shall convey to the County the *Scenic Easements* and *Recreational Trails* as described below subject to the conditions that (i) ... (ii) ... (iii) to the extent that the *Scenic Easements* do not provide sufficient area for such stormwater management, the Owner shall convey to the County, at no cost to the County, additional easement interests sufficient to accommodate such stormwater management needs; provided, however, that the land area to be encumbered by such additional easement interests shall be limited to no greater than necessary for the County to reasonably accommodate the stormwater management needs as required by the *Permits* for the development of the *Recreational Trails*; and (iv)

- In Paragraph 8, Road Improvements Scope, Design and Construction:
 - (b)(ii) The Operator shall submit the *Plans* for *Road Improvements* to the County for review and recommendations at each progress point customary for such roadway design: 30%, 60%, 90%, and 100% of design completion. No later than ~~three (3)~~ ten (10) *Business Days* after each such *Plans* receipt by the County, the County shall provide any recommended *Plans* revisions in writing to the Operator; provided, however, that the County shall use reasonable efforts to expedite such review in recognition of the Operator's desire to complete the *Road Improvements* as soon as reasonably possible. Unless otherwise agreed upon by the *Parties*, the County's failure to provide any recommended *Plans* revisions within such timeframe shall be deemed to be the County's acceptance of such *Plans* as submitted for that particular progress point of design completion.

In consideration of these revisions to the Agreement, Options #1 and #2 of Agenda Item #34 are revised to read as follows:

- Option #1 Conduct public hearing and approve the Proposed Tri-Party Infrastructure and Conveyance Agreement as revised in accordance with the additional information provided by memorandum on July 8, 2013, with any additional non-substantive changes to the Leasehold Mortgage provisions within Exhibit "B" therein in a form approved by the County Attorney.

- Option #2 Authorize the Chairman and County Administrator to execute and accept any and all documents necessary to effectuate the conveyances to the County of the Leased Property, the Scenic Easements, and the Recreational Trails as set forth in the Tri-Party Infrastructure and Conveyance Agreement as revised in accordance with the additional information provided by memorandum on July 8, 2013.

If you have any questions regarding these revisions, please do not hesitate to contact our office.

cc: Vincent S. Long, County Administrator
 Alan Rosenzweig, Deputy County Administrator
 Tony Park, Director of Public Works and Community Development
 Katherine Burke, Chief, Engineering Services

DJR