



Interoffice Memorandum

June 20, 2017

TO: Mayor Teresa Jacobs
and Board of County Commissions

FROM: Mark V. Massaro, P.E., Director, Public Works Department

CONTACT PERSON: Diana M. Almodovar, P.E., Manager
Development Engineering Division

PHONE NUMBER: (407) 836-7974

SUBJ: **Memorandum of Understanding between Toll Florida XII Limited Partnership and Orange County for Toll Florida XII Limited Partnership to provide a Letter of Credit in a dollar amount and for a period of time in excess of the Orange County Code requirements for a project within the Lakeshore Preserve Subdivision**

A Memorandum of Understanding between Toll Florida XII Limited Partnership, and Orange County is being proposed to provide a Letter of Credit for a dollar amount and for a period of time in excess of Orange County Code requirements to guarantee the functioning of an underdrain system installed in conjunction with the use of crushed concrete material base in the right-of-way of the Lakeshore Preserve Subdivision.

For a period of three years, Toll Florida XII Limited Partnership, at its sole cost and expense, will maintain the new experimental underdrain system. At the end of the three years term, and after re-certification of the underdrain system by a geotechnical engineer, Orange County will accept the underdrain system for maintenance and will release the letter of credit.

The Public Works Development Engineering Division and the County Attorney's Office have reviewed the agreement and find the terms acceptable.

Action Requested: Approval and execution of Memorandum of Understanding by and between Toll FL XII Limited Partnership and Orange County, Florida for Toll Florida XII Limited Partnership to provide a Letter of Credit in a dollar amount and for a period of time in excess of the Orange County Code requirements for a project within the Lakeshore Preserve Subdivision. District 1.

DMA/LAA/sa

Attachments

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("**MOU**") is being entered into by and between TOLL FL XII LIMITED PARTNERSHIP ("**TOLL**"), a Florida limited partnership, whose address is 2966 Commerce Park Drive, Suite 100, Orlando, Florida 32819 and ORANGE COUNTY, FLORIDA ("**COUNTY**"), a charter county and political subdivision of the State of Florida, whose address is 201 South Rosalind Avenue, Orlando, Florida 32801.

RECITALS

WHEREAS, TOLL is the owner of certain real property located in Orange County, Florida which is being developed as the Lakeshore Preserve Phase 2 development (the "**PROPERTY**");

WHEREAS, as part of developing the property, TOLL has chosen to use crushed concrete (a currently approved base material) in conjunction with the use of an underdrain system that is a new and experimental system in Orange County (the "**PROJECT**");

WHEREAS Section 34-203, Orange County Code, requires a developer to provide an irrevocable letter of credit prior to issuance of a certificate of completion in the amount of ten percent (10%) of the cost of construction of any required public improvements, such letter of credit to expire one year from the date of issuance of the certificate of completion (the "**CODE REQUIREMENTS**");

WHEREAS, due to the experimental nature of the PROJECT, the COUNTY would like TOLL to provide an irrevocable letter of credit in an amount and for a period of time in excess of the CODE REQUIREMENTS (the "**LOC**") for the PROJECT, and TOLL is amenable to doing so;

WHEREAS, TOLL and COUNTY are executing this Memorandum of Understanding in order to memorialize their understanding of the LOC requirements.

1. RECITALS. The foregoing recitals are true and correct, and are incorporated herein by reference.

2. LOC REQUIREMENTS. Notwithstanding certain CODE REQUIREMENTS, TOLL agrees to provide the LOC to the COUNTY within fifteen (15) days from the date of the last of the signatures hereto in a form substantially similar to the form letter of credit attached hereto, and incorporated herein by reference, as **Exhibit A**. Specifically, TOLL agrees that the LOC shall exceed the CODE REQUIREMENTS in the following respects:

A. The LOC shall be in an amount equivalent to 100% of the cost of construction of the PROJECT, in lieu of an amount equal to ten percent (10%) of the cost of construction of the PROJECT;

B. The LOC shall expire one year from the date of issuance of the LOC; and

C. The LOC shall automatically renew for no more than two one-year periods, in lieu of one 90-day renewal.

3. COUNTY REQUIREMENTS. The COUNTY hereby approves the form of the LOC provided it is in substantially the form attached hereto as **Exhibit A**. The COUNTY agrees to hold and secure the LOC in accordance with its standard letter of credit practices and procedures. The COUNTY agrees to only draw on the LOC in accordance with the terms set forth therein.

4. TERM. The term of the responsibilities described in this MOU shall start on the Effective Date and end on the date the COUNTY has both signed off on the completion of the PROJECT and released the LOC.

5. AMENDMENTS. The provisions of this MOU may only be amended in writing by mutual agreement of the parties hereto.

6. COUNTERPARTS. This MOU may be executed in as many counterparts as there are signatories to the MOU, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

7. SEVERABILITY. If any part of this MOU is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this MOU if the rights and obligations of the parties and if the intention of the parties can continue to be effective. To that end, this MOU is declared severable.

8. ENTIRE AGREEMENT; NO THIRD PARTY BENEFICIARIES. This MOU constitutes the entire agreement between the parties hereto on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written MOU, shall be enforceable. No person or entity is intended to be a third-party beneficiary of this MOU; nor shall any person or entity be permitted to assert any claim or right as a beneficiary under this MOU.

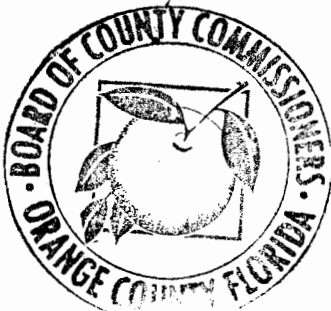
9. EFFECTIVE DATE. The effective date of this MOU is November 1, 2016, the date of issuance of the Certificate of Completion for the Project.

IN WITNESS WHEREOF, the parties have read and agree with this MOU and executed this MOU or caused this MOU to be executed and delivered by their duly authorized officers on the date(s) noted below.

ATTEST:

Phil Diamond, CPA, County Comptroller,
as Clerk of the Board of County Commissioners

By: Karl Smith
Deputy Clerk



COUNTY:

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: Teresa Jacobs
Orange County Mayor

Execution Date: July 11, 2017

[signatures continue on following page]

TOLL:

Signed, sealed, and delivered
in the presence of:

Mark McIntosh
Name: MARK MCINTOSH
Johanna Bass
Name: JOHANNA BASS

Toll FL XII Limited Partnership,
a Florida limited partnership

By: Toll FL GP Corp., a Florida
corporation, its General Partner

By: [Signature]

Printed Name: BROCK FANNING

Title: TR. VICE PRESIDENT

Execution Date: May 11, 2017

STATE OF FLORIDA
COUNTY OF ORANGE

SWORN and subscribed to freely and voluntarily for the purposes therein expressed before me by
Brock Fanning, of Toll FL GP Corp., a Florida corporation, the General Partner of Toll
FL XII Limited Partnership, a Florida limited partnership, who is known by me to be the person described herein
and who executed the foregoing this 11 day of May, 2017. S/he is personally known to me or has
produced _____ as identification and did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 11 day of
May, 2017



Johanna Bass
Notary Public

Print Name: Johanna Bass

My Commission Expires: 4/7/2020

**EXHIBIT A
FORM OF LOC**

IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____

DATE: _____, 20____

BENEFICIARY:

ORANGE COUNTY, FLORIDA
C/O ORANGE COUNTY DEV. ENGIN.
4200 SOUTH JOHN YOUNG PKWY
ORLANDO, FLORIDA 32839
ATTN: LUIS A. ALVAN

APPLICANT:

TOLL FL XII LIMITED PARTNERSHIP
2966 COMMERCE PARK DRIVE, SUITE _____
ORLANDO, FL 32819
ATTN: _____

PROJECT NAME:

AMOUNT: _____ [**ONE HUNDRED PERCENT OF COST OF CONSTRUCTION**]

DATE OF EXPIRY: _____, 20____

AT THE REQUEST AND FOR THE ACCOUNT OF APPLICANT, WE, _____ ("ISSUER"),
HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____, IN FAVOR
OF ORANGE COUNTY, A CHARTER COUNTY AND POLITICAL SUBDIVISION OF THE STATE OF
FLORIDA ("BENEFICIARY"), AND AUTHORIZE YOU TO DRAW ON ISSUER, IN THE MAXIMUM
AGGREGATE AMOUNT OF _____ [**ONE HUNDRED PERCENT OF COST OF CONSTRUCTION**],
IN UNITED STATES FUNDS, WHICH IS PAYABLE AT SIGHT AGAINST PRESENTATION OF YOUR
DEMAND, WHEN ACCOMPANIED BY THIS LETTER OF CREDIT AND ANY OF THE FOLLOWING
DOCUMENTS:

1. A STATEMENT SIGNED BY THE ORANGE COUNTY MAYOR OR AUTHORIZED REPRESENTATIVE
READING AS FOLLOWS: "THE PERFORMANCE OF APPLICANT'S OBLIGATION HAS NOT BEEN
COMPLETED YET AND THE LETTER OF CREDIT WILL EXPIRE WITHIN 45 DAYS FROM THE DATE
OF DRAWING WITHOUT BEING EXTENDED OR REPLACED TO THE COUNTY'S SATISFACTION;"
OR

2. A STATEMENT SIGNED BY THE ORANGE COUNTY MAYOR OR AUTHORIZED REPRESENTATIVE
READING AS FOLLOWS: "ISSUER [CONFIRMER] HAS LOST ITS DESIGNATION AS A "QUALIFIED
PUBLIC DEPOSITORY" PURSUANT TO FLORIDA STATUTES, CHAPTER 280, AND AN ACCEPTABLE
REPLACEMENT LETTER OF CREDIT HAS NOT BEEN RECEIVED BY THE COUNTY FOLLOWING
NOTICE TO APPLICANT;" OR

3. A STATEMENT SIGNED BY THE ORANGE COUNTY MAYOR OR AUTHORIZED REPRESENTATIVE
READING AS FOLLOWS: THE DRAWING IS DUE TO APPLICANT'S FAILURE TO HAVE PROPERLY
CONSTRUCTED THE CRUSHED CONCRETE BASE AND UNDERDRAIN SYSTEM FOR THE
LAKESHORE PRESERVE PHASE 2 PROJECT (HEREINAFTER THE "IMPROVEMENTS") AND
MAINTAIN SAID IMPROVEMENTS FOR A ONE (1) YEAR PERIOD FOLLOWING ISSUANCE OF A
CERTIFICATE OF COMPLETION FOR SUCH IMPROVEMENTS. SPECIFICALLY, THE STATEMENT
SHALL BE TO THE EFFECT THAT: "THE MATERIALS, WORKMANSHIP, STRUCTURAL INTEGRITY,
FUNCTIONING, AND/OR MAINTENANCE (MAINTENANCE REQUIRED TO ENSURE PROPER
OPERATION) OF THE IMPROVEMENTS HAS BEEN DETERMINED TO BE UNACCEPTABLE, AND

SUCH CONDITION(S) HAS NOT BEEN CORRECTED DESPITE NOTIFICATION TO THE DEVELOPER,” AND FURTHER STATING THE SUMS DUE AS A RESULT OF SUCH DEFAULT TO DEFRAY THE ESTIMATED COST OF REPAIRS TO THE IMPROVEMENTS.

A SUM NOT TO EXCEED _____ [**ONE HUNDRED PERCENT OF COST OF CONSTRUCTION**] SHALL BE AVAILABLE FOR PARTIAL OR FULL DRAW BY PRESENTATION OF YOUR DEMAND AT SIGHT IF ACCOMPANIED BY A WRITTEN STATEMENT AS DESCRIBED IN THE PRECEDING PARAGRAPHS.

THIS LETTER OF CREDIT SHALL BE IN FULL FORCE AND EFFECT UNTIL _____, 20__ [**ONE YEAR FROM DATE OF ISSUANCE**] AND WILL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR SUCCESSIVE ONE-YEAR PERIODS, NOT TO EXCEED TWO SUCH ONE-YEAR PERIODS, UNLESS WE PROVIDE THE BENEFICIARY WITH WRITTEN NOTICE OF OUR INTENT TO TERMINATE THE CREDIT HEREIN EXTENDED, WHICH NOTICE MUST BE PROVIDED AT LEAST THIRTY (30) DAYS PRIOR TO THE EXPIRATION DATE OF THE ORIGINAL TERM HEREOF OR ANY EXTENDED TERM.

[**IF A CONFIRMING BANK IS TO BE USED, INSERT THIS LANGUAGE:** ISSUER NOMINATES _____ [NAME AND ADDRESS OF NOMINATED CONFIRMING BANK] TO CONFIRM THIS STANDBY LETTER OF CREDIT.]

DRAWS MUST BE PRESENTED NO LATER THAN _____, 20__ OR ANY EXTENDED EXPIRATION DATE AND MUST BEAR THE CLAUSE: “DRAWN UNDER LETTER OF CREDIT NO. _____ OF [ISSUER], DATED _____, 20__.”

PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED; PROVIDED, HOWEVER, THAT ANY PAYMENT MADE UNDER THIS LETTER OF CREDIT SHALL REDUCE THE AMOUNT AVAILABLE UNDER IT.

WE, ISSUER, HEREBY AGREE THAT ALL DRAWS PRESENTED UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT SHALL BE DULY HONORED UPON PRESENTATION TO ISSUER [CONFIRMER] AT: (*note: must have tri-county street address (Orange, Osceola, Seminole).*)

THIS LETTER OF CREDIT WILL BE CONSIDERED AS CANCELLED UPON RECEIPT BY US OF THE ORIGINAL LETTER OF CREDIT OR UPON ANY PRESENT OR FUTURE EXPIRY DATE HEREUNDER, WHICHEVER SHALL OCCUR FIRST.

THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998 (ISP98) (INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590) AND TO THE PROVISIONS OF FLORIDA LAW. IF A CONFLICT BETWEEN THE ISP98 AND FLORIDA LAW SHOULD ARISE, FLORIDA LAW SHALL PREVAIL. IF A CONFLICT BETWEEN FLORIDA LAW AND THE LAW OF ANY OTHER STATE OR COUNTRY SHALL ARISE, FLORIDA LAW SHALL PREVAIL.

VERY TRULY YOURS,

AUTHORIZED SIGNATURE

ISSUER

AUTHORIZED SIGNATURE

ISSUER