ALACHUA COUNTY
BOARD OF COUNTY COMMISSIONERS

RESOLUTION 2014-33

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ALACHUA COUNTY RELATING TO CONTRACTUAL INDEMNIFICATION BY THE COUNTY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, this resolution replaces and supersedes Resolution 06-121;

WHEREAS, Alachua County frequently enters into contractual relationships;

WHEREAS, these contracts vary from purchase orders to multimillion dollar contracts and interlocal agreements; and,

WHEREAS, many contractors require the County to indemnify them for the actions of the County, its contractors, and third parties; and,

WHEREAS, the nature of the party and the subject matter of the contract are factors that the County should consider in promising to indemnify a contractor; and,

WHEREAS, the County usually has refused to indemnify contractors; and,

WHEREAS, the Supreme Court of Florida recently decided the case of American Home Assurance Company v. National Railroad Passenger Corporation, 908 So.2d 459 (Fla. 2005) (holding that a local government could contractually be held liable under an indemnification provision despite sovereign immunity defenses raised); and,

WHEREAS, it is the opinion of the County Attorney's Office that the safest course of action is to never indemnify another party; and,

WHEREAS, as a practical matter, it is sometimes necessary, to achieve policy goals that are in the best interests of the County, to take on the risk of such an indemnity provision; and,

WHEREAS, the Board of County Commissioners hereby finds that there is a need for the County to implement a uniform policy and methodology for the review of matters relating to contractual risk assumption or indemnification of other entities by the County.

NOW THEREFORE BE IT RESOLVED by the Alachua County Board of County Commissioners as follows:

Section 1. The County Policy is that the County does not indemnify contracted parties. The Board of County Commissioners may waive this policy after considering the following factors. This policy may only be waived based on the following factors.

1) The availability of the goods or services from other sources;
2) The County's need for the goods or services;
3) The probability of an incident occurring that will expose the County to financial liability occurring,

Section 2. County policy not to contractually indemnify others should conform to the following requirements:

1) The other entity must have refused, in writing, to remove all indemnification requirements or refused to allow a contractual provision that each party be responsible for its own negligence to take the place of the indemnification provision.

2) No indemnification by the County for the acts of any entity other than the County, its Governing Body, or its employees shall be approved. Particularly, no contract shall be entered into that requires the indemnification for acts or omissions of third parties or third party agents of the County.

3) County indemnification of a party shall specifically be limited to the lesser of the contract amount, or the limits of sovereign immunity under §768.28, Florida Statutes ($200,000/$300,000). Recovery shall be limited contractually to the actual damages incurred as a result of County's sole negligence. No recovery of attorney's fees and costs should be permitted.

4) County indemnification shall specifically be limited to traditional liabilities for which the County could be held liable under common law interpreting the limited waiver of sovereign immunity (i.e. no waiver of sovereign immunity for planning functions or otherwise). Language shall also be included in the contract that states that any claim must comply with the procedures found in §768.28, Fla. Stat. for such tort claims.

5) County indemnification requires specific individual review through the contract review process which shall include, at a minimum, written approval, by the County Attorney's Office, the County Risk Management Department, and the County Manager's Office.

Section 3. To the extent possible, and after consideration as outlined above, the following language should be used if the County decides to indemnify another party (Contractor):

> County hereby agrees to indemnify the Contractor for claims brought against the Contractor only to the extent that they are found to result from the sole negligence of the County, its governing body, or its employees. This indemnification shall not be construed to be an indemnification for the acts, or omissions of third parties, independent contractors or third party agents of the County. This indemnification shall not be construed as a waiver of the County's sovereign immunity, and shall be interpreted as limited to only such traditional liabilities for which the County could be liable under the common law interpreting the limited waiver of sovereign immunity. Any claims against the County must comply with the procedures found in §768.28, Florida Statutes. In order to comply with the requirements of §129, Florida Statutes, and Article VII, section 10 of the Florida Constitution, the value of this indemnification is limited to the lesser of the amount payable by either party under the substantive provisions of this Agreement, or the limitations of §768.28, Florida Statutes. In addition, this indemnification shall be construed to limit recovery by the indemnified party against the County to only those damages caused by County's sole negligence, and specifically not include any attorney's fees or costs associated therewith.

Section 4. This policy shall not apply to End-User License Agreements (EULA) for subscriptions or software, or terms of use for websites that do not require signature by the County, such as click and accept websites.

Section 5. This resolution shall take effect immediately upon adoption.

DULY ADOPTED in regular session, this 22nd day of April, 2014.

BOARD OF COUNTY COMMISSIONERS
OF ALACHUA COUNTY, FLORIDA

By: _____
Lee Pinkoson, Chair

ATTEST:

J. K. Irby, Clerk

(SEAL)

APPROVED AS TO FORM

Alachua County Attorney