



Legislation Text

File #: 20-1075, **Version:** 1

Agenda Item Name:

SR 25/US 441 at various County Roads Construction and Maintenance Agreement

Presenter:

James Flegert

Description:

Construction and maintenance agreement with FDOT for improvements at SE 185th Avenue, SE 165th Avenue, County Road 346, County Road 234 E, NE Chokolka Boulevard, and County Road 234 W at SR 25/US 441.

Recommended Action:

1. Adopt resolution 21-XX which approves and authorizes the Chair to sign the Construction and Maintenance Agreement with FDOT for various County Roads at SR 25/US 441, (the "Agreement")
2. Waive the County's Policy against contractual indemnity set forth in Resolution 2014-33, and approve and authorize the Chair to sign the Agreement.

Prior Board Motions:

April 22, 2014 - Board adopted resolution 14-33 related to indemnification

Fiscal Consideration:

Since the County already maintains SE 185th Avenue, SE 165th Avenue, County Road 346, County Road 234 E, NE Chokolka Boulevard, and County Road 234 W at SR 25/US 441, there is not expected to be any significant fiscal impact from assuming maintenance of these modifications.

Background:

FDOT has an upcoming project to mill and resurface SR 25/US 441 from the Marion County line to SR 331/Williston Road. As a part of the project, improvements will be constructed on or within County owned/maintained property at SE 185th Avenue, SE 165th Avenue, County Road 346, County Road 234 E, NE Chokolka Boulevard, and County Road 234 W. Therefore, a construction and maintenance agreement ("Agreement") is required to construct the improvements. FDOT will construct and fund the project and the County will be responsible for the maintenance of the modifications. The Agreement requires the County to indemnify FDOT for actions of the County. Alachua County Resolution 2014-33, relating to contractual indemnification by the County, specifies that the County does not indemnify contracted parties; therefore the BoCC must waive this policy in order for the BoCC to approve the Agreement.

BOCC Waiver of County Policy against Indemnification: The Agreement contains an indemnification provision, which would require the County to indemnify, defend and hold harmless FDOT from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, costs,

losses, penalties, construction delay costs/penalties, expenses, attorneys' fees and suits of any nature or kind whatsoever cause by, arising out of or related to the County's performance, or breach, of the Agreement. It does not include indemnifying FDOT for FDOT's negligence, intentional or wrongful acts, omissions or breach of contract. Furthermore, the Agreement does not waive the County's sovereign immunity protections or increase its limits of liability set forth in Section 768.28, Florida Statutes. As per Alachua County BOCC Resolution 2014-33, the County has adopted a Policy "that the County does not indemnify contracting parties." In recognition that there are instances when the County may determine that it is in its best interests to take on the risk of an indemnity provision, the Policy sets forth factors that the BOCC should consider when evaluating whether to approve an indemnification provision. Those factors are:

The availability of the goods or services from other sources;

The County's need for the goods or services; and

The probability of an incident occurring that will expose the County to financial liability occurring.

Therefore, in accordance with Resolution 2014-33, the BOCC should consider these factors and make a determination as to whether it should waive its Policy against contractual indemnification and enter into the Agreement.