



Legislation Text

File #: 20-1080, **Version:** 1

Agenda Item Name:

County Road 235 at NW 94th Avenue Construction and Maintenance Agreement

Presenter:

James Flegert

Description:

Construction and maintenance agreement with FDOT for intersection safety improvements to CR 235 at NW 94th Avenue.

Recommended Action:

1. Adopt resolution 20-XX which approves and authorizes the Chair to sign the Construction and Maintenance Agreement with FDOT for County Road 235 at NW 94th Avenue, (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:

September 12, 2017 - Board adopted resolution 17-107 authorizing the County to enter into a Local Agency Program Agreement with the FDOT to fund the design and construction of intersection safety improvements at CR 235 and NW 94th Avenue.

February 23, 2016 - Board submitted safety grant application for CR 235 and NW 94th Avenue.

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

Fiscal Consideration:

Since the County already maintains CR 235 and NW 94th Avenue and the FDOT is fully funding the project including reimbursement for staff time, there is no expectation of any significant fiscal impact from assuming maintenance of these modifications. Project is budgeted in account:

329.79.7910.541.63.99 project# 9177910 for \$117,000. The total project cost is \$117,000; however, \$582.07 has been spent already, leaving \$116,417.93 available for the remaining costs.

Background:

In 2015 the County completed a safety study of the intersection of CR 235 and NW 94th Avenue. It was determined that the intersection was experiencing a high number of crashes. The County made application for a safety grant from FDOT in 2016 which was awarded to the County in 2017. The improvements will be constructed on or within County owned/maintained property and, therefore, a construction and maintenance agreement ("Agreement") is required to construct the improvements. FDOT is fully funding the project and the County will be responsible for the maintenance of the improvements.

The Agreement requires the County to indemnify FDOT as more specifically set forth below. 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 defend, indemnify and hold FDOT harmless from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes and suits of any nature or kind whatsoever caused by, arising out of or related to the County's performance, or breach, of the Agreement. It does not require the County to indemnify 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.