



**BOARD OF COUNTY COMMISSIONERS**

**DATE:** April 21, 2015

**AGENDA ITEM NO.** 6

**Consent Agenda** ☒

**Regular Agenda** ☐

**Public Hearing** ☐

 **County Administrator's Signature:**

**Subject:**

County Incentive Grant Program (CIGP) Agreement with the Florida Department of Transportation (FDOT) for Construction Activities of the Belcher Road and Belleair Road Intersection Improvement Project  
FDOT Financial Project No.: 430373 1 38 01  
County PID No. 001021A

**Department:**

Engineering and Technical Support

**Staff Member Responsible:**

Kevin J. Becotte, P.E., Director

**Recommended Action:**

I RECOMMEND THE BOARD OF COUNTY COMMISSIONERS (BOARD) APPROVE THE CIGP GRANT FUNDING AGREEMENT WITH THE FDOT FOR CONSTRUCTION ACTIVITIES ASSOCIATED WITH THE BELCHER ROAD AND BELLEAIR ROAD INTERSECTION IMPROVEMENT PROJECT, AND AUTHORIZE THE CHAIRMAN TO SIGN THE AGREEMENT AND THE CLERK TO ATTEST.

IT IS FURTHER RECOMMENDED THE BOARD ADOPT THE RESOLUTION AUTHORIZING THE AGREEMENT.

**Summary Explanation/Background:**

The FDOT is providing Pinellas County financial assistance for construction activities associated with improvements to the intersection of Belcher Road and Belleair Road. The project consists of extending the left turn lanes, adding a single right turn lane, and construction of medians at Belcher Road and Belleair Road. The improvements will increase traffic flow and reduce congestion at the intersection during peak travel hours.

Design of the project is near completion. Construction services are anticipated to be advertised in May 2015, with an estimated project completion date of December 2017.

Staff and the County Attorney have requested FDOT revise the indemnification language contained in Section 4.B of the Agreement. The FDOT will not allow the change, and staff has followed through with the appropriate action for the indemnification provision. Staff and the County Attorney agree that this does not increase the liability to the County beyond an acceptable level of risk.

The CIGP Agreement will be forwarded to FDOT for execution following Board approval.

**Fiscal Impact/Cost/Revenue Summary:**

Funding for this project is budgeted in the Capital Improvement Program: Transportation and Traffic Flow, Intersection Capacity Program allocation. The FDOT is providing \$1,375,000 in grant funding, and the County is providing \$1,375,000 through the Infrastructure Sales Tax (Penny for Pinellas). The total estimated construction cost is \$2,750,000.

The current project budget includes \$600,000 in grant funding, and \$600,000 in Penny funding for the construction phase. The project budget will need to be revised with the upcoming budget submittal, including identifying a source for additional Penny funding needed for the total estimated construction cost.

**Exhibits/Attachments Attached:**

Contract Review Transmittal  
CIGP Agreement  
Resolution  
Delegated Packet to the County Administrator Dated March 27, 2015  
Project Location Map



## Delegated Authority Memorandum

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**TO:** Mark S. Woodard, County Administrator

**THROUGH:** David E. Scott, P.E., Assistant County Administrator

**FROM:** Kevin J. Becotte, P.E., Director, Engineering & Technical Support

**DATE:** March 27, 2015

**SUBJECT:** Request for Exemption to Pinellas County Resolution No. 06-70 Related to Contractual Indemnification within the County Incentive Grant Program (CIGP) Agreement with the Florida Department of Transportation (FDOT) for the Belcher Road and Belleair Road Intersection Improvement Project.  
FDOT Financial Project No.: 430373 1 38 01  
County PID No. 000157A

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### **Recommended Action:**

Recommend the County Administrator approve the request for exemption to Pinellas County Resolution No. 06-70 related to contractual indemnification within the CIGP Agreement with FDOT for the Belcher Road and Belleair Road Intersection Improvement Project.

### **Summary:**

The purpose of this delegated signature item is to request an exemption to Resolution No. 06-70 related to contractual indemnification, and allow the County to indemnify FDOT for project related activities associated with the Belcher Road and Belleair Road Intersection Improvement Project.

The County Incentive Grant Program (CIGP) Agreement with FDOT for Construction Activities associated with the Belcher Road and Belleair Road Intersection Improvement Project necessitates an agreement with FDOT. Per the terms of the agreement, FDOT requires the County to indemnify them. Staff and the County Attorney have requested FDOT revise the indemnification language contained in Section 4.B of the Agreement, and FDOT will not allow the change. Grant funding agreements such as this do not increase the liability to the County beyond an acceptable level of risk. Funding for current and future infrastructure projects would be limited without FDOT as an additional funding resource.

Resolution No. 06-70 does not allow the County to indemnify others, except under certain circumstances as approved by the County Administrator. Therefore, staff requests an exemption to Resolution No. 06-70 to comply with the terms of the FDOT CIGP Agreement.

### **Background/Explanation:**

Prior to the passing of Resolution No. 06-70 by the Board of County Commissioners, indemnification provisions within contractual agreements requiring the County to indemnify others have been avoided by the County to the extent practicable. While the determination to agree to indemnify another party had not been subject to a uniform decision making process within the County, Resolution No. 06-70 was passed in an attempt to layout policy guidelines to aid in this decision-making process. However, circumstances arise where it is necessary to indemnify another party in order to acquire goods, services, or funding usually not available from another source.

There is a potential loss of funding in the amount of \$1,375,000 from FDOT without approval of the indemnification provision for this project.

Please return a scanned copy of the approved delegated memo to Merry Celeste, Engineering & Technical Support and retain the original for filing on a future receipt and file report.

**Fiscal Impact:**

N/A

**Delegated Authority:**

Approval of this Exemption Request is within the authority of the County Administrator, as delegated by the Board of County Commissioners, pursuant to Resolution No. 06-70.

**Attachments:**


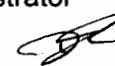
Email from FDOT Dated March 25, 2015

Resolution No. 06-70

Recommendation Approved: \_\_\_\_\_

  
Mark S. Woodard, County Administrator

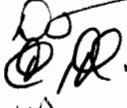

Date: 4/1/15

**NON-PURCHASING CONTRACT REVIEW TRANSMITTAL SLIP**

<b>PROJECT:</b> County Incentive Grant Program Agreement with the Florida Department of Transportation for the Belcher Road and Belleair Road Intersection Improvement Project	
<b>FDOT Contract No. 430373 1 58 01,</b> <b>County PID No. 001021A</b>	<b>ESTIMATED EXPENDITURE / REVENUE: \$1,375,000</b> (Circle or underline appropriate choice above.)

In accordance with Contract Administration and its Review Process, the attached documents are submitted for your review and comment. Please complete this Non-Purchasing Contract Review Transmittal Slip below with your assessment, and **forward to the next Review Authority on the list, skipping any authority marked "N/A."** Indicate suggested changes by noting those in "Comments" column, or by revising, in RED, the appropriate section(s) of the document(s) to reflect the exact wording of the desired change(s).

REVIEW SEQUENCE	DATE	INITIAL/ SIGNATURE	COMMENTS (IF ANY)	COMMENTS REVIEWED & ADDRESSED OR INCORPORATED
<b>Originator: ETS</b> Dave Talhouk Ivan Fernandez, P.E. Kevin Becotte, P.E.	3/2/15 3/2/15 3/3/15	 KIB		
<b>Risk Mgmt:</b> Virginia Holscher 3/3/15	3/5/15	GW	Public Entity to Public Entity - FDOT's reqts noted & will be included in related subsequent agreements	okay MC
<b>Finance:**</b> Cassandra Williams	3/9/15	CAW		
<b>OMB:**</b> Bill Berger	3/12/15	E	See attached. This requires add'l expenditure of County funds to match increased grant.	Comments incl. under fiscal section of Memo. MC 3/13
<b>Legal:</b> Christy Pemberton	3/13	CP	note provisions of 381 413 doesn't contain a phrase as incorporation of the agreement email says venue Leon	Delegated request for Exemption prepared. okay MC
<b>Assistant County Administrator or Executive Director:</b> David Scott, P.E.	3/30			

Please return to Merry Celeste, ext. #4-3185. All inquiries concerning this Agreement should be directed to Dave Talhouk, ext. #4-3780.

## OMB Contract Review

<b>Contract Name</b>	County Incentive Grant Program (CIGP) with FDOT for Belcher Rd and Belleair Rd Intersection Improvement		
<b>CATS#</b>	46743	<b>Contract #</b>	430373 1 58 01

**Mark all Applicable Boxes:**

Type of Contract									
CIP	X	Grant	X	Other		Revenue		Project	001021A

**Contract information:**

<b>New Contract (Y/N)</b>	Y	<b>Original Contract Amount</b>	1,375,000
<b>Fund(s)</b>	3001	<b>Amount of Change</b>	NA
<b>Cost Center(s)</b>	414100	<b>Contract Amount</b>	1,375,000
<b>Program(s)</b>	3021	<b>Amount Available</b>	Total:
<b>Account(s)</b>	5600001	<b>Included in Applicable Budget? (Y/N)</b>	Y (needs revised)
<b>Fiscal Year(s)</b>	FY15 - FY17		
Description & Comments			
(What is it, any issues found, is there a financial impact to current/next FY, does this contract vary from previous FY, etc.)			
<p>Agreement with FDOT providing \$1,375,000 for the construction phase of the intersection project.</p> <p><b>Please include comment:</b> The current project budget includes \$600,000 grant and \$600,000 penny for the construction; project budget will need revised with upcoming budget submittal and identify source for additional penny funding needed. Agreement states work must be completed by 12-31-17.</p>			

**Analyst:**

Tim Crowley 

**Ok to Sign:** ☒

### Instructions/Checklist

1. Upon receipt of a contract and notification in County Admin Tracking System (CATS) review the Agenda and Contract for language and accuracy. Make sure there are available funds, the dept is not overextending itself, was it planned, etc.
2. Complete the form above using the contract document and the County accounting & budgeting systems.
3. Use the "Description & Comments" section to give a brief summary of the contract and include your thoughts and pertinent information.
4. Print the form, initial, and leave folder on the Director's desk.
5. Login to CATS and click in the cell next to your name. A date will appear and click on the date you completed your review. Choose save and close the CATS system.

**Pinellas County Capital Improvement Program  
Project Budget Detail Report**

Function: Transportation

Fund Type: Governmental

		Current Year Estimate 2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	Total
<b>Function: Transportation</b>													
<b>Activity: Road &amp; Street Facilities</b>													
<b>Project: 001021A Belcher Road at Belleair Road Intersection Improvements</b>													
Fund: 3001	Capital Projects	Center: 414100	CIP-Transportation	Program: 3021	Intersection Improvements Projects								
020.1	Design-Penny	50,000	30,000	30,000	0	0	0	0	0	0	0	0	110,000
020.4	Design-Grant	50,000	30,000	30,000	0	0	0	0	0	0	0	0	110,000
030.1	Constr-Penny	0	300,000	300,000	0	0	0	0	0	0	0	0	600,000
030.4	Constr-Grant	0	300,000	300,000	0	0	0	0	0	0	0	0	600,000
<b>Project Total for : Fund: 3001</b>		<b>Capital Projects</b>	<b>Center: 414100</b>	<b>CIP-Transportation</b>	<b>Program: 3021</b>	<b>Intersection Improvements Projects</b>							
		100,000	660,000	660,000	0	0	0	0	0	0	0	0	1,420,000
<b>Total for Project: 001021A</b>		<b>Belcher Road at Belleair Road Intersection Improvements</b>											
		100,000	660,000	660,000	0	0	0	0	0	0	0	0	1,420,000
<b>Funding Source:</b>													
	Grant - State	50,000	330,000	330,000	0	0	0	0	0	0	0	0	710,000
	Penny for Pinellas	50,000	330,000	330,000	0	0	0	0	0	0	0	0	710,000
<b>Funding Total:</b>		100,000	660,000	660,000	0	0	0	0	0	0	0	0	1,420,000

**Project Description:** Intersection improvements including right turn lanes on the east and west legs of Belleair Road and extend the left turn lane on the east leg.

**Project Classifications:**

CIE Elements	Not Applicable
CIP Phase	Design
County Road Corridor	Not Applicable
Location	Largo, Belleair, Belleair Bluffs
Originating Department	DEI Public Works
Penny Program	Transportation and Traffic Flow
TIF District	Countywide



STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**COUNTY INCENTIVE GRANT PROGRAM AGREEMENT**  
**(County Letting)**

525-010-51  
POLICY PLANNING  
OGC - 04/14  
Page 1 of 16

Financial Project No.: 430373 1 58 01  
Catalog of State Financial Assistance No. 55.008  
COUNTY: PINELLAS

This County Incentive Grant Program (CIGP) Agreement, hereinafter referred to as the "AGREEMENT", by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT," and Pinellas County, hereinafter referred to as the "COUNTY."

**RECITALS**

WHEREAS, the DEPARTMENT has the authority, under Section 334.044, Florida Statutes, to enter into this AGREEMENT; and

WHEREAS, the County Incentive Grant Program has been created by Section 339.2817, Florida Statutes, to provide grants to counties to improve a transportation facility which is located on the State Highway System or which relieves traffic congestion on the State Highway System; and

WHEREAS, the COUNTY has certified to the DEPARTMENT that it has met the eligibility requirements of said Section 339.2817, Florida Statutes; and

WHEREAS, the DEPARTMENT is willing to provide the COUNTY with financial assistance under Financial Project No. 43037315801 for intersection improvements at Belcher Road and Belleair Road, hereinafter referred to as the "PROJECT," in accordance with Section 339.2817, Florida Statutes; and

WHEREAS, the COUNTY by Resolution No. \_\_\_\_\_ dated the \_\_\_\_ day of \_\_\_\_\_, 2015, a copy of which is attached hereto and made a part hereof, has authorized the Chairman of its Board of Commissioners to enter into this Agreement;

WHEREAS, the recitals set forth above are true and correct and are deemed to be restated herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein, the parties agree as follows:

**1. SERVICES AND PERFORMANCE**

A. The COUNTY shall furnish the services with which to construct the PROJECT. Said PROJECT consists of: intersection improvements to extend the left turn lanes, add a single right turn lane and construct medians at Belcher Road and Belleair Road, as further described in Exhibit A (Scope of Services) attached hereto and made a part hereof.

B. The COUNTY agrees to undertake the construction of the PROJECT in accordance with all applicable federal, state and local statutes, rules and regulations, and standards. The COUNTY shall be responsible for obtaining clearances/permits required for the construction of the PROJECT from the appropriate permitting authorities. Upon completion of the PROJECT, the COUNTY shall certify to the DEPARTMENT that the PROJECT has been completed in accordance with the applicable standards, statutes, rules and regulations in writing (Exhibit E, Notice of Completion).

C. The DEPARTMENT will be entitled at all times to be advised, at its request, as to the status of work being done by the COUNTY and of the details thereof. Coordination shall be maintained by the COUNTY with representatives of the DEPARTMENT. COUNTY shall provide the DEPARTMENT with quarterly progress reports.

D. For projects located on the State Highway System, the DEPARTMENT must approve any consultant and/or contractor scope of services including PROJECT budget. COUNTY shall obtain DEPARTMENT approval of plans and specifications prior to bidding the PROJECT.

E. For projects located on the State Highway System, the COUNTY must apply for and be granted a permit, from the DEPARTMENT, before the COUNTY can proceed with construction.

F. For projects located on the State Highway System, the PROJECT will be designed and constructed in accordance with all current DEPARTMENT specifications and standards. The construction engineering and inspection



(CEI) services will be provided (when required by specifications) by personnel meeting the requirements of the DEPARTMENT'S Construction Training and Qualification Program. The COUNTY may chose to satisfy this requirement by either hiring a DEPARTMENT prequalified consultant firm or utilizing COUNTY staff that meet these requirements, or a combination thereof. The CEI staff shall also include one individual that has completed the Advanced Maintenance of Traffic Advanced Level Training. The CEI staff shall be present on the PROJECT at all times that the contractor is working. Administration of the CEI staff shall be under the responsible charge of a State of Florida licensed Professional Engineer.

G. The COUNTY must certify that the consultant has been selected in accordance with the Consultants Competitive Negotiation Act (Section 287.055, Florida Statutes). Contractor must be prequalified by the DEPARTMENT as required by Section 2 of the current Standard Specifications for Road and Bridge Construction.

H. The COUNTY shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the COUNTY during the term of the contract; and shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

I. The COUNTY shall not sublet, assign, or transfer any work under this AGREEMENT without prior written consent of the DEPARTMENT.

J. All notices under this AGREEMENT shall be directed to the following addresses:

TO DEPARTMENT:	TO COUNTY:
Ms. Carin Watkins	David A. Talhouk, E.I.
Special Projects Coordinator, M.S. 7-350	Engineering and Technical Support Division
11202 N. McKinley Drive	14 South Ft. Harrison Avenue
Tampa, Florida 33612-6456	Clearwater, Florida 33756

## 2. TERM

A. The term of this AGREEMENT shall begin upon the date of signature of the last party to sign. The COUNTY agrees to complete the PROJECT in accordance with the schedule described and contained in Exhibit B (Schedule of Services) attached hereto and made a part hereof. If the COUNTY does not complete or maintain the project in accordance with the schedule, the DEPARTMENT may terminate this AGREEMENT unless an adjustment to the schedule is requested by the COUNTY and granted in writing by the DEPARTMENT.

B. This AGREEMENT shall not be renewed. Any extension shall be in writing and executed by both parties, and shall be subject to the same terms and conditions set forth in this AGREEMENT.

## 3. COMPENSATION AND PAYMENT

A. The COUNTY and the DEPARTMENT agree to share the cost of this PROJECT pursuant to 339.2817, F. S. The parties agree that the estimated total PROJECT costs are Two Million, Seven Hundred Fifty Thousand Dollars (\$2750000). The parties further agree that the DEPARTMENT's maximum participation is One Million, Three Hundred Seventy-Five Thousand Dollars (\$1375000) and all remaining costs of the PROJECT will be borne by the COUNTY. These amounts are outlined in Exhibit C (Schedule of Funding) attached hereto and made a part hereof.

i) The COUNTY shall submit one invoice (4 copies) plus supporting documentation required by the DEPARTMENT to the Project Manager for approval and processing:

- ☐ - monthly, or
- ☒ - quarterly, or
- ☐ - once the PROJECT has been accepted by the COUNTY and approved by the DEPARTMENT.

ii) Any provisions for an advance payment are provided in Exhibit D attached hereto

and made a part hereof.

iii) In the event the COUNTY proceeds with the design, construction, and construction engineering inspection services (CEI) of the PROJECT with its own forces, the COUNTY will only be reimbursed for direct costs (this excludes general and administrative overhead).

iv) Invoices shall be submitted by the COUNTY in detail sufficient for a proper pre-audit and post-audit thereof, based on the quantifiable, measurable and verifiable deliverables as established in Exhibit "A", Scope of Services and Project Plans when approved by the DEPARTMENT. Deliverables must be received and accepted in writing by the Department's Project Manager or designee prior to reimbursements.

v) Supporting documentation must establish that the deliverables were received and accepted in writing by the COUNTY and must also establish that the required minimum level of service to be performed as specified in Section 1. F. was met, and that the criteria for evaluating successful completion as specified in Section 1. B. was met.

vi) The COUNTY may receive progress payments for deliverables based on the contractor's Schedule of Values (**Schedule of Values would only apply to a construction project**) and on a percentage of services that have been completed, approved and accepted to the satisfaction of the DEPARTMENT when properly supported by detailed invoices and acceptable evidence of payment. The final balance due under this Agreement will be reimbursed upon the completion of all Project services, receipt of final construction cost documentation and proper submission of a detailed invoice and when the Project has been inspected, approved and accepted to the satisfaction of the DEPARTMENT in writing.

vii) All costs charged to the Project by the COUNTY shall be supported by detailed invoices, proof of payments, contracts or vouchers evidencing in proper detail the nature and propriety of the charges.

B. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the DEPARTMENT's Comptroller under Section 334.044 (29), Florida Statutes.

C. Within thirty (30) days after completion of the work authorized by this AGREEMENT, the COUNTY shall notify the DEPARTMENT in writing of the completion; and for all design work that originally required certification by a Professional Engineer, this notification shall contain an Engineers Certification of Compliance, signed and sealed by a Professional Engineer, (Exhibit E, Notice of Completion). The certification shall state that work has been completed in compliance with the PROJECT construction plans and specifications. If any deviations are noted from the approved plans, the certification shall include a list of all deviations along with an explanation that justifies the reason to accept each deviation.

D. Participants providing goods and services to the DEPARTMENT should be aware of the following time frames. Upon receipt, the DEPARTMENT has twenty (20) days to inspect and approve the goods and services. The DEPARTMENT has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services after receipt of the invoice and receipt, inspection, and approval of the goods or services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.

E. If a payment is not available within forty (40) days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), F.S., will be due and payable, in addition to the invoice amount, to the Participant. Interest penalties of less than one (1) dollar will not be enforced unless the Participant requests payment. Invoices that have to be returned to a Participant because of Participant preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the DEPARTMENT.

F. If this AGREEMENT involves units of deliverables, then such units must be received and accepted in writing by the Contract Manager prior to payments.

G. The DEPARTMENT's obligation to pay under this AGREEMENT is contingent upon an annual appropriation by the Legislature.

H. Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.

I. Travel costs will not be reimbursed.

J. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payments(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

K. Records of costs incurred under terms of this AGREEMENT shall be maintained and made available upon request to the DEPARTMENT at all times during the period of this AGREEMENT and for five (5) years after final payment is made. Copies of these documents and records shall be furnished to the DEPARTMENT upon request. Records of costs incurred includes the COUNTY's general accounting records and the PROJECT records, together with supporting documents and records of the COUNTY and all subcontractors performing work on the project, and all other records of the COUNTY and subcontractors considered necessary by the DEPARTMENT for a proper audit of costs.

L. The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the DEPARTMENT that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years.

M. It is unlawful for the Board of County Commissioners to expend or contract for the expenditure in any fiscal year more than the amount budgeted in each fund's budget, except as provided herein, and in no case shall the total appropriations of any budget be exceeded, except as provided in 129.06 Florida Statutes, and any indebtedness contracted for any purpose against either of the funds enumerated in this chapter or for any purpose, the expenditure for which is chargeable to either of said funds, shall be null and void, and no suit or suits shall be prosecuted in any court in this state for the collection of same, and the members of the .Board of .County .Commissioners voting for and contracting for such amounts and the bonds of such members of said boards also shall be liable for the excess indebtedness so contracted for Section 129.07 Florida Statutes.

N. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, consultant or subconsultant under a contract with any public entity and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

#### **4. INDEMNITY AND INSURANCE**

A. When either party receives notice of claim for damages that may have been caused by the other party in the performance of services required under this AGREEMENT, that party will immediately forward the claim to the other party. Each party will evaluate the claim, and report its findings to each other within fourteen (14) working days and jointly discuss options in defending the claim. A party's failure to promptly notify the other of a claim will not act as a waiver or any right herein.

B. The COUNTY hereby agrees to defend, indemnify, save and hold harmless the DEPARTMENT, including its officers, agents and employees, from all suits, actions, claims, demands, damages and liabilities of any nature whatsoever arising out of any intentional, negligent, or wrongful act(s) or omission(s) by the COUNTY, including its agents, employees, contractors, subcontractors, consultants or subconsultants, which occur or are alleged to have occurred in connection with the PROJECT. This provision does not apply to the extent any such acts or omissions are made by the DEPARTMENT. This paragraph shall not be construed as a waiver of either party's sovereign immunity.

C. LIABILITY INSURANCE.

The COUNTY shall cause the DEPARTMENT to be an Additional Insured on any and all liability policies which provide coverage for tort liability to the COUNTY in connection with its operations relating to the PROJECT. The COUNTY shall furnish evidence of such coverage to the DEPARTMENT prior to the commencement of such operations in the form of an ACORD Certificate of Liability Insurance together with copies of any and all applicable Additional Insured endorsements. In the event the COUNTY has no such insurance coverage but instead maintains a self-insurance fund to cover such liabilities, the COUNTY agrees it shall disclose to the DEPARTMENT the amount of such self-insurance available.

The COUNTY shall require any and all contractors, subcontractors, consultants and subconsultants it may enter agreements with in connection with the PROJECT to cause the DEPARTMENT to be made an Additional Insured on any and all liability policies providing coverage to said contractors, subcontractors, consultants and subconsultants for their operations relating to the PROJECT.

D. **WORKERS' COMPENSATION.** The COUNTY shall also carry, and cause any contractors, subcontractors consultants and subconsultants it may enter agreements with in connection with the PROJECT to carry, Worker's Compensation insurance in accordance with the requirements under Florida's Worker's Compensation law.

E. The COUNTY shall forward, within 5 (five) days of its receipt, copies of any notices of cancellation or any other communications it receives that are related to any and all policies of insurance referenced in paragraphs B - D above and which affect or potentially affect such coverage available to the DEPARTMENT.

## **5. COMPLIANCE WITH LAWS**

A. The COUNTY shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the COUNTY in conjunction with this AGREEMENT. Failure by the COUNTY to grant such public access shall be grounds for immediate unilateral cancellation of this AGREEMENT by the DEPARTMENT.

B. The COUNTY shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this AGREEMENT.

C. No funds received pursuant to this AGREEMENT may be expended for lobbying the Legislature, the judicial branch, or a state agency.

D. The COUNTY and the DEPARTMENT agree that the COUNTY, its employees, and subcontractors are not agents of the DEPARTMENT as a result of this AGREEMENT for purposes other than those set out in Section 337.274, Florida Statutes.

## **6. AUDIT**

A. The administration of resources awarded by the DEPARTMENT to the COUNTY may be subject to audits and/or monitoring by the DEPARTMENT, as described in this section.

### **B. MONITORING**

i) In addition to reviews of audits conducted in accordance with OMB Circular A-133 and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by DEPARTMENT staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this AGREEMENT, the recipient agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the DEPARTMENT. In the event the DEPARTMENT determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the DEPARTMENT staff to the Local Government regarding such audit. The Local Government further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the DEPARTMENT's Office of the Inspector General, the Chief Financial Officer (CFO) or Auditor General.

### **C. FEDERAL AUDITS**

i) Recipients of federal funds (i.e. state, local government, or non-profit organizations as defined in OMB

Circular A-133, as revised) are to have audits done annually using the following criteria:

ii) In the event that the recipient expends \$500,000 or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. Exhibit F to this AGREEMENT indicates Federal resources awarded through the DEPARTMENT by this AGREEMENT, if applicable. In determining the Federal awards expended in its fiscal year, the recipient shall consider all sources of Federal awards, including Federal resources received from the DEPARTMENT. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the recipient conducted by the Auditor General in accordance with the provisions OMB Circular A-133, as revised, will meet the requirements of this part.

iii) In connection with the audit requirements addressed in Subparagraph i), the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.

iv) If the recipient expends less than \$500,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. In the event that the recipient expends less than \$500,000 in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other than Federal entities).

v) Federal awards are to be identified using the Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, and name of the awarding federal agency.

#### D. STATE AUDITS

i) Recipients of state funds (i.e. a nonstate entity as defined by Section 215.97(2) (I), Florida Statutes) are to have audits done annually using the following criteria:

ii) In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year of such recipient, the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services and the CFO; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. Exhibit F to this agreement indicates state financial assistance awarded through the DEPARTMENT by this AGREEMENT, if applicable. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the DEPARTMENT, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

iii) In connection with the audit requirements addressed in sub-paragraph i) the recipient shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

iv) If the recipient expends less than \$500,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$500,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).

v) State awards are to be identified using the Catalog of State Financial Assistance (CSFA) title and number, award number and year, and name of the state agency awarding it.

#### E. OTHER AUDIT REQUIREMENTS

i) The recipient shall follow up and take corrective action on audit findings. Preparation of a summary schedule of prior year audit findings, including corrective action and current status of the audit findings is required. Current year audit findings require corrective action and status of findings.

ii) Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is completed or the dispute is resolved. Access to project records and audit work papers shall be given to the DEPARTMENT, the Comptroller, and the Auditor General. This section does not limit the authority of the DEPARTMENT to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any other state official.

#### F. REPORT SUBMISSION

i) Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by Paragraph C (FEDERAL AUDITS) of this AGREEMENT shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the recipient directly to each of the following:

a) The DEPARTMENT at each of the following addresses:

Florida Department of Transportation  
Office of Comptroller, MS 24  
605 Suwannee Street  
Tallahassee, Florida 32399-0405  
Email: [FDOTSingleAudit@dot.state.fl.us](mailto:FDOTSingleAudit@dot.state.fl.us)

b) The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse  
Bureau of the Census  
1201 East 10<sup>th</sup> Street  
Jeffersonville, IN 47132

c) Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133, as revised.

ii) In the event that a copy of the reporting package for an audit required by Paragraph C (FEDERAL AUDITS) of this AGREEMENT and conducted in accordance with OMB Circular A-133, as revised, is **not** required to be submitted to the DEPARTMENT for reasons pursuant to Section .320 (e)(2), OMB Circular A-133, as revised, the recipient shall submit the required written notification pursuant to Section .320 (e)(2) and a copy of the recipient's audited schedule of expenditures of Federal awards directly to the following:

Federal Audit Clearinghouse  
Bureau of the Census  
1201 East 10<sup>th</sup> Street  
Jeffersonville, IN 47132

a) In addition, pursuant to Section .320 (f), OMB Circular A-133, as revised, the recipient shall submit a copy of the reporting package described in Section .320 (c), OMB Circular A-133, as revised, and any management letters issued by the auditor, to the DEPARTMENT at the following address: (Insert mailing address(es) of office(s) responsible for program oversight)

iii) Copies of financial reporting packages required by Paragraph D (STATE AUDITS) of this AGREEMENT shall be submitted by or on behalf of the recipient directly to the following:

a) The DEPARTMENT at each of the following addresses:

Florida Department of Transportation  
Office of Comptroller, MS 24  
605 Suwannee Street  
Tallahassee, Florida 32399-0405  
Email: [FDOTSingleAudit@dot.state.fl.us](mailto:FDOTSingleAudit@dot.state.fl.us)

b) The Auditor General's Office at the following address:

Auditor General's Office  
Room 401, Pepper Building  
111 West Madison Street  
Tallahassee, Florida 32399-1450

iv) Copies of reports or the management letter required by Paragraph E (OTHER AUDIT REQUIREMENTS) of this AGREEMENT shall be submitted by or on behalf of the recipient directly to the DEPARTMENT at the following address:

a) The DEPARTMENT at each of the following addresses: (Insert mailing address(es) of office(s) responsible for program oversight)

v) Any reports, management letter, or other information required to be submitted to the DEPARTMENT pursuant to this AGREEMENT shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

vi) Recipients, when submitting financial reporting packages to the DEPARTMENT for audits done in accordance with OMB Circular A-133 or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

#### **G. RECORD RETENTION**

i) The recipient shall retain sufficient records demonstrating its compliance with the terms of this AGREEMENT for a period of at least five (5) years from the date the audit report is issued, and shall allow the DEPARTMENT, or its designee, the state CFO or Auditor General access to such records upon request. The recipient shall ensure that the independent audit working papers are made available to the DEPARTMENT, or its designee, the state CFO, or Auditor General upon request for a period of at least five (5) years from the date the audit report is issued, unless extended in writing by the DEPARTMENT.

#### **7. TERMINATION AND DEFAULT**

A. This AGREEMENT may be canceled by either the COUNTY or the DEPARTMENT upon sixty (60) days written notice.

B. If the DEPARTMENT determines that the performance of the COUNTY is not satisfactory, the DEPARTMENT shall have the option of (a) immediately terminating the AGREEMENT, or (b) notifying the COUNTY of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the AGREEMENT will be terminated at the end of such time, or (c) taking whatever action is deemed appropriate by the DEPARTMENT.

C. If the DEPARTMENT requires termination of the AGREEMENT for reasons other than unsatisfactory performance of the COUNTY, the DEPARTMENT shall notify the COUNTY of such termination, with instructions to the effective date of termination or specify the stage of work at which the AGREEMENT is to be terminated.

D. If the AGREEMENT is terminated before performance is completed, the COUNTY shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total work called for by this AGREEMENT. All work in progress will become the property of the DEPARTMENT and will be turned over promptly by the COUNTY.

#### **8. MISCELLANEOUS**

A. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.



B. The DEPARTMENT shall not be obligated or liable hereunder to any party other than the COUNTY.

C. In no event shall the making by the DEPARTMENT of any payment to the COUNTY constitute or be construed as a waiver by the DEPARTMENT of any breach of covenant or any default which may then exist, on the part of the COUNTY, and the making of such payment by the DEPARTMENT while any such breach or default exists shall in no way impair or prejudice any right or remedy available to the DEPARTMENT with respect to such breach or default.

D. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this AGREEMENT that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

E. If any part of this AGREEMENT shall be determined to be invalid or unenforceable by a court of competent jurisdiction or by any other legally constituted body having the jurisdiction to make such determination, the remainder of this AGREEMENT shall remain in full force and effect provided that the part of this AGREEMENT thus invalidated or declared unenforceable is not material to the intended operation of this AGREEMENT.

F. This AGREEMENT shall be governed by and construed in accordance with the laws of the State of Florida. Venue of any judicial proceedings arising out of this AGREEMENT shall be in Leon County, Florida.

G. This AGREEMENT shall be effective upon execution by both parties and shall continue in effect and be binding on the parties until the PROJECT is completed and accepted and payment made by the DEPARTMENT or terminated in accordance with Section 7.

H. An entity or affiliate which has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

IN WITNESS WHEREOF, the COUNTY has caused this AGREEMENT to be executed in its behalf this \_\_\_\_ day of \_\_\_\_\_, 2015, by the Chairman of the Board of Commissioners, authorized to enter into and execute same by Resolution Number \_\_\_\_\_ of the Board on the \_\_\_\_ day of \_\_\_\_\_, 2015, and the DEPARTMENT has executed this AGREEMENT through its District Secretary for District Seven, Florida Department of Transportation, this \_\_\_\_ day of \_\_\_\_\_, 2015.

**PINELLAS COUNTY, FLORIDA**

ATTEST: \_\_\_\_\_ (SEAL)  
CLERK

BY: \_\_\_\_\_  
CHAIRMAN, BOARD OF **COUNTY COMMISSIONERS**

**STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**

ATTEST: \_\_\_\_\_ (SEAL)  
EXECUTIVE SECRETARY

BY: \_\_\_\_\_  
DISTRICT SECRETARY DISTRICT Seven

NAME: \_\_\_\_\_

DOT Legal Review:

\_\_\_\_\_

Availability of Funds Approval:

\_\_\_\_\_

(Date)

APPROVED AS TO FORM *Signed to proper execution*  
OFFICE OF COUNTY ATTORNEY  
BY: Christy Susan Penick  
ATTORNEY

**Exhibit A**  
**SCOPE OF SERVICES**

This exhibit forms an integral part of that certain County Incentive Grant Program Agreement between the State of Florida, Department of Transportation and the Pinellas County dated \_\_\_\_\_, 2015.

PROJECT LOCATION:

Pinellas County, Florida

PROJECT DESCRIPTION:

The COUNTY will provide construction services for the improvement of the intersection of Belcher Road and Belleair Road. The project consists of extending the left turn lanes, adding a single right turn lane and construction of medians at Belcher Road and Belleair Road.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

**Exhibit B**  
**SCHEDULE OF SERVICES**

The COUNTY shall perform the PROJECT activities in accordance with the following schedule:

- a) Design to be completed on or before: N/A.
- b) Construction contract to be let on or before: 06/30/2015.
- c) Construction to be completed on or before: 12/31/2017.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

**Exhibit C  
SCHEDULE OF FUNDING**

**This exhibit forms an integral part of that certain County Incentive Grant Program Agreement between the State of Florida, Department of Transportation and Pinellas County, dated \_\_\_\_\_, 2015.**

**I. TOTAL ESTIMATED COST..... \$2,750,000.00**

**II. PROJECT PARTICIPATION**

**State .....\$1,375,000.00**

**Federal.....\$0.00**

**Local Funds Participation.....\$1,375,000.00**

**III. Project funds are subject to legislative appropriation of available funds.**

**Exhibit D**  
**PROVISIONS FOR ADVANCED PAYMENTS (If Applicable)**  
(Reference section 3 A. ii, in AGREEMENT)

- A. The DEPARTMENT agrees to pay an amount of \$N/A which is equal to 15% of the DEPARTMENT's maximum participation of the estimate of the cost of the PROJECT.
- B. The advanced amount shall be paid to the COUNTY after execution of this AGREEMENT and within the fiscal year of the project funding in the DEPARTMENT'S Adopted Work Program as of the date of execution.
- C. The amount advanced after execution shall be applied toward latter months payments or at the completion of the PROJECT.
- D. The COUNTY will submit an invoice for the advance.
- E. Any unexpended funds remaining at the conclusion/termination of the AGREEMENT shall be returned to the DEPARTMENT within N/A days of the completion/termination of the project.

Exhibit E  
**NOTICE OF COMPLETION**

JOINT PARTICIPATION AGREEMENT  
Between  
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
and the (Pinellas County), Florida

PROJECT DISCRIPTION This project is for intersection improvements at Belcher Road and Belleair Road. Will include extending the left turn lanes, adding right turn lanes and adding medians.

FINANCIAL MANAGEMENT ID# 430373 1 58 01

In accordance with the Terms and Conditions of the AGREEMENT, the undersigned hereby provides notification that the work authorized by this Agreement is complete as of \_\_\_\_\_.

(COUNTY Pinellas, Florida)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ENGINEER'S CERTIFICATION OF SUBSTANTIAL COMPLIANCE**

In accordance with the Terms and Conditions of the AGREEMENT, the undersigned hereby certifies that all work which originally required certification by a Professional Engineer has been completed in substantial compliance with the PROJECT construction plans and specifications.

SEAL:

By: \_\_\_\_\_, P.E.

Name: \_\_\_\_\_

Date: \_\_\_\_\_



## **Exhibit F AUDIT**

### FEDERAL RESOURCES (if applicable; otherwise delete)

Federal Agency:  
Catalog of Federal Domestic Assistance: (Number & Title)  
Amount: 1,375,000.00

### Compliance Requirements

1. N/A
2. N/A
3. N/A

### STATE RESOURCES

Agency: Florida Department of Transportation  
Catalog of State Financial Assistance: County Incentive Grant Program (55.008)  
Amount:

### Compliance Requirements

The PROJECT must:

1. be a facility. CIGP funds cannot be used for operational expenses.
2. be located on the State Highway System or relieve traffic congestion on the State Highway System.
3. be consistent to the maximum extent feasible with the Florida Transportation Plan (FTP).
4. be consistent to the maximum extent feasible, where appropriate, with the local Metropolitan Planning Organization (MPO) Long Range Transportation Plan (LRTP).\*
5. be consistent with, to the maximum extent feasible, with any local comprehensive plans.\*

\*If the PROJECT is not in these plans, it must be amended into them within six months of application.

NOTE: Section .400(d) of OMB Circular A-133, as revised, and Section 215.97(5)(a), Florida Statutes, require that the information about Federal Programs and State Projects included in Exhibit F be provided to the recipient.

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING THE CHAIRMAN TO EXECUTE AND THE CLERK TO ATTEST AN AGREEMENT BETWEEN THE FLORIDA DEPARTMENT OF TRANSPORTATION (DEPARTMENT) AND PINELLAS COUNTY (COUNTY) FOR FUNDING OF CONSTRUCTION ACTIVITIES ASSOCIATED WITH THE BELCHER ROAD AND BELLEAIR ROAD INTERSECTION IMPROVEMENT PROJECT THROUGH THE COUNTY INCENTIVE GRANT PROGRAM (CIGP) AGREEMENT, DEPARTMENT FINANCIAL PROJECT NUMBER 430373 1 38 01.

WHEREAS, the CIGP was created by Section 339.2817, Florida Statutes, to improve a transportation facility which is located on the State Highway System, or which relieves traffic congestion on the State Highway System; and

WHEREAS, the COUNTY has certified to the DEPARTMENT that it has met the eligibility requirements of said Section 339.2817, Florida Statutes; and

WHEREAS, the COUNTY, has requested funding from the DEPARTMENT through the CIGP for the construction of left turn lanes, adding a single right turn lane, and construction of medians at Belcher Road and Belleair Road; and

WHEREAS, the Belcher Road and Belleair Road Intersection Improvement Project has been awarded funding for construction; and

WHEREAS, the COUNTY is responsible for construction activities; and

WHEREAS, it is required that execution of a formal Agreement for the transfer of funds for the above activities be entered into between the DEPARTMENT and the appropriate COUNTY officials.

NOW THEREFORE, BE IT RESOLVED, by the Board of County Commissioners of Pinellas County, Florida, duly assembled this \_\_\_\_\_ day of \_\_\_\_\_, 2015 authorizes the Chairman to execute and the Clerk to attest the CIGP Agreement with the DEPARTMENT for funding of construction activities associated with the Belcher Road and Belleair Road Intersection Improvement Project.

Commissioner \_\_\_\_\_ offered the foregoing resolution and moved its adoption which was seconded by Commissioner \_\_\_\_\_, and upon roll call the vote was:

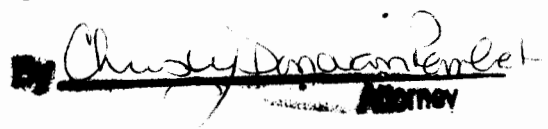
AYES:

NAYS:

ABSENT OR NOT VOTING:

\* \*

**APPROVED AS TO FORM  
OFFICE OF COUNTY ATTORNEY**

  
Attorney

## Celeste, Merry E

---

**From:** Watkins, Carin [Carin.Watkins@dot.state.fl.us]  
**Sent:** Wednesday, March 25, 2015 12:34 PM  
**To:** Celeste, Merry E; Gonzalez, Ana E.  
**Cc:** Talhouk, David A; Pemberton, Christy D  
**Subject:** RE: 430373 1 Belleair Road at Belcher Road Intersection Improvements(CIGP) -Engineers Estimate \*\*\*\*\*REVISED EMAIL\*\*\*\*\*

The new CIGP agreement cannot be modified. It is a form document that does not allow for changes. I checked with our attorney and was told that the agreement needs to be signed as it is.

I was also told the "Leon" county needs to stay in the document. If your attorneys have questions about the indemnification language, please contact Marty Hernandez at (813) 975-6483.

Thanks...Carin

Carin Watkins  
Special Projects Coordinator  
Program Management  
(813) 975-6435  
(work schedule: Tuesday through Friday 7:00A – 5:00P, Monday – Off)

"Alert today, Alive Tomorrow"

How am I doing? Please contact my supervisor Ana Gonzalez at [ana.gonzalez@dot.state.fl.us](mailto:ana.gonzalez@dot.state.fl.us), with any feedback.

**From:** Celeste, Merry E [mailto:mceleste@co.pinellas.fl.us]  
**Sent:** Wednesday, March 25, 2015 9:55 AM  
**To:** Gonzalez, Ana E.; Watkins, Carin  
**Cc:** Talhouk, David A; Pemberton, Christy D  
**Subject:** RE: 430373 1 Belleair Road at Belcher Road Intersection Improvements(CIGP) -Engineers Estimate  
\*\*\*\*\*REVISED EMAIL\*\*\*\*\*

Good Morning Carin – I have not received a response regarding the email request below. Normally, our agreements with FDOT allow us to cause the contractor to be responsible for the insurance and indemnity during construction, which we pass along to the contractor during advertising and award of the construction project. Can we have Section 4.B modified to include this language?

Thank you,

**Merry Celeste**  
Pinellas County ETS  
(727) 464-3185  
[mceleste@pinellascounty.org](mailto:mceleste@pinellascounty.org)  
*All government correspondence is subject to the public records law.*

**From:** Celeste, Merry E  
**Sent:** Friday, March 13, 2015 2:12 PM  
**To:** Gonzalez, Ana E.  
**Cc:** Talhouk, David A; Pemberton, Christy D

**RESOLUTION 06- 70**

**A RESOLUTION RELATING TO CONTRACTUAL  
INDEMNIFICATION BY THE COUNTY.**

WHEREAS, Pinellas County frequently enters into contractual relationships;

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

WHEREAS, the County generally requires other contracting parties to indemnify the County for the negligence both of the contractor and of the County;

WHEREAS, many parties refuse to indemnify the County for the actions or inactions of the County and often seek to require the County to indemnify them for the actions of the County, its contractors, or third parties;

WHEREAS, the nature of the party, and the subject matter of the contract are factors in the County's decision making regarding risk assumption and indemnification;

WHEREAS, the County usually has refused to indemnify other entities for several reasons: 1) The County is entitled to sovereign immunity under the Florida Constitution and §768.28, Fla. Stat., and an indemnification could be interpreted as a contractual waiver of that sovereign immunity; 2) The Florida Constitution prohibits a County from pledging its credit to another entity and the indemnification could be viewed as a pledge of the County's credit; 3) Article VII Section 10 of the Florida Constitution, and §§129.06 and 129.07, Fla. Stats. require that a County limit its expenditures to the budgeted amounts, and contracts requiring expenditures in violation of these statutes are not only void,

but subject the commissioners voting and contracting for such amounts, and their individual bonds, to liability for any excess indebtedness contracted for; 4) §§129.08 and 129.09, Fla. Stats. provide for criminal liability for commissioners knowingly voting for such expenditures, and the clerk of the circuit court signing any payment thereon;

WHEREAS, currently various individuals make determinations relative to these indemnification or risk assumption decisions based on the nature, size, necessity or desirability of the agreement at issue;

WHEREAS, in advising various departments and bodies regarding these indemnification or risk assumption matters, the County Attorney's Office has caused the phrase, "to the extent permitted by law" to be added to clauses wherein the County purports to indemnify another entity;

WHEREAS, the County Attorney's Office interpretation has been that due to all of the constraints listed above, "the extent permitted by law" is – not at all, and that the indemnification of another entity is a void *ab initio* action with no effect;

WHEREAS, certain legal precedents have come out that could be construed to undermine the County Attorney's Office interpretation;

WHEREAS, American Home Assurance Company v. National Railroad Passenger Corporation, 908 So.2d 459 (Fla. 2005) (*holding that a municipality could contractually be held liable under an indemnification provision despite sovereign immunity defenses raised*), and Florida Department of Natural Resources v. Garcia, 753 So.2d 72 (Fla. 2000) (*holding that the City of*

*Miami could indemnify the State of Florida despite a statutory provision that prohibits one governmental entity from indemnifying a second governmental entity for the second entity's negligence)* are two cases that raise potential problems for the interpretation previously relied upon by the County Attorney's Office;

WHEREAS, the County Attorney's Office has been in contact with other County Attorney's Offices, reviewed the widely varying policies thereof, and has researched and discussed the matter internally;

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

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 Pinellas County Board of County Commissioners as follows:

I. The County Policy is that the County does not indemnify other parties. That Policy may only be waived based on certain factors such as:

- 1) the availability of the goods or services from other sources;
- 2) the County's need/desire for the goods or services;
- 3) the probability of a loss occurring.

II. County policy not to indemnify others should not be waived lightly and when done, shall conform to the following requirements:

- 1) The other entity must have refused, in writing, to remove all indemnification requirements requested of the County directly, and refused to allow a statement 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 (\$100,000/\$200,000). 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 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 must include, at a minimum, the Clerk of the Circuit Court, the County Attorney's Office, the County Risk Management Department, and the County Administrator's Office.

III. To the extent possible, and after consideration as outlined above, the following language is to be used for the County 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 §129.06, 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.

IV. Notwithstanding any contractual authority delegation to the contrary, any indemnification provisions entered into by the County other than that listed in paragraph III. may only be entered into at the specific direction of the County Administrator or his designee, and only after review by the County Attorney's Office. Any indemnity provision entered into pursuant to this subsection IV shall be reported to the Board of County Commissioners in arrears no less than quarterly.


Commissioner Morroni offered the foregoing resolution and moved its adoption, which was seconded by Commissioner Seel, and upon roll call the vote was:

AYES: Duncan, Stewart, Harris, Seel, and Morroni.

NAYS: None.

ABSENT AND NOT VOTING: Welch and Latvala.

APPROVED AS TO FORM  
OFFICE OF COUNTY ATTORNEY

By  Attorney

