

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: January 15, 2008

Consent Regular

Public Hearing

Department FACILITIES DEVELOPMENT
AND OPERATIONS

Submitted By: COUNTY ATTORNEY

I. EXECUTIVE BRIEF

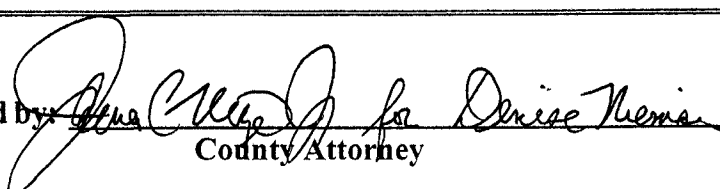
Motion and Title: Staff recommends motion to: Approve a settlement with Entek Environmental & Technical Services, Inc. in the amount of \$175,000 and execution of a General Release in favor of Entek and its insurer Zurich American Insurance Company.

Summary: Palm Beach County has sued Entek Environmental & Technical Services, Inc., and others, to recover the \$245,167.14 in extra costs incurred by the County to remove asbestos from the Old Courthouse prior to its restoration. These costs were incurred as a result of the failure of the County's consultant, Entek, and the County's contractor, Simpson and Associates, Inc., to completely identify and remove all of the asbestos during the 1996 remediation efforts. Entek has agreed to settle the claim against it for \$175,000 provided that the County provides it with a General Release in the form attached. Staff is recommending accepting Entek's offer in that it represents an immediate recovery of better than 70% of the claim amount and eliminates the uncertainty of litigation, which in this case includes, but is not limited to, potential challenges based upon the reasonableness of the amount of the change order and challenges based upon the statute of limitations. Countywide (JCM)

Background and Justification: In March 1994, Entek entered into a contract with Palm Beach County to perform services for Palm Beach County related to the removal of asbestos containing materials (hereafter asbestos containing materials shall be referred to as ACM) from County buildings including the Old Courthouse. In 1995, as a part of performing the services required by its Contract with Palm Beach County, Entek received a work authorization to establish an asbestos removal program for the old Palm Beach County Courthouse. As a part of that effort, Entek was obligated to identify and designate areas in the old courthouse that contained ACM that was to be removed before the old courthouse was demolished. In addition, pursuant to the terms of the Contract, Entek was required to monitor the work effort of the contractor hired to remove the ACM, to ensure that all ACMs were, in fact, removed. (continued on page 3)

Attachments:

- 1. General Release (2copies)

Recommended by:  for Denise Thomas 12/31/07
County Attorney Date

Approved by: _____ N/A

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	—	—	—	—	—
Operating Costs	—	—	—	—	—
External Revenues	175,000	—	—	—	—
Program Income (County)	—	—	—	—	—
In-Kind Match (County)	—	—	—	—	—
NET FISCAL IMPACT	175,000	—	—	—	—
# ADDITIONAL FTE POSITIONS (Cumulative)	—	—	—	—	—

Is Item Included in Current Budget? Yes ___ No X

Budget Account No.: Fund 3018 Department 411 Unit B019 Object 6930
Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____

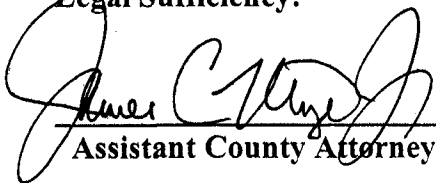
III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

OFMB

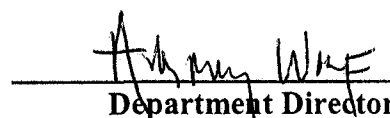
Contract Dev. and Control

B. Legal Sufficiency:



Assistant County Attorney

C. Other Department Review:



Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

Background and Justification (cont.): In November 1995 Simpson and Associates, Inc. entered into a contract with the county to remove all friable ACM in the courthouse as identified by Entek in drawings and documents provided to Simpson as a part of the proposal process and as detailed during a pre-award walk-through of the project. Simpson completed its work in 1996. In February 2004, as demolition of the courthouse was beginning, the County's contractor discovered the existence of friable ACM in areas which were to have been identified and abated by Entek and Simpson in 1995 and 1996. The County issued a change order to Hedrick Brothers Construction Company, Inc in the amount of \$245,167.14 to cover the costs of removing the asbestos. Delay costs were also incurred by the contractor as the project was delayed by 77 days.. In the pending litigation, the County has alleged that the change order was necessitated by the failures of Entek and Simpson to properly complete their 1996 contracts. Acceptance of Entek's offer of \$175,000 and issuance of the required General Release would settle all of the County's claims against Entek.

The County would then be left with only its claims against Simpson. Simpson and Associates, Inc. was dissolved in March 2004 and that corporate entity no longer exists. Florida law provides that claimants can pursue the last shareholders of the corporation for damages to the extent that those shareholders received a distribution from the corporation upon dissolution. Discovery in the litigation has indicated that the last shareholder of Simpson, Charles L. Gray and Jodie L. Gray, did not receive a distribution from the corporation as it had no assets when it was dissolved. Therefore, it does not appear that a claim against the Grays will be successful.

Simpson and Associates did post a payment and performance bond for the project, as do all County contractors, against which the County could have made a claim. However, Simpson's surety, Credit General Insurance Company, filed for liquidation in Ohio in 2000. Originally, proofs of claim were required to be filed by 2002, two years before the County knew it had a claim. A proof of claim is the document one files to document a claim in a liquidation. Normally, if the proof of claim is not submitted by the deadline the claim is barred. However, in this case, the Ohio liquidator recently re-opened the time for filing proofs of claims and one has been prepared and filed on the County's behalf. Nevertheless, if any recovery is ever had against Credit General Insurance Company, it may only be pennies on the dollar and may not be forthcoming for several years.

The bottom line is that it is very possible that only a small percentage of the County's claim against Simpson may ever be recovered and that the \$175,000 received from Entek may represent the County's complete recovery on this claim. Despite those facts, staff still recommends accepting Entek's offer. It represents an immediate recovery of better than 70% of the claim amount and eliminates the uncertainty of litigation, which in this case includes, but is not limited to, potential challenges based upon the reasonableness of the amount of the change order and challenges based upon the statute of limitations.

GENERAL RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That PALM BEACH COUNTY, first party, for and in consideration of the sum of ONE HUNDRED SEVENTY FIVE THOUSAND and No/100 DOLLARS (\$175,000.00) or other valuable considerations, received from or on behalf of ENTEK ENVIRONMENTAL TECHNICAL SERVICES, INC. and ZURICH AMERICAN INSURANCE COMPANY and its affiliated companies and second parties' successors and assigns, the receipt whereof is hereby acknowledged, AND

HEREBY remise, release, acquit, satisfy, and forever discharge the said second parties, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which said first party ever had, now has, or which any Personal Representative, successor, heir or assign of said first party, hereafter can, shall or may have, against said second parties, for, upon or by reason of any matter, cause or thing whatsoever, arising from or in any way related to the investigation, design, or construction services performed by second parties related to asbestos removal in the County's "Old Courthouse" as described in the claim which is the subject matter of Case No. 2007CA010353XXXXMBAB in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

THIS RELEASE shall cover any and all claims arising out of said incidents and any and all other insurer's claims, subrogated interests or liens. Each said party to bear their own costs concerning this litigation.

IT IS UNDERSTOOD AND AGREED that the payment made is not to be construed as an admission of liability of the part of the party or parties hereby released, and that said releasees deny liability therefore and intend merely to avoid litigation and buy their peace.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this ____ day of _____, 2007.

SHARON R. BOCK
CLERK & COMPROLLER

PALM BEACH COUNTY

Deputy

By: _____
Chair

Date: _____

Approved as to Form and Legal Sufficiency

By: 
Assistant County Attorney