

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: June 19, 2012

☒ Consent ☐ Regular
☐ Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For: WATER UTILITIES DEPARTMENT

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: A Settlement Agreement resolving Palm Beach County v. The Tower Group, et al, for the amount of \$200,000.

Summary: This litigation arose out of the design and construction of Water Utilities' Central Region Operations Center. The original roof on the structure suffered from systemic leaks ultimately resulting in the replacement of the roof. Acceptance of this settlement will result in the defendants paying Palm Beach County \$200,000.

District 2 (JCM)

Background and Justification: In 1999, the County initiated the design process for Water Utilities new operations center located at 8100 Forest Hill Blvd. In 2002, The Tower Group, Inc., entered into a contract with the County for the construction of the project. Immediately following substantial completion of the project, the building began to experience roof leaks. The leaks continued to appear unabated and in 2008, the County filed suit against Tower, the roofing subcontractor, the lead engineer and the architect responsible for the design of the roof. Expert review indicated that the problems were systemic and that the roof needed to be replaced. Because the operations building is used as Water Utilities Operations Center in the case of a hurricane, the decision was made to replace the original concrete tile roof with an upgraded metal roof. The settlement amount of \$200,000 approximates the amount the County would have been entitled to recover for the replacement of the original roof with a similar concrete tile roof. The defendants would not have been liable for the extra cost of the upgraded roof.

Attachments:

1. Settlement Agreement
- 2.

Recommended by:  6-7-12
County Attorney Date

Approved by: N/A Date: _____

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	(200,000)	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	(200,000)	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No X

Budget Account No.: Fund 4000 Department 720 Unit 4200 Rvsrc 6999
Reporting Category _____

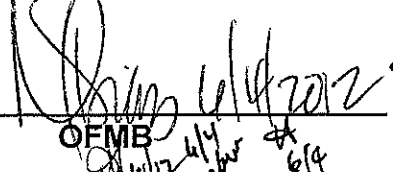
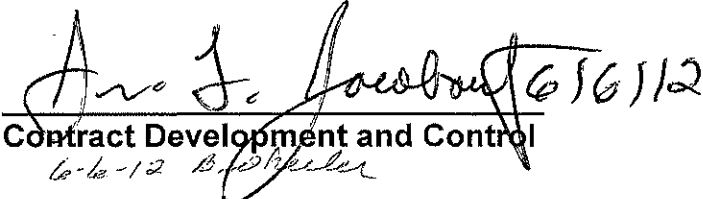
B. Recommended Sources of Funds/Summary of Fiscal Impact:

Payment received is a reimbursement of prior year expenditures.

C. Departmental Fiscal Review: _____

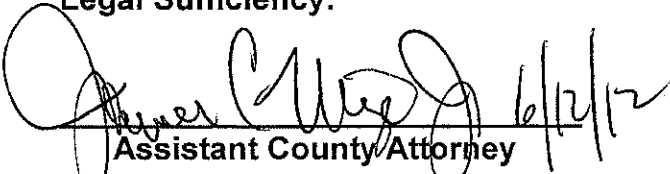
III. REVIEW COMMENTS

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

OFMB 6/14/12
 Contract Development and Control 6-16-12

B. Legal Sufficiency:


 Assistant County Attorney

C. Other Department Review:


 Department Director

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

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (hereinafter the "Agreement") is entered into this ____ day of _____, 2012, by and between Palm Beach County (County), The Tower Group, Inc. (Tower), Latite Roofing and Sheet Metal Co., Inc. (Latite), Hazen & Sawyer P.C. (H&S), and Song and Associates, Inc. (Song).

WHEREAS, in 1999, County and H&S entered into a contract for continuing engineering services and, thereafter pursuant to the terms of that contract, County and H&S agreed to CSA No.2, Supplement No.3 for design services for the project known as the Northern Region Operations Center Administration and Engineering Building (hereafter the "Project") and CSA No. 13 for Construction Administration Services for the Project, and

WHEREAS, at the request of the County, H&S entered into a contract with Song to provide all architectural services for the Project, and

WHEREAS, County entered into a 2002 contract with Tower for the construction of the Project and, thereafter, Tower subcontracted with Latite for the installation of the Project roof, and

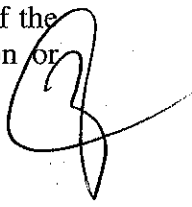
WHEREAS, the Project roof experienced a significant number of leaks, and, ultimately, the County replaced the original roof, and

WHEREAS, in August 2008, County instituted litigation related to the roof styled, Circuit of Florida, In And For Palm Beach County, Case No. 50 2008 CA 01 4587 XXXX MB AI, Palm Beach County, Florida, a political subdivision of the State of Florida, Plaintiff, vs. The Tower Group, Inc., a Florida corporation; National Union Fire Insurance Company of Pittsburgh, Pa., a foreign corporation; Latite Roofing and Sheet Metal Co., Inc., a Florida corporation; Defendants.

WHEREAS, on March 5, 2012, the parties to the County Litigation participated in a mediation. H&S was requested by the County to be in attendance even though H&S was not a party to the litigation. H&S honored the County's request and attended the mediation.

WHEREAS, at the conclusion of the mediation a mutually acceptable resolution of the County's claims was reached, evidenced by a handwritten agreement which was initialed by counsel for each of the parties (hereafter Mediation Agreement), and

WHEREAS, the parties desire to enter into this Agreement for the purpose of formalizing the Mediation Agreement, compromising and settling the disputes between the parties, and to avoid time-consuming litigation, the parties acknowledging that this Agreement does not and shall not constitute an admission that any conduct of any of the parties was wrongful, unlawful, negligent or violative of any statute or regulation or common law;



NOW, THEREFORE, in consideration of the mutual obligations set forth herein and the recitals set forth above as well as other good and valuable consideration the receipt of which the parties acknowledge, it is agreed by and between the parties that:

1. Tower, Latite, and Song have agreed, collectively, to pay to the County, the sum of \$200,000 by paying the individual amounts set forth in the Mediation Agreement. Each party hereby agrees to pay their individual portion of the settlement amount, as set forth in the Mediation Agreement, by check or wire transfer, within ten (10) days of the date that the Palm Beach County Board of County Commissioners approves this Agreement.

2. Palm Beach County hereby releases and forever discharges H&S, Song, Tower, Latite, and their respective agents, servants, employees, trustees, insurers, third party administrators, beneficiaries, affiliates, subsidiaries, successors, predecessors, parent companies, and assignees from any and all manner of actions, causes of action, suits, debts, dues, sums of money, accounts, covenants, contracts, controversies, agreements, promises, judgments, claims, and demands whatsoever, of whatever kind, whether absolute or contingent, known or unknown, matured or unmatured, in law, in equity, in arbitration or other proceeding which such party(s) ever had, now has, or hereafter can, shall or may have against any of the Released Parties (collectively all parties released herein will be referred to as the "Released Parties") for, upon or by reason of any matter, cause or information, arising in connection with or in any way related to the County Litigation or the Project. This release is limited to claims related to the roof of the Administration and Engineering Building.

In the same manner, H&S, Song, Tower, and Latite hereby release Palm Beach County and each other and their respective officers, elected officials, agents, servants, employees, trustees, insurers, third party administrators, beneficiaries, affiliates, subsidiaries, successors, predecessors, parent companies, and assignees from any and all manner of actions, causes of action, suits, debts, dues, sums of money, accounts, covenants, contracts, controversies, agreements, promises, judgments, claims, and demands whatsoever, of whatever kind, whether absolute or contingent, known or unknown, matured or unmatured, in law, in equity, in arbitration or other proceeding which such party(s) ever had, now has, or hereafter can, shall or may have against Palm Beach County or one another for, upon or by reason of any matter, cause or information, arising in connection with or in any way related to the County Litigation or the Project. This release is limited to claims related to the roof of the Administration and Engineering Building.

The claims mutually released herein expressly include all claims sounding in tort and contract, Common Law Indemnity, Contractual Indemnity, and Contribution arising out of or which may have or could have arisen out of the County Litigation or the Project.

3. Should any legal action be brought by a party for breach of this Agreement or to enforce any provision herein, each party to such action shall bear its own attorneys' fees, court costs, and such other costs as may be fixed by the court.

4. This Agreement is made and entered into in the State of Florida and shall be interpreted by the laws of that state. Venue for any action arising out of or related to this Agreement shall lie exclusively in Palm Beach County, Florida.

5. Neither this Agreement nor any provision of this Agreement can be modified or waived in any way, except by an agreement in writing.

6. To the extent permitted by law, the terms of the Mediation Agreement shall be and remain confidential.

7. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have by their duly authorized corporate officers signed this Agreement effective as of the date indicated above.

ATTEST:

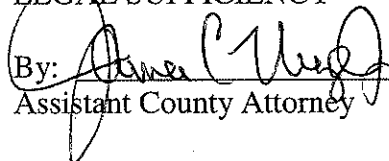
SHARON R. BOCK
CLERK & COMPTROLLER

PALM BEACH COUNTY, a political
subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____
Chair

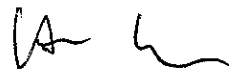
APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By:  _____
Assistant County Attorney

(OFFICIAL SEAL)

THE TOWER GROUP, INC.

**LATITE ROOFING AND SHEET
METAL CO., INC.**

By:  _____
Title: PRESIDENT

By: _____
Title:

HAZEN & SAWYER, P.C.

SONG and ASSOCIATES, INC.

By: _____
Title:

By: _____
Title:

SETTLEMENT AGREEMENT

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WHEREAS, in 1999, County and H&S entered into a contract for continuing engineering services and, thereafter pursuant to the terms of that contract, County and H&S agreed to CSA No.2, Supplement No.3 for design services for the project known as the Northern Region Operations Center Administration and Engineering Building (hereafter the "Project") and CSA No. 13 for Construction Administration Services for the Project, and

WHEREAS, at the request of the County, H&S entered into a contract with Song to provide all architectural services for the Project, and

WHEREAS, County entered into a 2002 contract with Tower for the construction of the Project and, thereafter, Tower subcontracted with Latite for the installation of the Project roof, and

WHEREAS, the Project roof experienced a significant number of leaks, and, ultimately, the County replaced the original roof, and

WHEREAS, in August 2008, County instituted litigation related to the roof styled, Circuit of Florida, In And For Palm Beach County, Case No. 50 2008 CA 01 4587 XXXX MB Al, Palm Beach County, Florida, a political subdivision of the State of Florida, Plaintiff, vs. The Tower Group, Inc., a Florida corporation; National Union Fire Insurance Company of Pittsburgh, Pa., a foreign corporation; Latite Roofing and Sheet Metal Co., Inc., a Florida corporation; Defendants.

WHEREAS, on March 5, 2012, the parties to the County Litigation participated in a mediation. H&S was requested by the County to be in attendance even though H&S was not a party to the litigation. H&S honored the County's request and attended the mediation.

WHEREAS, at the conclusion of the mediation a mutually acceptable resolution of the County's claims was reached, evidenced by a handwritten agreement which was initialed by counsel for each of the parties (hereafter Mediation Agreement), and

WHEREAS, the parties desire to enter into this Agreement for the purpose of formalizing the Mediation Agreement, compromising and settling the disputes between the parties, and to avoid time-consuming litigation, the parties acknowledging that this Agreement does not and shall not constitute an admission that any conduct of any of the parties was wrongful, unlawful, negligent or violative of any statute or regulation or common law;

NOW, THEREFORE, in consideration of the mutual obligations set forth herein and the recitals set forth above as well as other good and valuable consideration the receipt of which the parties acknowledge, it is agreed by and between the parties that:

1. Tower, Latite, and Song have agreed, collectively, to pay to the County, the sum of \$200,000 by paying the individual amounts set forth in the Mediation Agreement. Each party hereby agrees to pay their individual portion of the settlement amount, as set forth in the Mediation Agreement, by check or wire transfer, within ten (10) days of the date that the Palm Beach County Board of County Commissioners approves this Agreement.

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In the same manner, H&S, Song, Tower, and Latite hereby release Palm Beach County and each other and their respective officers, elected officials, agents, servants, employees, trustees, insurers, third party administrators, beneficiaries, affiliates, subsidiaries, successors, predecessors, parent companies, and assignees from any and all manner of actions, causes of action, suits, debts, dues, sums of money, accounts, covenants, contracts, controversies, agreements, promises, judgments, claims, and demands whatsoever, of whatever kind, whether absolute or contingent, known or unknown, matured or unmatured, in law, in equity, in arbitration or other proceeding which such party(s) ever had, now has, or hereafter can, shall or may have against Palm Beach County or one another for, upon or by reason of any matter, cause or information, arising in connection with or in any way related to the County Litigation or the Project. This release is limited to claims related to the roof of the Administration and Engineering Building.

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CLERK & COMPTROLLER

PALM BEACH COUNTY, a political
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By: _____
Deputy Clerk

By: _____
Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

(OFFICIAL SEAL)

THE TOWER GROUP, INC.

LATITE ROOFING AND SHEET
METAL CO., INC.

By: _____
Title:

By: _____
Title:

HAZEN & SAWYER, P.C.

SONG and ASSOCIATES, INC.

By: Patrick A. Davis
Title: PATRICK A. DAVIS
VICE PRESIDENT
3/20/12

By: _____
Title:

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THIS SETTLEMENT AGREEMENT (hereinafter the "Agreement") is entered into this 9th day of April, 2012, by and between Palm Beach County (County), The Tower Group, Inc. (Tower), Latite Roofing and Sheet Metal Co., Inc. (Latite), Hazen & Sawyer P.C. (H&S), and Song and Associates, Inc. (Song).

WHEREAS, in 1999, County and H&S entered into a contract for continuing engineering services and, thereafter pursuant to the terms of that contract, County and H&S agreed to CSA No.2, Supplement No.3 for design services for the project known as the Northern Region Operations Center Administration and Engineering Building (hereafter the "Project") and CSA No. 13 for Construction Administration Services for the Project, and

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CLERK & COMPTROLLER

PALM BEACH COUNTY, a political
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By: _____
Deputy Clerk

By: _____
Chair

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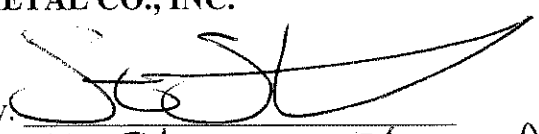
By: 
Assistant County Attorney

(OFFICIAL SEAL)

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**LATITE ROOFING AND SHEET
METAL CO., INC.**

By: _____
Title:

By: 
Title: Steven J. Struve, President

HAZEN & SAWYER, P.C.

SONG and ASSOCIATES, INC.

By: _____
Title:

By: _____
Title:

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CLERK & COMPTROLLER

PALM BEACH COUNTY, a political
subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____
Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

(OFFICIAL SEAL)

THE TOWER GROUP, INC.

**LATITE ROOFING AND SHEET
METAL CO., INC.**

By: _____
Title:

By: _____
Title:

HAZEN & SAWYER, P.C.

SONG and ASSOCIATES, INC.

By: _____
Title:

By: _____
Title: President