

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

Meeting Date: June 3, 2014

Consent Regular
Public Hearing

Department: Water Utilities Department

I. EXECUTIVE BRIEF


Motion and Title: Staff recommends motion to approve: a Settlement Agreement with Jacobs Engineering Group, Inc. (Jacobs) in the amount of \$125,000.

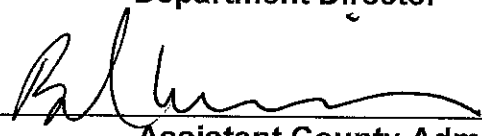
Summary: In 2005, Jordan, Jones & Goulding, Inc. (JJG) (became Jacobs Engineering Group, Inc. in 2010) was selected (R2005-0775) to provide professional engineering services for wastewater and reclaimed water facilities. On May 20, 2008, Palm Beach County Board of County Commissioners (County) approved Supplement No. 2 to Consultant Services Authorization No. 23 (R2008-0906) with JJG for the design of the FPL Reclaimed Treatment Facility located at the East Central Regional Wastewater Treatment Facility. In 2010, during construction and testing of the reclaimed water facility, cracks were discovered and excessive wall deflection occurred in the reclaimed filter basin. The construction contractor fixed these issues at a cost of \$179,401. On July 8, 2010, the County notified Jacobs that they would be held responsible for these costs. Jacobs has offered to settle this claim in the amount of \$125,000 provided that the County provides it with a General Release as part of the Settlement Agreement. Countywide (JM)

Background and Justification: On May 20, 2008, The County approved Agreements (R2008-0906 through R2008-0911) with Florida Power and Light (FPL), the East Central Regional Wastewater Treatment Operation Board (ECR), the City of West Palm Beach (City) and three (3) Consultant Service Authorizations. These Agreements laid the groundwork for constructing and operating a reclaimed water system to enable reclaimed water to become the primary source of cooling water supply to the West County Energy Center. One (1) of the three (3) Consultant Services Authorizations that was awarded was to JJG in the amount of \$ 1,634,875 for the design of the FPL Reclaimed Treatment Facility located at the East Central Regional Wastewater Treatment Facility. JJG being the engineer of record for the FPL Reclaimed Water Treatment Facility is fully responsible for any errors or omissions that occur. The cost to correct the design error, cracks and excessive wall deflection, that occurred during construction was \$179,401. The County has agreed to settle this issue in the amount of \$125,000. Staff recommends accepting this amount because Jacobs has agreed to waive claims it has asserted for additional costs associated with services rendered during construction.

Attachments:

- 1. Two (2) Original Settlement Agreements

Recommended By:  5/16/14
Department Director Date

Approved By:  5/29/14
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>(\$125,000.00)</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match County CCRT	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT	<u>(\$125,000.00)</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
 # ADDITIONAL FTE POSITIONS (Cumulative)	 <u>0</u>	 <u>0</u>	 <u>0</u>	 <u>0</u>	 <u>0</u>

Budget Account No.: Fund 4000 Dept 720 Unit 4200 Rsrc 6999

Is Item Included in Current Budget? Yes X No

(*) Amounts are not encumbered until work authorizations are issued.

Reporting Category N/A

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

Jacobs will pay \$125,000 to Palm Beach County to offset expenses associated with correcting design errors made on the FPL Reclaimed Treatment Facility.

C. Department Fiscal Review: Craig White

III. REVIEW COMMENTS

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

Shirley Strozny
OFMB
KW JB
5/19 5/20

Dr. J. Jacobson
Contract Development and Control
5-28-14/BJ/KC

B. Legal Sufficiency:

[Signature] 5/28/14
Assistant County Attorney

C. Other Department Review:

Department Director

SETTLEMENT AGREEMENT

This Settlement Agreement between **Jacobs Engineering Group, Inc.** ("Jacobs") and **Palm Beach County, Florida** (the "County") entered into on this _____ day of _____, 2014, is a negotiated settlement for the purposes as set forth below.

WHEREAS, on or about June 1, 2005, the County retained Jacobs to provide as needed engineering services in connection with the Florida Power and Light Reclaimed Water Treatment Facility at East Central Regional Waste Water Treatment Facility in West Palm Beach, FL (the "Project"); and

WHEREAS, on or about July 8, 2010, the County notified Jacobs that cracks within the upper level concrete walkway at the north and south corners of the east wall and that the inner and outer center of the east wall was deflecting and required repairs in the amount of \$179,401.00 for which Jacobs would be held responsible (the "Claim"); and

WHEREAS, Jacobs has denied sole liability for the Claim, has asserted claims for additional compensation for services rendered by Jacobs on the project, and has requested that the County consider settlement of the Claim as in the best interest of all parties; and

WHEREAS, the parties have agreed that it is in their mutual best interests to settle this dispute and are desirous of resolving their dispute in an amicable manner and fashion so as to avoid additional expense of litigation.

NOW THEREFORE, in consideration of the premises of the parties herein, the foregoing recitals which are incorporated by reference and made a part of this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Jacobs and the County agree as follows:

1. The Claim arises from services performed by Jacobs under the Professional Services Agreement with the County dated June 1, 2005.
2. Within 30 days of the execution of this Settlement Agreement, Jacobs, will remit a lump sum settlement payment to the County in the amount of \$125,000.00 to secure the release of any and all claims against Jacobs in any way related to the Claim. The payment shall be in full and final payment for making this release.
3. In consideration of the foregoing, the County waives, releases and forever discharges Jacobs, its parents, subsidiaries, related and affiliated organizations, subconsultants and their employees, agents, officers, directors, shareholders, assigns, executors, heirs, administrators and insurers (the "Jacobs Released Parties") against any and all issues, claims, causes of action, demands, disputes, and right of whatever nature, of any kind, whether known or unknown, that County has or may have against one or more of the Jacobs Released Parties, arising in any way out of or associated with any occurrence, event, fact or matter relating to the Claim and/or any and all repairs related to same. Such waiver, release and discharge is made by the County in its respective right and for its successors, executors, agents, employees, assigns, subcontractors, material men, suppliers, insurers, and any and all other persons, firms, corporations or other entities who may claim by and through the County. This release is limited as set forth above and does not release any claims other than those relating to the Claim.
4. In consideration of the foregoing, Jacobs waives, releases and forever discharges County, its commissioners, employees, agents, officers, successors, assigns, and insurers (the "County Released Parties") against any and all issues, claims, causes of action, demands, disputes, and right

of whatever nature, of any kind, whether known or unknown, that Jacobs has or may have against one or more of the County Released Parties, arising in any way out of or associated with the asserted claims for additional compensation for services rendered by Jacobs on the project and any occurrence, event, fact, or matter relating to the Claim as it relates to the Professional Services Agreement with the County dated June 1, 2005. Such waiver, release and discharge is made by the Jacobs in its respective right and for its successors, executors, agents, employees, assigns, subcontractors, material men, suppliers, insurers, and any and all other persons, firms, corporations or other entities who may claim by and through Jacobs. This release is limited as set forth above and does not release any claims other than those relating to the Claim.

5. This Settlement Agreement has been entered into for the purpose of resolving disputed claims and shall not be construed as an admission of any liability or wrongdoing by either party. Each party has availed itself of the advice of legal counsel and has knowingly and voluntarily entered into this Settlement Agreement in consideration for the promises, obligations and rights set forth herein.
6. This Settlement Agreement shall inure to the benefit of the County and Jacobs and their parent, subsidiary, related and affiliated companies or entities, and their officers, directors, commissioners shareholders, employees, assigns, executors, heirs, administrators and insurers.
7. The Parties agree that they shall keep the terms of this Settlement Agreement strictly confidential and agrees not to disclose the terms to any third party unless required by law.
8. This Settlement Agreement may be signed in counterparts, and each counterpart or set thereof shall be deemed to be a duplicate original.
9. This Settlement Agreement shall be governed by the laws of the State of Florida without giving effect to its conflict of laws, rules or principles.
10. Should any provision of this Settlement Agreement be determined by a court of competent jurisdiction to be invalid, the validity of any of the other provisions hereof shall not be affected thereby. The parties shall replace such invalid provisions by new provisions the contents of which shall approximate the invalid provisions as much as possible.

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of the date first above written.

PALM BEACH COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA

Sharon R. Bock, Clerk & Comptroller,

Palm Beach County

Palm Beach County,

Board of County Commissioners

ATTEST:

Signed: _____

Signed: _____

Priscilla A. Taylor, Mayor

Typed Name: _____
Deputy Clerk

_____ Date

Approved as to Form and Legal Sufficiency

Signed: _____

APPROVED AS TO TERMS AND CONDITIONS

Typed Name: _____
County Attorney

By: 
Department Director

ATTEST:

CONSULTANT:

John T. Jahn
Witness

John F. Giudici

Randy C. Pierce
(Signature) Randy C. Pierce

Jacobs Engineering Group, Inc.

March 7, 2014
Date