

Agenda Item #: 4D1

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

Meeting Date: July 7, 2015

☐ 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 with CDM Smith, Inc., settling claims brought by the County regarding alleged design and engineering deficiencies at the Lake Region Water Treatment Plant and Wellfield.

Summary: On June 21, 2011 the Board of County Commissioners (Board) approved a budget transfer of \$6.9 Million for emergency repairs/improvements to the existing 10 MGD Lake Region Water Treatment Plant, which serves Belle Glade, Pahokee and South Bay, contingent upon the Glades Utility Authority assignment of potential claims to the County upon absorption. The repairs/improvements were intended to address a decline in raw water quality from the existing seven (7) Floridan Aquifer brackish water supply wells, operational difficulties, and equipment failures. All of the funding has been expended and has resulted in improved well and plant performance. The repairs/improvements include the construction of three (3) additional supply wells and pumps, replacement of seven (7) of the existing well pumps, and installation of energy recovery devices on the existing four (4) treatment trains.

In addition to repairs and improvements, the County investigated the potential causes for the water quality degradation and operational difficulties experienced at the Lake Region Water Treatment Plant. The County has identified what it believes to be violations of the engineering standard of care owed by CDM Smith Inc., formerly Camp Dresser McKee, Inc., the engineering firm retained through three (3) contracts (R-2002-0570, R-2002-0574 and R-2005-0774) to provide engineering services for the design and construction of the plant and supporting facilities. The County's position is that CDM Smith Inc.'s violations of the standard of care contributed to the operational problems experienced at the Lake Region Water Treatment Plant and Wellfield. The parties engaged in pre-suit mediation and exchanged documentation to address the County's concerns. Due to the significant volume of technical material to be evaluated, the due diligence and pre-suit mediation took significantly longer than anticipated. The proposed settlement agreement calls for a one-time payment of \$700,000 by CDM Smith, Inc., to the County, in exchange for a release of all claims that have been or could have been raised relating to the Lake Region Water Treatment Plant project. Countywide (ATP)

(continued on page 3)

Attachments:

1. Settlement Agreement

Recommended by: _____

County Attorney

Date

Approved by: _____

n/a

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes No X

Budget Account No.: Fund 4011 Department 721 Unit 421 Object 6692

Reporting Category_____

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

C. Departmental Fiscal Review: Debra M. West

III. REVIEW COMMENTS

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

Shen M
3/10
6/26
6/26
OFMB
6/26

In: J. [Signature] 712115
Contract Development 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: (continued from page 1)

Palm Beach County commissioned the design and construction of the Lake Region Water Treatment Plant and Wellfield to provide a long-term solution to the lack of safe drinking water available to the Glades communities in the cities of Belle Glade, Pahokee, and South Bay. The Lake Region Water Treatment Plant, which was placed into service on March 31, 2008, serves as the only source of potable drinking water available to the Glades communities. CDM Smith, Inc., formerly Camp Dresser McKee, Inc., was engaged as the County's engineer to perform design, hydrogeologic, and engineering services necessary to design and construct a 10.0 million gallon per day finished water capacity low pressure reverse osmosis regional water treatment plant, as well as associated raw water, finished water, and concentrate water treatment mains, a ground storage tank, a production wellfield of seven (7) original wells, and a concentrate disposal system. CDM Smith, Inc.'s services were performed under contracts R-2002-0570, R-2002-0574, and R-2005-0774 and related consultant service authorizations. CDM Smith, Inc.'s total compensation under the three contracts was \$4,279,998.00. The Lake Region Water Treatment Plant and Wellfield experienced operational difficulties, equipment failures, and unexpected water quality degradation.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (hereinafter “the Agreement”) is entered into this _____ day of _____, 2015, by and between Palm Beach County (“the County”), a charter county and political subdivision of the State of Florida, and CDM Smith Inc., a foreign for-profit corporation authorized to do business in the State of Florida.

WHEREAS, the County and CDM Smith Inc., formerly known as Camp Dresser & McKee Inc. and hereinafter referred to as “CDM Smith Inc.,” entered into a contract on April 16, 2002, with the document number R-2002-0570 and an effective date of June 4, 2002, authorizing CDM Smith Inc., to perform water plant & water resources engineering services on a project numbered WUD 01-159; and

WHEREAS, on April 16, 2002, the County and CDM Smith Inc., entered into a contract for services, with the document number R-2002-0574 and an effective date of June 4, 2002, authorizing CDM Smith Inc., to provide utility hydrogeologic engineering services on a project numbered WUD 01-163; and

WHEREAS, on April 19, 2005, the County and CDM Smith Inc., entered into a contract for services with the document number of R-2005-0774 and an effective date of June 1, 2005, for water plant and water resources engineering services on a project numbered WUD 05-001; and

WHEREAS, Consultant Service Authorizations issued under the above-referenced contracts specifically set forth the scope of services to be performed in connection with the Lake Region Water Treatment Plant and Wellfield; and

WHEREAS, the Lake Region Water Treatment Plant was conceived as a long-term solution to the lack of safe drinking water available to the Glades communities in the cities of Belle Glade; Pahokee, and South Bay, and all parties understood the Lake Region Water Treatment Plant would serve as the only source of potable drinking water available to the communities; and

WHEREAS, CDM Smith Inc., was engaged as the County’s engineer on the Lake Region Water Treatment Plant and Wellfield (the “Project”); and

WHEREAS, the Lake Region Water Treatment Plant and Wellfield experienced operational difficulties, equipment failures, and unexpected water quality degradation, requiring the County to plan, design, and pay for the installation of 4 additional wells, replacement equipment, and plant modifications to maintain plant capacity and water quality; and

WHEREAS, CDM Smith Inc., expressly denies any liability for the problems experienced by the County at the Lake Region Water Treatment Plant and Wellfield; and

WHEREAS, the parties entered into pre-suit negotiations in a good faith attempt to resolve their differences over the alleged deficiencies at the Lake Region Water Treatment Plant and Wellfield; and

WHEREAS, the parties desire to enter into this Agreement for the purpose of 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 violated any statute or regulation or common law; and

WHEREAS, the parties intend that CDM Smith Inc., be fully released for all claims, whether known or unknown, as set forth in paragraph 3, below.

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. The Recitals in this Agreement are true and correct.
2. Within 15 days of the last to occur of (1) the execution of this Settlement Agreement and (2) the approval by the County Commission of the Settlement Agreement, CDM Smith Inc., will remit a lump sum payment to the County in the amount of \$700,000.00 to secure the release of any and all claims against CDM Smith Inc. arising out of the services CDM Smith Inc. provided on the Lake Region Water Treatment Plant and Wellfield Project(s) under the contracts referenced in the Recitals above and any and all associated Consultant Service Authorizations.
3. In consideration of the foregoing, the County waives, releases and forever discharges CDM Smith Inc., its parents, subsidiaries, related and affiliated organizations, subconsultants and their employees, agents, officers, directors, shareholders, assigns, executors, heirs, administrators and insurers (the "CDM Smith Inc. 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 CDM Smith Inc. Released Parties, arising in any way out of or associated with any occurrence, event, fact, or matter relating to the Lake Region Water Treatment Plant and Wellfield Project(s) under the contracts referenced in the Recitals above and any and all associated Consultant Service Authorizations.
4. In consideration of the foregoing, CDM Smith Inc., 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 CDM Smith Inc., has or may have against one or more of the County Released Parties, arising in any way out of or associated with the project and any occurrence, event, fact, or matter relating to the Lake Region Water Treatment Plant and Wellfield Project(s), under the contracts referenced in the Recitals above and any and all associated Consultant Service Authorizations. Such waiver, release and discharge is made by the CDM Smith Inc., 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 CDM Smith Inc.

5. The claims mutually released herein expressly include all legal and equitable claims including, without limitation, those sounding in tort and contract, Common Law Indemnity, Contractual Indemnity, and Contribution.
6. 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.
7. This Settlement Agreement shall inure to the benefit of the County and CDM Smith Inc., and their parent, subsidiary, related and affiliated companies or entities, and their officers, directors, commissioners shareholders, employees, assigns, executors, heirs, administrators and insurers.
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.
11. Should any legal action be brought by a party for breach of this Agreement or to enforce any provision herein, such action shall be brought in a state court of competent jurisdiction located in Palm Beach County and each party to such action shall bear its own attorneys' fees, court costs, and such other costs as may be fixed by the court.
12. Neither this Agreement nor any provision of this Agreement can be modified or waived in any way, except by an agreement in writing.

[the remainder of this page left intentionally blank]

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: *Amy Kyle Petuck*
~~Chief~~ Assistant County Attorney
~~Senior~~

(OFFICIAL SEAL)

CDM Smith Inc.

By: *Timothy B. Wall*
Title: President