

Lee County Board Of County Commissioners
Agenda Item Summary

Blue Sheet No. **20040539**

1. REQUESTED MOTION:

ACTION REQUESTED: Approve Waiver, Release of Claims and Replacement Agreement to Central Sprinkler Company to participate in the voluntary replacement program to replace o-ring sprinkler heads in various County buildings.

WHY ACTION IS NECESSARY: Board approval is required.

WHAT ACTION ACCOMPLISHES: Provides for the replacement of o-ring sprinkler heads that were installed in County buildings between 1996 and 1998 because they could possibly fail with replacement sprinkler heads.

2. DEPARTMENTAL CATEGORY:
02 Construction & Design
COMMISSION DISTRICT #:

C2D

3. MEETING DATE:

05-18-2004

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

5. REQUIREMENT/PURPOSE:
(Specify)

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
- B. DEPARTMENT **Public Works**
- C. DIVISION **Facilities Mgmt**
- BY: **Rich Beck, Director** *[Signature]*

7. BACKGROUND:

Between 1996 and 1998 sprinkler heads were purchased from Central Sprinkler Company (Central) and installed in the Community Development/Public Works Building, the 5th floor of the Administration Building and in various sections of the 1st floor of the Justice Center. The sprinklers that are equipped with o-ring sprinkler heads could possibly fail and are included in the voluntary replacement program that is offered by Central. Under the replacement program, Central will pay a licensed contractor to provide a replacement extension, escutcheon and any fittings, fixtures or appurtenances necessary for the proper replacement of each o-ring sprinkler head with a replacement sprinkler head.

Attachment: Waiver, Release of Claims and Replacement Agreement

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
					OA	OM	Risk	GC	
<i>[Signature]</i> 4/29/04	<i>[Signature]</i> 5/14/04	N/A		<i>[Signature]</i> for Scheduling 5/14/04	<i>[Signature]</i> 5/14/04	<i>[Signature]</i> 5/14/04	<i>[Signature]</i> 5/14/04	<i>[Signature]</i> 5/14/04	<i>[Signature]</i> 4/29/04

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty
 Date: 5/31/04
 Time: 4:30 PM
 Forwarded To:
 Co. Admin
 5/14/04

RECEIVED BY
 COUNTY ADMIN: *[Signature]*
 5/14/04
 9:40 am SLT
 COUNTY ADMIN
 FORWARDED TO: *[Signature]*
 5-5-04
 9am

WAIVER, RELEASE OF CLAIMS AND REPLACEMENT AGREEMENT

“Central” means Central Sprinkler Company, its predecessors, successors, subsidiaries, parent company, affiliated companies (including, but not limited to, Gem Sprinkler Co. and Star Sprinkler, Inc.), and any and all of their past, present or future officers, directors, stockholders, partners and agents.

“You” means the undersigned individual or entity that owns O-Ring Sprinkler Heads covered by the Voluntary Replacement Program described in this Notice Packet or at www.SprinklerReplacement.com, or any person claiming through the undersigned individual as his, her or its heir, administrator, devisee, predecessor, successor, shareholder, partner, director, owner, affiliate, subrogee, assignee, insurer or representative of any kind.

In return for Your agreements below, Central agrees to do the following:

(1) Central will provide a Central Replacement Sprinkler Head to replace each O-Ring Sprinkler Head owned by You that is covered by the Voluntary Replacement Program described in the Notice Packet or at www.SprinklerReplacement.com.

(2) Central will provide a replacement extension, escutcheon and any fittings, fixtures or appurtenances necessary for the proper replacement of each O-Ring Sprinkler Head with a Replacement Sprinkler Head (“Replacement Parts”).

(3) Central will remove the O-Ring Sprinkler Heads at Your building(s) and install the Replacement Sprinkler Heads and Parts or pay an installer designated by Central an agreed-upon price to perform the replacement work.

In return for Central’s agreements above, You agree to the following:

(1) You release and give up any claim against Central and those persons or entities in the chain of distribution of Central O-Ring Sprinkler Heads, including distributors, installers, design engineers, builders, developers, contractors or subcontractors (together with Central, “Released Parties”) that may arise from the selection, purchase, presence or use of the O-Ring Sprinkler Heads that are being replaced, except as provided below. You do not release, and continue to retain, any claim against persons in the chain of distribution that does not arise from that person’s selection, sale or distribution of the O-Ring Sprinkler Heads that are being replaced. You also do not release, and continue to retain, the right to bring any claim for actual property damage, costs associated with business interruption or lost business, bodily injury, or wrongful death that may arise from (a) the failure of an O-Ring Sprinkler Head or sprinkler system to perform in a fire as intended, designed or expected, (b) the premature activation of an O-Ring Sprinkler Head, or (c) damage to property other than the O-Ring Sprinkler Head or sprinkler system caused by leakage or corrosion of the O-Ring Sprinkler Head.

(2) **You expressly waive the provisions of Section 1542 of the California Civil Code (and all other like provisions of law), which provides:**

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor;

Unknown claims for damages arising from fire damage, property damage, personal injury, or wrongful death associated with the failure or alleged failure of a O-ring sprinkler head or sprinkler system to perform in a fire as intended, designed, or expected; premature activation of such sprinkler; or damage to property other than the O-Ring Sprinkler Head or sprinkler system caused by leakage or corrosion of the O-Ring Sprinkler Head, are not released hereby.

- (3) You will fully cooperate with Central (or the installer designated by Central to perform the replacement work) to schedule the replacement work for a mutually convenient time and, if necessary, to secure the cooperation and agreement of any occupants or tenants.
- (4) It is Central's intention that, as a matter of good faith and sound business practice, if a defect in the sprinkler system not related to the heads being replaced is identified by the installer, the installer will bring the defect to the attention of the building owner or manager. Nevertheless, Central and/or the installer designated by Central are not legally responsible for identifying, disclosing, repairing, or remedying any pre-existing condition(s) of Your building or sprinkler system, and cannot be held liable for failing to do so. Pre-existing conditions include asbestos abatement, improper or incorrect sprinkler system design, unsuitable piping or materials (other than the O-Ring Sprinkler Heads), adequacy of available water supply, water quality or microbiologically induced corrosion.
- (5) Central and/or the installer designated by Central are not liable for any incidental or consequential damages or for costs associated with business interruption or lost business to You, unless such damage was caused by intentional misconduct or a negligent act during the installation of the Replacement Sprinkler Heads and Parts. These incidental damages include water damage, leaks, cosmetic damage, or costs of cleaning the premises more than broom clean.
- (6) Central and/or the installer designated by Central are not liable for any costs associated with access restrictions, fire watch or security costs, permit costs, or Your personnel costs, unless such cost was caused by intentional misconduct or a negligent act during the installation of the Replacement Sprinkler Heads and Parts. If your O-ring sprinkler heads are "On-Off" sprinklers, Central is not liable for the fact that no Replacement Sprinklers with an On-Off feature are available if you choose to participate in this program.
- (7) In the event You bring suit against some party other than the Released Parties for claims covered by this release, You will reduce any judgment You obtain related to the claims released above so as to discharge any claims for contribution and/or indemnity against the Released Parties arising from or related to those claims, and if You obtain a judgment (or settlement) against a party and that party obtains a judgment against the Released Parties for contribution or indemnity, You will reduce or remit any judgment You obtain by the amount of the judgment against the Released Parties.
- (8) Your participation in this program supersedes all prior offers from Central regarding replacement of O-Ring Sprinkler Heads.
- (9) Central's offer of free Replacement Sprinkler Heads, free Replacement Parts and performance or provision of replacement labor does not mean that any valid claim exists against Central or any other person or entity regarding the O-Ring Sprinkler Heads, and by making this offer, Central does not admit liability of any kind.
- (10) This Agreement can only be amended in writing signed by You and Central.
- (11) You are fully possessed of all rights and authority to execute this document on behalf of the owner of the O-Ring Sprinklers being replaced.

By entering this Agreement, You and Central intend to eliminate the necessity and expense of defending against any claims by You, as an owner of O-Ring Sprinkler Heads, relating to the purchase and installation of O-Ring Sprinkler Heads against any other person.

Bob Brinkman

Owner of the O-ring Sprinkler Heads (Signature)

Robert Brinkman,
for Central Sprinkler Company

By: _____
(print name)

Title: _____
(if You are signing on behalf of an entity)

Date: _____

Send this signed Agreement with Your completed and signed Proof of Claim Form and required photographs to:

Central Sprinkler Company Replacement Program, PO Box 5005, Lansdale, PA 19446