

Office of Superintendent of Schools
Board Meeting of November 14, 2001

November 9, 2001

Office of School Board Attorney
Johnny Brown, Board Attorney

**SUBJECT: GASTON-THACKER GENERAL PARTNERS and UNITED STATES FIDELITY AND GUARANTY COMPANY v. THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA
Case No. 99-20132 CA 10, Miami-Dade County Circuit Court
SETTLEMENT AGREEMENT**

On August 25, 1999, Gaston-Thacker General Partners (Gaston-Thacker) and United States Fidelity and Guaranty Company (USF&G) initiated the subject lawsuit against the School Board, asserting three counts: breach of contract, alleging damages associated with active interference by the School Board with the performance of Gaston-Thacker's work; breach of contract to recover under the equitable theory of *quantum meruit*; and for rescission and restitution based on the allegation that the contract was illegal in violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. In the Complaint, Gaston-Thacker and USF&G sought damages against the School Board in excess of \$14,000,000 plus interest and costs. Outside counsel representing the Board filed an Answer, Affirmative Defenses and Counterclaim against Gaston-Thacker and USF&G seeking liquidated damages based on Gaston-Thacker's failure to timely perform the contract work, and seeking compensatory damages for deficient work and latent defects. In keeping with the requirements of the Court, outside counsel entered into formal mediation with the Defendants, which has resulted in the settlement offer being recommended to the Board. The recommended settlement provides for the global resolution of all claims between the parties for the payment of \$3,678,000 by the School Board. This amount represents the release of retainage being withheld; unpaid contract balance; unprocessed requests for change orders, and extended general conditions and supervision on the project.

This settlement figure is recommended as advantageous to the School Board for reasons set forth in the Memorandum dated November 6, 2001, submitted to the Board under separate cover. Outside counsel, administrative staff and the School Board Attorney are in agreement that this settlement is in the best interest of the School Board, considering the respective claims and offsets of the parties and the potential risk and exposure to the Board if the litigation proceeded.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, approve and authorize settlement in the case of Gaston-Thacker General Partners and United States Fidelity and Guaranty Company v. The School Board of Miami-Dade County, Florida, Case No. 99-20132 CA 10, by payment in the amount of \$3,678,000 in return for the global resolution and release of all claims between the parties.

Replacement

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