

November 8, 2001

Facilities Planning and Construction
Suzanne A. Marshall, Chief Facilities Officer (Construction)

**SUBJECT: ACCEPTANCE OF INDEMNIFICATION PROPOSAL BY SURETY FOR
URBAN ORGANIZATION, INC. AT CHARLES DREW ELEMENTARY AND
MIDDLE SCHOOLS**

The construction contract for renovation and addition work at Charles Drew Elementary and Middle Schools was awarded to the Urban Organization on April 27, 1994. Subsequently, Urban defaulted on this and a number of other projects resulting in the various sureties being required to complete much of the work. This particular project for Charles Drew Elementary and Middle Schools was substantially completed by Century Surety Company, and Century seeks to collect the contract proceeds in compensation for its expenses in completing the work.

Complicating the closing of this project by the Board is an IRS Notice of Levy which was served on The School Board in October of 1996 arising from Urban's non-payment of taxes. In response to that levy in the amount of \$150,149.01, the Board made one payment to the IRS in the amount of \$68,640.30. The propriety of this payment has been contested by the Surety and further payments were not made. In October of 1998, a second IRS Notice of Levy was served on The School Board in the amount of \$256,616.25. Research by outside counsel indicates that the IRS may well not have a property interest in the proceeds of this project. Notwithstanding that, the IRS could certainly assert a claim at some point for the project proceeds. Since no one can guarantee that an IRS claim would not be asserted, and even though it appears it would legally fail, the Board has made no further payments to either the IRS or the Surety pending sufficient indemnification to ensure the Board would not be placed in the position of paying twice.

REVISE

Outside counsel has met with Century Surety Company counsel and negotiated a Settlement and Indemnification Agreement to close out this project. This Agreement involves paying the remaining contract amount to the Surety and receiving from the Surety the negotiated Settlement and Indemnification Agreement which resolves all existing disputes between the Board and the Surety, and in which the Surety agrees to fully defend, indemnify, and hold harmless the Board for any future claims including a claim by the IRS asserting entitlement to all or any part of the contract proceeds paid to Century.

REVISE

Outside counsel, the Board Attorney's Office, and staff recommend the Board approve this Settlement and Indemnification Agreement and the resulting payment of contract proceeds in the amount of \$116,495.70 to Century Surety Company for the completion of the Charles Drew Elementary and Middle Schools project.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, authorize the Superintendent to:

- a) execute the Settlement and Indemnification Agreement between The School Board of Miami-Dade County, Florida and Century Surety Company; and
- b) pay the remaining contract proceeds in the amount of \$116,495.70 on the Charles Drew Elementary and Middle Schools project to Century Surety Company.

JWP:mc