

Office of School Board Attorney
JulieAnn Rico, Board Attorney

**SUBJECT: PROPOSED SETTLEMENT AGREEMENT
THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA v.
MAGNUM CONSTRUCTION MANAGEMENT CORP., ET AL., CIRCUIT
COURT CASE NO. 04-17641-CA-25 (REGARDING JOSE DE DIEGO
MIDDLE SCHOOL, MDCPS PROJECT NO. A-0690)**

Magnum Construction Management Corp. ("MCM") was the design/builder for the School Board in connection with the construction of Jose de Diego Middle School, Project A-0690 ("the School"). The School Board sued MCM in the above-referenced case, as well as its surety, alleging breaches of contract and warranty for defective construction, based on the report issued by the School Board's forensic consultant in this matter (primarily related to water intrusion), Liberty Building Diagnostics Group. Although MCM asserted that it had several defenses to the lawsuit, the parties agreed to engage in informal discovery and negotiation rather than formal litigation processes in an effort to resolve the dispute cost effectively. This effort has led to a proposed settlement of all claims except those related to the HVAC system, conditioned upon Board approval.

Approval of the settlement will result in (1) the remediation by MCM of a negotiated list of items related to water intrusion valued at approximately \$239,383, without any cost to the School Board; and (2) the award of the regularly scheduled "Major Paint" maintenance contract to MCM for fair value compensation under a Guaranteed Maximum Price (GMP) of \$634,417, inclusive of a \$30,210 contingency (associated with Agenda Items F-13 and F-14, commissioning of CM at Risk and approval of GMP contract).

The Major Paint project maintenance items are separate from the remediation items under the litigation settlement. MCM's GMP is \$604,207 and the independent cost estimate is \$602,511. The GMP covers all required work and includes subcontracts, materials, contingency, general conditions, bond, and overhead and profit. There are several benefits to the School Board having MCM perform the Major Paint project simultaneously with MCM completing the settlement remediation items. These benefits include time savings and less disruption to the impacted school through concurrent scheduling (as certain scopes of both projects will require the same staging, equipment, and subcontracting services). The timing of the Major Paint project coincides with the school's regular maintenance schedule. To minimize interruptions to classes, MCM has agreed to complete all interior work prior to the start of the school year in August 2007.

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Pursuant to the terms of the settlement, the School Board will give MCM a limited release that will release MCM from all claims raised in this case regarding this school, except claims related to the HVAC system. The School Board retains the right to look to MCM for any third party claims that might be filed against the School Board with respect to construction defects. Claims related to the HVAC system are the subject of ongoing negotiations. This settlement is recommended as being in the best interests of the Board, and administration is in agreement with the proposed settlement. A copy of the Settlement Agreement will be provided to the Board under separate cover.

RECOMMENDED: That The School Board of Miami-Dade County, Florida authorize the Superintendent to enter into the Settlement Agreement with Magnum Construction Management Corporation as described herein (and more specifically in the Settlement Agreement) for the settlement of all claims, except any claims related to the HVAC system asserted in the case known as The School Board of Miami-Dade County, Florida v. Magnum Construction Management Corp., et al., Miami-Dade County Circuit Court Case No. 04-17641 CA 25, and any third party claims that might be filed against the School Board relating to construction defects at the subject school.