

Office of School Board Attorney
JulieAnn Rico, Board Attorney

SUBJECT: PROPOSED SETTLEMENT AGREEMENT

CRISAL CONSTRUCTION COMPANY, INC., v. THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, CASE NO. 03-12504 CA 13; ASSOCIATED WITH SCHOOL BOARD PROJECT NO. A0491/AO491-A [OTC/ESE SUITE ADDITIONS, REMODELLING AND RENOVATIONS, CITRUS GROVE MIDDLE SCHOOL]

Crisal Construction Company, Inc. ("Crisal") was the general contractor for Project No. A0491/A0491-A OTC/ESE Suite Additions, Remodeling And Renovations, Citrus Grove Middle School. Crisal also was the general contractor for the Phillis Wheatley Elementary School construction project. The Board terminated Crisal on both projects and made demand upon Crisal's Performance Bond sureties to complete. For the Citrus Grove Project, The Mountbatten Surety Company, Inc. and The Fidelity & Deposit Company of Maryland (collectively, the "Surety") had issued the Performance Bond and completed the Project upon demand. Meanwhile, Crisal sued the School Board for breach of the construction contracts at both Citrus Grove Middle School and Phillis Wheatley Elementary School. In total, Crisal's claims exceeded \$2,400,000, of which \$1,864,206.80 were claimed as damages from the Phillis Wheatley Project. Crisal assigned its Phillis Wheatley claim to its Surety, International Fidelity Insurance Company ("IFIC"). Subsequently, IFIC and the Board reached a settlement on the Phillis Wheatley Project by which the Board (1) released \$184,138 to IFIC for a previously approved Change Order and (2) released \$245,000 of the remaining \$404,252 balance on that contract. The Board retained \$159,252 for incomplete punch list work, credits and liquidated damages due to the untimely completion of the Phillis Wheatley Project. This settlement was approved by the Board at the August 17, 2005 Board meeting.

The current settlement proposal, which pertains to the Citrus Grove Project is intended to resolve all outstanding claims and disputes. It will result in payment to the Surety of (1) \$29,822.00 for change orders previously submitted and (2) \$180,241.00 of the remaining balance on the Citrus Grove contract. The Board will retain \$129,301.00 of the contract balance for completion and correction of punchlist work, costs for fire watch and liquidated damages. The Surety, pursuant to its General Indemnity Agreement, has the right to settle all of Crisal's claims arising out of the Citrus Grove contract. Under this settlement, the Surety will release the School Board from all claims related to the Citrus Grove Project. In addition, the Surety will use its best efforts to secure Crisal's

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dismissal with prejudice of all claims remaining in the litigation and execution of a release in favor of the School Board. If Crisal refuses, the Surety will cooperate with the School Board in moving for final summary judgment on the basis of the Surety's release of Crisal's claims.

The settlement is recommended as being in the best interest of the Board given the consideration of the full range of information which was developed throughout this litigation. The Board's outside counsel and administrative staff agree with this recommendation. 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, approve the settlement with The Mountbatten Surety Company, Inc. and The Fidelity & Deposit Company of Maryland in the case of Crisal Construction Co., Inc. v. The School Board of Miami-Dade County, Florida, Case No. 03-12504 CA 13 and authorize payment in the amount of \$210,063 in the manner prescribed herein and as more fully described in the Settlement Agreement.