

Office of Superintendent of Schools
Board Meeting of December 15, 2010

December 10, 2010

Office of School Board Attorney
Walter J. Harvey, Board Attorney

SUBJECT: REQUEST APPROVAL OF PROPOSED SETTLEMENT AGREEMENT BETWEEN THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA AND SKLAR ARKITEKTS, INC. – CASE NO. 01-6081 CA 09 (ETHEL KOGER BECKHAM ELEMENTARY (STATE SCHOOL "A1"), PROJECT A0288

This matter involves a settlement of litigation that involved multiple claims by each party arising out of a contract for design and construction of State School A-1, Ethel Koger Beckham Elementary School, Project A0288.

BACKGROUND

Sklar Arkitekts (Sklar) was commissioned by the Board on August 22, 1990 as the Architect/Engineer of Record (A/E) for the State School "A1", Ethel Koger Beckham Elementary. The construction contractor on this project subsequently sued the Board (Case No. 00-25445 CA 01) on a variety of counts, amounting to over \$51,000,000, in large part due to alleged errors and deficiencies in the construction documents prepared for the project by Sklar. In turn, the Board sued Sklar (Case No. 01-6081 CA 09) for indemnification of the Board with regard to contractor's claims attributable to the A/E, and, for breach of contract, including but not limited to exceeding the threshold for A/E errors and omissions set forth in the agreement. The Board sought recovery from the A/E of additional costs it had paid for change orders on the project due to errors in the construction documents prepared by the A/E amounting to approximately \$170,000. Prior to that time, Sklar had been put on notice that the contractual threshold for errors and omissions had been exceeded and the balance remaining on Sklar's contract was withheld as provided in the agreement. Sklar then counter-sued the Board for unpaid additional services it allegedly performed on the project amounting to approximately \$190,000. Both cases were later administratively dismissed by the court for lack of prosecution. However, Sklar was successful in reopening its case with the Board seeking payment for the additional services it allegedly performed.

PROPOSED SETTLEMENT

On November 3, 2010, formal mediation between Board and Sklar (also attended by Sklar's professional liability insurance carrier) was conducted, in which the parties agreed to a proposed settlement of the case between the Board and Sklar, pending approval by the Board. Upon approval of the settlement by the Board, Sklar, through its

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insurance carrier, will pay the School Board the amount of \$65,000 to resolve the Board's claims for recovery of the additional costs for change orders on the project due to the A/E's errors and omissions. Upon receipt of the payment from Sklar's insurance carrier, the School Board will then pay Sklar the amount of \$60,000 to resolve Sklar's claims for additional services. The School Board shall retain the remaining \$5,000 to cover costs associated with the litigation. In addition, the School Board shall retain the unpaid balance withheld on Sklar's A/E services agreement. Sklar shall also execute a general release in favor of the School Board and file a voluntary dismissal with prejudice of its claims against the School Board.] Revised

The proposed settlement agreement is recommended as being in the best interests of the Board considering the full range of factors involved in this litigation and administration is in agreement with the proposed settlement. A copy of the proposed settlement agreement, along with a memorandum from the Board Attorney's office more fully explaining this recommendation will be provided to the Board Members under separate cover prior to the Board Meeting.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, approve the proposed settlement agreement in the case of *The School Board of Miami-Dade County, Florida and Sklar Arkitekts, Inc. – Case No. 01-6081 CA 09 (Ethel Koger Beckham Elementary (State School "A1"), Project A0288*, authorize payment in the manner prescribed herein and as more fully described in the Settlement Agreement, and approve the Settlement Agreement and Release.