

Facilities Planning and Construction  
Paul J. Phillips, Chief Facilities Officer

**SUBJECT: AUTHORIZATION TO EXECUTE A SETTLEMENT AND RELEASE AGREEMENT WITH CCJ INVESTMENTS, INC., FOR PRIMARY LEARNING CENTER "H"**

At its June 21, 1995 meeting, the Board authorized the Superintendent to negotiate a Declaration of Restrictions (Declaration), for Application No. 95-15, Gertrude G. Ellis, et al., Trustees, subsequently assigned to CCJ Investments, Inc. (CCJ), for the applicant's construction of a Primary Learning Center (PLC) on an approximate 1.5-acre parcel within a proposed 149-unit residential development, to mitigate the impact of the development. The development is located at N.W. 87 Avenue and N.W. 146 Street, and the PLC is located at 8875 N.W. 143 Street. In addition, the Board authorized the Chair and Secretary to negotiate and execute additional agreements (Development Agreement), as necessary, to ensure compliance with the terms and conditions of the Declaration.

The terms and conditions of the Development Agreement and the Declaration provided that the developer construct the PLC as a contribution in-lieu-of impact fees. Because the anticipated impact fees for the development were significantly less than the PLC value established by the Board for the Educational Facilities Impact Fee Ordinance, the agreements provided for a reimbursement to the developer. The reimbursement was to be calculated by subtracting the total amount of impact fees owed by the development at completion (\$398,334.60), from the total PLC value of \$2,390,068.23, for a total reimbursement of \$1,991,733.63. Total PLC value is calculated by adding the base PLC construction value (\$1,800,000), the fair market value of land as determined by District-commissioned appraisals (\$415,000), and District-initiated scope changes (\$175,068.23). Partial reimbursements have been issued in the amounts of \$1,539,816.82; \$300,000; \$115,000; and \$31,119.08, for a total partial reimbursement to date of \$1,985,935.90.

The PLC was substantially completed as of July 10, 1998, and opened under a early occupancy agreement for the beginning of the 1998-99 school year. However, final occupancy approval was not granted by the District until October 22, 1998, and title to the land and PLC was conveyed November 13, 1998. As a result, the first partial reimbursement of \$1,539,816.82 was not paid to CCJ until November 20, 1998. Subsequent to this payment, CCJ submitted a claim indicating that the District had delayed its final occupancy approval of the PLC from July 10, 1998 until October 22, 1998, thus delaying the title transfer and first partial reimbursement, resulting in CCJ having to bear additional interest charges through November 20, 1999. Further, CCJ claimed that certain traffic signalization plans which had been prepared at the District's request were beyond the scope of the contract, and that, therefore, the costs associated with the preparation of these plans should be borne by the District.

As recommended by the School Board Attorney's Office, the District commissioned MIA Consultants (MIA) to investigate the delayed payment claim. MIA indicated that the partial reimbursement payment made on November 20, 1998 was for a PLC which was essentially as presented on July 10, 1998, when substantial completion was certified. As a result, MIA recommended that the District recognize the claim for interest damages for the period of July 11, 1998 through November 20, 1998. This amount, as verified by Ocean Bank as having actually been paid by CCJ, is \$66,576. In addition, CCJ has submitted documentation indicating a cost of \$8,000 for the preparation of the traffic signalization plans.

As a result of the above, a Settlement and Release Agreement (Settlement Agreement) has been negotiated with CCJ to resolve all outstanding issues in regards to PLC "H." The terms and conditions of the proposed Settlement Agreement are as follows:

- Within 30 business days of the execution of the Agreement, CCJ will deliver to the District written certification that the traffic signalization plans for PLC "H" have been submitted to Miami-Dade County for processing (Submittal of Traffic Signalization Plans), and that no additional residential permits are to be pulled beyond the existing 149 (Permit Completion Certification).
- Within 45 business days of receipt of the Permit Completion Certification, the District shall provide notification to Ocean Bank that the \$75,000 Letter of Credit currently being held to provide impact fee and warranty/facility compliance financial guarantees, may be released.
- Within 45 business days of receipt of the Submittal of Traffic Signalization Plans and Permit Completion Certification, the District shall pay CCJ the sum of \$80,373,73 (Partial Settlement Payment). The Partial Settlement Payment includes \$66,576 for the claim of interest damages, \$8,000 for the cost of the Traffic Signalization Plans and \$5,797.73 for the balance of impact fees remaining after subtracting the total amount of impact fees owed by the development at completion (\$398,334.60) and reimbursements paid to date (\$1,985,935.90), from the total PLC value of \$2,390,068.23.
- By September 15, 2000, unless otherwise extended by the District, CCJ shall deliver to the District a full set of signed and sealed Traffic Signalization Plans which have been approved by Miami-Dade County (Approved Traffic Signalization Plans).
- Within 45 business days of receipt of the Approved Traffic Signalization Plans, the District shall pay CCJ the sum of \$2,000 for the processing of said plans through Miami-Dade County.
- During the processing of the Traffic Signalization Plans through Miami-Dade County, CCJ shall be responsible for the costs associated with any plan revisions required due to architectural/engineering (A/E) errors or omissions or necessary to bring the plans into compliance with the code of Miami-Dade County. The costs associated with all other plan

revisions shall be the responsibility of the District; however, CCJ must first submit the requested revisions and associated costs to the District for approval and allow adequate time for the District to work with Miami-Dade County to reduce or eliminate requested revisions.

- Should CCJ fail to deliver Approved Traffic Signalization Plans to the District by September 15, 2000, unless otherwise extended, CCJ shall reimburse the District for the \$8,000 paid for said plans, as well as any other amounts paid by the District for plan revisions. Additionally, the District shall not pay CCJ the \$2,000 plans processing fee.
- Upon performance of their respective sections of the Settlement Agreement, CCJ and the District are released of and from any and all claims, suits and causes of action arising out of the Development Agreement and PLC "H."
- The District and CCJ each acknowledge that the obligations set forth in the Settlement Agreement are conditioned upon such obligations being in compliance with the Educational Facilities Impact Fee Ordinance No. 95-79 of Miami-Dade County, including the Administrative Manual and the Interlocal Agreement, and that nothing in the Settlement Agreement shall be construed to waive, release or limit the rights of Miami-Dade County as to PLC "H," the subject development of the Development Application or the Declaration.
- The Superintendent shall be the party designated by the Board to grant or deny all approvals or grant time extensions required by the Settlement Agreement.

The proposed Settlement Agreement has been reviewed by the School Board Attorney's Office.

A copy of the proposed Settlement Agreement will be placed on file in the Citizen information Center and the Recording Secretary's Office.

**RECOMMENDED:**

That The School Board of Miami-Dade County, Florida, authorize the Superintendent or his designee to execute a Settlement and Release Agreement with CCJ Investments, Inc., for the resolution of all claims associated with Primary Learning Center "H," and under the terms and conditions set forth above.

KW:adc