

Office of School Board Attorney
Luis M. Garcia, Interim School Board Attorney

SUBJECT: REQUEST APPROVAL OF SETTLEMENT AGREEMENT RELATING TO THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA v. TRAVELERS CASUALTY AND SURETY CO., CASE NO. 05-18636 CA 24 (ASSOCIATED WITH SCHOOL BOARD PROJECT A-0569/A-0570 - HIALEAH MIDDLE SCHOOL/AMELIA EARHART ELEMENTARY SCHOOL)

On December 11, 1996, the School Board entered into a Lump Sum Contract with Allstar Builders Corp. ("Allstar"), for the construction of additions and renovations at Hialeah Middle and Amelia Earhart Elementary, Project A-0569/A-0570 (the "Project"). Travelers Casualty and Surety Co. ("Travelers") bonded the Project. On March 29, 2000, after reaching substantial completion, Allstar abandoned the Project and failed to complete the punch list work.

In October 2002, the School Board sued Allstar for breach of contract and sought compensatory damages for defective and incomplete work, plus liquidated damages for delay (the "Allstar case"). Allstar subsequently filed a counterclaim against the School Board seeking \$26,000,000 in damages on a variety of theories, which included a claim of lost business opportunities. This lawsuit along with several others was part of a Board approved initiative to seek remuneration for various alleged construction defects that had led to water-intrusion problems at numerous schools within the school district.

In March 2004, the School Board provided Travelers with formal notice of Allstar's breach of its contract with the School Board and demanded that Travelers meet its obligations on the Project as surety. Travelers refused and in September 2005, the School Board sued Travelers in the case of The School Board of Miami-Dade County, Florida v. Travelers Casualty and Surety Co., Circuit Court Case No. 05-18636 CA 24. The Allstar and Travelers cases were subsequently consolidated.

In the Allstar case, the School Board sought damages against Allstar in three areas: liquidated damages for Allstar's failure to complete the Project and the punch list on time, damages for incomplete and/or defective work, and damages for repairs made on safety-to-life items that Allstar did not complete.

After mediation, the Allstar case ended in an impasse. In order to resolve the matter and avoid continued and protracted litigation on the advice of our outside counsel on this case, Tew Cardenas LLP, the case was settled by the District for \$10,000.00 as full and final settlement of all claims. As a result of that settlement, Travelers then offered to settle its case by each side agreeing to bear their own attorneys' fees and costs, and allowing the School Board to retain the contract balances of \$242,101. Those monies will be used to offset the cost of the necessary repairs to the school.

This is a proposed settlement of the lawsuit filed by the School Board in September 2005 against Travelers who was the surety on construction projects at Hialeah Middle School and Amelia Earhart Elementary School.

The Administration and our outside counsel on this case both agree that settlement of this consolidated case is in the best interests of the School Board.

RECOMMENDED: That The School Board of Miami-Dade County, Florida authorize the Superintendent to enter into the Settlement Agreement for the resolution of all claims asserted in the case known as The School Board of Miami-Dade County, Florida v. Travelers Casualty and Surety Co., Case No. 05-18636 CA 24, which would permit the School Board to retain the contract balances of \$242,101, and dismissing the case, with each party to bear its own costs and attorneys' fees.