

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

SUBJECT: REQUEST APPROVAL OF SETTLEMENT AGREEMENT IN THE CASE OF THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FL v. F&L CONSTRUCTION, INC. AND SEABOARD SURETY CO., CASE NO. 04-25048-CA-02 (ASSOCIATED WITH SCHOOL BOARD PROJECT NO. A-0573, CHRISTINA M. EVE ELEMENTARY SCHOOL)

This is a settlement of a lawsuit filed by the School Board in November 2004 against F&L Construction, Inc. ("F&L"), and Seaboard Surety Company ("Seaboard") relating to Christina M. Eve Elementary School.

On May 13, 1998, the School Board entered into a lump-sum contract with F&L, the contractor to build Christina M. Eve Elementary School - Project No. A-0573 (the "Project" or the "School"). Seaboard executed and delivered a contract bond for the Project on behalf of F&L.

Certain issues regarding deficiencies in the construction arose which resulted in the School Board filing a lawsuit against F&L and its surety in 2004. F&L filed third party actions in the same case against certain of its subcontractors. The proposed settlement resolves all of the issues between the parties.

Previously, at the September 5, 2007 School Board meeting, the School Board authorized the release of Defendant Perez Associates, the Design Professional on the Project, from their lawsuit (Agenda Item G-5).

The essential terms of the settlement are as follows:

- F&L will pay to the School Board \$115,000.00 as consequential damages due to alleged construction defects. F&L will also pay to the School Board the sum of \$15,000.00 for claims arising out of alleged defects in the Mechanical/Electrical/Plumbing/HVAC system.
- In addition to the monetary compensation, the School Board will receive the following work from F&L and its subcontractors:

G-4

All window openings on the south side of Building 3 of this school site and any other windows evidencing water intrusion will be remediated in accordance with a protocol mutually developed between the School Board and the window manufacturer/subcontractor. The School Board will also receive a one-year warranty against any further window leaks.

Remedial work will be done on the roof of the school by a certified manufacturer's contractor in accordance with the manufacturer's specifications at no expense to the School Board. In addition to the contracted ten year warranty, the manufacturer will extend the roof warranty two and one-half years.

Upon payment of the settlement funds and completion of the work set forth therein, the parties will execute mutual releases excepting only third party claims for personal injury or property damage and latent defects that were not known or should have been known as of January 20, 2009. The lawsuit will be voluntarily dismissed with prejudice except for enforcement of the Settlement Agreement.

RECOMMENDED: That The School Board of Miami-Dade County, Florida authorize the Superintendent to enter into the Settlement Agreement in the case known as The School Board of Miami-Dade County, FL v. F&L Construction, Inc. and Seaboard Surety Co., Case No. 04-25048-CA-02, providing for payment to the School Board by Defendant F&L in the total amount of \$130,000.00, plus remedial work, and an extension of warranties on the windows and roof at Christina M. Eve Elementary School.