

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

SUBJECT: REQUEST APPROVAL OF SETTLEMENT AGREEMENT IN THE CASE OF MIAMI-DADE COUNTY SCHOOL BOARD v. F&L CONSTRUCTION, INC. AND SEABOARD SURETY CO. CASE NO. 04-26693-CA-21 (ASSOCIATED WITH SCHOOL BOARD PROJECT NO. A-0699, THE DESIGN AND BUILD K-8 ADDITION TO THE JANE S. ROBERTS ELEMENTARY SCHOOL

This is a settlement of a lawsuit filed by the School Board in December 2004 against F&L Construction, Inc. and Seaboard Surety Co. relating to Jane S. Roberts Elementary School.

On March 24, 1999, the School Board entered into a design-build lump-sum contract with F&L, the design-build contractor, to design and build the K-8 addition to the Jane S. Roberts Elementary School, Project No. A-0699 (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. 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.

The essential terms of the settlement are as follows:

- F&L will pay to the School Board \$140,000.00 for consequential damages suffered by the School Board as a result of the alleged construction defects and for the alleged defects themselves.
- In addition to the monetary compensation, the School Board will receive the following work from F&L and its subcontractors:

Eleven window openings identified by School Board representatives as being 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.

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F&L will repair the framing and door anchorage at the art room entrance and will complete any necessary remedial work on the fire-safing of the corridor mid-point walls on both floors of the school at no expense to the School Board.

Certain corrective work will be done on the roof of the school by a certified manufacturer's contractor in accordance with the manufacturer's specifications to remediate three active leaks identified by the School Board and to repair any open base flashing seams or blisters. 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 of Miami-Dade County School Board v. F&L Construction, Inc. and Seaboard Surety Co., Case No. 04-26693-CA-21, providing for payment to the School Board by Defendant F&L in the total amount of \$140,000.00, plus remedial work and an extension of warranties, on the windows and roof of the Jane S. Roberts Elementary School K-8 Addition.