

Office of School Facilities  
Jaime G. Torrens, Chief Facilities Officer

**SUBJECT:           TERMINATION, WITHOUT CAUSE, OF KVH ARCHITECTS, PA, AS ARCHITECT/ENGINEER OF RECORD FOR DEFERRED MAINTENANCE PACKAGE #11, RENOVATIONS, MAINTENANCE AND REPAIRS AT THENA C. CROWDER EARLY CHILDHOOD DIAGNOSTIC & SPECIAL EDUCATION CENTER (ORIGINALLY COMMISSIONED AS THENA C. CROWDER ELEMENTARY SCHOOL), PROJECT NO.00261800, MORNINGSIDE K-8 ACADEMY (ORIGINALLY COMMISSIONED AS MORNINGSIDE ELEMENTARY SCHOOL), PROJECT NO. 00261500, AND TOUSSAINT L'OUVERTURE ELEMENTARY SCHOOL, PROJECT NO. 00266500**

**COMMITTEE:           FACILITIES AND CONSTRUCTION REFORM**

**LINK TO STRATEGIC FRAMEWORK:           FINANCIAL EFFICIENCY/STABILITY**

Background

On May 10, 2006, the Board commissioned KVH Architects, PA (KVH), as Architect/Engineer (A/E) of Record for Deferred Maintenance Project Package #11, Renovations, Maintenance and Repairs at Thena C. Crowder Early Childhood Diagnostic & Special Education Center (originally commissioned as Thena C. Crowder Elementary School), Project No. 00261800, Morningside K-8 Academy (originally commissioned as Morningside Elementary School), Project No. 00261500, and Toussaint L'ouverture Elementary School, Project No. 00266500.

Project Status

- Thena C. Crowder Early Childhood Diagnostic & Special Education Center
- Toussaint L'ouverture Elementary School

KVH reached Phase II/III 100% BCC-approved documents on Thena C. Crowder Early Childhood Diagnostic & Special Education Center and on Toussaint L'ouverture Elementary School. However, no further work was done, on either project, due to funding restrictions. Therefore, it is recommended that both projects be cancelled and the Agreement with KVH be terminated without cause. All payments up to Phase II/III 100% BCC-approved documents and one additional service for each project have been paid to KVH. No other amounts are due to KVH on these projects.

- Morningside K-8 Academy:

NAC Construction, Inc. (NAC), was commissioned by the Board on March 15, 2006, to provide Construction Management at-Risk (CMR) services for the same projects under DMP #11. On December 14, 2011, a Guaranteed Maximum Price Amendment was approved and the project reached approximately 65% construction completion. However, on January 31, 2013, NAC notified staff that it had closed its business and has conceded that it is in default of its Contract with the Board and that it cannot and will not complete the Morningside Project. In addition, NAC's surety, First Sealord Surety, Inc., is in liquidation and cannot fulfill its performance bond obligations with respect to the completion of the Morningside Project. Refer to Board Agenda Item F-28 for termination recommendation of NAC.

KVH has been paid for all required services up to 65% for construction administration and one additional service. Due to this exceptional circumstance with NAC, it is recommended that KVH be terminated without cause. Should the Board approve, under a separate Board Agenda Item F-27, the commissioning of KVH as Architectural/Engineering Projects Consultant (A/EPC); then this incomplete project would be transferred as a work order assignment under the A/EPC agreement. KVH would then be obligated to complete all remaining design and/or construction administration work for the Morningside Project with a new CMR, substantially in conformance with the terms and conditions of the original commissioning.

In accordance with Article XIII (A) of the A/E Agreement with KVH, the Board may terminate the Agreement, with or without cause, at any time, upon 30 days written notice to the A/E. A Memorandum of Understanding (MOU) between the School Board and KVH was processed which waives the 30-day required notice and provides conditions of the termination, as follows:

1. KVH agrees to waive the 30-day written notice requirement for termination by the Board contained in the KVH Agreement.
2. KVH agrees that all amounts due KVH under the KVH Agreement rendered prior to the date of termination have been paid and that no amounts are due under the KVH Agreement.
3. KVH agrees that it is not entitled to recover from the Board any termination costs associated with the KVH Contract.
4. The Board agrees that KVH's termination shall be without cause pursuant to Article XIII (A) of the KVH Agreement, and shall not affect KVH for future APC/EPC commissioning by the Board.
5. KVH agrees, should KVH receive future commissioning by the Board as A/EPC and subsequently be issued a work order for the Morningside Completion Work, that

KVH will retain all liability for work performed prior to KVH's termination without cause as well as for work performed thereafter.

6. The Parties agree that, should KVH receive future commissioning by the Board as A/EPC, KVH may be authorized by work order to perform services in connection with the re-bidding (phase IV) of items necessary to perform the Morningside Completion Work with the new contractor.
  - a) All terms and conditions associated with such work order assigned to KVH under an A/EPC Agreement for the Morningside Completion Work shall reflect the terms and conditions of the original KVH Contract and work order for the Morningside Project and for purposes of completion of the Morningside Project shall supersede those in the A/EPC commissioning.
  - b) Each of KVH's original designated specialists on the Morningside Project shall remain unchanged with respect to the Morningside Completion Work, unless otherwise approved by the Board as may be provided and in accordance with the governing terms and conditions.

The School Board and KVH mutually agree that it is in the best interest of both parties to terminate the KVH commissioning, without cause, based on the conditions set forth herein and the MOU.

**RECOMMENDED:** That The School Board of Miami-Dade County, Florida, terminate the Agreement with KVH Architects, PA, without cause, as Architect/Engineer of Record for Deferred Maintenance Project Package #11, Renovations, Maintenance and Repairs at Thena C. Crowder Early Childhood Diagnostic & Special Education Center (originally commissioned as Thena Crowder Elementary), Project No. 00261800, Morningside K-8 Academy (originally commissioned as Morningside Elementary), Project No. 00261500, and Toussaint L'ouverture Elementary, Project No. 00266500, as follows:

- 1) In accordance with the executed Memorandum of Understanding;
- 2) without cost to the District; and
- 3) with written notification of this action to the A/E.

NAD:nad