

Office of School Board Attorney
Walter J. Harvey, School Board Attorney

SUBJECT: PROPOSED SETTLEMENT AGREEMENT BETWEEN THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, PIONEER CONSTRUCTION MANAGEMENT SERVICES, INC. AND ITS SURETY, UNITED STATES FIRE INSURANCE COMPANY

At the School Board meeting of March 14, 2014, Pioneer Construction Management Services, Inc. ("Pioneer") was commissioned as a Construction Management at-Risk firm for Miscellaneous projects up to \$1 million each. In conjunction with its commissioning, the School Board also approved a Miscellaneous Construction Manager At Risk Agreement ("CM At Risk Agreement") for miscellaneous individual projects, with an estimated construction cost up to \$1,000,000 each. As part of the CM AT Risk Agreement, a Guaranteed Maximum Price was included for the following construction projects: (1) Renovations at MAST Academy (Project No. 01645600); (2) Riverside Elementary Renovation Project (Project No. 01334900); (3) Sweetwater Elementary Site Work Renovation (CM Services) (Project No. 01425402); and (4) Sylvania Heights Elementary School (Project No. 01335900) (collectively, the "Projects"). In addition to the CM At Risk Agreement, on May 31, 2016, Pioneer, among others as Indemnitors, executed a General Indemnity Agreement (the "Indemnity Agreement") in favor of United States Fire Insurance Company ("U.S. Fire") as Indemnitee to issue various construction performance and payment bonds.

On or about May 1, 2018, U.S. Fire as surety for Pioneer, issued demands for the School Board to make no further payments and release no further funds to Pioneer in connection with the Projects and thereby informed the School Board of U.S. Fire's right to all sums due to Pioneer on the Projects. Once the close out of the Projects was completed Pioneer its surety, U.S. Fire, and the School Board conducted arms-length negotiations to resolve all differences concerning the final payments owed to Pioneer on the Projects.

The parties have now reached a tentative Settlement Agreement with respect to all claims in connection with the work associated with the Projects. The proposed Settlement Agreement will require that the School Board pay U.S. Fire via check the following amounts (totaling \$199,325.87) as full and final settlement on each of the following Projects: (1) \$18,366.68 for the Renovations at MAST Academy (Project No. 01645600); (2) \$98,420.73 for the Riverside Elementary Renovation Project (Project No. 01334900); (3) \$49,984.32 for the Sweetwater Elementary Site Work Renovation (CM Services) (Project No. 01425402); and (4) \$32,554.14 for the Sylvania Heights Elementary School

(Project No. 01335900) within 30 days of this Settlement Agreement's approval by the School Board. In consideration for said payment, U.S. Fire will release the School Board for any and all claims related with these Projects.

This item is being presented for the Board's consideration for the approval of the proposed Settlement Agreement between Pioneer and its surety, U.S. Fire, and the School Board. The approval of the proposed Settlement Agreement is in the best interests of the School Board and will obviate the need to attempt to resolve the existing claims from Pioneer and its surety U.S. Fire, through litigation. Administration is in agreement with the acceptance of the proposed Settlement Agreement. A copy of the Settlement Agreement will be provided to the Board under separate cover prior to the October 19, 2022, School Board meeting.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, approve the proposed Settlement Agreement with Pioneer Construction Management Services, Inc., and its Surety United States Fire Insurance Company and authorize the Superintendent to execute the Settlement Agreement and to issue payment to United States Fire Insurance in the amount of \$199,325.87 as full and final settlement of all claims connected with the following construction projects: (1) Renovations at MAST Academy (Project No. 01645600); (2) Riverside Elementary Renovation Project (Project No. 01334900); (3) Sweetwater Elementary Site Work Renovation (CM Services) (Project No. 01425402); and (4) Sylvania Heights Elementary School (Project No. 01335900).