

## SETTLEMENT AGREEMENT

KNOW ALL MEN BY THESE PRESENTS;

That the undersigned parties, LEMARTEC CORPORATION f/k/a LEMARTEC ENGINEERING & CONSTRUCTION CORP., a Florida corporation (hereinafter "LEMARTEC") and THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter "School Board"), in consideration for the payments as set forth in this document, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree to mutually release and discharge each other; and

(Whenever any Party is referenced herein, it shall be construed to include singular and plural heir(s), legal representatives, current and former principals, partners, officers, directors, professionals, employees, agents, predecessor and successor corporations, parent corporations, subsidiaries, shareholders, assigns, associates, representatives, partnerships, its consultants and their respective insurers or any other party having or claiming any interest herein.)

WHEREAS, on or about May 19, 2009, the School Board and LEMARTEC entered into an agreement to construct that project more commonly known as the New Replacement Facility P.000077 (f.k.a. 0405-99-01) at Lanier-James Educational Center, located in Broward County, Florida (hereinafter "Project"); and

WHEREAS, during and after construction of the Project, LEMARTEC submitted multiple Change Order Requests ("CORs") to the School Board seeking both additional costs and time associated with both work performed and delays that were alleged to be the result of active interference on the part of the School Board and/or those under the direct control of SBBC; and

WHEREAS, the CORs sought additional costs for General Conditions in the amount of \$295,395.72, additional costs for work performed in the amount of \$22,339, and additional time for alleged delays totaling 264 calendar days; and



WHEREAS, the additional costs and time sought by LEMARTEC totaling \$ 317,734.72 and 264 calendar days are hereinafter collectively referred to as the "**Damages**"; and

WHEREAS, the School Board denied LEMARTEC's CORs and the Damages being sought; and

WHEREAS, LEMARTEC filed a complaint against the School Board for recovery of its Damages in the matter styled LEMARTEC ENGINEERING & CONSTRUCTION CORP. v. THE SCHOOL BOARD OF BROWARD COUNTY[, FLORIDA], Case No. 14-003880 (03) (hereinafter the "**Lawsuit**"); and

WHEREAS, the Parties desire to resolve and settle the Lawsuit to avoid additional costs; and

WHEREAS, nothing in this Agreement is intended to nor shall act as a release, waiver, limitation, compromise or discharge of liability of responsibility of LEMARTEC for latent construction defects; and

NOW THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.
2. The Parties hereby warrant and represent that as an inducement to the entry of this Agreement, that they did not and shall not assign or transfer any of their right, title and/or interest to any claim, cause of action or action that they have or may have in the future relating to the Project, to any person or entity relative to the Project.
3. This Agreement is the joint product of the respective Parties and may not be more strictly construed against any party by virtue of any alleged drafter.



4. In accordance to with the Parties' Agreement the School Board, will pay LEMARTEC the sum of ONE HUNDRED THIRTY-SIX THOUSAND AND 00/100 DOLLARS (\$136,000.00) (the "Settlement Sum") within twenty (20) days of the Effective Date of this Agreement. The Parties acknowledge that said amount represents full and final payment in consideration for a full release, in accordance with Exhibit "A" attached hereto, with regard to the Project, as further described in paragraph 6 of this Agreement.

5. Approval of this Agreement by the School Board at a duly called Board Meeting shall serve as a condition precedent to any portion of the payment referenced in paragraph 4, above. Furthermore, prior to the scheduled Board Meeting, both a Final Payment Requisition and Consent of Surety must be submitted to the School Board c/o its counsel in the amount of \$136,000.00.<sup>1</sup> The approval of the Agreement will be placed on the Agenda for the Board Meeting scheduled on March 17, 2015. The Effective Date shall be the date on which the Board ratifies payment pursuant to this Settlement Agreement. The timing for payment of the sums outlined in paragraph 4 shall be made not later than twenty (20) days after the Board's approval of this Agreement. If this Agreement is not approved at or before the referenced March 17, 2015 meeting, this Agreement shall be automatically void and of no force and effect. Lemartec expressly reserves all rights in such an event.

6. For the above-referenced consideration and other good and valuable consideration the sufficiency of which is hereby acknowledged, the Parties shall hereby release and forever discharge each other from any and all direct and derivative claims, liabilities, liens, demands, obligations, costs, attorneys' fees, actions and causes of actions of every nature, character and description which the Parties have, had or will have in the future, relating to the Project, as

---

<sup>1</sup> LEMARTEC's failure to provide this information timely, will serve as an agreed upon extension of time to the deadline in paragraph 5 to submit payment pursuant to paragraph 4.



further described in Exhibit "A" attached hereto. This Release is conditional upon receipt by LEMARTEC of the payment referred to in paragraph 4 above, in cleared funds.

7. The Parties agree to bear their own attorneys' fees and costs and agree to waive any claims regarding same.

8. The Parties enter into this Agreement voluntarily and under the advice of their respective counsel.

9. The Parties expressly deny any and all allegations, claims, defenses, or liability with regards to any contention, defense, and allegation made by any Party to this Agreement, and as such, all Parties agree that this Agreement shall not be construed as admission of liability by any Party executing this Agreement, by whom liability is expressly denied, or be admissible in any forum for any purpose other than the enforcement of the terms herein.

10. This Agreement is to be construed broadly to execute the intent of the Parties and enforced under the laws of the State of Florida. The Parties stipulate that the Circuit Court of Broward County shall have jurisdiction to enforce and construe this Settlement and Release Agreement.

11. This Agreement does not settle, limit, waive, release or compromise any potential claims and/or causes of action the Parties may have against each other and/or their subconsultants, subcontractors, materialmen or suppliers for any claims and/or causes of action for: (a) latent defects<sup>2</sup> at the Project, (b) obligations to provide documentation to the SBBC pursuant to either contract or statute, (c) rights of indemnification not expressly released by this Agreement, (d) claims against the Performance Bond for the Project arising from latent defects, and (e) any claim for future personal injury.

12. Each person signing this Agreement warrants that he or she has full legal power to execute this Agreement on behalf of the Party for whom he or she is signing, and to bind and

---

<sup>2</sup> As of the date of this Agreement, no latent construction or design defects have been identified.



obligate such Party with respect to all provisions contained in this Agreement, and has not conveyed, transferred or assigned its rights assert or maintain any claims or defenses related to the Project to any entity or party, which it seeks to Release per Exhibit A to this Agreement..

13. This Agreement contains the entire agreement between Parties, and the terms of this Agreement are contractual and not a mere recital. The Parties agree that all prior negotiations and understandings between the Parties are merged herein and that this Agreement may not be modified or changed, except by a writing signed by a duly authorized representative of each Party.

14. The Parties agree that this Agreement may be executed in counterparts, and that a copy, facsimile, or electronic transmission of this Agreement shall be as effective and enforceable as the original.

15. The Parties agree that the Settlement Sum includes any and all attorney's fees and costs incurred in relation to the disputes resolved by this Agreement, that the prevailing party in any action to enforce any terms of this Agreement shall be entitled to recover reasonable attorney's fees and costs in trial or appellate proceedings, and the Parties to this Agreement expressly waive their right to a jury trial for any dispute arising out of this Agreement.

IN WITNESS WHEREOF, the Parties, by their duly authorized agents, have signed and sealed this Agreement as of the 17th day of March, 2015 (the "Effective Date").

\*\*\* THE BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK \*\*\*



**FOR SCHOOL BOARD**

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

(Corporate Seal)

ATTEST:

By \_\_\_\_\_  
Donna Korn, Chair

\_\_\_\_\_  
Robert W. Runcie,  
Superintendent of Schools

Approved as to Form and Legal Content:

  
\_\_\_\_\_  
Office of the General Counsel

\*\*\* THE BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK \*\*\*



**FOR LEMARTEC**

LEMARTEC CORPORATION f/k/a LEMARTEC  
ENGINEERING & CONSTRUCTION CORP.

By: [Signature]  
Jose Garcia-Tunon, Chief Operating Officer

[Signature]  
Witness

[Signature]  
Witness

STATE OF FLORIDA     )  
                                  )  
COUNTY OF Alachua Dade

The foregoing instrument was acknowledged before me this 18 day of Feb., 2015, by Jose Garcia-Tunon, Chief Operating Officer of LEMARTEC CORPORATION f/k/a LEMARTEC ENGINEERING & CONSTRUCTION CORP., a Florida corporation, on behalf of the corporation. He took an oath, and is personally known to me or has produced \_\_\_\_\_ as identification and acknowledged before me that he/she executed the same freely and voluntarily for the purposes therein expressed.

[Signature]  
NOTARY PUBLIC, STATE OF FLORIDA

My Commission Expires:

Printed Name of Notary Public



\*\*\* THE BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK \*\*\*

**"Exhibit "A"**

**MUTUAL RELEASE**

KNOW ALL MEN BY THESE PRESENTS that **Lemartec and School Board**, for and in consideration of the sum identified in Paragraph 4 of the Settlement Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, exchanged between **Lemartec and School Board**, hereby remise, release, acquit, satisfy and forever discharge each other of and from any and all manner of action and actions, causes and causes of action, claims, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, liabilities, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which the Parties had, now have, or which any personal representative, successor, heir or assign of the Parties hereafter can, shall or may have, from the beginning of the world to the date of these presents, for, upon, or by reason of any matter, cause, or thing whatsoever, arising from or connected with the **Project**, located in the City of Hallandale, in Broward County, Florida.

This RELEASE shall include singular and plural, **Lemartec's and School Board's** board, officers, directors, agents, representatives, employees, professionals, consultants, insurers, sureties, and attorneys, and any and all parties who, together with it or them, might be directly, derivatively, jointly and/or severally liable to any **Party** to the **Agreement**, and all of their respective successors and assigns.

This RELEASE shall not release any person, firm, entity or individual other than as expressly described herein, and is not intended to benefit any other or third party.

This RELEASE shall not release **Lemartec** for any latent defects that **School Board** knew about or reasonably should have known about as of the Effective Date.

The **Parties** hereby expressly acknowledge warrant and represent that: (i) this Release was signed only after due consideration and consultation with their attorneys; and (ii) in signing this Release, the **Parties** have not relied upon any oral or written statements or acts made by the other **Party** or its attorneys or agents.

**IN WITNESS WHEREOF**, the **Parties** hereto have made and executed this Release as of this 17th day of March, 2015.

\*\*\* THE BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK \*\*\*



**FOR SCHOOL BOARD**

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

(Corporate Seal)

ATTEST:

By \_\_\_\_\_  
Donna Korn, Chair

\_\_\_\_\_  
Robert W. Runcie,  
Superintendent of Schools

Approved as to Form and Legal Content:

  
\_\_\_\_\_  
Office of the General Counsel

\*\*\* THE BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK \*\*\*



**FOR LEMARTEC**

LEMARTEC CORPORATION f/k/a LEMARTEC  
ENGINEERING & CONSTRUCTION CORP.

By: [Signature]  
Jose Garcia-Tunon, Chief Operating Officer

[Signature]  
Witness

[Signature]  
Witness

STATE OF FLORIDA )  
COUNTY OF Miami Dade

The foregoing instrument was acknowledged before me this 18 day of Feb., 2015, by Jose Garcia-Tunon, Chief Operating Officer of LEMARTEC CORPORATION f/k/a LEMARTEC ENGINEERING & CONSTRUCTION CORP., a Florida corporation, on behalf of the corporation. He took an oath, and is personally known to me or has produced \_\_\_\_\_ as identification and acknowledged before me that he/she executed the same freely and voluntarily for the purposes therein expressed.

[Signature]  
NOTARY PUBLIC, STATE OF FLORIDA

My Commission Expires:

Printed Name of Notary Public

