



# AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Special Order Request

☐ Yes ☒ No

Time

MEETING DATE

Jul 28 2015 10:15AM - Regular School Board Meeting

AGENDA ITEM

OPEN ITEMS

CATEGORY

HH. OFFICE OF THE GENERAL COUNSEL

DEPARTMENT

Office of the General Counsel

ITEM No.:

HH-1.

Open Agenda

☒ Yes ☐ No

TITLE:

Settlement Agreement between The School Board of Broward County, Florida and HADP Architecture, Inc.

## REQUESTED ACTION:

Approve the Settlement Agreement between The School Board of Broward County, Florida and HADP Architecture, Inc.

## SUMMARY EXPLANATION AND BACKGROUND:

This Agreement is the result of efforts to resolve differences and disputes between HADP Architecture, Inc., formerly known as Harper Partners, Inc. ("HADP"), and The School Board of Broward County, Florida (the "SBBC") arising from the design and construction improvement Hallandale Elementary School Replacement School Project, Project No. 0131-99-02 (hereinafter "the Project").

See Supporting Docs for continuation of Summary Explanation and Background.

## SCHOOL BOARD GOALS:

☐ Goal 1: High Quality Instruction ☒ Goal 2: Continuous Improvement ☐ Goal 3: Effective Communication

## FINANCIAL IMPACT:

There is a positive financial impact to the District in the amount of \$280,000.

## EXHIBITS: (List)

(1) Summary Explanation and Background Continued (2) Settlement Agreement between The School Board of Broward County, Florida and HADP Architecture, Inc.

## BOARD ACTION:

**APPROVED**

(For Official School Board Records Office Only)

## SOURCE OF ADDITIONAL INFORMATION:

Name: Thomas C. Cooney, Esq.

Phone: 754-321-2050

Name: Edward C. Lohrer, Esq.

Phone:

## THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

### Senior Leader & Title

J. Paul Carland, II - General Counsel

Signature

J. Paul Carland II

7/13/2015, 6:57:51 PM

Approved In Open  
Board Meeting On:

**JUL 28 2015**

By:

  
School Board Chair

**SUMMARY EXPLANATION AND BACKGROUND**

This Agreement is the result of efforts to resolve differences and disputes between HADP Architecture, Inc., formerly known as Harper Partners, Inc. ("HADP"), and The School Board of Broward County, Florida (the "SBBC") arising from the design and construction improvement Hallandale Elementary School Replacement School Project, Project No. 0131-99-02 (hereinafter "the Project").

On or about January 16, 2001, HADP executed a Professional Services Agreement (hereinafter "PSA") with the SBBC to act as Architect of Record for the Project. The SBBC incurred additional costs on the Project attributed to alleged delays, design errors and omissions of HADP. HADP denied such allegations and asserted various defenses.

Unable to resolve their differences and disputes, the SBBC filed a claim against HADP in a case styled The School Board of Broward County, Florida v. HADP Architecture, Inc.: Case No. CACE 10-030355 (04) in the Circuit Court for the Seventeenth Judicial Circuit in and for Broward County, Florida (the "Lawsuit"). Through settlement negotiations, HADP has agreed to pay the SBBC \$280,000 in full and complete settlement of the Lawsuit. This item resolves and settles the litigation between the SBBC and HADP, except potential future personal injury claims associated with the Project. Neither party admits liability for the claims.

The School Board's Cadre Counsel, Edward C. Lohrer, with the concurrence of District Staff and the General Counsel's Office, recommend approval of the Settlement Agreement as a fair, reasonable and cost-effective resolution of the dispute between the parties.

*End of Document*

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT, IN AND FOR  
BROWARD COUNTY, FLORIDA

CASE NO. CACE 10-030355 (04)

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA,

Plaintiff,

v.

HADP ARCHITECTURE, INC., F/K/A  
HARPER PARTNERS, INC., a Florida profit  
corporation,

Defendant.

\_\_\_\_\_ /

**SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT (hereinafter "Agreement") made as of this 28<sup>th</sup> day of July, 2015, by and between THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA ("SBBC"), and HADP ARCHITECTURE, INC., F/K/A HARPER PARTNERS, INC. ("HADP"). The SBBC and HADP shall hereinafter collectively be referred to as the "Parties" unless otherwise referenced herein:

**WITNESSETH:**

**WHEREAS**, the Parties to this Agreement have existing between them certain differences and disputes arising out of certain alleged design errors, General Contractor change orders and alleged General Contractor delay claims relating to Hallandale Elementary School Replacement School – SBBC Project No.0131-99-02 ("Project" unless otherwise referenced); and

**WHEREAS**, during the course of the Project certain change orders were required or requested on the Project. These change orders resulted in additional costs to SBBC that SBBC alleges HADP is liable for in whole or in part; and

**WHEREAS**, during the course of the Project SBBC paid significant sums in excess of the contract price to settle several delay claims asserted by the General Contractor. Payment of these delay claims resulted in additional costs to SBBC that SBBC alleges HADP is liable for in whole or in part; and

**WHEREAS**, as a result of the disputes referenced above, SBBC filed a Complaint against HADP in Broward County Case Number CACE 10-030355 (04) alleging entitlement to damages, *inter alia*, for design errors/omissions and delay ("Lawsuit" unless otherwise referenced herein); and

**WHEREAS**, HADP has asserted various defenses to the Lawsuit; and

**WHEREAS**, this Agreement, subject to the provisions below, resolves the Lawsuit and all underlying claims and disputes of SBBC and its employees, agents, subcontractors, consultants, officers, directors, servants, executors, heirs, administrators, successors and assigns, relative to the Project against HADP, its parent corporation(s), affiliates, subsidiaries, principals, employees, agents, subconsultants, subcontractors, consultants, officers, directors, executors, heirs, administrators, successors and assigns ; up to and including those claims, causes of action and actions that arose or could have arose due to any and all events associated with the Lawsuit and those other matters referenced in this Agreement and any and all other matters related to the Project, in any way; and

**WHEREAS**, the parties desire to amicably resolve the Lawsuit and all underlying disputes, but do not admit to any liability to the claims and defenses of the other parties hereto; and

**WHEREAS**, the Parties to this Agreement hereby enter into this Agreement, under which HADP agrees to pay certain settlement sums to SBBC in full and complete settlement of the

Lawsuit as well as all potential or possible causes of action and claims of SBBC relating to the Project, including but not limited to those matters described in the Lawsuit; and

**WHEREAS**, the Parties to this Agreement do not admit any wrongdoing or liability, but have determined to settle and compromise the Lawsuit to avoid the financial expense and burden and uncertainties associated with protracted and complex litigation; and

**WHEREAS**, the Parties desire to reduce this, their agreement of settlement, to writing so that it may be binding upon the parties, their successors and assigns; and

**WHEREAS**, with regard to resolution of the Lawsuit as outlined in this Agreement, the Parties agree to bear their own costs, including expert and attorney's fees.

**NOW, THEREFORE**, in consideration of the foregoing representation of the mutual covenants, promises and considerations hereinafter set forth with the intent to be legally bound, it is agreed by and between the Parties as follows:

1. **Incorporation of Recitals:** The Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

2. **Matters Settled:** This Agreement settles the Lawsuit and any and all claims and causes of action of any nature whatsoever that the parties had, have or will have in the future relating to the above referenced Project. This Agreement **does not** settle, and specifically excludes the settlement of or release of HADP from any liability, duty or responsibility relating to personal injury claims associated with the Project covered by this Agreement. As of the date of this Agreement the SBBC has no knowledge of any personal injury claims associated with this Project as it relates to HADP.

3. **Payment of Settlement Sums:** In full and complete settlement of the Lawsuit, HADP agrees to pay SBBC Two Hundred Eighty Thousand 00/100 Dollars (\$280,000.00)

("Settlement Sum"). The Settlement Sum shall be paid by HADP to SBBC within twenty (20) days after approval of this Settlement Agreement as described in Paragraph 4 below.

4. **Approval of Agreement:**

a. Approval of this Agreement by the SBBC at a duly called Board Meeting shall serve as a condition precedent to final approval of this Agreement, as will the obligation of HADP to transmit to counsel for the SBBC a fully executed Release in the form labeled and attached hereto as Exhibit "A". HADP shall deliver the Settlement Sum to counsel for SBBC, on or before the twentieth (20th) consecutive calendar day after approval of this Agreement by the SBBC at a duly called Board Meeting.

b. The SBBC warrants and represents that neither the execution of this Agreement by HADP nor the institution of the Lawsuit against HADP shall serve to disqualify HADP, its subsidiaries, affiliates, parent corporations, related entities or principals from seeking work from the SBBC in the future. Provided further that this condition precedent shall not serve as any guaranty of being awarded future work from the SBBC.

c. To the extent that any conditions precedent as described above have not been satisfied, all documents (including the Release executed by HADP) shall be returned to HADP, and this Agreement shall be declared null and void.

5. **Releases:** In addition to the Release required in paragraph 4(a), the SBBC will provide a release to HADP in the form attached as Exhibit "B". This Release specifically excludes the release of HADP from any liability, duty or responsibility of HADP relating to personal injury claims associated with the Project covered by this Agreement.

6. **Dismissal of Lawsuit with Prejudice:** Within three (3) business days upon full payment of the amount described in Paragraph 3, SBBC will dismiss the Lawsuit, with prejudice.

If payment is made in any form other than wire transfer, the three (3) day dismissal requirement will not start to run until all funds have been cleared by SBBC's chosen financial institution.

7. **Assignment of Claims:** SBBC hereby warrants and represents to HADP that as an inducement to HADP to pay SBBC the Settlement Sum referenced in this Agreement, that it has not and shall not assign or transfer any of its right, title or interest to any claim, cause of action or action that it has or may have in the future relating to the Project to any person or entity relative to the Project.

8. **Attorney's Fees and Costs:**

- a. The Parties shall each bear their own attorney's fees and costs incurred in relation to the Lawsuit resolved by this Agreement.
- b. The prevailing party in any action to enforce any terms of this Agreement shall be entitled to recover reasonable attorney's fees and costs, whether incurred pre-litigation, in trial or appellate proceedings.

9. **Choice of Law and Venue:**

- a. This Settlement Agreement shall be interpreted in accordance with the substantive laws of the State of Florida.
- b. Venue for any dispute arising out of this Agreement shall lie solely and exclusively in a court of competent jurisdiction in the 17<sup>th</sup> Judicial Circuit in and for Broward County, Florida, and the Parties waive the right to venue elsewhere.

10. **Waiver of Jury Trial: THE PARTIES TO THIS AGREEMENT EXPRESSLY WAIVE THEIR RIGHT TO A JURY TRIAL FOR ANY DISPUTE ARISING OUT OF THIS AGREEMENT.**

11. **Authority:** The signatories to the Agreement represent that they have the authority to enter into this Agreement and have the authority to execute the Releases attached hereto as Exhibits "A" and "B".

12. **Entire Agreement:**

a. This Settlement Agreement sets forth the entire Agreement between the parties hereto and supersedes any and all prior agreements, understandings, or representations between the parties hereto pertaining to the subject matter hereof.

b. The Parties acknowledge that this Settlement Agreement is the result of their joint efforts with each party having the benefit of legal counsel, and shall be construed as having been drafted by all parties hereto.

c. The parties acknowledge and agree that each is foregoing certain rights and assuming certain duties and obligations which, but for this Agreement, would not have been released or assumed. Accordingly, the Parties agree that this Agreement is fully and adequately supported by consideration, is fair and reasonable, and that the Parties have had the opportunity to consult with and have in fact discussed this matter with counsel of their choice.

d. The Parties have read this Agreement and the Exhibits attached hereto, and have freely and voluntarily entered into this Agreement.

13. **Modification and Waiver:**

a. This Agreement may not be modified except by a writing signed by all parties hereto.



b. The failure of any of the Parties executing this Agreement to require the performance of any term or obligation of this Agreement or the waiver by any of the parties executing this Agreement of any breach of this Agreement shall not prevent any subsequent enforcement of such term or obligation and shall not be deemed a waiver of any subsequent breach.

14. **Counterparts:** This Agreement may be executed in counterparts with each copy being deemed an original.

15. **Notices:** Notices, to the extent they are referenced in this Agreement, shall be to the following persons on behalf of the Parties by certified mail, return receipt requested:

As to the SBBC: Edward C. Lohrer, Esq.  
Becker & Poliakoff, P.A.  
1 East Broward Blvd. Ste. 1800  
Fort Lauderdale, Florida 33301

As to HADP: Scott A. Witzigreuter  
Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC  
3344 Peachtree Road, N.E., Suite 2400  
Atlanta, Georgia 30326

16. **Effective Date:**

a. This Agreement shall be binding upon and shall inure to the benefit of the parties, as well as their successors and assigns.

b. This Agreement shall be effective upon execution of this Agreement by all parties hereto.

17. **Time is of the Essence:** Time is of the essence for the performance and completion of all duties required by this Agreement.

18. **Headings:** All headings contained in this Agreement are designed and used for reference purposes only. The language used in the headings is not controlling and is not considered a substantive part of this Agreement.

IN WITNESS WHEREOF, the Parties, by their duly authorized agents, have signed and sealed this Agreement the day and year first above written.


THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

By:   
Donna P. Korn, Chair

ATTEST:   
Robert W. Runcie, Superintendent of Schools

Approved As To Form and Legal Content:

  
Thomas Cooney  
Assistant General Counsel

  
Edward C. Lohrer, Esq.  
As Cadre Counsel for The School Board of  
Broward County, Florida

HADP ARCHITECTURE, INC., F/K/A HARPER PARTNERS, INC.

  
Its: President

David Harper  
Printed Name

**EXHIBIT "A"**  
**RELEASE**

**KNOW ALL MEN BY THESE PRESENTS:**

That HADP ARCHITECTURE, INC., F/K/A HARPER PARTNERS, INC., and its officers, agents, servants, successors, heirs, administrators, executors, successors, and assigns (collectively referred to as "HADP"), for and in consideration of the mutual covenants and promises as set forth in that certain Settlement Agreement, dated July 28, 2015 ("Settlement Agreement"), hereby remises, releases, acquits, satisfies and forever discharges THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA, and any of its employees, agents, officers, directors, servants, executors, heirs, administrators, successors, assigns, design professionals, architects, engineers, attorneys and consultants, subcontractors, materialmen and suppliers (hereinafter collectively referred to as "SBBC"), from the matters referenced in the above-referenced Settlement Agreement, as well as from any and all manner of action and actions, claims, liabilities, losses, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, warranties (including express, implied, contractual and statutory), claims and demands whatsoever, in law or in equity, which HADP can, shall, or may have in the future or did have against the SBBC emanating or relating in any way, directly or indirectly, from professional services performed by HADP at Hallandale Elementary School Replacement School – SBBC Project No. 0131-99-02, including but not limited to the matters alleged in the Lawsuit initiated by SBBC styled The School Board of Broward County, Florida v. HADP Architecture, Inc., f/k/a Harper Partners, Inc., Broward County Case Number CACE 10-030355 (04), from the beginning of time through the day that the Settlement Agreement has been approved by the SBBC. In the event that any portion or provision of this Release is finally adjudged to be invalid or

unenforceable for any reason, such portion or provision shall be deemed excised, and such recision shall have no effect upon the remaining portions and provisions of this Release.

It is further stated that the undersigned has read the foregoing Release and knows the content and signs it as a free act.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this \_\_\_\_day of June, 2015.

Signed, sealed and delivered  
in the presence of:

HADP ARCHITECTURE, INC., F/K/A HARPER PARTNERS, INC.

By: \_\_\_\_\_

Printed name:

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 30 day of June, 2015 by David Harper as authorized agent and on behalf of HADP ARCHITECTURE, INC., F/K/A HARPER PARTNERS, INC., who is personally known to me or who has produced \_\_\_\_\_ as identification and who did take an oath.

Loures P. Nunez  
NOTARY PUBLIC, STATE OF FLORIDA

Loures P. Nunez  
Printed Name of Notary Public

My Commission Expires:



**EXHIBIT "B"**  
**RELEASE**

**KNOW ALL MEN BY THESE PRESENTS:**

That THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA, its officers, agents, servants, successors, heirs, administrators, executors, successors, and assigns (hereinafter referred to as "SBBC"), for and in consideration of the mutual covenants and promises as set forth in that certain Settlement Agreement, dated July 28, 2015 ("Settlement Agreement"), hereby remises, releases, acquits, satisfies and forever discharges HADP ARCHITECTURE, INC., F/K/A HARPER PARTNERS, INC., and any of its affiliates, parent corporations, subsidiaries, employees, agents, officers, directors, servants, executors, heirs, administrators, successors, assigns, design professionals, architects, engineers, attorneys and consultants, subconsultants, subcontractors, materialmen and suppliers (collectively referred to as "HADP"), from the matters referenced in the above-referenced Settlement Agreement, as well as from any and all manner of action and actions, claims, liabilities, losses, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, warranties (including express, implied, contractual and statutory), claims and demands whatsoever, in law or in equity, which SBBC can, shall, or may have in the future or did have against HADP emanating or relating in any way, directly or indirectly, from professional services performed by HADP at Hallandale Elementary School Replacement School – SBBC Project No. 0131-99-02, including but not limited to the matters alleged in the Lawsuit initiated by SBBC styled The School Board of Broward County, Florida v. HADP Architecture, Inc., f/k/a Harper Partners, Inc., Broward County Case Number CACE 10-030355 (04), from the beginning of time through the day that the Settlement Agreement has been approved by the SBBC. **This Release specifically excludes the release of HADP from any liability, duty or responsibility of HADP relating to personal injury claims**

**associated with the Project covered by the Agreement.** In the event that any portion or provision of this Release is finally adjudged to be invalid or unenforceable for any reason, such portion or provision shall be deemed excised and such rescission shall have no effect upon the remaining portions and provisions of this Release.

It is further stated that the undersigned has read the foregoing Release and knows the content and signs it as a free act.

IN WITNESS WHEREOF, the undersigned Party, by its duly authorized agents, have signed and sealed this Agreement the day and year first above written.

(Corporate Seal)

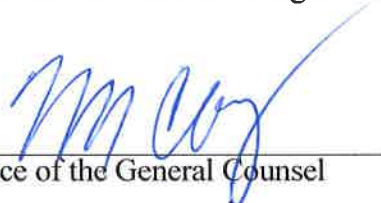
THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

  
Donna P. Korn, Chair

  
Robert W. Runcie, Superintendent of  
Schools

Approved as to form and legal content

  
Office of the General Counsel