



AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Special Order Request

☐ Yes

☒ No

Time

Open Agenda

☒ Yes

☐ No

ITEM No.:

HH-1.

MEETING DATE

Nov 3 2015 10:15AM - Regular School Board Meeting

AGENDA ITEM

OPEN ITEMS

CATEGORY

HH. OFFICE OF THE GENERAL COUNSEL

DEPARTMENT

Office of the General Counsel

TITLE:

Settlement Agreement between The School Board of Broward County, Florida and DeRose Design Consultants, Inc.

REQUESTED ACTION:

Approve the Settlement Agreement between The School Board of Broward County, Florida and DeRose Design Consultants, Inc.

SUMMARY EXPLANATION AND BACKGROUND:

This Agreement is the result of efforts to resolve differences and disputes between DeRose Design Consultants, Inc. ("DEROSE") and The School Board of Broward County, Florida (the "SBBC") arising from the design and construction improvement of the Twin Lakes Administration Center, Project No.: 9387-22-01 and Silver Lakes Middle School, Project No.: 2971-94-50 (the "Projects").

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 \$500,000.

EXHIBITS: (List)

(1) Summary Explanation and Background (2) Settlement Agreement and Release

BOARD ACTION:

APPROVED

(For Official School Board Records Office Only)

SOURCE OF ADDITIONAL INFORMATION:

Name: Thomas C. Cooney, Esq.

Phone: 754-321-2050

Name: F. Malcolm Cunningham, Jr., Esq.

Phone:

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Senior Leader & Title

J. Paul Carland, II - General Counsel

Signature

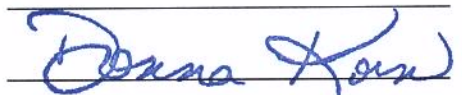
J. Paul Carland II

10/20/2015, 3:51:47 PM

Approved In Open
Board Meeting On:

NOV 03 2015

By:


School Board Chair

SUMMARY EXPLANATION AND BACKGROUND

This Agreement is the result of efforts to resolve differences and disputes between DeRose Design Consultants, Inc. ("DEROSE") and The School Board of Broward County, Florida (the "SBBC") arising from the design and construction improvement of the Twin Lakes Administration Center, Project No.: 9387-22-01 and Silver Lakes Middle School, Project No.: 2971-94-50 (the "Projects").

On May 2, 2000 and May 16, 2000 respectively, the School Board and DEROSE entered into Professional Services Agreements pursuant to which DEROSE agreed to provide architectural, engineering and other professional design services, as further defined in the Professional Services Agreements, for the Projects. The SBBC incurred additional costs on the Projects attributed to alleged delays, design errors and omissions of DEROSE. DEROSE denied such allegations and asserted that it was owed for unpaid contract balances, additional services and delays.

Unable to resolve their differences and disputes, the SBBC filed a claim against DEROSE in a case styled The School Board of Broward County, Florida v. DeRose Design Consultants, Inc.: Case No.: 07-29240 CACE (07) in the Circuit Court for the Seventeenth Judicial Circuit in and for Broward County, Florida (the "Lawsuit"). Through settlement negotiations, DEROSE has agreed to pay the SBBC \$500,000 in full and complete settlement of the Lawsuit. This item resolves and settles the litigation between the SBBC and DEROSE, except potential future claims for latent defects. Neither party admits liability for the claims.

The School Board's Cadre Counsel, F. Malcolm Cunningham, Jr., Esq., with the concurrence of District Staff and the General Counsel's Office, recommend approval of the Settlement Agreement.

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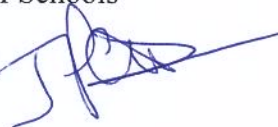
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
OFFICE OF THE GENERAL COUNSEL

K.C. WRIGHT ADMINISTRATION BUILDING
600 SOUTHEAST THIRD AVENUE, 11TH FLOOR
FORT LAUDERDALE, FLORIDA 33301
Telephone: (754) 321-2050
Facsimile: (754) 321-2705

J. PAUL CARLAND, II
GENERAL COUNSEL

MEMORANDUM

TO: Donna P. Korn, Chair
All School Board Members
Robert W. Runcie, Superintendent of Schools

FROM: J. Paul Carland, II, General Counsel 

DATE: November 2, 2015

SUBJECT: **Revision to HH-1, Settlement Agreement between The School Board of Broward County, Florida and DeRose Design Consultants, Inc. for the November 3, 2015 Regular School Board Meeting**

Attached is a revision for HH-1, Settlement Agreement between The School Board of Broward County, Florida and DeRose Design Consultants, Inc. for the November 3, 2015 Regular School Board Meeting.

The School Board's Release, identified in paragraph three of the Settlement Agreement as Exhibit "A" is attached. DeRose's Release, identified in the Settlement Agreement as Exhibit "B" was included when posted.

JPC/TCC:jcf
Enclosure

C: Thomas C. Cooney, Esq., Assistant General Counsel
F. Malcolm Cunningham, Jr., Esq.
Senior Leadership Team

fritz\allwork\agenda\2015\11-02-15-HH1-DeRoseMemoBoardRevised

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into this 3rd day of November ~~October~~, 2015, by and between The School Board of Broward County, Florida (the "School Board") and DeRose Design Consultants, Inc. ("DeRose").

Witnesseth

WHEREAS, the School Board and DeRose entered into a Mechanical Engineering "Professional Services Agreement," dated May 2, 2000 and a Structural Engineering "Professional Services Agreement," dated May 16, 2000, pursuant to which DeRose agreed to provide those architectural, engineering and other professional design services, as further defined in the Professional Services Agreements, for the Twin Lakes Administration Center, Project No.: 9387-22-01 and Silver Lakes Middle School, Project No.: 2971-94-50 (the "Projects"); and

WHEREAS, disputes have arisen between the School Board and DeRose regarding the Agreement and the Projects; and

WHEREAS, the School Board filed a lawsuit against DeRose in a case styled The School Board of Broward County, Florida v. DeRose Design Consultants, Inc., f/k/a DeRose & Slopey Consulting Engineers, Inc.: Case No.: 0729240 CACE (07) in the Circuit Court for the Seventeenth Judicial Circuit in and for Broward County, Florida (the "Lawsuit"); and

WHEREAS, the parties have agreed to resolve the School Board's claims in the Lawsuit; and

WHEREAS, counsel and staff of the School Board recommend resolving the School

Board's pending claims against DeRose involving the Project in accordance with the terms set forth below.

NOW THEREFORE, the parties hereto, intending to be legally bound hereby, in consideration of the mutual covenants and conditions set forth herein, receipt and sufficiency of which consideration are hereby acknowledged, it is agreed, by and between the parties, as follows:

1. **Recitals.** The recitals contained herein are true and correct and are incorporated herein by reference.

2. **Settlement Amount.** DeRose shall pay to the order of "The School Board of Broward County, Florida" the sum of Five Hundred Thousand Dollars (\$500,000), and deliver such payment by wire to counsel for the School Board within forty five (45) days of the School Board's execution of the Agreement. The payment in this paragraph shall be made by wire transfer to the following account:

**Wells Fargo NA
303 Banyon Blvd.
West Palm Beach, Florida 33401
ABA Routing Number:121000248
Customer: F. Malcolm Cunningham, Jr., P.A. Trust Account
Account Number: 2155 0011 36444**

3. **School Board's Release.** Conditioned upon the performance of the obligations set forth above in paragraph 2, the School Board shall execute form of release for DeRose in the form attached hereto as Exhibit "A."

4. **DeRose's Release.** The release to be executed by DeRose for the School Board shall be in the form attached hereto as Exhibit "B." DeRose shall execute release

along with Agreement in triplicate and provide same to counsel for the School Board for presentation to the School Board upon the Board's consideration of the Agreement.

5. **Default in Payment.** If DeRose defaults by failing to make the payment required in paragraph 2 on or before the due date, School Board shall be entitled to judgment against DeRose in the amount of \$2,097,133.87, plus costs after written application to the court without notice.

6. **Joint Stipulation and Order of Dismissal.** Within ten (10) days of the performance of the obligations set forth above in paragraphs 2, 3 and 4, the parties shall execute and file a Joint Stipulation for Entry of an Order of Dismissal with Prejudice of the Lawsuit, reflecting that each party shall bear its own costs and attorney's fees. (A true and correct copy of the form for the Joint Stipulation and Order of Dismissal with Prejudice is attached hereto as Composite Exhibit "C").

7. **Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Florida, without regard to its conflict of laws principles, except to the extent federal law provides the rule of decision. The provisions of the *Florida Rules of Civil Procedure* dealing with computation of time shall control the calculation of the beginning or ending of any period referenced in this Agreement.

8. **Representation by Counsel.** Each of the parties represents that it has read and understands the provisions of this Agreement, and has had the opportunity to receive advice from independent counsel of its own choice. For the purpose of resolving any disputes arising out of this Agreement, the Agreement shall be deemed to have been drafted by each of the parties, neither of which may assert that it should be construed

9. **Authorization to Execute.** The persons executing this Agreement on behalf of the respective parties represent and warrant that they are authorized to execute this Agreement and bind their respective party.

11. **Execution in Counterparts**. This Agreement may be signed in counterparts, of which together constitute one Agreement. Facsimile signatures shall be permitted and binding.

Executed the 12th day of OCTOBER, 2015.

By:

Print:

Title:

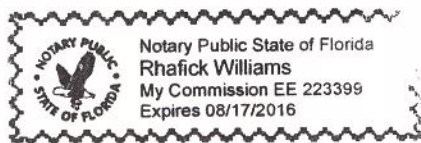
Name:

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BEFORE ME, the undersigned authority, personally appeared Lawrence P. Rose,
as Se. V.P. of **DeRose Design Consultants, Inc.**, to me known to
be the person described in and who executed the foregoing instrument and acknowledged before
me that he executed the same freely and voluntarily for the purposes expressed.

IN WITNESS WHEREOF, I have hereunto affixed my hand and official seal in the County
and State last aforesaid this 12th day of October, 2015.

(Seal)



[Signature]
Notary Public, State of Florida
Name: Rhaick Williams
My Commission Expires: 08/17/2016

FOR SBBC

Executed the 6th day of November, 2015.

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By: [Signature]
Donna P. Korn, Chair

ATTEST:

[Signature]
Robert W. Runcie, Superintendent of
Schools

Approved as to Form and Legal Content:



F. Malcolm Cunningham, Jr., Esq.
As Cadre Counsel for The School Board of
Broward County, Florida



School Board Attorney

GENERAL RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS that DEROSE DESIGN CONSULTANT'S, INC. ("DEROSE"), for their insurers, consultants and their respective successors, assigns, corporate affiliates, subsidiaries, parent corporations, officers, directors, shareholders, employees, agents, partners, representatives, attorneys, and personal representatives, for and in consideration of the sum of TEN (\$10.00) Dollars and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, hereby remises, releases, acquits, satisfies and forever discharges THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA (the "School Board") and its respective successors, assigns, corporate affiliates, subsidiaries, parent corporations, Board members, officers, shareholders, employees, agents, partners, representatives, attorneys and personal representatives, of and from any and all actions, causes of action, suits, claims, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, and demands whatsoever, in law or in equity, which DEROSE its successors, directors, insurer, assigns, employees, agents, representatives, attorneys and personal representatives had or now have for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of these presents relating to all matters, actions, causes of action, claims, and damages arising out of, raised in, that could have been raised in, concerning, referring or relating to the litigation styled: *The School Board of Broward County, Florida v. DeRose Design Consultants, Inc., f/k/a DeRose & Slopey Consulting Engineers, Inc.*: Case No.: 07-029240 CACE (17) in the Circuit Court for the Seventeenth Judicial Circuit in and for Broward County, Florida arising out of DEROSE's obligations under any and all contract with School Board regarding the Twin Lakes Administration Center, Project No.: 9387-22-01 and Silver Lakes Middle School, Project No.: 2971-94-50 (the "Projects").

DEROSE DESIGN CONSULTANT'S, INC.

By: 

Print Name: Lawrence DeRose

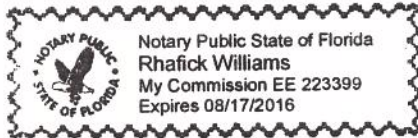
Title: Sr. V.P.

State of FLORIDA)
) ss:
County of BROWARD)

BEFORE ME, the undersigned authority, personally appeared Lawrence DeRose, as Sr. V.P. of Derosé Design Consultant's, Inc., to me known to be the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same freely and voluntarily for the purposes expressed.

IN WITNESS WHEREOF I have hereunto affixed my hand and official seal in the County and State last aforesaid this 12th day of October, 2015.

(Seal)



Notary Public, State of Florida

Name: RHAICK WILLIAMS

My Commission Expires: 08/17/2016.

GENERAL RELEASE OF ALL CLAIMS

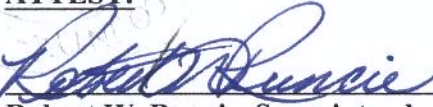
KNOW ALL MEN BY THESE PRESENTS that THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA, (the "School Board"), for and in consideration of the sum of TEN (\$10.00) Dollars and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, hereby remises, releases, acquits, satisfies and forever discharges DEROSE DESIGN CONSULTANTS, INC. ("DeRose"), its insurer, its consultants, and their respective successors, assigns, corporate affiliates, subsidiaries, parent corporations, directors, officers, shareholders, employees, agents, partners, representatives, attorneys, and personal representatives, of and from any and all actions, causes of action, suits, claims, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, and demands whatsoever, in law or in equity, which the School Board, its successors, assigns, employees, agents, representatives, attorneys and personal representatives had or now have for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of these presents relating to all matters, actions, causes of action, claims, and damages arising out of, asserted in, that could have been asserted in, concerning, referring or relating to *The School Board of Broward County, Florida v. DeRose Design Consultants, Inc. f/k/a DeRose & Slopey Consulting Engineers, Inc.*: Case No.: 07-029240 CACE (07) in the Circuit Court for the Seventeenth Judicial Circuit in and for Broward County, Florida arising out of DeRose's obligations under any and all contracts with School Board regarding the Twin Lakes Administration Center, Project No.: 9387-22-01 and Silver Lakes Middle School, Project No.: 2971-94-50 (the "Projects"), with the exception of the following continuing obligation:

1. The payment of \$500,000.00 to the School Board in accordance with the terms of the "Settlement Agreement," executed November 3, 2015.

FOR SBBC

(Corporate Seal)

ATTEST:


Robert W. Runcie, Superintendent of
Schools

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By


Donna P. Korn, Chair

Approved as to Form and Legal Content:


School Board Attorney