



ADDED ITEM

# AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

ITEM No.:  
**JJ.2.**

MEETING DATE	Aug 2 2016 10:15AM - Regular School Board Meeting
AGENDA ITEM	OPEN ITEMS
CATEGORY	JJ. OFFICE OF FACILITIES AND CONSTRUCTION
DEPARTMENT	Chief Facilities & Construction Officer

<b>Special Order Request</b> <input type="radio"/> Yes <input checked="" type="radio"/> No
<b>Time</b>
<b>Open Agenda</b> <input checked="" type="radio"/> Yes <input type="radio"/> No

TITLE:  
Project Completion Agreement between The School Board of Broward County, Florida and Kaufman Lynn Construction, Inc., for the Fort Lauderdale High School Project

**REQUESTED ACTION:**  
Approve the Project Completion Agreement between The School Board of Broward County, Florida and Kaufman Lynn Construction, Inc., for the Fort Lauderdale High School Project.

**SUMMARY EXPLANATION AND BACKGROUND:**  
This project Completion Agreement is the result of extensive efforts to resolve differences regarding a claim asserted by Kaufman Lynn Construction, Inc., ("KL") pursuant to a Construction Agreement ("Agreement") between KL and The School Board of Broward County, Florida (the "SBBC"). This agreement has been reviewed and approved as to form and legal content by the Office of the General Counsel.

**SCHOOL BOARD GOALS:**  
 Goal 1: High Quality Instruction  Goal 2: Continuous Improvement  Goal 3: Effective Communication

**FINANCIAL IMPACT:**  
The total financial impact of this item is \$1,351,882, which will come from the Capital Projects Reserve.

**EXHIBITS: (List)**  
(1) Executive Summary (2) Completion Agreement (3) Collaboration Form

**BOARD ACTION:**  
**APPROVED**  
(For Official School Board Records Office Only)

SOURCE OF ADDITIONAL INFORMATION:	
Name: Thomas Cooney, General Counsel	Phone: 754-321-2050
Name: Diego J. Clavijo, Vp Project Director, Atkins	Phone: 305-514-3579

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**  
Senior Leader & Title

Leo Bobadilla - Chief Facilities Officer  
Signature  
*Leo Bobadilla Jr*  
Wednesday, July 27, 2016 6:16:12 PM

Approved In Open Board Meeting on: **AUG - 2 2016**  
By: *Rosalind Arguel*  
School Board Chair

## **Executive Summary**

Project Completion Agreement between The School Board of Broward County, Florida and Kaufman Lynn Construction, Inc., for the Fort Lauderdale High School Project.

On or about June 7, 2011, the SBBC and KL entered into an agreement for additions and renovations to Ft. Lauderdale High School, Project Number P.000687, (hereinafter the "Project"). Construction of the Project commenced in November of 2011 and originally provided for performance within 508 consecutive calendar days.

In February of 2016, KL submitted a Time Impact Analysis ("TIA") to the School Board seeking to recover costs associated with significant delay and changes to the Project's scope of work and construction phasing (hereinafter, the "Claim"). KL has performed work associated with the Project in a good and workmanlike manner and fully cooperated with the School Board to avoid delays, but has nonetheless suffered significant delays due to circumstances beyond its control as more fully set forth in the attached Completion Agreement.

## **Resolution and Recommendation**

To settle the Claim, the SBBC will pay the sum of \$1,351,881.58 to KL.

This item resolves and settles the dispute between the SBBC and KL, but does not release, waive, compromise or discharge any liability or responsibility of KL or any of its successors, affiliates or assigns for Latent Defects associated with the Project.

The Superintendent and District staff recommend approval of the Completion Agreement as a fair, reasonable and cost-effective resolution of the dispute between the parties.

Pursuant to the terms of the Completion Agreement, once fully executed OEF documents are received by School Board staff, KL has completed and corrected all Punch List items, provided Consent of Surety, provided a W-9, and provided wiring instructions, and the Project has achieved Final Completion, an additional Board item shall be presented to the School Board for acceptance of the Project and the approval of Final Payment.

## COMPLETION AGREEMENT

This Completion Agreement is made by and between **KAUFMAN LYNN CONSTRUCTION, INC.** (hereinafter "**Kaufman Lynn**") and **THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA** (hereinafter "**School Board**"), (singularly referred to as a "**Party**"; collectively referred to as the "**Parties**"), on this 2nd day of August, 2016.

WHEREAS, this Completion Agreement arises from a dispute regarding the entitlement to costs associated with significant delay to a project for the construction and improvements to Fort Lauderdale High School located in Fort Lauderdale, Florida (hereinafter the "**Project**"), Project Number P.000687 (f/k/a 0951-27-01); and

WHEREAS, on or about June 7, 2011, the School Board and Kaufman Lynn entered into a Construction Contract for the Project; and

WHEREAS, the Project commenced on November 15, 2011 and originally provided for performance within 508 consecutive calendar days, in order to resolve and complete the Project; and

WHEREAS, Kaufman Lynn has performed work associated with the Project in a good and workmanlike manner and fully cooperated with the School Board to avoid delays, but has nonetheless suffered significant delays due to circumstances beyond Kaufman Lynn's control, including, but not limited to, the unanticipated increase in student population, which prevented Building No. 2 from being vacated by the School Board for approximately one year and prevented demolition of that building during that time; and

WHEREAS, this unanticipated increase in student population led to a delay to the critical path of the Construction Contract timeline and a significant increase in the total cost of work, ultimately requiring the School Board to change the phasing and sequencing as originally agreed in the Construction Contract; and

WHEREAS, significant changes to the scope of work with respect to the existing Classroom Science Building No. 8 and new science classrooms in new Classroom Building No. 21 to reflect improvements to the science curriculum also led to a delay to the critical path of the Construction schedule of approximately one year and four months and a significant increase in the total cost of work, including, but not limited to, a redesign of the science labs to add gas, water and electrical to the lab tables, relocation of plumbing, and redesign of HVAC for the science labs;

WHEREAS, these aforementioned issues as well as additional, unforeseeable issues arose with respect to subsurface conditions affecting the parking lot drainage design and previously undiscovered asbestos in Buildings 2 and 3, all which impacted the Project schedule by approximately three years that was not accounted for through Change Orders; and

WHEREAS, the Parties agree that it is desirous for Kaufman Lynn to complete the Work as set forth in Construction Contract in accordance with the Contract Documents, all applicable laws, codes, and ordinances including prior and anticipated change orders to be approved and issued from School Board to Kaufman Lynn; and

WHEREAS, as a condition precedent to final payment by the School Board to Kaufman Lynn, all final inspections must be completed and passed by Kaufman Lynn and all OEF documents need to be issued and executed, i.e. OEF 110B form Certificate of Occupancy and OEF 209 form for Final Completion; and

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

WHEREAS, the Parties desire to resolve all disputes arising between the School Board and Kaufman Lynn regarding the granting of additional compensation and days to Kaufman Lynn as part of the Construction Contract.

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 it did not and shall not assign or transfer any of its right, title, and/or interest to any claim, cause of action that it has 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.

4. In accordance with the Parties' Agreement, the Construction Contract is modified as follows:

- a. Additional Contract Time: the Parties confirm that prior Change Orders, material changes to the Construction Contract, and anticipated additional work to be completed shall extend the Contract Time from 508 days as originally set forth in the Construction Contract to 1,739 days, through and including August 19, 2016. To date, 581 additional days have been awarded pursuant to prior Change Orders, and a remaining 650 additional days are required to reach Substantial Completion.
- b. Contract Sum Increase: the Parties agree that the School Board shall pay to Kaufman Lynn an additional sum of **ONE MILLION THREE HUNDRED FIFTY ONE, EIGHT HUNDRED AND EIGHTY ONE AND 58/100 DOLLARS (\$1,351,881.58)** for additional work performed as part of Change Order 14, as well as costs resulting from the additional 650 days of Project duration as a result of the significant shift in Project scope and work stoppage resulting from the unanticipated increase in student enrollment, among other things, as more further described above. Addition of the aforementioned increase to the current Contract Sum of **\$14,843,466.63** results in a total Adjusted Contract Sum of **\$16,195,348.21**.
- c. Authorizations/Representations and Warranties: In entering into this Completion Agreement, each Party represents that they are represented by counsel and each Party represents that it has relied and acted upon the advice of its chosen attorney; that the terms of this Completion Agreement have been completely read and explained to the Parties by their attorneys; and that the terms of this Completion Agreement are fully understood and voluntarily accepted by the Parties.
- d. Completion Sum: Upon Board approval of this Completion Agreement, the total amount due and owing to Kaufman Lynn for the Project shall be **ONE MILLION SEVEN HUNDRED THIRTEEN, NINE HUNDRED FORTY-SEVEN AND 45/100 DOLLARS (\$1,713,947.45)** (hereinafter, the "**Completion Sum**").

5. For the above-referenced consideration and other good and valuable consideration the sufficiency of which is hereby acknowledged, the Parties agree to release and forever discharge each other by execution of the Mutual Release attached hereto as **Exhibit "A."** This Mutual Release is conditioned upon full performance of the terms contained herein, and receipt by Kaufman Lynn of the payments referred to in paragraph 4.d above. The Mutual Release shall be fully executed and held in escrow by the undersigned attorney for the School Board until such time as all conditions precedent and final payment to Kaufman Lynn has been made.

6. Payment of the Completion Sum shall be made in two (2) separate disbursements. The first disbursement in the amount of **\$1,551,993.97** shall be made, subject to the conditions

precedent listed below in paragraph 7, within twenty (20) days of the approval of this Completion Agreement by the School Board. The second and final disbursement in the amount of **\$161,953.48** shall be made, subject to the conditions precedent listed below in paragraph 8, within ten (10) days of the School Board's acceptance of the Project and approval of final payment at a duly called, regularly scheduled School Board Meeting. After Kaufman Lynn completes correction of the Punch List, an Agenda Item for acceptance of the Project and approval of Final Payment shall be presented to the School Board at the next available Board Meeting.

7. **First Disbursement** - As a condition precedent to the first disbursement, Kaufman Lynn shall provide the attorney for the School Board the following:

- a. Three (3) original, fully-executed copies of this Completion Agreement, including three (3) original, executed copies of the Mutual Release;
- b. Three (3) original, fully executed Payment Applications indicating a current payment due in the amount of \$1,551,993.97;
- c. Consent of Surety;
- d. W-9; and
- e. Wiring instructions.

8. **Second/Final Disbursement** - As a condition precedent to the second and final disbursement, Kaufman Lynn shall provide the attorney for the School Board the following:

- a. Three (3) original, fully executed Payment Applications indicating a current payment due in the amount of \$161,953.48;
- b. Three (3) original Final Payment Affidavits;
- c. Consent of Surety;
- d. Three (3) original, fully executed OEF 110B forms; and
- e. Three (3) original, fully executed OEF 209 forms.

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

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

11. The Parties expressly deny any and all allegations, claims or liability with regards to any contention and allegation made by any Party to 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.

12. 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 the Circuit Court of Broward County shall have jurisdiction to enforce and construe this Completion Agreement. .

13. This Agreement does not settle, limit, waive, release or compromise any potential claims and/or causes of action the School Board may have against Kaufman Lynn and/or its subconsultants, subcontractors, materialmen or suppliers for any claims and/or causes of actions for: (a) latent defects at The Project School, (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.

14. 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 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 related to the Project to any entity or party, which it seeks to Release per Exhibit A to the Agreement.

15. 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 were 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.

16. The Parties agree that this Agreement may be executed in counterparts.

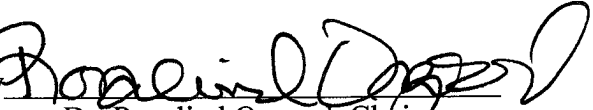
17. The Parties agree that the Completion Sum includes any and all attorney's fees and costs incurred in relation to the disputes resolved by this Agreement, that the prevailing party in any action to enforce any terms of this Agreement shall be entitled to recover reasonable attorney's fees and costs in trial or appellate proceedings.

IN WITNESS WHEREOF, the Parties, by their duly authorized agents, have read and signed this Completion Agreement, effective as of the date set forth below.


**FOR SCHOOL BOARD**

(Corporate Seal)

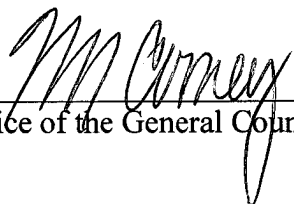
THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

By   
Dr. Rosalind Osgood, Chair

ATTEST:

  
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

  
Office of the General Counsel



**FOR KAUFMAN LYNN**

KAUFMAN LYNN CONSTRUCTION, INC.

BY: *Chris Long*  
Chris Long, Chief Operating Officer

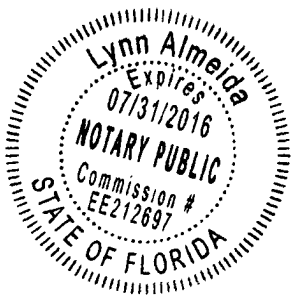
*[Signature]*  
Witness  
*Lynn Almeida*  
Witness

STATE OF FLORIDA            )  
  )  
COUNTY OF PALM BEACH    )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of July, 2016, by Chris Long of KAUFMAN LYNN CONSTRUCTION, INC., a Florida corporation, on behalf of the corporation. He took an oath and is personally known to and acknowledged before me that he executed the same freely and voluntarily for the purposes therein expressed.

My Commission Expires: 7/31/2016

*Lynn Almeida*  
NOTARY PUBLIC, STATE OF FLORIDA  
Name: Lynn Almeida



**EXHIBIT "A"**

**MUTUAL RELEASE**

KNOWN ALL MEN BY THESE PRESENTS that **Kaufman Lynn** and **The School Board of Broward County, Florida**, (as defined in the first paragraph of the Agreement above) for an in consideration of the sum of **ONE MILLION THREE HUNDRED FIFTY ONE, EIGHT HUNDRED AND EIGHTY ONE AND 58/100 DOLLARS (\$1,351,881.58)** paid to Kaufman Lynn, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, with the exception of the potential liability for costs associated with latent defects and with the exception of Kaufman Lynn's duty to indemnify and defend the School Board from any claims arising from Construction Work on the Project, 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 any Party ever had or now has, or which any Party may have in the future, including any successor or assign, against each and every **Party** to the **Agreement**, all of their 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 or derivatively, jointly and/or severally liable to any other **Party** to the **Agreement**, and all of their respective successors and assigns, for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of these presents, arising from or connected with the **Project** located in Fort Lauderdale, Florida, in Broward County, Florida.

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.

With the exception of the potential liability for costs associated with latent defects and with the exception of Kaufman Lynn's duty to indemnify and defend the School Board from any claims arising from Construction Work on the Project, each **Party** further expressly acknowledges their intention by execution of this Release to discharge every **Party** from any and all claims and demands, including, but not limited to, breach of contractual obligations, negligence, breach of

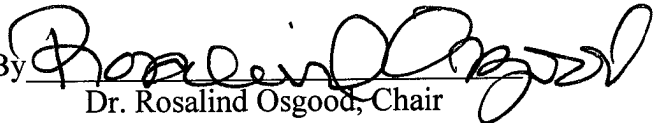
implied or expressed warranties, violations of codes, statutes and/or standards of professional care and practice, and any other claims arising out of and/or pertaining to the **Project**, or any part or component thereof.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Release on 2<sup>nd</sup> day of August, 2016, hereinafter the Effective Date.


**FOR SCHOOL BOARD**

(Corporate Seal)

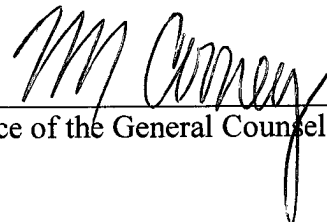
THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

By   
Dr. Rosalind Osgood, Chair

ATTEST:

  
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

  
Office of the General Counsel

**FOR KAUFMAN LYNN**

KAUFMAN LYNN CONSTRUCTION, INC.

BY: \_\_\_\_\_  
Michael Kaufman, Chief Executive Officer

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

STATE OF FLORIDA            )  
  )  
COUNTY OF PALM BEACH    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_ of KAUFMAN LYNN CONSTRUCTION, INC., 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.

My Commission Expires:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA  
Name: