

AGENDA REQUEST FORM
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Meeting Date 06/19/07	Open Agenda Yes ☒ No	Time Certain Request Yes ☒ No	Agenda Item Number H-2
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TITLE:

Settlement and Release Agreement Between The School Board of Broward County, Florida and BRPH Architect Engineers, Inc.

REQUESTED ACTION:

Approve the Settlement and Release Agreement Between The School Board of Broward County, Florida and BRPH Architect Engineers, Inc.

SUMMARY EXPLANATION AND BACKGROUND:

The School Board of Broward County, Florida entered into a Professional Service Agreement for the design of Dillard High School renovation/addition with BRPH Architect Engineers, Inc. ("BRPH"). The School Board has asserted monetary claims for design errors and omissions. BRPH has denied liability for the claimed errors and omissions, or alternatively asserts that The School Board has suffered no damages as a result of its actions.

Pending approval of this Settlement and Release Agreement, The School Board and BRPH have agreed to resolve and settle all claims asserted with respect to the project and pending civil action. BRPH will pay The School Board \$150,000 within thirty (30) days of the date of the approval of the Settlement and Release Agreement.

The School Board Attorney and The School Board's cadre counsel, Oscar E. Soto, Esq., recommend approval of the Settlement and Release Agreement as a fair and reasonable cost-effective resolution of the claim.

SCHOOL BOARD GOALS:

- ☐ •Goal One: All students will achieve at their highest potential.
- ☐ •Goal Two: All schools will have equitable resources.
- ☐ •Goal Three: All operations of the school system will demonstrate best practices while supporting student achievement.
- ☒ •Goal Four: All stakeholders will work together to build a better school system.

FINANCIAL IMPACT:

The School Board will receive \$150,000.

EXHIBITS: (List)

1. Settlement and Release Agreement Between The School Board of Broward County, Florida and BRPH Architect Engineers, Inc.

BOARD ACTION:

APPROVED

(For Official School Board Records' Office Only)

SOURCE OF ADDITIONAL INFORMATION:

Oscar E. Soto, Esq.

Edward J. Marko, Esq.

754-321-2050

Name

Phone

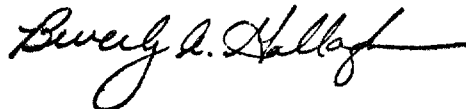
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Office of The School Board Attorney

Edward J. Marko, General Counsel

Approved in Open Board Meeting
on:

JUN 19 2007



School Board Chair

By:

Revised November 28, 2006

JFN/EJM:jcf

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SETTLEMENT AND RELEASE AGREEMENT

KNOW ALL MEN BY THESE PRESENTS;

That the undersigned parties, **THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA** (hereinafter "**SCHOOL BOARD**") in consideration for the payment as set forth in this document, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agrees to release and discharge **BRPH ARCHITECT ENGINEERS, INC.**, (hereinafter "**BRPH**") (collectively referred to as the "**PARTIES**"), a Florida corporation, in accordance with the terms contained herein:

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

WHEREAS, on or about September 21, 1999 the **SCHOOL BOARD** and **BRPH** entered into a professional services agreement for the design, design development, construction documents, and contract administration for a phased replacement, remodeling and improvement to the Dillard High School, located at 2501 NW 11th Street, Ft. Lauderdale, Florida 33311, (hereinafter "**PROJECT**"), Project Number: 0371-99-02;

WHEREAS, on or about August 22, 2006, the **SCHOOL BOARD** filed an action in the Circuit Court of Broward County, Florida, in the case styled, *School Board of Broward County, Florida vs. BRPH Architect Engineers, Inc.*; Case Numbers: 04-013191 (04) (hereinafter "**ACTION**"), regarding its claims on the Project; and

WHEREAS, the **SCHOOL BOARD**'s claims seek to recover monetary compensation from allegations in the **ACTION**, against **BRPH**, regarding alleged design errors and omissions, on the **PROJECT**; and

WHEREAS, the **BRPH** denies any liability to the **SCHOOL BOARD** for the claimed errors and/or omissions, and/or alternatively, that the **SCHOOL BOARD** suffered any damages as a result of its alleged claims; and

WHEREAS, the **PARTIES** to this Settlement and Release Agreement recognize and agree that said disputes have been, and will be, time consuming and expensive and that it is in the best interests of the **PARTIES** hereto, and their officers, officials, agents, principals and employees, that the presently pending claims in the **ACTION** be compromised and resolved; and

WHEREAS, the **PARTIES**, pursuant to the terms of this Settlement and Release Agreement, desire to settle all dispute and controversies regarding only the **ACTION** and the **PROJECT** which pertain to any professional services provided or anticipated pursuant to the **PARTIES'** Agreement;

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. **BRPH**, and/or its insurer, will pay the sum of one-hundred and fifty-thousand dollars (\$150,000.00), to the **SCHOOL BOARD**, within thirty (30) days of the effective date of this Settlement Agreement. The **PARTIES** acknowledge that said amount represents a

compromised sum as full and final payment in consideration for a full release of all claims which the **SCHOOL BOARD** has, had or may have in the future against **BRPH**, with regards to the **PROJECT**, as set forth in paragraph 4 below.

3. Upon the **SCHOOL BOARD**'s receipt of the above-referenced payment, the **PARTIES** will file a Joint Stipulation for Dismissal with Prejudice of the pending **ACTION** referenced above.

4. In consideration of the undertakings described above, the **SCHOOL BOARD** shall hereby release and forever discharges **BRPH**, its Consultants and its insurer, CONTINENTAL CASUALTY COMPANY, from any and all claims, liabilities, demands, obligations, costs, attorneys' fees, actions and causes of actions of every nature, character and description which the **SCHOOL BOARD** has, had or will have in the future, relating to the **PROJECT**, except claims for latent defects or any outstanding professional services due under the **PARTIES'** Agreement, in accordance with the attached Release, Exhibit "A".

5. The **PARTIES** agree to bear their own attorney's fees and costs associated with the **ACTION** referenced above, and agree to waive any claims regarding the same.

6. The **PARTIES** enter into this Settlement Agreement voluntarily and under the advice of their respective counsel.

7. **BRPH** denies any and all liability with regards to any allegation on portion of the **ACTION**, and this Settlement and Release Agreement shall not be construed as admission of liability by **BRPH**, by whom liability is expressly denied, or be admissible in any forum for any purpose other than the enforcement of the terms herein.

8. This Settlement and Release 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 shall retain jurisdiction to enforce and construe this Settlement and Release Agreement.

9. Each person signing this Settlement and Release Agreement warrants that he or she has full legal power to execute this Settlement and Release 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 Settlement and Release Agreement.

10. This Settlement and Release Agreement contains the entire agreement between **PARTIES**, and the terms of the agreement are contractual and not a mere recital. The **PARTIES** agree that all prior negotiations and understandings between the **PARTIES** have been 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.

11. This Settlement and Release Agreement shall not impede, alter or discharge the **PARTIES'** contractual obligation under the Agreement, to the extent any remain, except as to the claims compromised herein or referenced in the **ACTION**.

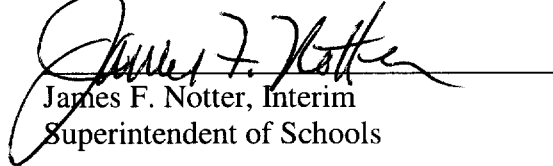
12. This Settlement and Release Agreement shall not impede or be construed to prohibit, bar or impede **BRPH's** ability to seek, petition or proceed with an action to collect its outstanding professional services fees due and owing as a result of the services rendered on the **PROJECT**.

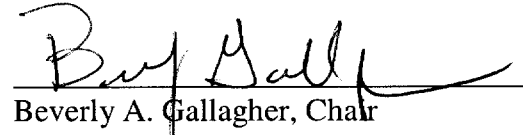
IN WITNESS WHEREOF, the **PARTIES** hereto have made and executed this Agreement on this 19th day of ^{June}~~May~~, 2007, hereinafter the Effective Date.

FOR SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:


James F. Notter, Interim
Superintendent of Schools

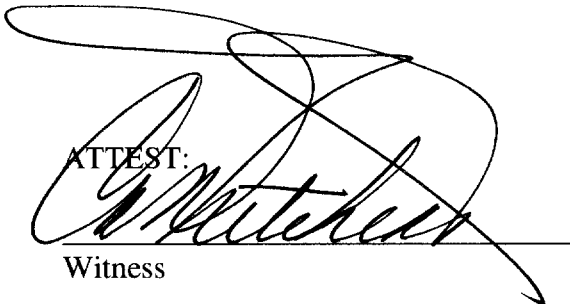

Beverly A. Gallagher, Chair

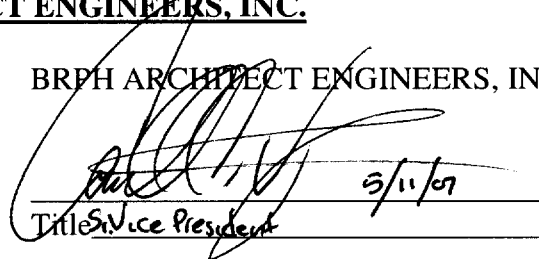
Approved as to Form:


School Board Attorney

FOR BRPH ARCHITECT ENGINEERS, INC.

BRPH ARCHITECT ENGINEERS, INC.


ATTEST:
Witness


5/11/07
Title: Vice President

“Exhibit “A”

SCHOOL BOARD’S RELEASE OF BRPH

KNOW ALL MEN BY THESE PRESENTS that THE SCHOOL BOARD OF BROWARD COUNTY FLORIDA, (the “**First Party**”), for and in consideration of the sum of one hundred fifty thousand and No/100 (\$150,000.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, received from or on behalf of BRPH, and all of their officers, directors, agents, representatives, employees, insurers, sureties, and attorneys, and any and all parties who, together with it or them, might be jointly or severally liable to the First Party, and all of their respective successors and assigns (“**Second Party**”), hereby remises, releases, acquits, satisfies and forever discharges each and every one of the Second Party of and from any and all manner of action and actions, causes and causes of action, 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 First Party ever had or now has, or which the First Party, or any successor or assign of the First Party, hereafter can, shall or may have in the future, against each and every one of the Second Party, for, upon or by reason of any matter, cause or thing whatsoever, including, but not limited to construction and/or design defects, from the beginning of the world to the day of these presents, arising from or connected with the **PROJECT**, Dillard High School, located at 2501 NW 11th Street, Ft. Lauderdale, FL 33311, located in Broward County, Florida, except claims for latent defects or any outstanding professional services due under the **PARTIES** agreement.

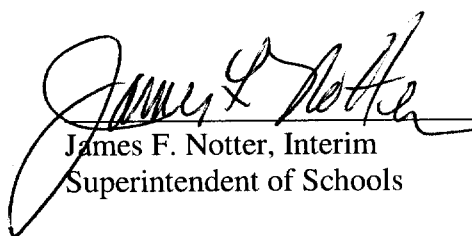
The First Party hereby expressly acknowledges warrants and represents that: (i) this Release was signed only after due consideration and consultation with its attorneys; and (ii) in signing this Release, First Party has not relied upon any oral or written statements or acts made by Second Party or Second Party's attorneys or agents.

The First Party further expressly acknowledges its intention by execution of this Release to discharge Second 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 any other claims arising out of and/or pertaining to the **PROJECT**, or any part or component thereof, except claims for latent defects or any outstanding professional services due under the **PARTIES** agreement.

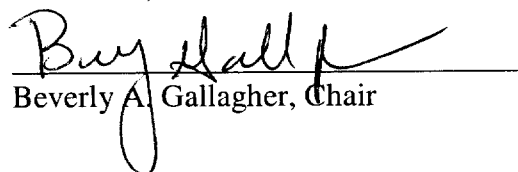
IN WITNESS WHEREOF, the **PARTIES** hereto have made and executed this Release on this 19th day of ^{June}~~May~~, 2007, hereinafter the Effective Date.

FOR SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

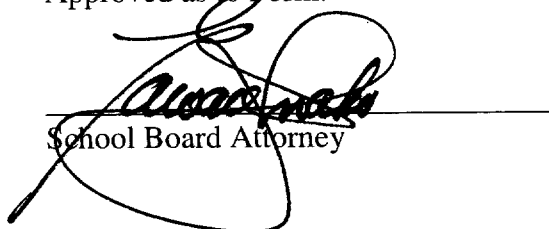
ATTEST:


James F. Notter, Interim
Superintendent of Schools

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA


Beverly A. Gallagher, Chair

Approved as to Form:


School Board Attorney