


AGENDA REQUEST FORM
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Meeting Date 03/20/12	<table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="width: 50%; text-align: center;">Open Agenda <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</td><td style="width: 50%; text-align: center;">Special Order Request <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</td></tr></table>	Open Agenda <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Special Order Request <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Agenda Item Number HH-1												
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TITLE: Final Acceptance of Sandpiper Elementary School Project No. 3061-99-06 and Settlement Agreement between The School Board of Broward County, Florida and Thermal Concepts, Inc.																
REQUESTED ACTION: Approve the Final Acceptance of Sandpiper Elementary School HVAC Additions & Alterations, Project No. 3061-99-06, and approve the Settlement Agreement between The School Board of Broward County, Florida and Thermal Concepts, Inc.																
SUMMARY EXPLANATION AND BACKGROUND: Please see attached Summary Explanation and Background.																
SCHOOL BOARD GOALS: <table style="width: 100%;"><tr><td><input type="checkbox"/> •Goal One:</td><td>Raise achievement of all students to ensure graduation from high school and readiness for post-secondary education.</td></tr><tr><td><input type="checkbox"/> •Goal Two:</td><td>Improve the health and wellness of students and personnel.</td></tr><tr><td><input type="checkbox"/> •Goal Three:</td><td>Provide a safe and secure physical and technological environment for all students and employees.</td></tr><tr><td><input type="checkbox"/> •Goal Four:</td><td>Promote innovation which focuses on best practices and quality efforts that improve our best-in-class position.</td></tr><tr><td><input type="checkbox"/> •Goal Five:</td><td>Recruit, develop, retain, and recognize high performing and diverse faculty and personnel.</td></tr><tr><td><input checked="" type="checkbox"/> •Goal Six:</td><td>Build strong partnerships with family, business, community and government at the classroom, school, area, and district level.</td></tr><tr><td><input type="checkbox"/> •Goal Seven:</td><td>Ensure district's leadership as an environmental steward through innovative ecology and energy conservation programs.</td></tr></table>			<input type="checkbox"/> •Goal One:	Raise achievement of all students to ensure graduation from high school and readiness for post-secondary education.	<input type="checkbox"/> •Goal Two:	Improve the health and wellness of students and personnel.	<input type="checkbox"/> •Goal Three:	Provide a safe and secure physical and technological environment for all students and employees.	<input type="checkbox"/> •Goal Four:	Promote innovation which focuses on best practices and quality efforts that improve our best-in-class position.	<input type="checkbox"/> •Goal Five:	Recruit, develop, retain, and recognize high performing and diverse faculty and personnel.	<input checked="" type="checkbox"/> •Goal Six:	Build strong partnerships with family, business, community and government at the classroom, school, area, and district level.	<input type="checkbox"/> •Goal Seven:	Ensure district's leadership as an environmental steward through innovative ecology and energy conservation programs.
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FINANCIAL IMPACT: The financial impact of this item is \$11,345.90 for interest on the retainage for this project. The source of these funds is Legal and Contingency.																
EXHIBITS: (List) <ol style="list-style-type: none">1. Consent of Surety of Final Payment2. Certificate of Final Inspection – OEF 209 Form3. Collaboration Sign-Off Form (Capital Budget)4. Policy 70055. Settlement Agreement between The School Board of Broward County, Florida and Thermal Concepts, Inc.																
BOARD ACTION: <div style="text-align: center; font-weight: bold; font-size: 1.2em;">APPROVED</div> (For Official School Board Records' Office Only)		SOURCE OF ADDITIONAL INFORMATION: F. Malcolm Cunningham, Jr., Esq. Thomas C. Cooney, Esq. J. Paul Carland, II, Esq.  Name _____ Phone 754-321-2050														

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

J. Paul Carland, II, General Counsel

Office of the General Counsel

Approved in Open Board Meeting

on:

MAR 20 2012

By:

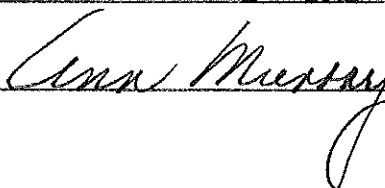
Form #4189

Revised 10/11

RWR/JPC/ICC:jcf

fritz/fllwork/agenda/2012/03-20-12-HH1-Thermal Concepts-Cunningham-arf

School Board Chair



SUMMARY EXPLANATION AND BACKGROUND

On February 6, 2007, The School Board of Broward County, Florida ("SBBC") entered into an Agreement with Thermal Concepts, Inc. ("Thermal") for the addition and alteration of HVAC systems at Sandpiper Elementary School for Project No. 3061-99-06 (the "Project"). A dispute developed between the parties concerning whether the work performed by Thermal conformed to the Agreement, and whether such work was causing chronic malfunction of the HVAC system. As a result of this dispute, the SBBC, through its Facilities Department, withheld payment of Thermal's Final Retainage in the amount of \$156,225.90 and sought repairs of the system.

On or about November 22, 2010, Thermal filed a lawsuit against SBBC in a case styled Thermal Concepts, Inc. v. The School Board of Broward County, Florida, Case No. 10-045492 (05), in the Circuit Court of Broward County, Florida (the "Lawsuit"), alleging in a two count complaint for breach of contract and violation of Local Government Prompt Payment Act. The School Board moved to dismiss the lawsuit and the parties engaged in discussions regarding repairs that Thermal would make to the HVAC system to assure its performance and monitoring that Thermal would undertake to confirm proper performance of the HVAC system.

Thermal proposes to dismiss the lawsuit with prejudice, waive its claim to attorney's fees and costs, accept one-half of the amount of accrued interest as of October 2010 on the Final Retainage, and comply in all respects with the terms of the Settlement Agreement. As part of the Settlement Agreement, Thermal shall provide the SBBC an additional, extended, labor-only warranty on the installed HVAC system and additional training of SBBC personnel on the operation and maintenance of the system. Upon approval of the settlement and in accordance with its terms, the District will pay Thermal its Final Retainage of \$156,225.90, plus the agreed upon interest on the retainage of \$11,345.90.

District staff, the General Counsel, and the School Board Cadre Counsel, F. Malcolm Cunningham, Jr., Esq., recommend approval of the Settlement Agreement as a fair and reasonable cost-effective resolution of the Lawsuit, which will eliminate protracted litigation and additional costs.

End of Document

CONSENT OF
SURETY COMPANY
TO FINAL PAYMENT

☐ OWNER
☐ ARCHITECT
☐ CONTRACTOR
☐ SURETY
☐ OTHER

Bond #3954384

Project: HVAC work at Sandpiper Elementary School

To: (Owner)

The School Board of Broward County
1700 S.W. 14th Court
Ft. Lauderdale, FL 33312

Project No.: 3061-99-06

Contract Date: February 6, 2007

Contractor: Thermal Concepts, Inc., 2201 College Avenue, Davie, FL 33317

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the (here insert name and address of Surety Company)

The Ohio Casualty Insurance Company, 175 Berkeley Street, Boston, MA 02116, as
SURETY COMPANY

on bond of (here insert name and address of Contractor)

Thermal Concepts, Inc., 2201 College Avenue, Davie, FL 33317, as CONTRACTOR

hereby approves the final payment to the Contractor, and agrees that final payment to the Contractor shall not relieve the Surety Company of any of its obligations to (here insert name and address of Owner)

The School Board of Broward County, 1700 S.W. 14th Court, Ft. Lauderdale, FL 33312, as
OWNER

as set forth in the said Surety's bond.

IN WITNESS WHEREOF,

the Surety Company has hereunto set its hand this 8th day of March, 2012.

The Ohio Casualty Insurance Company

By: _____

James F. Murphy, Attorney-In-Fact

Attest: (Seal)

As Per Attached Power of Attorney

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. _____

American Fire and Casualty Company
The Ohio Casualty Insurance Company
West American Insurance Company

Liberty Mutual Insurance Company
Peerless Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That American Fire & Casualty Company and The Ohio Casualty Insurance Company are corporations duly organized under the laws of the State of Ohio, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, that Peerless Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, **GERALD J. ARCH, JAMES F. MURPHY, SHAWN A. BURTON, JOANNE M. MURSELL, MICHAEL A. HOLMES,**

all of the city of FT. LAUDERDALE, state of FLORIDA, each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 22nd day of February, 2012.



American Fire and Casualty Company
The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
Peerless Insurance Company
West American Insurance Company

By: Gregory W. Davenport
Gregory W. Davenport, Assistant Secretary

STATE OF WASHINGTON
COUNTY OF KING

ss

On this 22nd day of February, 2012, before me personally appeared Gregory W. Davenport, who acknowledged himself to be the Assistant Secretary of American Fire and Casualty Company, Liberty Mutual Insurance Company, The Ohio Casualty Company, Peerless Insurance Company and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Seattle, Washington, on the day and year first above written.



By: KD Riley
KD Riley, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, West American Insurance Company and Peerless Insurance Company, which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS - Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts - SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes Gregory W. Davenport, Assistant Secretary to appoint such attorney-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, David M. Carey, the undersigned, Assistant Secretary, of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, West American Insurance Company and Peerless Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 8th day of March, 2012.



By: David M. Carey
David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, bank deposit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

FLORIDA DEPARTMENT OF EDUCATION
Office of Educational Facilities

CERTIFICATE OF FINAL INSPECTION

TO: Office of Educational Facilities (OEF) 325 West Gaines Street, Room 1054 Tallahassee, Florida 32399-0400 (850) 245-0494, Fax (850) 245-0494 or (850) 245-9304	OEF USE ONLY
INSTRUCTIONS: Submit for OEF files one copy of the completed form for all projects with construction costs exceeding \$300,000. Mark the appropriate term within the parentheses. Reproduce this form in sufficient quantity for your use. Section 1013.37(2)(c), F.S.	

RE: _____ Project # P000562 (fka 3081-99-06) _____ **OEF Assigned Project Number**
 _____ School Board of Broward County _____ (☐ School District ☐ Community College)
 _____ Sandpiper Elementary School _____ (☐ School Name ☐ Campus)
 _____ (☐ School ☐ College) Code Number _____
 _____ Additions and Alteration to the HVAC _____ Description of Project

SECTION A: BOARD'S ACCEPTANCE

Upon the recommendation of our Project (☐ Architect ☐ Engineer) in his certification in Section B below, in accordance with Chapter 1013, F.S., THE BOARD ACCEPTED the above-referenced project on _____
 Name (Type or Print) _____
 Signature: James F. Foster Date: 5/6/10
 _____ (☒ Superintendent ☐ President)

SECTION B: (☐ ARCHITECT ☒ ENGINEER) CERTIFICATION

As PROJECT (☐ ARCHITECT ☒ ENGINEER), I have inspected this project and, in my considered professional opinion, the work required by the contract for this project has been completed in accordance with approved contract documents; Chapter 1013, Florida Statutes, Rule 6A-2.0010, FAC, Chapter 553, F.S., and the Florida Building Code.
 Signature: [Signature] Date: 4/14/2010
 Firm Name: Dyank, Inc.
 Address: 2240 Palm Beach Lakes Blvd, West Palm Beach FL 33409
Street/P.O. Box City State Zip

SECTION C: (☐ Building Official ☒ Other (Specify) Certification

I have inspected the project and, in my considered opinion, it is complete and in accordance with applicable statutes, rules, and codes.
 Name (Type or Print) DANIEL MORALES
 Signature: [Signature] 12/1 B11651 Date: 5/4/10
 _____ (☐ Building Official ☒ Certified Inspector)

SECTION D: FACILITY INFORMATION.

1. TYPE OF PROJECT: <input type="checkbox"/> New Plant <input type="checkbox"/> Addition <input type="checkbox"/> Remodeling <input checked="" type="checkbox"/> Renovation AC <input type="checkbox"/> _____	2. CORRECTED "SPACE INVENTORY REPORT" (land, building, room) HAS BEEN FILED WITH THE OEF: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If "No," explain: _____
3. SOURCE OF FUNDS: <input type="checkbox"/> Local <input type="checkbox"/> State <input type="checkbox"/> Federal <input type="checkbox"/> _____	4. ADJUSTED FINAL CONTRACT AMOUNT: \$ <u>\$3,124,518.00</u> 5. PROJECT GROSS SQUARE FOOTAGE: _____ SQ. FT. 6. COST PER GROSS SQUARE FOOT: \$ _____ 7. COST PER STUDENT STATION: \$ _____

CERTIFICATE OF FINAL INSPECTION (CFI)

8. BUILDING CONTRACT DATE: June 1, 2007 COMPLETION DATE: August 18, 2009 (Final)

9. CHANGE ORDERS - List of each Change Order and amount:

C.O. No. 001 \$ 42,545.00

C.O. No. 002 \$ 8,846.00

C.O. No. 003 \$ 10,270.00

C.O. No. 004 (333 days granted to contract)

10. Date of Occupancy: _____ Never lost occupancy ☒

11. Additional Information:

COLLABORATION

SIGN-OFF FORM

Title of Agenda Request Item:

Final Acceptance of Sandpiper Elementary School Project No. 3061-99-06 and Settlement Agreement between The School Board of Broward County, Florida and Thermal Concepts, Inc.

Project No. P. 3061-99-06

School Board Meeting Date:

03/20/2012

☐ All projects have been appropriated in the Adopted District Educational Facilities Plan (September 8, 2011) and in the District's Capital Budget.

☐ The following project(s) have not been appropriated in the Adopted District Educational Facilities Plan (September 8, 2011) and in the District's Capital Budget.

☒

Comments: The financial impact of this item is \$11,345.90 for interest on the retainage for this project.
The source of these funds is Legal and Contingency.

Department Name

Department Head Name

Department Head Signature

Capital Budget

Omar Shim
Director

 3/20/12

Note: By signing this collaboration the Capital Budget Department is acknowledging that the budget impact as stated is correct. Other aspects of the agenda item are the responsibility of the department submitting the item.

CONTACT:

PAYMENTS TO CONTRACTOR DURING CONSTRUCTION

PER STATUTE F.S. 255.078, AND EXCEPT AS PROVIDED BELOW, CONSTRUCTION PAYMENTS ON PROJECTS UP TO FIFTY (50) PERCENT COMPLETION SHALL NOT EXCEED NINETY (90) PERCENT OF THE WORK COMPLETED OR MATERIALS PAID FOR AND PROPERLY STORED ON SITE, OR IN A BONDED WAREHOUSE.

PAYMENTS SHALL BE CONDITIONED UPON OWNER'S REPRESENTATIVE APPROVING PROGRESS OF WORK AND MATERIALS STORED, IN ACCORDANCE WITH THE EXECUTED CONSTRUCTION CONTRACT.

REDUCTION OF RETAINAGE:

PER STATUTE F.S. 255.078, RETAINAGE SHALL BE REDUCED TO FIVE (5) PERCENT AFTER THE PROJECT REACHES FIFTY (50) PERCENT COMPLETION. FURTHER REDUCTION OF RETAINAGE SHALL BE AUTHORIZED ONLY AFTER THE PROJECT ACHIEVES SUBSTANTIAL COMPLETION AND THE CERTIFICATE OF OCCUPANCY OR FORM OEF 110B HAS BEEN FULLY EXECUTED. THE RETAINAGE REDUCTION BELOW FIVE (5) PERCENT SHALL REQUIRE THE RECOMMENDATION OF THE SUPERINTENDENT OR DEPUTY SUPERINTENDENT OF FACILITIES AND CONSTRUCTION MANAGEMENT, AND BE AUTHORIZED BY BOARD ACTION.

REDUCTION OF RETAINAGE ON IDENTIFIABLE PHASED PROJECTS IS PERMITTED, PURSUANT TO THE RULES ABOVE. FOR PHASED PROJECTS, IF THE OVERALL CONTRACT VALUE EXCEEDS THE CONSTRUCTION COST LIMIT PER STATUTE F.S. 287.055; REDUCTION OF RETAINAGE ON INDIVIDUAL PHASES SHALL REQUIRE BOARD APPROVAL.

FINAL PAYMENT OF RETAINAGE:

THE CRITERIA AND CONDITIONS FOR FINAL PAYMENT OF THE RETAINAGE INCLUDE:

1. THE SCHOOL BOARD ACCEPTS THE FACILITY VIA AN EXECUTED FORM 110B.
2. ALL CONTRACTUAL OBLIGATIONS HAVE BEEN COMPLETED.
3. EXECUTED FORM OEF 209, OR WHEN AN OEF 209 IS NOT REQUIRED, CERTIFICATION OF COMPLETION BY THE ARCHITECT OR ENGINEER OF RECORD.

FINAL ACCEPTANCE AND RELEASE OF RETAINAGE ON PROJECTS WITH A CONSTRUCTION COST LIMIT PER F.S. 287.055 SHALL NOT REQUIRE BOARD APPROVAL. APPROVAL SHALL BE GRANTED BY THE DEPUTY SUPERINTENDENT OF FACILITIES AND CONSTRUCTION MANAGEMENT OR DESIGNEE, UPON RECEIPT OF THE EXECUTED CERTIFICATE OF FINAL INSPECTION OR CERTIFICATE OF COMPLETION NOTED ABOVE. FOR THE PURPOSES OF THIS RULE, CONSTRUCTION CONTRACTS THAT DO NOT REQUIRE A CERTIFICATE OF OCCUPANCY SHALL BE CERTIFIED AS SUBSTANTIALLY COMPLETE BY THE ARCHITECT OR ENGINEER OF RECORD.

AUTHORITY: F.S. 1001.41 (1) (2)
F.S. 1013.50
F.S. 218.735 (8)
F.S. 255.078
F.S. 287.055

POLICY ADOPTED: 1/21/82; 5/19/88; 1/16/07

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this 20th day of March, 2012, by and between The School Board of Broward County, Florida ("School Board") and Thermal Concepts, Inc., ("Thermal").

Witnesseth

WHEREAS, the School Board and Thermal entered into an agreement ("Agreement"), dated February 6, 2007, pursuant to which Thermal agreed to perform certain work for the addition and alteration of HVAC systems at Sandpiper Elementary School (Main Building), as further defined in the Agreement, for Project No. 3061-99-06 (the "Project"); and

WHEREAS, disputes have arisen between the School Board and Thermal regarding the School Board's failure to pay Thermal retainage under the Agreement; and

WHEREAS, Thermal filed a lawsuit against the School Board in a case styled *Thermal Concepts, Inc v. The School Board of Broward County, Florida*: Case No.: 10-045492 (05) in the Circuit Court for the Seventeenth Judicial Circuit in and for Broward County, Florida (the "Lawsuit"); and

WHEREAS, the School Board has agreed to pay retainage of \$156,225.90, plus interest on the retainage of \$11,345.90, as final payment to Thermal under the Agreement and Thermal has agreed to accept retainage of \$156,225.90 and interest on the retainage of \$11,345.90, as final payment under the Agreement in the amount of one hundred sixty-seven thousand five hundred seventy one dollars and 80/100 (\$167,571.80); and

WHEREAS, counsel and staff of the School Board recommend resolving Thermal's

pending claim for payment against the School Board 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.** The School Board shall pay to the order of "Thermal Concepts, Inc." the sum of one hundred sixty-seven thousand five hundred seventy one dollars and 80/100 (\$167,571.80), and deliver such payment to counsel for Thermal within thirty (30) days of the School Board's approval and execution of this Settlement Agreement.

3. **Thermal's Release.** As a condition precedent to the receipt of payment, Thermal shall provide the School Board a release, the form of which is attached hereto as Exhibit "A."

4. **Stipulation and Order of Dismissal.** Within ten (10) days of delivery of payment, the parties shall execute and file a Stipulation for Entry of Order of Dismissal with Prejudice, reflecting that each party shall bear its own costs and fees. (A true and correct copy of the form of Stipulation and Order of Dismissal with Prejudice are attached hereto as Comp. Ex. "B").

5. **Extended Labor Warranty.** In addition to what is required by the Agreement,

Thermal shall provide to the School Board a labor only warranty for the Work provided by Thermal pursuant to the Agreement which shall expire at 11:59 pm, June 7, 2012.

6. **Extended Training.** Thermal shall provide School Board personnel training on the proper operation and maintenance of the Project consistent with the provisions of sections 1.03 and 1.04, Demonstration and Instructions, Section 01820 of the Contract Documents contained within the Agreement.

7. **Governing Law.** The Agreement shall remain in full force and effect and shall be altered only to the extent modified herein. This Settlement 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 Settlement Agreement.

8. **Representation by Counsel.** Each of the parties represents that it has read and understands the provisions of this Settlement 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 Settlement Agreement, the Settlement Agreement shall be deemed to have been drafted by each of the parties, neither of whom may assert that it should be construed against the other.

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

10. **Intended Beneficiaries.** This Settlement Agreement is intended for the sole benefit of the parties named herein and shall not inure to the benefit of any persons not specifically named herein.

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

IN WITNESS WHEREFORE, the parties having set forth their duly authorized signatures on the following dates:

Executed the 16 day of February, 2012.

Thermal Concepts, Inc.,

By: [Signature]

Print: M. JESSO MAWER

Title: Vice President

ATTEST:

[Signature]
Name: David Valerchis

State of Florida)
County of Broward) ss:

BEFORE ME, the undersigned authority, personally appeared M. Jesso Mawer as Vice President of **Thermal Concepts, 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 16 day of February, 2012.

[Signature]
Notary Public, State of Florida
Name: Gina Lixie
My Commission Expires: 5-23-2012

(Seal)



GINA LIXIE
MY COMMISSION # DD 775936
EXPIRES: May 23, 2012
Bonded Thru Budget Notary Services

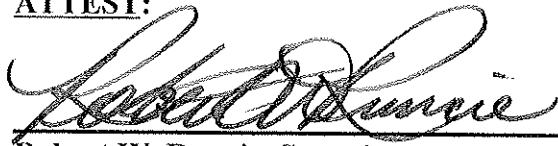
FOR SBBC

Executed the 20th day of March, 2012.

(Corporate Seal)

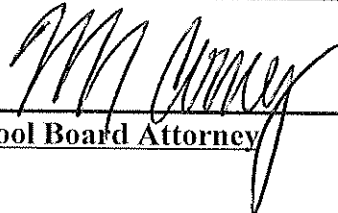
THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:


Robert W. Runcie, Superintendent of
Schools

By 
Ann Murray, Chair

Approved as to Form and Legal Content:


School Board Attorney

GENERAL RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS that THERMAL CONCEPTS, INC. ("THERMAL"), and its respective successors, assigns, corporate affiliates, subsidiaries, parent corporations, officers, shareholders, employees, 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, 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 THERMAL its successors, assigns, employees, 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: *Thermal Concepts, Inc. v. The School Board of Broward County, Florida*: Case No.: 10-45492 (05) in the Circuit Court for the Seventeenth Judicial Circuit in and for Broward County, Florida arising out of Thermal Concepts, Inc.'s Agreement with School Board regarding the Sandpiper Elementary School, Project No. 3061-99-06 (the "Project").

THERMAL CONCEPTS, INC.,

By: 

Print Name: M. JESSE MAURER

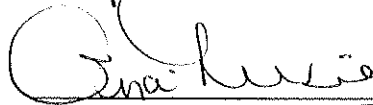
Title: VICE PRESIDENT

State of Florida)
County of Broward) ss:

BEFORE ME, the undersigned authority, personally appeared M. Jesse Maurer as Vice President of **Thermal Concepts, 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 16 day of February, 2012.



Notary Public, State of Florida

Name: Gina Lixie

My Commission Expires: 5-23-2012

(Seal)



GINA LIXIE
MY COMMISSION # DD 775936
EXPIRES: May 23, 2012
Bonded Thru Budget Notary Services

Michael E. Stearns, Esq.
Stearns, Roberts & Guttentag
Attorneys for Thermal
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Ft. Lauderdale, FL 33134
Tel: 954-382-9199

