

SUMMARY EXPLANATION AND BACKGROUND

This Agreement is the result of efforts to resolve differences and disputes between West Construction, Inc. ("West") and The School Board of Broward County, Florida (the "SBBC") arising out of an Agreement, dated December 15, 2009 ("Contract"), for Hallandale Elementary School, New Ball Fields P.000753, (f.k.a. 0593-99-02) (hereinafter the "Project"). During construction of the Project, Board-approved changes to the Contract resulted in increases to both the Project scope and duration.

West sought an amount of \$255,213 for work performed and delays it alleged were caused by active owner interference. Such claim was rejected, in part, by reliance upon the no damages for delay provision in the Agreement, which bars monetary delay claims for active interference.

On or about May 8, 2012, West filed a Complaint against the SBBC styled West Construction, Inc. vs. The School Board of Broward County, Florida, in Broward County Case Number 12-013256 (14), alleging entitlement to damages totaling \$255,213.

Through settlement negotiations, West has agreed to accept compensation from the SBBC with a total value of \$73,776.54 in full and complete settlement of its lawsuit (the "Settlement Sum"). The Settlement Sum is comprised solely of the remaining contract balance (\$49,945.69) plus an amount for additional work satisfactorily performed (\$23,830.85). The Settlement Sum does not contain any delay damages, attorney's fees or interest.

This item resolves and settles the litigation between the SBBC and West, and authorizes Final Acceptance of the Project, but does not release, waive, compromise or discharge any liability or responsibility of the engineer of record for the Project.

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. In conjunction therewith, staff also recommends approval of the Final Acceptance of the Project.

End of Document

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (hereinafter “Agreement”) made as of this ____ day of _____, 2013 by and between THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA (hereinafter referred to as “SBBC”), and WEST CONSTRUCTION, INC. (hereinafter referred to as “WEST”). The SBBC and WEST 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 an Agreement dated December 15, , 2009 (hereinafter referred to as “Contract”) for Hallandale Elementary School, New Ball Fields P.000753, (f.k.a. 0593-99-02) (hereinafter referred to as the “Project” unless otherwise referenced herein); and

WHEREAS, during construction of the Project WEST submitted a claim seeking damages for work performed and alleged delay to the Project (“Delay Claim”); and

WHEREAS, as a result of a dispute regarding the Delay Claim referenced above, on or about May 8, 2012, WEST filed a Complaint against SBBC in Broward County Case Number 12-013256 (14), alleging entitlement to damages, excluding fees and interest, in the amount of approximately Two Hundred Fifty-Five Thousand Two Hundred Thirteen and 00/100 Dollars (\$255,213.00) (hereinafter referred to as the “Lawsuit” unless otherwise referenced herein); and

WHEREAS, the SBBC 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 between the Parties, including their employees, agents, subcontractors, consultants, officers, directors, servants, executors, heirs, administrators, successors and assigns, relative to the Project, up to and including those claims, causes of action and action 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 or any and all other matters related to the Project, in any way; 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 any design professionals, architects, engineers or consultants retained by the SBBC for the Project, including but not limited to Jay Flynn Engineering Services, P.A., or any of its successors, affiliates or assigns; and

WHEREAS, the Parties desire to amicably resolve the Lawsuit and all underlying disputes, but do not admit to any liability nor to the claims and defenses of the other parties hereto; and

WHEREAS, the Parties to this Agreement hereby enter into this Agreement, under which the SBBC agrees to pay certain settlement sums to WEST in full and complete settlement of the Lawsuit as well as all potential or possible causes of action and claims of WEST 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.

Return completed form as needed to:
 Office of Educational Facilities
 325 West Gaines Street, Room 1054
 Tallahassee, Florida 32399-0400
 (850) 245-0494
 Fax (850) 245-9236 or (850) 245-9304

FLORIDA DEPARTMENT OF EDUCATION
 Office of Educational Facilities
CERTIFICATE OF OCCUPANCY

DEF USE ONLY

INSTRUCTIONS: Submit one copy of the completed form for each project over \$300,000.
 Reproduce this form in sufficient quantity for your use.

RE: **Broward**
Hallandale Elementary School
New Ballfields
Project No. 0593-99-02/P.000753

(X School District Community College)
 (X School Name Campus)
 Description of Project
 EFIS Number (if applicable)

In accordance with Section 1013.37(2)(c), Florida Statutes, and upon recommendation of the project architect/engineer and the certified inspector, as stated below, the subject project is ready for occupancy.

Signature: Robert W. Runcie *Robert W. Runcie* Date: 7/10/13
 Superintendent President Designee

Intended Occupancy Date: June 30, 2011

PROJECT ARCHITECT/ENGINEER AND CERTIFIED INSPECTOR I have inspected the subject project and, to the best of my knowledge and ability, I have determined that the safety systems* are working satisfactorily; the facility is in compliance with statutes, rules and codes affecting the health and safety of its occupants; and that no asbestos-containing materials were specified for use in this building, nor to the best of my knowledge were asbestos containing materials used in the construction of this project.

Architect or Engineer of Record:

N/A _____ Rating Achieved _____
 High Performance Green Building Standard Used (S. 255.2575(2), F.S.)

Flynn Engineering Services, P. A. 6578 02-28-2013 2015
 Name (Type or Print) License # Expiration Date

Signature: Jay m Flynn _____
 Architect Engineer

Building Official:

Robert F. Hamberger Bull12 11/30/13
 Name (Type or Print) License # Expiration Date

Signature: RF Hamberger 79-13

Contractor:

West Construction, Inc. CBC 057038 August 31, 2011
 Name (Type or Print) License # Expiration Date

Threshold Inspector (if applicable):

NA _____ License # _____ Expiration Date _____
 Name (Type or Print)

Project Information

Code/Edition FBC 2005 Occupancy Type(s) _____ Construction Type(s) _____ Occupant Load _____

Automatic Sprinkler System Required Y X N District/Community College Permit Number 059308PR510P

Special Permit Stipulations _____

*Safety systems include, but are not limited to: exiting, safety, rescue, fire rating, fire protection, means of egress, master valves, eye wash and dousing shower in science labs; emergency disconnects in shops; fume and dust collection systems; heat and smoke detectors, stage protection including curtain operation, smoke vent, sprinklers, etc.; kitchen hood; fire sprinklers; smoke venting; illumination of means of egress; emergency lighting; emergency power; exit lights; fire alarm systems with required incidental functions; fire extinguishers; fuel fired heaters; electrical illumination; electrical system required ventilation; toilet facilities; kitchen hot water supply; water supply; and sewage disposal as they apply to this project.

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: **0593-99-02 / P.000753**

Broward

Hallandale Elementary School

0593

New Ballfields

OEF Assigned Project Number
(X School District Community College)
(x School Name Campus)
(x School College) Code Number
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) Robert W. Runcie

Signature: _____ Date: _____
(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. (NOTE: See "Additional Information" on page 2 of this document); Chapter 1013, Florida Statutes, Rule 6A-2.0010, FAC, Chapter 553, FS, and the Florida Building Code.

Signature: Jay m. j. Date: 7-1-13

Firm Name: Flynn Engineering Services, P.A.

Address: 241 Commercial Boulevard Fort Lauderdale Florida 33308
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) Robert F. Hamberger
Signature: [Signature] Date: 7-9-13
 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 type="checkbox"/> Renovation <input type="checkbox"/> N/A	2. CORRECTED "SPACE INVENTORY REPORT" (land, building, room) HAS BEEN FILED WITH THE OEF: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input checked="" type="checkbox"/> N/A If "No," explain: Project Limited To installation of new ballfields, lighting and drainage.
3. SOURCE OF FUNDS: <input type="checkbox"/> Local <input type="checkbox"/> State <input type="checkbox"/> Federal <input type="checkbox"/> _____	4. ADJUSTED FINAL CONTRACT AMOUNT: \$ 808,290
	5. PROJECT GROSS SQUARE FOOTAGE: SQ. FT. NA
	6. COST PER GROSS SQUARE FOOT: NA
	7. COST PER STUDENT STATION: \$ NA

CERTIFICATE OF FINAL INSPECTION (CFI)

8. BUILDING CONTRACT DATE: December 15, 2009 COMPLETION DATE: June 30, 2011	
9. CHANGE ORDERS - List of each Change Order and amount:	
C.O. No. 01	\$ 8,198
C.O. No. 02	\$ 2,264
C.O. No. 03	\$ 4,428
10. Date of Occupancy: June 30, 2011	
11. Additional Information:	
<p><u>NOTE: The topsoil mixture installed by the contractor does not comply with the technical requirements of the contract documents. Upon being fully advised by Flynn Engineering Services, P.A., the Owner has elected to accept the topsoil as installed.</u></p>	