

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.

NOW, THEREFORE, in consideration of the foregoing representation of the mutual covenants, promises and considerations hereinafter set forth with the intent to be legally bound, it is agreed by and between the Parties as follows:

1. **Incorporation of Recitals:** The Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

2. **Matters Settled:**

This Agreement settles all claims relating to the Project and any and all claims and causes of action of any nature whatsoever that the Parties had, has or will have in the future relating to the above referenced Project. This Agreement does not settle, and specifically excludes the settlement of or release of WEST from any liability, duty or responsibility of WEST relating to latent defects or damages associated therewith, and which are associated with the Project.

3. **Payment of Settlement Sums:** In full and complete settlement of the Lawsuit, the SBBC agrees to pay WEST Seventy-Three Thousand Seven Hundred Seventy-Six and 54/100 Dollars (\$73,776.54) (hereinafter referred to as "Settlement Sum"). The Settlement Sum shall be paid by the SBBC to WEST within thirty (30) days after approval of this Settlement Agreement as described in Paragraph 4 below.

4. **Approval of Agreement:** Approval of this Agreement by the SBBC at a duly called Board Meeting, shall serve as a condition precedent to payment of the Settlement Sums, as well as the obligation of WEST to transmit to counsel for the SBBC a fully executed Release as referenced in paragraph 5 herein (which shall be held in escrow until the Settlement Sums are delivered to WEST), and the obligation of WEST to submit a Payment Requisition for the Project reflecting the payment of these Settlement Sums to WEST in forms acceptable to the SBBC. The SBBC shall deliver the Settlement Sums to WEST, on or before the thirtieth (30th) consecutive calendar day

after approval of this Agreement by the SBBC at a duly called Board Meeting and delivery of the aforementioned documents to counsel for the SBBC, whichever event occurs last.

To the extent that any conditions precedent as described herein has not been satisfied, all documents (including the Release executed by WEST) shall be returned to WEST, and this Agreement shall be declared null and void.

5. **Release:** WEST shall provide a release to SBBC in the form attached as **Exhibit "A."**

6. **Assignment of Claims:** WEST hereby warrants and represents to the SBBC that as an inducement to the SBBC to pay WEST the Settlement Sums referenced in this Agreement, that it has not and shall not assign or transfer any of its right, title or interest to any claim, cause of action or action that it has or may have in the future relating to the Project to any person or entity relative to the Project.

7. **Dismissal of Lawsuit with Prejudice:** Within three (3) business days of receipt of final payment, WEST shall submit to counsel for SBBC fully executed Stipulation for Final Order of Dismissal with Prejudice using the form attached hereto as **Exhibit "B."** It is understood and agreed that pursuant to the Stipulation, a proposed Final Order of Dismissal with Prejudice, using the form attached hereto as **Exhibit "C,"** shall be submitted to the Court for entry by the Judge.

8. **Attorney's Fees and Costs:**

a. The Parties shall each bear their own attorney's fees and costs incurred in relation to the Lawsuit.

b. The prevailing party in any action to enforce any terms of this Agreement shall be entitled to recover reasonable attorney's fees and costs, whether incurred pre-

litigation, in trial or appellate proceedings.

9. **Choice of Law and Venue:**

a. This Settlement Agreement shall be interpreted in accordance with the substantive laws of the State of Florida.

b. Venue for any dispute arising out of this Agreement shall lie solely and exclusively in a court of competent jurisdiction in the 17th Judicial Circuit in and for Broward County, Florida and the Parties waive the right to venue elsewhere.

10. **Waiver of Jury Trial: THE PARTIES TO THIS AGREEMENT EXPRESSLY WAIVE THEIR RIGHT TO A JURY TRIAL FOR ANY DISPUTE ARISING OUT OF THIS AGREEMENT.**

11. **Authority:** The signatories to the Agreement represent that they have the authority to enter into this Agreement and have the authority to execute the Release attached hereto as Exhibit "A" on behalf of WEST.

12. **Entire Agreement:**

a. This Settlement Agreement sets forth the entire Agreement between the Parties hereto and supersedes any and all prior agreements, understandings, or representations between the Parties hereto pertaining to the subject matter hereof.

b. The Parties acknowledge that this Settlement Agreement is the result of their joint efforts and shall be construed as having been drafted by all Parties hereto.

c. The Parties acknowledge and agree that each is foregoing certain rights and assuming certain duties and obligations which, but for this Settlement Agreement, would not have been released or assumed. Accordingly, the Parties agree that this Settlement Agreement is fully and adequately supported by consideration, is fair and

reasonable, and that the Parties have had the opportunity to consult with and have in fact discussed this matter with counsel of their choice.

d. The Parties have read this Agreement and the Exhibits attached hereto, and have freely and voluntarily entered into this Agreement

13. **Modification and Waiver:**

a. This Settlement Agreement may not be modified except by a writing signed by all Parties hereto.

b. The failure of any of the Parties executing this Settlement Agreement to require the performance of any term or obligation of this Settlement Agreement or the waiver by any of the Parties executing this Settlement Agreement of any breach of this Settlement Agreement shall not prevent any subsequent enforcement of such term or obligation and shall not be deemed a waiver of any subsequent breach.

14. **Counterparts:** This Agreement may be executed in counterparts with each copy being deemed an original.

15. **Notices:** Notices, to the extent they are referenced in this Agreement, shall be to the following persons on behalf of the Parties by certified mail, return receipt requested:

As to the SBBC: THOMAS C. COONEY, ESQ.
OFFICE OF THE GENERAL COUNSEL
The School Board of Broward County, Florida
600 Southeast Third Avenue - 11th Floor
Fort Lauderdale, Florida 33301

As to WEST: BRUCE E. LOREN, ESQ.
LOREN LAW FIRM
2000 Palm Beach Lakes Boulevard, Suite 501
West Palm Beach, Florida 33409

16. **Effective Date:**

a. This Agreement shall be binding upon and shall inure to the benefit of the

Parties, as well as their successors and assigns.

b. This Agreement shall be effective upon execution of this Agreement by all Parties hereto.

17. **Time is of the Essence:** Time is of the essence for the performance and completion of all duties required by this Agreement.

18. **Headings:** All headings contained in this Agreement are designed and used for reference purposes only. The language used in the headings is not controlling and is not considered a substantive part of this Agreement.

IN WITNESS WHEREOF, the Parties, by their duly authorized agents, have signed and sealed this Agreement the day and year first above written.

(Corporate Seal)

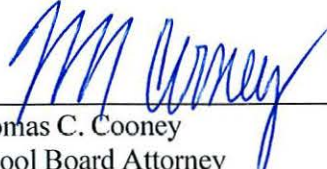
**THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA**

By: _____
Laurie Rich Levinson
Chair

ATTEST:

Robert W. Runcie
Superintendent of Schools

Approved As To Form and Legal Content:



Thomas C. Cooney
School Board Attorney

WEST CONSTRUCTION, INC.

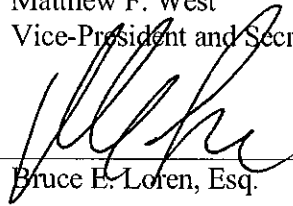
By 
Matthew F. West
Vice-President and Secretary

Bruce E. Loren, Esq.

WEST CONSTRUCTION, INC.

By _____

Matthew F. West
Vice-President and Secretary



Bruce E. Loren, Esq.

EXHIBIT "A"

RELEASE

KNOW ALL MEN BY THESE PRESENTS that WEST CONSTRUCTION, INC., First Party, for and in consideration of the sum of SEVENTY THREE THOUSAND SEVEN HUNDRED SEVENTY-SIX THOUSAND and 54/100 DOLLARS (\$73,776.54), and other valuable consideration, received from or on behalf of THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA, Second Party, the receipt and sufficiency of which is hereby acknowledged:

Singular and plural, heirs, legal representatives, agents, employees, attorneys, and assigns of individuals and the subsidiaries, affiliates, parent corporations, and each of their respective present and former officers, agents, employees including, but not limited to, shareholders, directors, attorneys, insurers, sureties, successors and assigns of corporations, agencies, or political bodies, wherever the context so admits or requires.

DOES HEREBY remise, release, acquit, satisfy, and forever discharge the said Second Party, of and from all claims asserted or that could have been asserted against Second Party in that certain action styled, *West Construction, Inc. v. The School Board of Broward County, Florida*, Broward County Case Number 12-013256 (14), claims at law or in equity, and claims involving labor, services, materials, delays, change orders, compensatory damages, punitive damages, costs, expenses, and attorneys' fees.

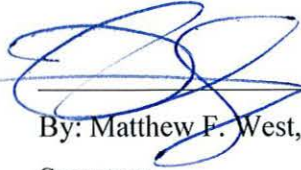
First Party further states it is the proper and authorized entity to execute this Release as and upon behalf of First Party and that it has not assigned, sold, signed, transferred, conveyed, pledged or otherwise disposed of or encumbered any of the claims, damages and other matters referenced herein that are the subject of this Release.

First Party also acknowledges that Second Party has not admitted liability in this matter, that this has been a contested matter in all respects, that this settlement is in full compromise of doubtful and disputed claims, and that neither this Release, nor any

payment made pursuant thereto, shall be construed as an admission of liability by Second Party, such liability being expressly denied by Second Party.

IN WITNESS WHEREOF we have hereunto set our hands and seal this 20th day of June, 2013.


WEST CONSTRUCTION, INC.



By: Matthew F. West, Vice President and Secretary

State of Florida)
County of Palm Beach

THE FOREGOING Release was acknowledged before me this 20th day of June 2013 by Matthew West on behalf of WEST CONSTRUCTION, INC., who is personally known to me or who has produced _____ as identification and who did take an oath.



Notary Public, State of Florida

Print Name

My Commission Expires:



AURORA VEGA
MY COMMISSION # DD 936186
EXPIRES: December 8, 2013
Bonded Thru Budget Notary Services

EXHIBIT "B"

JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO: 12-013256 (14)

WEST CONSTRUCTION, INC.,

Plaintiff,

vs.

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA,

Defendant.

_____ /

STIPULATION FOR FINAL ORDER OF DISMISSAL WITH PREJUDICE

Plaintiff, WEST CONSTRUCTION, INC. ("WEST"), and Defendant, THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA ("SCHOOL BOARD"), through their respective undersigned counsel, stipulate that WEST's Complaint and all claims asserted or that could have been asserted by either party shall be dismissed with prejudice (through a Final Order of Dismissal with Prejudice), with each party to bear its own costs, expenses, and attorneys' fees as to these claims.

Attorney for Plaintiff, WEST
CONSTRUCTION, INC.
Loren Law Firm
2000 Palm Beach Lakes Blvd, Ste. 501
West Palm Beach, Florida 33409
Tel: (561) 615-5701
Fax: (561) 615-5708

Attorney for Defendant, THE SCHOOL BOARD OF
BROWARD COUNTY, FLORIDA
Office of the General Counsel
600 S.E. 3rd Avenue, Floor 11
Fort Lauderdale, Florida 33301
Tel: 754-321-2050
Fax: 754-321-2050

By:
Bruce Loren, Esq.
Florida Bar No. 947105

By:
Thomas C. Cooney, Esq.
Florida Bar No. 0551961

Dated: _____

Dated: _____

EXHIBIT "C"

JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO: 12-013256 (14)

WEST CONSTRUCTION, INC.,

Plaintiff,

vs.

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA,

Defendant.

FINAL ORDER OF DISMISSAL WITH PREJUDICE

THIS CAUSE having come before the Court upon WEST CONSTRUCTION, INC. and Defendant, THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA's Stipulation for Final Order of Dismissal with Prejudice and the Court, having been advised of agreement of respective counsel and being fully advised in the premises, it is thereupon:

ORDERED AND ADJUDGED as follows:

1. The Stipulation for Final Order of Dismissal with Prejudice is approved and ratified by the Court.
2. All claims asserted or which could have been asserted in the lawsuit are dismissed with prejudice, with each party to bear its own costs, expenses, and attorneys' fees as to these claims.

DONE AND ORDERED in Chambers, in Broward County, Florida, this ____ day of _____, 2013.

Honorable Marc H. Gold
CIRCUIT COURT JUDGE

Copies furnished to:
Bruce E. Loren, Esq.
Thomas C. Cooney, Esq.