

AGENDA REQUEST FORM
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Meeting Date 08/05/03	<input checked="" type="checkbox"/> Open Agenda <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Time Certain Request <input type="checkbox"/> Yes <input type="checkbox"/> No	Agenda Item Number H-1
---------------------------------	--	--	----------------------------------

TITLE: **Settlement Agreement Between The School Board of Broward County, Florida and Decon Environmental & Engineering, Inc.**

REQUESTED ACTION: **To approve the Settlement Agreement Between The School Board of Broward County, Florida and Decon Environmental & Engineering, Inc.**

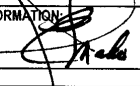
SUMMARY EXPLANATION AND BACKGROUND:
 On January 23, 2001, Decon Environmental & Engineering, Inc. ("Decon") was awarded six separate Contracts to perform "Design-Build Modular Classrooms work on behalf of The School Board at Broward Estates Elementary School (Project No. 0501-21-01), Lloyd Estates Elementary School (Project No. 1091-21-01), Park Ridge Elementary School (Project No. 1951-21-01), Sander's Park Elementary School (Project No. 0891-21-01), Walker Elementary School (Project No. 0321-201-01) and Fairway Elementary School (Project No. 1641-21-01). Decon achieved final completion of all work at each of the foregoing schools.

On March 5, 2003, Decon submitted a claim to The School Board which was later amended to allege entitlement to damages in excess of \$1,200,000.00 for many issues including payment for disputed change order work, claims for unforeseen conditions, not made known to Decon at the time of bidding, alleged delays and disruptions in performance of the work, out of sequence performance of labor, claims of subcontractors and suppliers, extended home office overhead, extended general conditions, interest and attorney's fees. Retainage due Decon is not in dispute between the parties and will be paid separately from those Settlement Sums (\$643,344.00) to be paid pursuant to the Settlement Agreement. In an effort to arrive at a resolution of the claim, the parties engaged in significant negotiations and exchange of information and have relied upon construction professionals in analyzing the Decon Claim in order to achieve an amicable resolution.
 The School Board's Cadre Counsel, Steven B. Lesser, Esq., recommends approval as a fair, reasonable and cost effective resolution of this 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 business practices while supporting student achievement.
 *Goal Four: All stakeholders work together to build a better school system.

FINANCIAL IMPACT:
\$643,344.00

EXHIBITS: (List)
 1. Settlement Agreement Between The School Board of Broward County, Florida and Decon Environmental Engineering, Inc.

BOARD ACTION: APPROVED	SOURCE OF ADDITIONAL INFORMATION: Steven B. Lesser, Esq. Edward J. Marko, Esq. 	954-765-8866
(For Official School Board Records' Office Only)	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: **AUG - 5 2003**
 By:  School Board Chair

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (hereinafter "Agreement") made as of this ^{5th}~~28th~~ day of August~~July~~, 2003 by and between THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA (hereinafter referred to as "SBBC") and DECON ENVIRONMENTAL & ENGINEERING, INC. (hereinafter referred to as "DECON"). The SBBC and DECON shall hereinafter collectively be referred to as the "Parties" unless otherwise referenced herein:

WITNESSETH:

WHEREAS, the Parties to this Agreement have heretofore had existing between them certain differences arising out six (6) separate contracts awarded by the SBBC to DECON on January 23, 2001 regarding "Design-Build Modular Classrooms" work to be performed at six (6) schools namely, Broward Estates Elementary School (Project No: 0501-21-01), Lloyd Estates Elementary Schools, (Project No. 1091-21-01), Park Ridge Elementary School (Project No: 1951-21-01), Sander's Park Elementary School (Project No: 0891-21-01), Walker Elementary School (Project No: 0321-201-01) and Fairway Elementary School (Project No: 1641-21-01). The work performed at each of the foregoing schools shall hereinafter be referred to as "Work" unless otherwise stated. In addition, the six (6) schools referenced above shall hereinafter be collectively referred to as "Projects" unless otherwise stated herein.

WHEREAS, DECON submitted a claim to the SBBC dated March 5, 2003 along with amendments, alleging entitlement to damages in excess of One Million Two Hundred Thousand (\$1,200,000.00) Dollars, for many issues, including payment for disputed change order Work performed for the Projects, claims for unforeseen conditions, not made known to DECON at the time of bidding, alleged delays and disruptions in performance of the Work, as well as out of sequence performance of labor, claims of subcontractors and suppliers, extended home office

overhead, extended general conditions, interest, attorney's fees (hereinafter collectively referred to as the "Claim"); and

WHEREAS, the SBBC has asserted various defenses to the DECON Claim; and

WHEREAS, DECON has achieved Final Completion of the Projects; and

WHEREAS, this Agreement, subject to the provisions below, resolves the Claim of DECON and those of its employees, agents, officers, directors, servants, executors, heirs, administrators, successors and assigns, relative to the Projects; and

WHEREAS, nothing in this Agreement is intended to nor shall act as a release limitation or discharge of liability or responsibility of any design professionals, architects, engineers or consultants retained by the SBBC for the Projects; and

WHEREAS, the Parties to this Agreement participated in numerous negotiation sessions in an effort to resolve the Claim . In furtherance of this process, the Parties exchanged and analyzed voluminous documents and information relative to the Projects; and

WHEREAS, the Parties have arrived at an amicable settlement of the claims of the respective parties, subject to the provisions of this Agreement; and

WHEREAS, the Parties to this Agreement hereby enter into this Agreement, under which the SBBC agrees to pay certain settlement sums to DECON in full and complete settlement of the Claim, the causes of action and claims of DECON relating to the Projects including but not limited to those matters described in the Claim excepting those matters referenced in Paragraph 3 below entitled "Matters Not Settled"; and

WHEREAS, the Parties to this Agreement do not admit any wrongdoing or liability but have determined to settle and compromise the Claim 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 claims of the respective Parties as outlined in this Settlement 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 above Recitals are hereby incorporated into this Agreement as if fully set forth herein.

2. Matters Settled: This Agreement settles all of the claims, causes of action of any nature whatsoever that DECON had, has or will have in the future relating to the Claim as well as for labor and material supplied to the Projects by DECON, including but not limited to those claims, causes of action and damages which were or could have been asserted that arose with respect to the Projects and/or any and all events and causes that delayed or could have delayed DECON in its Work. The only exceptions to the matters settled are those matters described in Paragraph 3 below entitled "Matters Not Settled."

3. Matters Not Settled: This Agreement does not settle, limit, waive or release any claims and/or causes of action of the SBBC against DECON and/or its subcontractors, materialmen, or suppliers arising out of, regarding or relating to any warranties (if any) that are still in effect relating to the Projects. Additionally, this Agreement does not settle any obligation of DECON to provide Project Records to the SBBC as set forth in the Contract Documents for the Projects; rights of indemnification in favor of the SBBC pursuant to the Contract Documents for the Projects, as well as any and all claims and causes of action of the SBBC that are not settled by this Agreement based

upon the provisions of the Payment and Performance Bonds that relate to the Projects. Furthermore, this Agreement does not settle, waive, compromise, limit or release any claims and/or causes of action of the SBBC for: (a) patent and/or latent defects with respect to labor and materials provided to the Projects; (b) any claims and/or causes of action of the SBBC against any design professionals, architects, engineers or Projects consultants retained by the SBBC for the Projects, and (c) any future claims for personal injury. Furthermore, this Agreement does not settle, waive, compromise, limit or release any defenses available to DECON with reference to all claims and/or causes of action of the SBBC that have not been settled as described in this Paragraph.

4. Payment of Settlement Sums: In full and complete settlement of the Claim, the SBBC agrees to pay DECON the total sum of Six Hundred Forty-Three Thousand Three Hundred Forty-Four (\$643,344.00) Dollars to resolve the Claim (hereinafter referred to as "Settlement Sums").

5. Releases and Payment of Settlement Sums: 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. DECON shall also transmit to counsel for the SBBC a fully executed Release in the form labeled and attached hereto as Exhibit "A", Consent of Surety to Final Payment and a Final Requisition for the Projects in forms acceptable to the SBBC. The furnishing of the aforementioned documents to the SBBC shall also serve as a condition precedent to payment of Settlement Sums to DECON. The SBBC shall deliver the Settlement Sums made payable to DECON on or before the twentieth (20th) consecutive calendar day from 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 above have not been satisfied, all documents (including the Release from DECON) shall be returned to the respective parties, and this Agreement shall be declared null and void.

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

7. Entire Agreement: This written Agreement, including Exhibit "A", attached hereto, constitutes the entire agreement between the Parties and may not be amended or modified except in writing by each of the Parties.

8. Construction: This Agreement is the joint product of those respective Parties and may not be more strictly construed against any party.

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

10. Authority To Bind Parties: The signatories to this Agreement warrant and represent to each other that they are authorized to bind their respective entity to the terms and conditions of this Settlement Agreement.

11. 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: STEVEN B. LESSER ESQ.
 Becker & Poliakoff, P.A.
 3111 Stirling Road
 Post Office Box 9057
 Fort Lauderdale, Florida 33310-9057

As to DECON : ELLIS KOWEN
 Decon Environmental & Engineering, Inc.
 2652 N.W. 31st Avenue
 Fort Lauderdale, Florida 33311

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 *Lois Wexler*
Lois Wexler, Chair

ATTEST:

Franklin L. Till
Franklin L. Till, Superintendent of Schools

Approved As To Form:

Edward J. Marko
Edward J. Marko,
School Board Attorney

DECON ENVIRONMENTAL &
ENGINEERING, INC.

K. Kelly
Witness
L. Kelley
Witness

By *Sara Levin*
Sara Levin, President

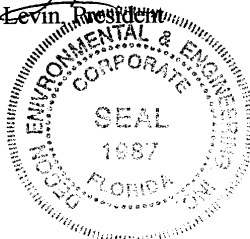


EXHIBIT "A"
RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That DECON ENVIRONMENTAL & ENGINEERING, INC. its officers, agents, servants, successors, heirs, administrators, executors, successors, and assigns (hereinafter referred to as "B&A"), for and in consideration of the mutual covenants and promises as set forth in that certain Settlement Agreement, dated as of ~~July 28~~ ^{August 5th}, 2003 ("Settlement Agreement"), hereby remises, releases, acquits, satisfies and forever discharges THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA, and any of its employees, agents, officers, directors, servants, executors, heirs, administrators, successors, assigns, design professionals, architects, engineers and consultants, subcontractors, materialmen and suppliers (hereinafter collectively referred to as "SBBC"), from the matters referenced in the above-referenced Settlement Agreement, as well as from any and all manner of action and actions, claims, liabilities, losses, cause and causes of action, suits, debts, dues, sums of money, contract retainage, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, warranties (including express, implied, contractual and statutory), claims and demands whatsoever, in law or in equity, which DECON can, shall, or may have in the future or did have against the SBBC emanating or relating, directly or indirectly, from the SBBC's involvement relating to the performance of labor, furnishing material and other work performed by DECON at the following School Projects ("Work") namely, Broward Estates Elementary School (Project No: 0501-21-01), Lloyd Estates Elementary Schools, (Project No. 1091-21-01), Park Ridge Elementary School (Project No: 1951-21-01), Sander's Park Elementary School (Project No: 0891-21-01), Walker Elementary School (Project No: 0321-201-01) and Fairway Elementary School

(Project No: 1641-21-01). The six (6) Schools shall hereinafter be collectively referred to as "Projects" unless otherwise stated including, but not limited to the matters alleged in the Claim submitted by DECON as well as any and all events and causes that delayed or could have delayed DECON in its Work or caused them to incur additional costs and expenses with respect to the Projects.

This Release is not intended to waive, release or compromise any defenses DECON may have to any claim asserted by the SBBC pursuant to the following: (a) any warranties relative to the Projects; (b) obligations to provide Project Records to the SBBC pursuant to the Contract Documents; (c) rights of indemnification; (d); claims against the Payment and Performance Bonds for the Projects and (e) any future claim for personal injury.

In the event that any portion or provision of this Release is finally adjudged to be invalid or unenforceable for any reason, such portion or provision shall be deemed excised, and such recision shall have no effect upon the remaining portions and provisions of this Release.

It is further stated that the undersigned has read the foregoing Release and knows the content and signs it as a free act.

IN WITNESS WHEREOF, I have hereunto set my hand(s) and seal(s) this 28th day of July, 2003.

Signed, sealed and delivered
in the presence of:

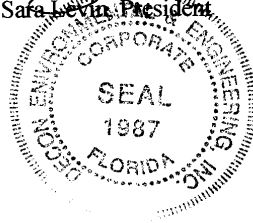
DECON ENVIRONMENTAL &
ENGINEERING, INC.

L. Gillespie
Signature of Witness

L. GILLESPIE
Printed Name of Witness

Keith Sivers

By Sara Levin
Sara Levin, President



Audrey J Croft
Signature of Witness

AUDREY J CROFT
Printed Name of Witness

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 28th day of July, 2003 by SARA LEVIN of DECON ENVIRONMENTAL & ENGINEERING, INC., a corporation, on behalf of the corporation. ~~He~~ She took an oath, and is personally known to me or has produced as identification and acknowledged before me that SRL executed the same freely and voluntarily for the purposes therein expressed.

Lesley Kent Gillespie
NOTARY PUBLIC, STATE OF FLORIDA

Printed Name of Notary Public

My Commission Expires:



787494_1.DOC