

**APPROVE SETTLEMENT AGREEMENT BETWEEN PUBLIC BUILDING COMMISSION
AND McHUGH/RITEWAY JOINT VENTURE**

THE GENERAL COUNSEL RECOMMENDS THE FOLLOWING:

Approve appropriation for a settlement agreement and partial release between the Public Building Commission ("PBC") and McHugh/Riteway Joint Venture ("McHugh") regarding the construction of the Little Village High School construction project ("Little Village High School Project"). Information pertinent to this settlement agreement is as follows:

ENTITIES: McHugh/Riteway Joint Venture
c/o James P. McHugh
1737 S. Michigan Avenue
Chicago, IL 60616

Public Building Commission
Richard J. Daley Center, Room 202
Chicago, Illinois 60602

HISTORY: The proposed settlement agreement resolves disputes that arose between the PBC and McHugh/Riteway concerning the contract for the Little Village High School Project ("PBC Contract 1304"). McHugh was the general contractor for the Little Village High School Project. There remain numerous unfinished work items under Contract 1304, as identified by the Board's Department of Operations and PBC. This settlement agreement will provide for a resolution of the outstanding monetary issues claimed by McHugh under Contract 1304, a reservation of certain contract rights by the PBC, and the retention of certain settlement monies set forth below until remaining work items under Contract 1304 are completed.

DESCRIPTION OF SETTLEMENT: McHugh claims additional compensation for certain costs it claims are due under Contract 1304. The settlement agreement will adjust the contract price and resolve the balance by paying McHugh an additional sum of \$3,685,000.00, with a retention amount of at least \$503,300 to be paid only upon McHugh's completion of items on a Compiled Punch list/Issue Log dated April 13, 2007 ("Remaining Work List"). McHugh will release PBC and the Board, and PBC will release McHugh only as to the liquidated damages under Contract 1304 (i.e., money damages relating to delay), and underutilization of specified categories of labor and underutilization of minority or women owned businesses under Contract 1304. The settlement agreement shall be conditioned upon the execution within 45 days of this Board Report's adoption of a written settlement agreement incorporating the material terms of this Board Report as to the retention, the Remaining Work List, the reservation of rights by PBC and the Board, and the following conditions:

1. A retention amount of at least \$503,300 shall be withheld from any lump sum payment to McHugh under Contract 1304 until McHugh timely completes all items on the Remaining Work List and submits to PBC all appropriate payment applications and interim and final lien waivers.
2. The only claims released by PBC are those as to monies owed or allegedly owed to McHugh on Contract 1304, underutilization of specified categories of labor under Contract 1304, and underutilization of minority or women owned businesses under Contract 1304. All other rights shall be expressly reserved.
3. The Settlement Agreement does not resolve any other pending or anticipated litigation related to the Little Village High School Project involving the PBC, McHugh, the Board and/or any entity or person who is not a party to the Settlement Agreement.

AUTHORIZATION: Authorize the Chief Financial Officer to execute a settlement agreement as to substance and the General Counsel to execute a settlement agreement as to legal form between PBC and McHugh incorporating the above-referenced terms.

LSC REVIEW: LSC approval is not applicable to this report.

AFFIRMATIVE ACTION STATUS: Not applicable.

FINANCIAL: Charge \$3,685,000.00 to the Capital Improvement Fund Fiscal Year: FY 08
Budget Classifications0014-401-XXXX-54125

GENERAL CONDITIONS:

Inspector General - Each party to the agreement shall acknowledge that, in accordance with 105 ILCS 5/34-13.1, the Inspector General of the Chicago Board of Education has the authority to conduct certain investigations and that the Inspector General shall have access to all information and personnel necessary to conduct those investigations.

Conflicts - The agreement shall not be legally binding on the Board if entered into in violation of the provisions of 105 ILCS 5/34-21.3 which restricts the employment of, or the letting of contracts to, former Board Members during the one year period following expiration or other termination of their terms of office.

Indebtedness - The Board's Indebtedness Policy adopted July 26, 1995, (95-0726-EX3), as amended from time to time, is hereby incorporated into and made a part of the agreement.

Ethics - The Board's Ethics Code adopted September 27, 1995, (95-0927-RU3), as amended from time to time, is hereby incorporated into and made a part of the agreement.

Contingent Liability - The agreement shall contain the clause that any expenditure beyond the current fiscal year is deemed a contingent liability, subject to appropriation in the subsequent fiscal year budget(s).

Approved,



Patrick J. Rocks
General Counsel

Within Appropriation:


John Maiorca
Chief Financial Officer