



South Washington County Schools

Keith Jacobus, Ph.D., Superintendent

District Service Center

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Cottage Grove, MN 55016

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ADMINISTRATIVE REPORT

TO: Members of the School Board
Keith Jacobus, Superintendent

FROM: Michael T. Vogel, Interim Director of Facilities and Construction
Management

DATE: July 18, 2018

TOPIC/PURPOSE OF REPORT: Settlement Agreement with Friedges Landscaping regarding compensable rock removal quantities.

RECOMMENDED BOARD ACTION: Approve the attached Settlement Agreement authorizing payment of \$202,500 to Friedges Landscaping as additional compensation for rock removal in excess of the amount specified in the contract documents

DATE FOR BOARD ACTION: July 26, 2018

REPORT

Friedges has filed a demand for arbitration, asserting that they are owed \$411,750.00 for rock removal in excess of the amount specified in the bid and contract award documents. The district has asserted that Friedges has misinterpreted the language in the bid documents, relating to rock quantities, failed to follow the prescribed procedure for identifying "excess rock" and quantifying the additional amount of rock to be removed and is thereby not entitled to any additional compensation.

Attorney Jay Squires has recommended the district approve the attached settlement agreement to avoid an arbitration award in excess of this amount with the added potential of interest due to Friedges under the prompt pay statutes of 1.5% monthly. Administration recommends approval of the Settlement Agreement.

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into on the dates indicated below by and between Friedges Contracting Company, LLC (“Friedges”) and Independent School District No. 833, South Washington County (“District”).

WHEREAS, Friedges and District entered into a contract dated September 15, 2016, for excavation work for the Oltman Middle School facility located in Cottage Grove, MN (the “Cottage Grove School Project”); and

WHEREAS, a dispute arose between the parties concerning the removal of materials that Friedges has asserted is compensable rock material under the project specifications; and

WHEREAS, Friedges has filed a demand for arbitration in AAA Case No. 01-18-0001-4370 asserting that it is entitled to an increase in the Contract Sum of \$411,750.00, together with interest under the State Prompt Payment Act (the “Friedges Claim”); and

WHEREAS, the District has brought a motion to stay the arbitration on the grounds that the demand is outside the scope of the arbitration agreement of the parties due to Friedges’ alleged failure to comply with certain requirements in the project specifications, said matter being captioned Independent School District No. 833, South Washington County Schools vs. Friedges Contracting Company, LLC, District Court File No. 82-CV-18-1903 (the “District Court Action”); and

WHEREAS, the parties have reached an agreement resolving claims as provided herein.

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

1. The District agrees to pay Friedges Two Hundred Two Thousand Five Hundred and no/100 dollars (\$202,500.00) in full compromise of the Friedges Claim. Said payment shall be made within 10 business days of full execution of this Agreement.
3. Friedges, on its own behalf and a behalf of its successors and assigns, hereby forever and fully releases the District and its consultants, officers, employees, and agents, and their successors and assigns, from any claim for additional compensation arising from or related in any way to the Friedges Claim set forth above or to the Cottage Grove School Project.

3. The parties agree to mutually effect dismissal of the pending arbitration case, and the District agrees to dismiss the District Court Action. The parties agree to cooperate in filing the necessary paperwork to effect dismissal of both proceedings.
4. This Settlement Agreement shall constitute a full and final compromise of the above claims. It is not be considered to be an admission by either party relative to the merits of the disputed claims. Both parties assume responsibility for all costs, disbursements, and attorney's fees incurred, and waive any and all claims for reimbursement by the other party.
5. It is expressly acknowledged that this settlement has been voluntarily entered into, and each of the parties has had the opportunity to consult with legal counsel as to its effect.
6. This settlement constitutes the complete agreement of the parties.
7. The undersigned represent they have the full authority to enter into the terms of this Agreement.
8. This agreement is null and void if not approved by the School Board of District.

**FRIEDGES CONTRACTING
COMPANY LLC**

**SOUTH WASHINGTON COUNTY
SCHOOLS, ISD #833**

By: *John Friedges*

By: _____

Its: *Chief manager*

Its: _____

Dated: *7/19/18*

Dated: _____