

## **Resolution 2021-22:96 Authorization to Commence Third Party Action**

**By Board Member: Kim Jones**

WHEREAS, the Rochester School Facilities Modernization Program Act (“School Modernization Act”) established the Rochester Joint Schools Construction Board (“RJSCB” or “Board”), a seven voting member board consisting of equal representation by the City of Rochester (“City”) and the Rochester City School District (“District”), as well as a member jointly selected by the City and the District; and

WHEREAS, under the School Modernization Act, the RJSCB has certain enumerated powers to act as agent for the District, the City, or both; and

WHEREAS, the authorizing legislation for Phase 2 of the Rochester Schools Modernization Program (“RSMP”) was signed into law by the Governor of the State of New York on December 17, 2014; and

WHEREAS, the amended Act authorized up to 26 projects in Phase 2 of the RSMP including a District Wide Technology program which involves technology upgrades and infrastructure work at several of the possible projects; and

WHEREAS, the RJSCB contracted with Hewitt Young Electric, LLC (“HYE”) for the electrical construction work for the East Campus Project (the “Project”); and

WHEREAS, on September 13, 2021, HYE commenced an action in NYS Supreme Court, Monroe County against the RJSCB seeking to recover damages for breach of contract and quantum meruit, arising out of HYE’s contract to perform electrical construction work on the Project; and

WHEREAS, the RJSCB has answered HYE’s complaint, denied the substantive allegations and asserted counterclaims in connection with HYE’s deficient performance on the Project; and

WHEREAS, the Program Manager and the RJSCB’s General Counsel recommended that the Board commence a third-party action for indemnity, contribution, breach of contract and negligence against the Project’s construction manager (The Pike Company), architect (Cannon Design, Inc.) and electrical engineer (Popli Design Group) based on their actions or inactions relative to the unauthorized and unapproved installation of an electrical bus duct system by HYE; and

WHEREAS, the RJSCB Board considered, discussed and deliberated the recommendation at its March 14, 2022 regular meeting.

NOW THEREFORE, BE IT RESOLVED, that the RJSCB hereby authorizes the RJSCB’s General Counsel to commence and prosecute a third-party action against The Pike Company, Cannon Design, Inc. and Popli Design Group.

**Second by: Jesse Dudley**