

Resolution 2022-2023:21

Authorization to Resolve CannonDesign Claim

By Board Member Rich Perrin

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 CannonDesign ("Cannon") for the architectural and engineering services for the East Campus Project (the "Project"); and

WHEREAS, the RJSCB and Cannon have been involved in negotiations arising out of Cannon's performance on the Project and claimed errors and omissions and associated charges for the same (the "Action"); and

WHEREAS, the RJSCB has asserted claims for a reduction in Cannon's compensation as a result of said negotiations (the "E&O Claim"), and Cannon has contested such claims and filed a breach of contract action for nonpayment (the "Action"); and

WHEREAS, the Board authorized the Chair and Bond, Schoeneck & King ("BSK") to enter into settlement discussions with Cannon to attempt to resolve the E&O Claim and Action; and

WHEREAS, the Chair and BSK have recommended to the Board that it fully and finally resolve the RJSCB's E&O Claim against Cannon through a reduction in Cannon's contract sum of \$200,000 in exchange for a release and the discontinuance of the Action with prejudice; and

WHEREAS, the RJSCB considered the recommendations of the Chair and BSK and after due deliberation, it determined that it is in the best interest of the RJSCB to resolve this matter on the terms set forth above and avoid the burden, uncertainty, delay, expense and distraction of continued litigation.

THEREFORE, BE IT RESOLVED:

1. The proposed settlement between the RJSCB and Cannon as set forth above is hereby approved; and
2. The Chair and BSK are authorized in the name and on behalf of the RJSCB, to prepare and execute any necessary instruments to effectuate the settlement described above.

Second by Member Ron Gaither

Adopted: 6-0