

Resolution 2023-24: 04

Amendment #11 to CannonDesign Agreement – East (Phase 2)

By Board Member: Kim Jones

WHEREAS, the Rochester School Facilities Modernization Program Act (the “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 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 (“DWT”) program, which involves technology upgrades and infrastructure work at several of the possible projects; and

WHEREAS, for Phase 2 of the RSMP, the RJSCB intends to undertake 14 projects for the design, reconstruction, or rehabilitation of existing school buildings for their continued use by the District (collectively, the “Phase 2 Projects”), which have been further defined as Phase 2a, Phase 2b, Phase 2c and Phase 2d, plus a DWT project at each of the Phase 2 school buildings; and

WHEREAS, the East School (“East”) is one of the projects included in Phase 2 of the RSMP as provided in the Phase 2 Master Plan; and

WHEREAS, the RJSCB approved the selection of CannonDesign (“Cannon”) as the Architect for the East project in Phase 2 (Resolution 2014-15: 216); and

WHEREAS, the RJSCB entered into an agreement with Cannon (Resolution 2014-15: 216) dated December 22, 2015, entitled Agreement Between Board and Architect (the “Agreement”) for the East project (“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”);

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 had 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 (Resolution 2022-23: 21); and

WHEREAS, Amendment #11 provides that in consideration of the terms of the Settlement Agreement, Cannon has agreed, among other things, to provide a monetary credit to Board of \$200,000.00, and the Board agrees to pay Architect the remaining balance on the Design Agreement, which amounts to \$158,796.97, in full satisfaction of Cannon's nonpayment claims asserted under the Agreement and in the Action;

WHEREAS, the Amendment #11 provides for a reduction of the Fee as set forth in the Agreement in the amount of **\$200,000.00**; and

WHEREAS, the Chair and BSK recommended to the RJSCB that Cannon's Agreement should be amended as set forth herein and the total amount of Fee be reduced by \$200,000.00; and

WHEREAS, the RJSCB Board considered, discussed and deliberated the Chair's recommendation at its July 10, 2023 regular meeting.

THEREFORE, BE IT RESOLVED:

1. The Rochester Joint Schools Construction Board hereby approves the proposed Amendment #11 to the Agreement between RJSCB and Cannon dated December 22, 2015, as set forth above decreasing the total amount of the Agreement by the sum of \$200,000.00; and
2. The RJSCB's Chair is hereby authorized, in the name and on behalf of the RJSCB, to execute an amendment to the Agreement that is consistent with this approval and in an acceptable form to the Chair upon the advice of the RJSCB's general counsel.

Second By: Jesse Dudley

Adopted: 5-0