

Resolution 2021-22: 84 Independent Compliance Officer Third Amendment to Phase 2 Agreement

By Board Member Jesse Dudley

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 amended Act requires the Board is to engage an Independent Compliance Officer ("ICO") to report directly to the Board; and

WHEREAS, in April of 2016, the RJSCB issued a request for proposals regarding ICO services for Phase 2 of the RSMP (Resolution 2015-16: 145); and

WHEREAS, in August 2016, the RJSCB awarded the Phase 2 Independent Compliance Officer Services contract to the firm Baker Tilly Virchow Krause LLP ("Baker Tilly") (Resolution 2016-17: 28) and entered into an agreement with Baker Tilly dated August 9, 2016 ("Agreement"); and

WHEREAS, Baker Tilly and Anchin Block & Anchin LLP ("Anchin") requested that the RJSCB consent to the assignment of the Agreement to Anchin for ICO services for Phase 2 of the RSMP; and

WHEREAS, the RJSCB, Baker Tilly, and Anchin on May 6, 2019, consented to the assignment (the "Assignment") of the Agreement to Anchin upon the satisfaction of certain conditions (Resolution 2018-19:167); and

WHEREAS, the Agreement was amended on October 16, 2017 ("Amendment One") to allow the ICO to provide additional out-of-scope services requested and approved by the RJSCB as well as Business Opportunity Program ("BOP") services in the not-to-exceed amount of \$540,000 and such scope change would not resulted in an increase in the amount of the Agreement (Resolution 2017-18:55); and

WHEREAS, following the execution of the Agreement and Amendment One, Baker Tilly, Anchin and the Program Manager, identified the need for an additional scope of ICO services to review, approve and audit pay requisitions submitted by contractors, vendors, suppliers and consultants hired by the Board (with the exception of Baker Tilly's own pay requisitions and requisitions paid out of the Board's Operating Budget) for the not-to-exceed amount of \$152,916.30 and such scope change would not resulted in an increase in the amount of the Agreement; and

WHEREAS, the Agreement was amended on January 11, 2021 ("Amendment Two") to reduce the out-of-scope services requested and approved by the RJSCB as well as Business Opportunity Program ("BOP") services in the amount of \$387,083.70) and such scope change resulted in a decrease in the amount of the Agreement (Resolution 2020-21:54); and

WHEREAS, following the execution of the Agreement and Assignment One and Two, Anchin, the Chair and the Program Manager, identified an error in the reduction of the amount of the Agreement in Amendment Two; and

WHEREAS, the Chair and Program Manager thereafter recommended that the ICO's Agreement should be amended to correct the amount of the Agreement and increase the total amount of the Agreement by the sum of \$56,494.00; and

WHEREAS, the RJSCB Board considered, discussed and deliberated the Chair and Program Manager's recommendations to amend the Agreement at its November 8, 2021 regular meeting.

THEREFORE, BE IT RESOLVED:

1. The third amendment to the Agreement between the Board and Anchin dated August 9, 2016 as set forth above increasing the total amount of the Agreement by \$56,494.00 is hereby approved; and
2. The RJSCB's Chair is hereby authorized, in the name and on behalf of the RJSCB, to execute an Amendment 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 Board Member I. Geena Cruz

Adopted 6-0