

BUFFALO FISCAL STABILITY AUTHORITY

RESOLUTION NO. 09-43

APPROVING THE MASTER DESIGN AND CONSTRUCTION AGREEMENT OF PHASE V OF THE BUFFALO PUBLIC SCHOOLS RECONSTRUCTION PROGRAM

WHEREAS, the Buffalo City School District (“the District”), in cooperation with the City of Buffalo (“the City”) and the Joint Schools Construction Board (“the JSCB”) has undertaken a comprehensive program to redevelop the educational facilities (“the Program”), has substantially completed Phases I and II, and is nearing completion of Phase III of the Program and has commenced Phase IV of the Program; and

WHEREAS, the State Legislature, by Chapter 605 of the Laws of 2000, as amended by Chapter 59 of the laws of 2003, Chapter 421 of the Laws of 2004, Chapter 283 of the Laws of 2006, Chapter 403, 492 and 497 of the Laws of 2008, and Chapter 209 of the Laws 2009 (collectively, “the Buffalo Schools Redevelopment Act”) has authorized the financing of Phases I, II, III and IV of the Program through the issuance of bonds and notes by the Erie County Industrial Development Agency (“ECIDA”) that, during the existence of a Control Period (as defined in the Buffalo Fiscal Stability Authority Act (the “BFSA Act”), is subject to review and approval by the Buffalo Fiscal Stability Authority (the “Authority”); and

WHEREAS, pursuant to a Comprehensive Program Packaging and Development Services Provider Agreement (the “PPDS Agreement”), dated June 5, 2002 between LPCIMINELLI, INC. (the “Program Provider”) and the JSCB, the Program Provider has undertaken the comprehensive development and redevelopment of the facilities of the Buffalo Public Schools over a ten-year period; and

WHEREAS, the District and Program Provider have identified seven additional school facilities to be redeveloped and the general scope of the work to be completed in such facilities so as to constitute Phase V of the Program, along with a District-wide technology component and energy savings component of the program; and

WHEREAS, pursuant to ARTICLE VIII of the PPDS Agreement, the Program Provider and the JSCB desire to execute this Master Design and Construction Agreement relating to Phase V in order to proceed with the design and construction work; and

WHEREAS, the parties hereto intend that the Master Design and Construction Agreement and the Supplement shall serve as and be deemed to be the fifth (5th) addendum to and part of the PPDS Agreement as contemplated therein; and

WHEREAS, the scope of projects to be completed in Phase V has been expressly authorized by the Buffalo Schools Redevelopment Act and is subject to the approval of the New York State Commissioner of Education; and

WHEREAS, the Program Provider, with the consent and approval of the District, has retained Cannon Design to perform all of the strategic planning and preliminary design services for the Project, and the District, in consultation with Program Provider, has selected the Architects of Record and based on such selection, Program Provider has retained such Architects of Record to prepare under the supervision of the Program Provider and in consultation with the District, the plans and specifications for submission

to State Education Department; and

WHEREAS, in recognition of the joint control of the Architects of Record afforded to the District and Program Provider during the Pre-Construction Phase, the District and Program Provider acknowledge and agree that the District will advance up to \$6,000,000 of fees and expenses for the Architects of Record in the Pre-Construction Phase; and

WHEREAS, after the \$6,000,000 from the District is exhausted, any additional fees and expenses of the Architects of Record for pre-construction work shall be paid out of dollars on deposit in the Local Share Fund, up to but not exceeding \$4,200,000; and

WHEREAS, Section 3858(2)(h) of the Public Authorities Law provides that the Authority “may review and approve or disapprove contracts or other obligations binding or purporting to bind the city or any covered organization,” and

WHEREAS, the District has notified the Authority that it is ready to commence the next phase of the Program with the Program Provider and to implement the Master Design and Construction Agreement for Phase V; and

NOW, THEREFORE IT IS RESOLVED, that the Authority approves the proposed Master Design and Construction Agreement between the JSCB and Program Provider, with approval further conditioned upon the State Education Department’s approval of the plans and specifications for the Program; and further

RESOLVED, that the Authority authorizes the City, the District and the JSCB to enter into necessary and appropriate contracts in connection with Phase V of the Master Design and Construction Agreement; and further

RESOLVED, that the Acting Chair and the Executive Director of the Buffalo Fiscal Stability Authority are hereby authorized and directed to execute and deliver any agreements, certificates, documents, papers or other written instrument, to make any changes, modifications or amendments as he or she deems necessary, to do all other things and to take all other actions necessary and appropriate in their judgment, to consummate the transactions contemplated by this resolution.

This resolution shall take effect immediately.

Approved December 9, 2009

/S/ George K. Arthur

George K. Arthur,
Secretary