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**BUFFALO FISCAL STABILITY AUTHORITY**  
**Meeting Minutes – May 17, 2011**

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The following are the minutes of the Special Meeting of the Board of Directors of the Buffalo Fiscal Stability Authority (“BFSA” or the “Authority”) held on Tuesday, May 17, 2011, in the Buffalo Market Arcade Complex, 1<sup>st</sup> Floor Conference Room. The meeting was called to order at 12:06 PM.

**Board Present:** Arthur, Collins, Johnstone, Mesiah, & Olsen

**Board Excused:** Brown, Giardino, Floss, & Townsend

**Staff Present:** Link, Miller & Mongold

**Additionally Present:** A.V. Buzard, Esq., Harris Beach, PLLC

**Opening Remarks**

Chair Olsen called the meeting to order. He noted that the Special Meeting of the Board had been called for a singular purpose: consideration of the Phase V financing for the Joint Schools Construction Board (“JSCB”). Chair Olsen asked Director Arthur to perform a roll call of the attending Directors.

***Roll Call of Directors***

Director Arthur called a roll of the Board and determined that a quorum was present. He noted that Directors not in attendance at the meeting had given notice that they would not be available. The meeting commenced.

**Joint Schools Construction Board Phase V Financing**

Chair Olsen noted that Acting City Comptroller Darby Fishkin had requested that BFSA review and approve the proposed financing of Phase V of the JSCB. He noted that the financing contained both a new money portion as well as a refunding. BFSA is only required to approve the new money portion. Additionally, BFSA’s approval would be conditional based on the results of the final pricing; the conditional approval is necessary in order to meet the timing needs of the bond deal. The Board is requested to delegate approval of the final pricing to the Chair, Vice Chair, and the Executive Director, consistent with past practices.

Chair Olsen asked Executive Director Jeanette Mongold to summarize the proposed Phase V financing.

Ms. Mongold addressed the Board and offered the following presentation:

**General Information**

The JSCB was created by resolution of the Buffalo Board of Education, Buffalo Common Council, and an amendment to the Buffalo City Charter. The leadership of JSCB is comprised of the following:

- Mayor of Buffalo,
- City Comptroller
- School Superintendent,
- Buffalo Board of Education Designees (2), and
- Buffalo Common Council Designee (1).

The JSCB was created to undertake a comprehensive redevelopment of physical schools. The scope of the project includes:

- 41 of 70 schools improved through Phase IV with an additional 7 school facilities planned for reconstruction for Phase V of the project,
- 5 total phases spanning 10 years,
- \$1.139 billion dedicated to reconstruction to date with total anticipated cost through all 5 phases of \$1.313 billion.

### **History**

All phases of the project include:

- General reconstruction of existing school facilities,
- A District-wide technology program, and
- A District-wide energy program.

A summation of the borrowings is as follows:

- Phase I
  - Bond was issued in September of 2003;
  - Project work completed in April of 2005;
  - 9 school facilities were reconstructed.
- Phase II
  - Bonds were issued in December of 2004 and August of 2007;
  - Project work completed in June of 2008;
  - 13 school facilities were reconstructed.
- Phase III
  - Bonds were issued in August of 2007 and February 2008;
  - Project work is substantially complete to date;
  - 5 school facilities were reconstructed.
- Phase IV
  - Bond was issued in November of 2009;
  - Project work is scheduled for completion in April of 2012;
  - 10 school facilities will be reconstructed.
- Phase V
  - Bond to be issued in June 2011 (contingent on approval)
  - Project work would begin in July of 2011 and is scheduled for completion in June of 2014;
  - 7 school facilities will be reconstructed;
  - Estimated project costs - \$168.2 million;
  - 3 components
    - School reconstruction - \$107.5 million,
    - District-wide technology - \$49.1 million,
    - District-wide energy performance - \$11.6 million.

### **State Aid Reimbursement**

The Maximum Cost Allowance (“MCA”) sets the “aidability” of projects. “Aidability” varies depending on the type of project.

- For example, there is either a reduced reimbursement or no reimbursement for hallways or athletic facilities.
- Estimated building aid for Phase V is 95%.

## General Structure Overview

The general structure of the proposed borrowing is as follows:

- Bond Issuer - Erie County Industrial Development Agency;
- Ground Lessee - Erie County Industrial Development Agency;
- Ground Lessor - Buffalo School District;
- Installment sale - from Erie County Industrial Development Agency to Buffalo School District
- Purchase payments = amount of bond payments (principal + interest);
- Lease term = bond term.

The general structure of the Phase V borrowing is consistent with that of previous phases.

## Master Construction Agreement

JSCB has contracted with LP Ciminelli, Inc., to manage the reconstruction program. LP Ciminelli performs the following actions:

- Determines the costs, designs, specifications, and timing of the projects,
- Selects subcontractors to perform work,
- Responsible for the bidding process,
- Supervises the execution of the work, and
- Responsible for monitoring established diversity goals.

LP Ciminelli works in conjunction with the District on all these actions. Additionally, it is noted that LP Ciminelli has selected the overall design architect, Canon Design.

## Financing Overview

The bond issue consists of both a New Money bond (2011A) as well as a Refunding bond (2011B).

- The New Money (2011A) bond is estimated at \$174,690,000 par;
- The Refunding (2011B) bond is estimated at \$117,745,000 par;
- The estimated total premium at May 16, 2011 is \$9,012,308. The estimated par amount at May 16, 2011 is \$170,020,000.
  - Both current totals reflect favorable changes from the earlier April of 2011 estimates.
- The total expenses associated with issuing the bond is \$3.1 million, or \$18.24 per \$1,000 bonded, representing a decrease from Phase IV of 5.1%, or \$0.73/\$1,000 bond. The decrease is more significant in comparison to Phases IIIA and IIIB, which an approximate decrease of \$6.75/\$1,000 bond, reflecting a decrease of approximately 28%.
- Fees:
  - The New York State Bond Issuance Charge is \$1.4 million, or \$8.33 per \$1,000 issued,
  - The Erie County Industrial Development Agency fee is \$250,000, or \$1.47 per \$1,000 borrowed. It is charged for the New Money borrowing only. This represents a decrease of \$250,000 from Phase IV.
  - The Underwriters' fees are \$1,106,592, or \$6.51/thousand.
- Local Share:
  - Building Aid from New York State is estimated at 95%;
  - The remaining 5% represents the required local share and is funded through a combination of interest earnings on capitalized interest (i.e., funds set-aside until Building Aid is received) and energy savings from the District-wide energy performance portion of the project;
  - There is remaining local share available from prior phases of \$42.8 million, if needed.
- Expected Bond Ratings:
  - Moody's = Aa3;
  - S&P = AA-;

- Fitch = not applied for.
- General notes:
  - JSCB bonds are not a general obligation of the City of Buffalo or the Buffalo School District. As such, JSCB bonds do not reduce the City's constitutional debt limit
  - JSCB bonds are secured by State Aid
    - The State Aid intercept provision leads to a higher bond rating.

## **Risks**

The risks associated with Phase V and the proposed borrowing includes:

- Decrease in Maximum Cost Allowances – When the supplement to the agreement is executed, the actual MCA will not be known. This is due to a time lag in which cost indexes are published, which can be three months or more. The actual MCA is the MCA in effect for the month that the supplement is executed;

Director Arthur asked what the additional costs would be if this occurred. Ms. Mongold explained that an exact amount of additional costs had not been estimated. She explained that the New York State Department of Education had not officially taken a position on whether State Aid would be based on the aggregate MCA or on the MCA for each individual project. If individual projects are assessed individually, as opposed to the entire Phase V collectively, there could be nuances with respect to how the State ultimately applies the MCA and reimburses costs to the District.

Ms. Mongold continued her summary.

## **Risks (continued)**

- Decrease in State Aid – The District has a risk of reduced State Aid for reasons other than that of design or construction, for example final cost reports will be reviewed by the State Education Department and could include the denial of reimbursement of certain costs;
- Non-performance by LP Ciminelli – The District maintains the financial risk in the event LP Ciminelli does not meet their contractual obligations;
- Design approval - Designs must ultimately be approved by the New York State Department of Education. If they are not approved, the District will be responsible for the design costs;
- Non-payment to subcontractors – If LP Ciminelli were not to make payment to a subcontracted firm, the subcontractors could stop work and/or file a lien;
- Construction quality – To ensure that the construction quality is acceptable, the District has a Supervisor of Building Construction and four inspector positions. The District also withholds retainages which are not paid to Ciminelli until the project is substantially complete to the satisfaction of the Architect on Record and the District.

Ms. Mongold noted that BFSA's financial advisor, Public Financial Management, Inc. ("PFM"), had reviewed the preliminary pricing scale and spreads as provided by the City Comptroller, and determined them to be in line with PFM's independent view. PFM also reviewed the bond structure in the preliminary cash flows and believes they are reasonable.

Ms. Mongold noted that the respective boards of the JSCB, the Buffalo Board of Education, and the ECIDA had approved of the transaction. She offered a recommendation to the Board to conditionally approve the proposed borrowing.

Ms. Mongold concluded her summary.

Chair Olsen introduced Resolution No. 11-09, "Approving Financing of Phase V of the Buffalo Schools Reconstruction Program," and asked for motion to move the item.

Motion to approve by Floss, second by Collins.

**RESOLUTION NO. 11-09**

**APPROVING FINANCING OF PHASE V OF BUFFALO 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 educational facilities ("the Program") and has completed Phases I and II, has substantially completed Phase III, and expects to have Phase IV completed by April 2012; 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, IV and V 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, the scope of projects to be financed 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, Section 16 (b) of the Buffalo Schools Redevelopment Act provides a safeguard against unnecessary costs in the financing of Phases I, II, III, IV and V by the ECIDA by requiring (a) the JSCB, the City and the District to compare the costs of ECIDA financing with the cost of financing by the Municipal Bond Bank Agency ("MBBA"), (b) a determination by MBBA of the cost and interest rate that would be incurred if the financing were by the issuance of bonds by MBBA, and (c) the JSCB, the City, the District and ECIDA to employ the financing mechanism that will result in the lowest cost to the taxpayers of the City and the State; and

WHEREAS, Section 3858(2)(i) of the Public Authorities Law provides that the Authority "shall, with respect to any proposed borrowing by or on behalf of the city or any covered organization on or after July first, two thousand three, review the terms of and comment, within thirty days after notification by the city or covered organization of a proposed borrowing, on the prudence of each proposed issuance of bonds or notes to be issued by the city or covered organization and no such borrowing shall be made unless first reviewed, commented upon and approved by the authority. The authority shall comment within thirty days after notification by the city or covered organization of a proposed borrowing to the mayor, the comptroller, the council, the director of the budget and the state comptroller and indicate approval or disapproval of the proposed borrowing"; 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 proposes to finance Phase V by agreement with ECIDA for issuance by ECIDA of its School Facilities Revenue Bonds, (City School District of the City of Buffalo Project), Series 2011A (the “Series 2011A Bonds”); and

WHEREAS, the Authority has reviewed the proposed borrowing by ECIDA on behalf of the District and has found it to be financially sound, prudent and in the public interest and especially the interest of the school children of the City;

NOW THEREFORE BE IT RESOLVED, that prior to the final pricing of the Series 2011A Bonds the District shall have (i) provided the Authority with a comparison of the costs and rates of ECIDA financing with the cost and rates that would have been incurred if the financing were undertaken by MBBA, and, (ii) demonstrated that the financing of Phase V through ECIDA will result in the lowest cost to the taxpayers of the City and the State as required by Section 16 (b) of the Buffalo Schools Redevelopment Act; and further

RESOLVED, that the Authority approves the proposed borrowing by the District through the ECIDA to finance Phase V of the Program, provided that (i) the aggregate principal par amount of Series 2011A Bonds to be issued shall not exceed \$195 million and (ii) the Chair, the Vice Chair, or the Executive Director, of the Authority shall approve the final terms and pricing of the Series 2011A Bonds in writing. Such approval is 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 the borrowing; and further

RESOLVED, that the Chair, the Vice Chair, and 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.

Prior to taking the matter to the vote, Chair Olsen made certain comments related to the financing. Chair Olsen noted that it was important that the costs associated with the issuance of the bonds remain locally within Erie County. He indicated his strong opinion is that the bond counsel representing the City be a local firm, of which there are many highly qualified local firms, as opposed to using bond counsel from New York City. He also indicated that local bond counsel could potentially perform the role for less money. Going forward, funds associated with these types of projects should be spent locally as much as possible.

Chair Olsen added that it was important to know how successful the project has been with its diversity hiring goals. It is one of the most significant public works projects ever within the City of Buffalo and a good opportunity to promote diversity within the area of building trades. Compliance with these goals should be a factor BFSAs considers when considering the proposed financing.

Additionally, Chair Olsen noted that it was gratifying to see the reconstruction project move into the latter phases of the project. However, in order for this program to reach its intended purpose there needs to be significant restructuring of the financial drain on the District so that essential personnel are not laid off and non-mandated services cut, resulting in state-of-the-art facilities which are under-utilized or not used at all.

Director Arthur concurred that compliance with the stated diversity program goals was very important. Director Mesiah concurred with these sentiments. He asked what the compliance to diversity goals in the reconstruction project had been and whether BFSA would be able to take any specific action if they had not been met. Ms. Mongold noted that representatives from LP Ciminelli were in attendance to address questions pertaining to the workforce diversity goals of the reconstruction project.

LP Ciminelli Executive Vice President, Mr. Eugene T. Partridge addressed the Board. He offered the following summary of the JSCB's compliance with the state workforce diversity goals:

- To date, month-to-month throughout the delivery of the program, compliance with the diversity goals have been monitored;
- In total, the program has met, and in some instances exceeded, the diversity goals set;
- LP Ciminelli has reached out to area colleges in order to attract women and minorities to work in trades to assist with future compliance with these goals;
- In some instances, there is not sufficient number of individuals to meet the stated workforce goals. For example, local design professionals have been unable to meet the 23% diversity goal due to a lack of minorities in this field in the local labor market. There are currently New York State initiatives to address this issue.

Director Mesiah expressed his concern that the African-American and Hispanic communities have not been sufficiently apprised of the existing opportunities available, particularly within the categories where diversity goals have not been met. Perhaps members of these minority communities can be brought in as outside consultants to help with outreach efforts within these communities to increase awareness of the program's employment opportunities. Additionally, he asked if there had been substantive analysis of the outreach efforts within the schools to see if they have been successful and, if not, why they have not been so.

Mr. Partridge replied that both majority-owned and minority-owned firms subcontract portions of design work to minority-owned enterprises. However, even with this subcontracting work, the diversity goals in the design area are difficult to meet. With respect to outreach to young adults, the project has provided many opportunities for internships for students to gain exposure to the design aspects of the project. Additionally, scholarships have been provided for young adults who are serious about pursuing careers in these areas. However, these outreach efforts take time to show results as architectural and engineering programs take eight-to-ten years to complete.

Director Mesiah expressed his frustration from hearing explanations from businesses over the years why diversity goals have not been met. Very large public works projects have been completed in recent years locally with a large amount of funds devoted toward them. The projects have diversity workforce initiatives that are unmet to varying degrees. The entities responsible express that outreach within minority communities were performed with limited results. Nothing substantive has been enacted so that the diversity goals of the next project will be reached.

Mr. Partridge replied that the workforce diversity goals of the reconstruction project have largely been met. There is an inadequate minority labor force locally to meet the diversity goals within some of the trades work. A pre-apprenticeship program within the trades' field has been offered over the course of the reconstruction program, attempting to attract young adults to these fields. However, there has been an issue industry-wide attracting young adults, both majority or minority, to trades work. Construction projects locally, regionally and nationally face this problem.

Director Mesiah replied that there has been no improvement over the years in wider diversification within trades' fields. Various corporations in charge of large public works projects have all expressed similar responses to unmet diversity goals.

Director Floss thanked Mr. Partridge for his comments. He noted that seventeen of the local trades unions were involved with the JSCB project. He asked what the percentage of workers involved within the entire project were local residents. Additionally, he asked what percentage of contracted firms were local firms.

Mr. Partridge explained that the focus in contracting has been to hire local firms from the onset of the project. Firms within the region such as Batavia, New York and Jamestown, New York were considered too distant to be considered "local." The vast majority, at least 90%, of companies and employees are from the area.

Director Floss asked for more specifics regarding LP Ciminelli's pre-apprenticeship program with the local trades groups. Mr. Partridge replied that the local trades groups have run "open houses" before to provide individuals with information about employment opportunities within trades groups. These efforts have shown limited success. These types of outreach efforts were enacted mostly during Phase I & II of the reconstruction project. Currently, the trades groups have contracted with a former LP Ciminelli employee, Ms. Tyra Johnson, who used to report directly to the JSCB Board. Ms. Johnson is currently an independent consultant. Ms. Johnson assists applicants prepare for apprenticeship exams. The success of these types of efforts will be seen in the near future; it has been very difficult to attract individuals to trade groups.

Director Arthur referenced the BFSa Staff Summary related to the JCSB Phase V borrowing which states, "Ciminelli is also charged with the development and training of a diverse workforce, as well as JSCB's diversity plan." He requested a detailed report on the effectiveness of the diversity plan which documents how many minorities are working on projects and a breakdown of the number of hours worked by minorities. A more comprehensive and understandable report on the diversity program would be helpful in evaluating the effectiveness of the diversity initiatives. Additionally, the names and addresses of the firms involved with the reconstruction program should also be included.

Director Arthur suggested that Chair Olsen call the question.

Chair Olsen reiterated the reconstruction program should further utilize local firms in lieu of others going forward in the project.

Vote 5-0 to approve.

### **Adjournment**

Director Arthur offered a motion to adjourn. County Executive Collins seconded this motion.

The meeting adjourned at 12:44 PM.