

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY  
BOARD OF DIRECTORS TELECONFERENCE MEETING  
WEDNESDAY, JANUARY 5, 2022**

A teleconference meeting of the Board of Directors of the New Jersey Schools Development Authority (SDA or the Authority) was held on Wednesday, January 5, 2022 at 9:15A.M.

Participating by teleconference were:

Robert Nixon, Chairman  
David Moore (Treasury)  
Bernard Piaia (DOE)  
David Nuse (EDA)  
Kevin Luckie (DCA)  
Richard Elbert  
Daniel Gumble  
Lester Lewis-Powder  
Michael Maloney  
Mario Vargas

being all the Members of the Board.

At the Chairman's request, Manuel Da Silva, chief executive officer; Andrew Yosha, vice president; Jane F. Kelly, vice president and assistant secretary; Donald Guarriello, vice president and chief financial officer; Albert Barnes, chief counsel; and Robert Ryan, director of the SDA, participated in the meeting by teleconference. Joy Johnson of the Governor's Authorities Unit (GAU) also participated in the meeting by teleconference.

The meeting was called to order by Mr. Nixon, the Chairman of the Board. The Chairman asked Ms. Kelly to read the requisite notice of the meeting. Ms. Kelly announced that the meeting notice was sent to the *Trenton Times* and *Star-Ledger* at least 48 hours prior to the meeting. She said that a call-in number was provided on the SDA Website so that members of

the public could participate in the meeting by teleconference. Ms. Kelly then conducted a roll call and indicated that a quorum of the Members of the Board was present.

### ***Approval of Meeting Minutes***

The Chairman presented for consideration and approval the minutes of the Board's December 1, 2021 Open Session meeting. A copy of the meeting minutes and a resolution had been provided to the Members for review in advance of the meeting. Upon motion duly made by Mr. Vargas and seconded by Mr. Piaia, the Open Session minutes of the December 1, 2021 SDA Board meeting were approved with the Members' unanimous vote in favor of the resolution attached hereto as ***Resolution 3a***.

### ***Authority Matters***

#### ***CEO Report***

The Chairman asked Mr. Da Silva for the Report of the CEO. Mr. Da Silva began his report with an update on design-build projects in construction. He said that for the Millville High School project, Phase IV footings and foundation work is complete and Phase IV structural steel work has begun. He added that Phase IV is the final phase, which involves construction of an auditorium at the school. He reported that for the Passaic Dayton Avenue Educational Campus project, a temporary certificate of occupancy was granted in November. He advised the Board that the district is partially occupying the school for the remainder of the year, to be followed by full occupancy in the fall of 2022. He added that furniture deliveries should be completed by the end of this month (January). He said that contract close out is ongoing, with an expectation that the school will be delivered roughly 6 months ahead of schedule.

In continuing, Mr. Da Silva reported that steel erection is ongoing for the Perth Amboy High School project. He advised that for the Plainfield Woodland Avenue Elementary School

project, the Department of Community Affairs (DCA) has released Package 2. He added that masonry, cold weather framing and exterior sheathing is ongoing there.

Turning to design-bid-build projects in the construction stage, Mr. Da Silva reported that for the Keansburg Port Monmouth Road School project, interior mechanical, electrical and plumbing rough-in work is underway in the new addition and renovation area of the building.

Next Mr. Da Silva gave an update on projects in the programing/pre-design/in-house design stages. He advised that in response to the procurement, the Authority received 5 qualifying proposals from design-build teams last month for the Union City New Grade 7 to 9 School project. He said that staff can proceed with the issuance of a Request for Qualifications (RFQ) on Friday (January 7) to selected firms identified in the RFQ process.

Turning to non-project related matters, Mr. Da Silva informed the Members that SDA celebrated the ribbon cutting and dedication of the new Joseph A. Taub School in Paterson on Tuesday, December 14. He said that staff joined the Taub Family, school district, state and local officials for the event and tour of the new school.

Mr. Da Silva said that, also in December, SDA celebrated the ceremonial ribbon cutting for the new addition to the Orange HS, along with the district, state and local officials. He added that one of the highlights of the ceremony was an energetic performance by the Orange HS marching band.

Mr. Da Silva said the management was pleased that Chairman Nixon was able to participate in the event in Paterson. He noted that both events provided an opportunity to highlight the great work of the SDA. He congratulated Team Lucarelli and Team Ryan who were involved in these projects.

Next, Mr. Da Silva reported that SDA staff donated dozens of toys last month to the New Jersey Community Development Corporation (NJCDC) in Paterson following the ribbon cutting

event there. He said that the toys would be provided in connection with the NJCDC's annual toy drive which will benefit children and families throughout the Paterson community.

Mr. Da Silva informed the Members that the SDA's Annual Contractor Training Program culminated with a graduation ceremony on December 15. He said the SDA had 18 firms successfully complete the program in 2021. He noted that the program was conducted through online learning sessions again this year, adding that staff is hopeful that the Authority will be able to resume with an in-person program in 2022. He added that he would like to thank the members of SDA staff who facilitated the program, along with those who served as instructors.

Finally, Mr. Da Silva said that last month SDA staff finalized the biannual report for the reporting period of April 1, 2021 through September 30, 2021. He added that the report is currently on the SDA website.

In continuing, Mr. Da Silva discussed the status of the SDA-owned Astor Place property. He said that following the December 1, 2021 Board meeting, SDA's chief counsel again reached out to the Black Interest Team Enterprise's (BITE) attorney on December 15 asking whether BITE remains interested in entering into a licensing arrangement so that the Community Garden can continue. He said that, again, the SDA received no response to its outreach.

Mr. Nixon thanked Mr. Da Silva for acknowledging that he attended the Paterson ribbon cutting. He encouraged the Members to attend SDA events. He said that you can see the excitement from the administrators, teachers, staff and the students at these events. He added that being in these brand new, beautifully constructed, high tech modern schools is a great experience. He said that the end result of the Authority's work brings joy to many people in the State of New Jersey. Mr. Nixon said that you can see staff's pride walking the members of the public and the alumni through those schools, adding that it is clear that SDA's staff puts their heart and soul into every inch of those buildings.

In continuing, Mr. Vargas asked Mr. Da Silva if the Perth Amboy HS project is on track for delivery. Mr. Da Silva replied in the affirmative.

Next, Mr. Nixon asked Mr. Da Silva if the SDA has plotted out into the future with regards to supply chain issues. Mr. Da Silva answered in the affirmative, noting that there were issues with the Perth Amboy project, but that the SDA team worked out those issues with the general contractor and the project is moving forward and on track for delivery. He added that there are some impacts on steel and the raw materials that are used to fabricate concrete, along with electronic parts, fire alarms, doors and hardware that have electric devices. He said that the SDA is trying to stay ahead of it so that the supply chain issues do not impact the projects' schedules. He added that SDA staff will keep the Members informed going forward.

Mr. Maloney noted for the benefit of both the new and seasoned Members of the Board that there are Project Labor Agreements (PLA) on SDA jobs. He said that the motto of union steam fitters is to "deliver on time and under budget". He said that there are sometimes detractors who will point to instances where there are delays in steel deliveries and criticize when that projects do not come in on time or under budget. He stressed that these delays are not due to the unions but to the hold up in the supply chain.

Mr. Vargas asked Mr. Da Silva if the supply chain issues will affect project budgets. Mr. Da Silva said that as it stands right now these issues have not increased the budgets of these projects and the projects have stayed on course.

### ***Audit Committee***

Mr. Nixon, as Audit Committee Chairman, reported that the Audit Committee met on December 20, 2021 at which time management provided the Committee with the November 2021 New Funding Allocation and Capital Plan Update. He said that staff informed the Committee that there was a \$100,000 decrease in the 2011 Capital Plan Emergent Projects

Reserve balance following CEO approval of a release of funds for the Newark Harriet Tubman School emergent water infiltration project. Mr. Nixon said that there were no changes in the remaining SDA District Reserve balances during the reporting period.

He then advised the Board that the reserve balance for the Regular Operating Districts (RODs) increased by \$500,000 during the reporting period due to a reduction in state share for grant projects nearing completion.

Next, Mr. Nixon advised the Board that the Internal Audit Division (IA) provided the Committee with the results of one interim, real-time project audit and one section 15 grant audit. He noted that the audits were conducted to ensure compliance with the statutory requirement that capital portfolio projects with a state share over \$10 million be reviewed to assess whether state funds were expended in accordance with contractual terms, SDA practices and state regulations. He said that IA also provided the Committee with a report on the current status of open audit recommendations and suggestions for improvement from the various project and operational audits. He reported that 9 recommendations and 3 suggestions for improvement have been closed since the last report.

Next, Mr. Nixon discussed the November 2021 Monthly Financial Report. He advised the Members that the Authority's operating expenses (Actual vs. Budget) for the year-to-date period total \$12.7 million, down \$2.5 million as compared to the budget for the corresponding period. He explained that this decrease is mainly attributable to lower salary and benefit expenditures than budgeted, partially offset by lower than projected payroll allocations to project expenditures. He said that, in addition, expenditures are for general office expenses, information systems and contracted services. He reported that the current employee headcount, as compared to the budget, is down 22 FTEs.

Mr. Nixon then reported that school facilities project expenditures (Actual vs. Forecast) for the year-to-date period total \$240.1 million, approximately \$55.8 million lower as compared to the capital spending forecast for the corresponding period. He advised the Members that this variance is the result of lower than forecasted expenditures for grant activity, construction activity, design services, project insurance and payroll expense allocations, offset by an increase in school furniture purchases. Mr. Nixon said that project expenditures (Actual vs. Prior Year Actual), at approximately \$240.1 million, are lower by approximately \$26.8 million when compared to the capital spending forecast for the corresponding period. He advised the Members that this variance is the result of lower than forecasted expenditures in grant activity, project insurance and payroll expense allocations, offset by an increase in school furniture purchases.

Mr. Nixon said that, since program inception, 91.5% of the funds authorized for the SDA districts have been disbursed. Additionally, he noted that 96% of all SDA disbursements relate to school facilities projects, while 4% relate to operating expenses. He advised that the estimated value of active school facilities capital projects, along with emergent and regular operating district grant projects, is approximately \$1.1 billion.

### ***School Review Committee***

The Chairman asked Mr. Luckie to provide the report of the School Review Committee. Mr. Luckie reported that the School Review Committee met on December 20, 2021 at which time two items were discussed that require Board consideration. Mr. Luckie said that the Committee is recommending Board approval of Amendment No. 20 for Kliment Halsband Architects (KHA) for the Orange High School project (Project or High School). He advised that Orange High School is a 145,300 square-foot facility educating 804 students in grades 10 to 12.

He said that the scope of work underway at the High School includes a two-story addition of approximately 50,000 square feet, an enclosed connecting bridge between the High School and the adjacent Orange Preparatory Academy (OPA), and selective renovations to the existing High School building to address facilities conditions deficiencies. Mr. Luckie advised that an allowance has also been included to address limited facilities conditions deficiencies in the OPA. He explained that in January 2018 KHA was issued a notice-to-proceed (NTP) with the construction document phase of the Project.

In continuing, Mr. Luckie reminded the Members that in March 2019, the Members of the Authority approved the award of a contract in the amount of \$37 million to Terminal Construction (Terminal) for construction services for the Project and also approved the Project's final charter. He added that in April 2019 Terminal was issued a limited NTP with a constructability review to identify any potential conflicts in the project documents and, once completed, the corresponding costs to address them. He said that the constructability review phase was conducted and completed and in December 2019 the Members of the Authority approved Change Order No. 2 to Terminal and issued Terminal a NTP with construction on January 29, 2020.

Mr. Luckie explained that during the course of construction of the Project, various unforeseen hidden conditions were encountered that differed from what was identified on the as-built plans of the existing school that had been provided to KHA for use during design. He reported that, upon review, it was determined that these variances in existing conditions were not foreseeable by KHA and that the construction work necessary to address them was not accounted for in the project scope which was the basis of KHA's original fee. He said that, to date, these unforeseen conditions have resulted in multiple construction change orders with a combined value of approximately \$1.3 million. He added that amendments to KHA's agreement with the



SDA have been approved for the related design services; however, an additional amendment is now necessary to compensate KHA for the related construction phase services.

In continuing, Mr. Luckie said that KHA has provided the Authority with an accounting of additional construction phase hours expended to date in relation to these conditions and also with a projection of the additional hours necessary to complete these services. He noted that the documentation has been reviewed, negotiated, and accepted by SDA staff toward recommending Amendment No. 20. He explained that Amendment No. 20, in the fixed, lump sum amount of \$174,580.00 is necessary to compensate KHA and maintain the Project schedule. He noted that funding for the amendment is available within the final project charter budget approved by the Members in March 2019. He advised that the necessary reviews have been completed and all reviewing SDA staff members have determined that Amendment No. 20 is justified and that the amount is reasonable and appropriate.

Mr. Luckie emphasized that the SDA has encountered this issue with almost every building we renovate. He added that these are old buildings and, from a construction perspective, as-builts are not always reliable.

Mr. Elbert asked if anything is being done at this time to make sure that as-built drawings for current projects are kept up to date. Mr. Ryan said that the SDA's standard practice is that the contractor does redlines in the job trailers. He added that there are regularly scheduled reviews of those redlines with the construction manager in the field to make sure that they are keeping them current and accurate. He added that at the end of a project, the general contractor owes the SDA the architect record which the SDA then provides to the architectural engineering firm. He added that those redlines generate an actual as built. Mr. Luckie added that this is the standard practice applicable to any project in which the DCA is involved.

A resolution pertaining to this matter was provided to the Board for review in advance of the meeting. Upon motion duly made by Mr. Mr. Vargas, and seconded by Mr. Piaia, Amendment No. 20 for Kliment Halsband Architects was approved with the Board's unanimous vote in favor of *Resolution 6a*.

Next, Mr. Luckie said that management is seeking approval of Change Order (CO) No. 4 for Epic Management for the New Plainfield ES project (Project or the School). He reported that the new 120,000 square-foot, three story School in the Plainfield School District, is designed to educate approximately 756 students in grades Kindergarten through Five. He said that on March 11, 2020 Epic Management, Inc. (Epic) was issued a NTP with the design portion of a design-build engagement to deliver the new School. He advised that geotechnical investigation data provided in the Project's Design-Build Information Package identified the presence of unsuitable fill in two soil borings and in one test pit advanced in the proposed construction area. He advised that the design-builder subsequently identified a larger volume of unsuitable fill during its own geotechnical investigation which was performed to meet building code requirements for the final building design. Mr. Luckie explained that after multiple unsuccessful attempts to improve the soil conditions in order to meet compaction requirements, it was determined necessary to replace the soil with clean structural fill. He said that to avoid a negative impact on the Project schedule, Epic proceeded with removal and replacement of the unsuitable soils, with SDA monitoring the work and verifying all soil quantities removed, disposed of and imported. He added that Epic and SDA negotiated a unit price-based proposal to value the various activities of work.

Mr. Luckie said that following review of actual quantities and work performed, \$842,075 is the total value of CO No. 4 which covers the cost to dispose of unsuitable soils and furnish clean structurally suitable fill to be used under the building's foundation. He emphasized that the SDA project team performed a detailed review to confirm that the scope and costs represented by

CO No. 4 do not include costs that were included in Epic's bid. He reported that all documents supporting this change order were reviewed by SDA staff and all reviewing staff members have determined that the items it includes are justified and that the amount is reasonable and appropriate.

A resolution pertaining to this matter was provided to the Board for review in advance of the meeting. Upon motion duly made by Mr. Vargas, and seconded by Mr. Piaia, Change Order No. 4 for Epic Management, Inc. was approved with the Board's unanimous vote in favor of ***Resolution 6b.***

Next, Mr. Luckie informed the Members that management also discussed three informational matters with the Committee. He said that these involved a proposed change order and proposed amendments for the Orange Cleveland Street ES project; and a release of funds from the program reserve, task order award and a final charter for the Newark Cleveland ES emergent project.

The Chairman said that before continuing with the meeting and concluding the Board's business today, he wanted to follow up on Mr. Da Silva's earlier remarks regarding the Jersey City Community Garden issue that has been before the Board previously. He said that he wanted to offer some comments on the matter, particularly for the members of the public who may be joining the meeting today with an interest in the Garden and for the benefit of the Board.

Mr. Nixon said that eight (8) months ago, SDA's chief counsel reached out to the Jersey City School District and provided a License Agreement and Sub-License Agreement that would allow the Black Interest Team Enterprise (BITE) to operate a Community Garden on the Astor Place property owned by the SDA.

He said that since that time (in May 2021), SDA has reached out to BITE's attorney numerous times and forwarded the Licensing Agreements again in an effort to move the

Community Garden forward. He said that, despite this outreach from May to January, the SDA still has not received a response.

The Chairman said that, as Mr. Da Silva mentioned earlier, just three weeks ago, following the December Board meeting, SDA expressed its support for the Community Garden as it had many times prior but that no response has been forthcoming from BITE's representatives.

Mr. Nixon said that he recognizes that there may be individuals from the BITE organization and the community on the line today to support the Community Garden effort. He said that SDA has been very open to receiving comments on the matter. In fact, he noted that over the past ten (10) months, the Board has received hours of extensive public comments regarding the Community Garden at seven (7) different Board meetings during the months of March, April, May, June, July, October and December from some 60 speakers. He strongly emphasized that there is no difference of opinion—both BITE and the SDA support establishment of the Garden.

Mr. Nixon said that he wished to stress again –as both he and Mr. Da Silva have stated at all of the previous Board meetings where the Community Garden was discussed—the SDA cannot and will not authorize continued operation of the Community Garden unless it is done legally with the proper Licensing Agreements in place. This, he said, cannot be achieved through public comments.

The Chairman stressed to the BITE representatives that the way to accomplish continuation of the Community Garden is to have their attorney respond to SDA's attorney. He said BITE's response to the letter SDA sent three weeks ago must be received in order to move forward. He stressed that the ball is completely in BITE's court to make that happen.

In continuing, the Chairman said that, as has already been explained, SDA is unable to sell or give the property to BITE. Nonetheless, he said that the CEO has been supportive of continuing the Garden and has visited the site with members of the Board to this end. He reiterated that the way to get this done is through the legal process and not through public comment. Mr. Nixon said that, for this reason, he is not going to entertain further public comment on the Community Garden today. He said, however, that he has directed Ms. Kelly to make sure that BITE's continued support of the Community Garden is recorded in today's meeting record.

The Chairman concluded his remarks by again respectfully requesting that BITE's representatives follow up by ensuring that their legal representatives respond to the most recent letter sent by SDA's attorney and assured them that they will receive a prompt response from SDA's attorney in return. He emphasized that SDA cannot give away or sell the land and cannot authorize activities on the land without the proper Licensing Agreements in place.

Mr. Nixon said that that the ongoing virtual nature of SDA's Board meetings and the inability to actually see those supporting the Community Garden has been difficult but he again urged that BITE's representatives take the steps necessary to ensure that their attorneys follow up and respond to the multiple letters they have received from SDA.

In conclusion, the Chairman said that as there is no indication that there are individuals on the line who wish to address the Board on other matters, he would now offer a motion to adjourn the meeting.

### ***Adjournment***

There being no further business to come before the Board, upon motion by the Chairman and with unanimous consent, the meeting was adjourned.

**Certification:** The foregoing represents a true and complete summary of the actions taken by the Board of the New Jersey Schools Development Authority at its January 5, 2022 meeting.

/s/ Jane F. Kelly  
Assistant Secretary