NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
BOARD OF DIRECTORS MEETING

WEDNESDAY, APRIL 4, 2012

A meeting of the Board of Directors of the New Jersey Schools Development Authority ("SDA", "NJSDA" or "the Authority") was held on Wednesday, April 4, 2012 at 9:00 A.M. at the offices of the Authority at One West State Street, Trenton, New Jersey.

Participating were:

Edward Walsh, Chairman
Caren Franzini (NJEDA)
Kevin Luckie (NJDCA)
James Petrino (State Treasury)
Bernard Piaia (NJDOE)
Kevin Egan
Karim Hutson
Loren Lemelle
Lester Lewis-Powder
Michael Maloney
Joseph McNamara
Robert Nixon
Martin Perez
Mario Vargas

being a quorum of the Board. Mr. Perez, Mr. Lewis-Powder, Mr. Egan, Mr. Hutson, Mr. Petrino, Mr. Vargas and Mr. Piaia participated in the meeting via telephone conference.

At the Chairman's request, Marc Larkins, chief executive officer; Jason Ballard, chief of staff; Jane Kelly, vice president & assistant secretary; Andrew Yosha, vice president; Donald Guarriello, vice president and chief financial officer; Albert Barnes, senior counsel; Gregory Voronov, director; Ritchard Sherman, director; Thomas Schrum, director; Cecelia Haney, senior counsel; and Sean Murphy, director, of the SDA and John Cascarano of the Governor's Authorities Unit participated in the meeting.

The meeting was called to order by the Chairman, Mr. Walsh. Mr. Walsh requested that Ms. Kelly read the requisite notice of the meeting. Ms. Kelly announced that the meeting notice had been sent to the *Trenton Times* and *Star-Ledger* at least 48 hours prior to the meeting, and that a meeting notice had been duly posted on the Secretary of State's bulletin board at the State House in Trenton, New Jersey.

Approval of Meeting Minutes

Mr. Walsh then presented the minutes of the meetings of the Board held March 7, 2012 for consideration and approval. He noted that presented for Board consideration were the minutes of the Board's March 7, 2012 Open and Executive Session meetings. A copy of the minutes and resolutions for Board consideration and approval were provided to the Members for review in advance of the meeting. Upon motion duly made by Mr. Luckie, and seconded by Ms. Lemelle, the March 7, 2012 Open and Executive Session meeting minutes were approved by the Board upon its vote in favor of the resolution attached hereto as ***Exhibits 3a/3b.***

Authority Matters

CEO Report

Mr. Walsh asked Mr. Larkins to provide the report of the CEO. Mr. Larkins noted that the agenda is lengthy and began by updating the Members with regard to the 2011 Financial Statements. He reported that the SDA received an unqualified opinion on the Financial Statements, which Mr. Larkins noted as a positive for the SDA. He said that the Financial Statements would be discussed later in the meeting. Next, Mr. Larkins gave an update regarding the Emergent Program. He informed the Members that an announcement regarding the Emergent Program was made on March 12 at the Harrison Middle School. He noted that seventy-six (76) of over seven-hundred (700) projects have been identified as likely emergent projects. Mr. Larkins stated that the 76 projects were selected based on the results of site visits and other information. He said that after the 76 projects were selected, the SDA was informed that the Newark school district plans on closing three (3) of the schools that were selected as potential emergent projects. Mr. Larkins provided the Members with a breakdown of the 700 plus projects. He reported that of the seven-hundred twenty-three (723) conditions the SDA originally received, three-hundred twenty (320) were identified as "capital maintenance" projects. Mr. Larkins then explained that, according to the law and the regulations, the SDA must follow the guidelines as how to spend money by way of a "capital fund" or an "emergent fund". He said that the emergent fund is defined by DOE regulations and is generally limited to those conditions that pose a threat to the health and safety of the students. In continuing, Mr. Larkins noted that there are other categories of facilities needs that do not necessarily fall into either the capital project or imminent threat categories. Rather, he said, they fall into a grey area that the SDA does not have the authority to address unless the projects are packaged and vetted differently. Mr. Larkins offered examples of such projects as e.g. repairs to interior finishes, installation of new systems, or upgrades to existing systems, which are necessary, but do not pose an imminent threat or danger to the health and safety of the students. Mr. Walsh inquired as to whether the districts have the right to do the repairs themselves. Mr. Larkins replied that this depends on the cost of the repair. He said that if the repair exceeds a certain dollar amount, DOE approval is required. Mr. Larkins stated that it is his understanding that most of the districts rely on the SDA for repairs. Mr. Walsh asked if the districts can make repairs that cost under $500,000.00. Mr. Piaia replied that if the project is routine maintenance, the district can make the repairs without coming to the SDA or DOE. He explained that if it is considered an eligible project, the cap is under $500,000.00 per project for the thirty-one (31) SDA districts. Mr. Piaia said that the districts have to seek assistance from the SDA for any project over $500,000.00. Mr. Walsh inquired whether districts try to bring projects over the cap in order to get assistance from the SDA and, in the alternative, if other districts keep the projects under $500,000.00 just so that they can do the projects themselves. Mr. Larkins replied that most districts say that they simply do not have the resources and the SDA attempts to assist them in the best way possible. Mr. Larkins said that even if the SDA were to reject a request, the district could wait a year and reapply. In continuing, Mr. Larkins reported that three-hundred and fourteen (314) projects fell into the routine and required maintenance category as was just explained by Mr. Piaia. Mr. Larkins further reported that thirteen (13) projects fell into the category of school facilities project, i.e. as a "Capital Program" project. Mr. Larkins offered to provide additional information if the Members have further inquiries regarding the emergent list. Mr. Walsh inquired as to whether the SDA is prepared to do all the projects with SDA staff. Mr. Larkins replied that, of the 76 projects, the working group classified them into tiers as follows: 1) Tier 1 represents fire safety, structure, boilers and HVAC requests; 2) Tier 2 represents electrical and domestic water requests; and 3) Tier 3 represents building envelope requests. Mr. Larkins noted that the SDA would like to move the projects along as quickly as possible, but there are issues that affect timing. He noted them as follows: 1) whether or not the repair has been properly scoped; 2) whether or not the repair has to be designed and approved by DCA, which is time consuming because of services that must be acquired from a design firm; and 3) the type of repair work involved. He said that some types of work cannot proceed while the children are in school and must be done in the summer months. In continuing, Mr. Larkins reported that, of the 76 projects, SDA staff has worked diligently on scoping twenty-nine (29) and is in a position to advance the projects by delegating some back to the district. He said that, of the 29 projects, there are about eight (8) that are being considered for delegation back to the districts. Mr. Larkins said that the other approach for advancement would be to go directly to a contractor if design work is not required and to utilize this summer to complete some of that work. He said that the other advancement approach would be to engage a design firm and ultimately go to bid. Mr. Walsh asked if any project management firms ("PMFs") are involved or if this is all being done with in-house staff. Mr. Larkins replied that, for now, the SDA is approaching the emergent project program as self-managed, along with the design firms, but if a larger project comes along and the SDA does not have the in-house resources, outside assistance will be acquired. Ms. Franzini commented that the SRC discussed receiving a detailed schedule/timeline for the projects being managed by SDA staff. Mr. Larkins replied that SDA staff has developed two (2) schedules, one relating specifically to the emergent project program and the other relating to the Capital Program. He offered to share these with the Members.

Next, Mr. Larkins reported that he recently appeared with the Commissioner of DOE before the Senate Budget Committee at a budget hearing held on March 29. He said that some of the SDA's capital projects were discussed, as well as the emergent program. Mr. Larkins noted that the hearing went well and informed the Members that the Assembly Budget Hearing is scheduled for the third week in April. He said that he will likely be appearing again with the Commissioner of the DOE to answer questions the Assembly may have regarding the SDA's program.

Next, Mr. Larkins reported that the SDA has continued to advance work. He reported that on today's agenda is an item regarding a construction award for the Catrambone Elementary School in the Long Branch school district. He noted that bids were opened on March 20 as part of the procurement process and that an award is being recommended to the general contractor ("GC"). Mr. Larkins then highlighted that the process requires Board approval, but that it is a two-phase process. He said that Phase 1 would include the notice to proceed ("NTP") to the contractors to perform the constructability review, which will take a couple of months. Mr. Larkins noted that SDA anticipates that the review will identify any problems in the design documents and seek resolution prior to the start of design work. He said that once this phase is completed, the SDA will proceed without coming back to the Board, assuming that there is no reason to do so and will give the contractor the NTP to begin the construction phase of the project. Mr. Larkins also explained that if management has to come back to the Board it will be to report issues that resulted from the constructability review that would increase construction costs. By way of example, he said, if there are problems identified in the design documents that would lead the contractor to believe that more costs would be incurred, the contractor would have the ability to ask for a change order. Mr. Larkins stated that if that request exceeds $500,000.00, it would be presented to the Board for consideration and approval as is required by the Operating Authority ("OA"). He said that if the change order is short of $500,000.00, Board approval would not be required. He noted that delays can occur if Board approval is required due to the timing of when the change order is presented as well as the requisite gubernatorial veto period. Ms. Franzini clarified that when the design/build approach is utilized, a delay would not occur because there would not be a constructability review, given the combined architect/GC effort. Mr. Larkins agreed and noted that one team would be performing both the design and construction. Mr. Walsh asked about the timeline/schedule regarding site work. Mr. Larkins reported that the Long Branch site is in good shape and if the Board approves the award today, after conclusion of the veto period, a notice of award can be issued and the NTP can be given for Phase 1.

In continuing, Mr. Larkins reported that a recommendation of award for Morgan Village demolition is being presented later on in today's Board meeting. He noted that this is Phase 2 of that project. He reminded the Members that the new school has opened and that the old school has to be demolished to make room for play space and parking prior to the new school year. Mr. Larkins further reported that, with regard to other advertisements, the SDA has been on schedule with the rollout of procurements. He noted that in every month in 2012, with the exception of January, the SDA has announced procurements. Mr. Larkins said that last week the SDA advertised for demolition and site work in Paterson at PS No.16, which will make way for the construction of a new elementary school. He reported that there is one issue that involves the acquisition of a piece of property and that the site package advertised recognizes the issue. He said that there will be a phased approach to the demolition and site work. Mr. Larkins said that by the time the contractor would get to this piece of property, those issues should be resolved or the property acquired by eminent domain.

Mr. Larkins continued the discussion regarding advertisement and reported that the West New York ("WNY") project bids were opened on April 3. He said that the bids were favorable. He reported that at some point the Members will be informed of what the bids and final tallies are, and that next month the award will be presented to the Members for approval. Mr. Larkins explained the process and why it takes so long to award for projects. He said that, in this case, for example, the bids were opened yesterday and the Board meeting held today. As a result, he said, the award has to wait for the next Committee meeting, ultimately go before the Board for approval and then, upon expiration of the Governor's veto period, be presented to the contractor. Mr. Larkins then reported that by the end of April, a site package for Jersey City PS No. 20 will be advertised. Mr. Larkins noted that there will be advertisement for all ten announced (10) Capital Projects by the June-July timeframe with the exception of the Bridgeton project, which is a project that changed from a new school into an addition/renovation project.

In continuing, Mr. Larkins highlighted the 2011 Annual Report ("Report"). He informed the Members that the Report is being presented for Board approval. Mr. Larkins highlighted a couple of accomplishments. He said that, in 2011, SDA introduced and is well on its way to achieving standardization. He also noted that in 2011 the SDA introduced materials and systems standards and said that the effort is ongoing in terms of introducing programmatic standards. Mr. Larkins also noted that the SDA introduced the kit of parts ("KOP") program in 2011. Secondly, Mr. Larkins noted that the SDA announced in March 2011 that two major projects would be advertised--one being the Elizabeth project and the other being the Long Branch project. He said that both projects were advertised in December 2011.

Mr. Larkins further reported that the SDA completed and opened several new schools or significant renovations last year. He also reported that the SDA completed forty (40) emergent projects during a time when the Authority was being widely criticized for not advancing any emergent projects. Mr. Larkins said that there were another approximately eighty (80) emergent projects that were advanced last year either through delegation or self-management by the SDA. Mr. Larkins informed the Members that, in terms of the Regular Operating District ("RODs") grant program, the SDA executed three-hundred forty-eight (348) ROD grants. Mr. Larkins said that, all totaled, SDA impacted approximately one-hundred eighteen (118) school districts with a state share of approximately $90 million.

Mr. Larkins offered additional highlights from the Report and noted the success of the Small Business Development Center ("SBDC") program. He reported that this was a program that was historically outsourced. He said that the SDA took over management of the program, presented it at a reduced cost and received rave reviews from the participating contractor community. Mr. Larkins said that the SDA plans to conduct another training program this spring and maybe another program in the fall.

Mr. Larkins then offered highlights from the Report regarding the Audit and Assessment Group ("Group"). He reported that the Group has performed a lot of work in terms of in-housing the audit program, finding issues and recovering money for the program.

Mr. Walsh commended SDA staff responsible for compiling the Report and asked the Members if there were questions. Mr. Maloney inquired as to whether the message gets out when the SDA completes projects, such as the 40 emergent projects. Mr. Larkins replied that the message does get out and that the SDA has been more aggressive in terms of communications. He said that whenever the SDA completes an emergent project, Communications staff creates a press release and posts it to the SDA website and also submits it to the Press. Mr. Larkins noted that the local press often will report it, while larger newspapers do not. Mr. Vargas had a question regarding the SBDC chart, inquiring why Latino and Hispanic contractors are not reflected on the chart. Mr. Larkins stated that Senator Rice also has the same question regarding the chart and noted that the SDA does all it can in terms of outreach. He said that the law is proscriptive in terms of what the SDA can and cannot do relative to efforts for increasing minority involvement. He noted that if any of the Members have ideas in this regard, the SDA is interested in hearing them. He explained that the SBDC program does not cost the applicants or participants anything. He asked if Mr. Vargas had specific groups in mind for inclusion on the distribution list. He said that, if so, SDA would be happy to add them. Mr. Walsh stated that in 2012 the Authority has to get shovels in the ground. He said that the public will be watching the SDA closely and if there is anything that the Board can do to expedite matters, management should feel free to present ideas. He said if a special Board meeting or teleconference would keep a project from being delayed, management should call upon the Board for such a meeting. Mr. McNamara suggested that prior to opening bids, management could come to the Board and request approval for award of a contract if a bid is within certain parameters and below the CCE. Mr. Larkins said that it is good to know that the Members are flexible and he will keep those options in mind.

A resolution pertaining to the approval of the 2011 Annual Report had been provided to the Members in advance of the meeting. Following discussion, upon a motion by Mr. Maloney, and seconded by Ms. Lemelle, the 2011 Annual Report was approved by the Board upon its vote in favor of the resolution attached hereto as ***Exhibit 4aii.***

Mr. Walsh suggested that at the next SRC meeting, time be allotted for a detailed discussion on the next design/build project in New Brunswick. Mr. Larkins agreed.

Audit Committee Report

Mr. Walsh then asked for the report of the Audit Committee. Mr. Nixon advised the Board that the Audit Committee met on March 19, 2012. He said that the February 2012 New Funding Allocation and Capital Program update reported a $600,000 increase in the Unforeseen Events Reserve and no change in the Planning or Emergent Reserves. He said that the reserve balance for the Regular Operating Districts ("RODs") increased by $1.8 million due entirely to a reduction in state share for projects nearing completion.

Mr. Nixon reported that Ernst & Young (E&Y) had presented the Authority's 2011 Financial Statements to the Committee. He noted that E&Y reported that the Financial Statements are consistent with those of prior years and that there were no new accounting pronouncements implemented in 2011. He said that E&Y presented its analysis of the 2011 Audit Results and Required Communications report advising that E&Y reviewed various sections of the Audit and that their in-house actuaries are in agreement with the assumptions made in the Authority's report. He said that E&Y also provided an overview of its Management Letter and discussed two (2) observations it felt necessary to bring to the attention of the Authority. He emphasized that neither rose to the level of a deficiency. He explained that the first observation dealt with construction and retainage accruals and the second observation pertained to amendment and change order accruals. Mr. Walsh and Mr. Nixon noted that these issues are already being addressed. Mr. Nixon then informed the Members that following the regular Audit Committee meeting the Committee met without management present for a discussion with E&Y. Mr. Nixon invited Mr. Guarriello and E&Y to address any questions the Members might have regarding the Financial Statements. Mr. Guarriello introduced Kimberly Hancy of E&Y and indicated that she was available for questions or discussion. Mr. Walsh noted that the Audit Committee had reviewed the Financial Statements and found them very straight forward. He asked if there were any questions. There were none.

In continuing, Mr. Nixon said that the director of internal audit had provided the Committee with an audit program update and overview. He said that the overview described the individuals that comprise the Program Assessment and Development Team ("PAD") as well as the methodology utilized in assigning audits and assessments. He noted that PAD is working on sixty-four (64) audits following consultation with the State Comptroller's office and endeavoring to complete audits that did not hit the statutory threshold of $10 million along with lessons learned as a result of those audits. He said that renewed efforts to close prior audit recommendations were also reported. He said that the Committee recognized the significant workload facing the PAD Mr. Larkins noted that while that is a significant amount of audit work to do, the PAD is being assisted by the outside firm of Experis/Jefferson Wells ("Experis"). He said that Experis is working on one audit at the present time and may be asked to do more. He advised that the statute that requires the Authority to perform audits on projects that exceed $10 million was enacted in 2008. He noted that there may be certain assumptions made regarding which projects require audits and that this will be the subject of internal discussion and, thereafter, the subject of discussion with the Comptroller. He said that, in addition, there are some additional projects that the PAD group is considering auditing such as the demonstration projects. Mr. Ballard noted that, in addition to the sixty-four (64) statutory audits, there are additional audits and assessments that the PAD group is addressing. Ms. Franzini asked if the sixty-four (64) audits were related to projects only. Mr. Larkins noted that the audits are on the processes of those projects. Ms. Lemelle asked if Experis was hired to do these audits. Mr. Ballard said that they were not initially hired for this purpose and explained that when the 64 audits came to light Experis was given one of the earlier and easier audits to conduct. Mr. Ballard noted that to have the PAD group conducting sixty-four (64) audits is unrealistic and he is looking forward to having a discussion with the Comptroller regarding this matter. Mr. Walsh asked the age of the project that was last reported. Mr. Larkins said that the time frame was 2004-2005. Ms. Pacuta noted that the Comptroller's office requested that the Authority perform an audit on any project that was open as of July 2008. She said that she had proposed that the Authority close out everything prior to 2008 Capital Plan. She explained that she has been working with Mr. Guarriello to identify those projects that fall within the statutory requirements in an attempt to find some flexibility in the requirements as the grants date back to 2001. She further noted that the PAD group did not anticipate including the grants but if the State share exceeds the $10 million threshold the Comptroller requested those grants be audited. Mr. Walsh noted that there are new procedures in place that did not exist in 2006 and asked if there is the possibility of changing the requirement. Mr. Larkins said that the Authority will seek a reconsideration of the present interpretation of the statute. Mr. Guarriello explained that the requirement came about in 2008 when the additional $3.9 billion was authorized. He noted that none of the $3.9 billion was used until May 2010 when the first bond issuances for the new money occurred. Ms. Franzini agreed that staff should look into the matter and then have a discussion with the Comptroller's office. She noted that the spirit of the statute was to assist the Authority in moving forward. She said that since so many audits were conducted in 2006 which resulted in new processes and procedures being established, it makes little sense to go backwards and revisit what already has been corrected. Mr. Nixon advised that the Audit Committee had this discussion in depth and concluded that bringing this issue to the Comptroller's office is the right course of action.

Mr. Nixon then suggested that the Members vote on the 2011 Financial Statements. Mr. Walsh asked if there were any further questions on the Financial Statements. There were none. A resolution pertaining to the proposed modifications to the Operating Authority had been provided to the Members in advance of the meeting. Upon a motion by Ms. Lemelle, and seconded by Mr. McNamara, the resolution attached hereto as ***Exhibit 5a,*** was approved by the Board.

Mr. Nixon said that staff had reported on the status of audit recommendations and advised that one recommendation was completed, closing out the KPMG audit on cost recovery. He said that the Authority now has a completed project manual and advised that a working group has been established to prepare a template for processing and analyzing contracts.

Mr. Nixon then reported on the results of the assessment and audit reports presented to the Committee. He noted that the Barack Obama (formally Bangs Avenue) Elementary School assessment for the Office of State Comptroller was presented. He explained that the objective of the assessment was to ensure that State funds utilized for the project were expended prudently. He noted that observations and recommendations regarding the assessment were highlighted and reported that there was a discussion regarding the close-out process. He said that staff presented the design consultant allowances audit and explained that the scope covered a review and analysis of design consultant agreement allowances paid from January 1, 2009 through June 30, 2011 and related internal controls, including policies, procedures and current processes. He noted that observations and recommendations were highlighted.

School Review Committee Report

Change Order/Amendments –USA Environmental Inc.; Ernest Bock & Sons, Inc.

The Chairman then asked Ms. Franzini to provide the report of the SRC. Ms. Franzini reported that the Committee met on March 19, 2012 and discussed various issues. She referenced materials that were previously sent to the Members for review.

Ms. Franzini reported that the Committee discussed a change order for USA Environmental Inc. ("USA Environmental") for the Lanning Square Elementary School in the Camden school district for de-obligation of unused funds in the amount of

$340,644.97. She said this project is not a part of the Capital Program, so the funding is no longer needed.

A resolution pertaining to the approval of a change order for USA Environmental had been provided to the Members in advance of the meeting. Following discussion, upon a motion by Mr. Vargas, and seconded by Mr. McNamara, the change order for USA Environmental was approved by the Board upon its vote in favor of the resolution attached hereto as ***Exhibit 6a1***.

Ms. Franzini reported that the Committee discussed a change order in the amount of $14,299.00 for Ernest Bock & Sons, Inc. ("Bock") for the Victor Mravlag Elementary School No. 21 in the Elizabeth school district. He said that the money was compensation for additional work that was performed.

A resolution pertaining to the approval of a change order for Bock had been provided to the Members in advance of the meeting. Following discussion, upon a motion by Mr. Luckie, and seconded by Mr. Nixon, the change order for Ernest Bock & Sons, Inc. was approved by the Board upon its vote in favor of the resolution attached hereto as ***Exhibit 6a2.***

Approval of Awards – CA-0010-N01 – Morgan Village MS – Demolition, Remediation & Site Development; ET-0068-C01 – Catrambone ES – New Construction

Ms. Franzini reported that the Committee was presented with two awards for consideration. She reported that the first award is for Morgan Village Middle School in the Camden school district. She noted that the school was opened in September 2011, but that a contract award was required for demolition of the existing school for parking space and a play area. Ms. Franzini noted that six (6) bidders had sufficient project ratings to bid. She said that three (3) bids were received, but there was only one (1) responsive bidder, who was also the lowest bidder. Ms. Franzini said that the contract is proposed for award to USA Environmental Management, Inc. in the amount of $1,870,886.50, which is below the CCE.

A resolution pertaining to the approval of an award for USA Environmental had been provided to the Members in advance of the meeting. Following discussion, upon a motion by Mr. Luckie, and seconded by Ms. Lemelle, the approval of award for USA Environmental was approved by the Board upon its vote in favor of the resolution attached hereto as ***Exhibit 6bi.***

In continuing, Ms. Franzini presented an award for new construction for the George L. Catrambone Elementary School in the Long Branch school district. She reported that this project is a part of the 2011 Capital Program. Ms. Franzini noted that this project was advertised on a price and other factors basis with ninety (90) percent of the bid for price and the other ten (10) percent for other factors. She said that the bid award came in under the revised CCE and that the award is being recommended to Terminal Construction Corporation ("Terminal") in the amount of $27,500,000. She said that the Board also is being asked to approve the final charter for the Long Branch school. Following discussion, Mr. Walsh referenced the project charter and inquired as to whether the PMF's total cost of the project amount is an estimated amount or if it is a contract in the budget. Mr. Yosha explained that there are numbers representative of actuals and he noted that the percentages that Mr. Walsh was referring to are actuals. He said that numbers that are representative of estimated values are the ones that represent scope that is not yet procured, e.g., FF&E. Ms. Franzini inquired as to whether the SDA did a bid for a construction manager ("CM") for this project. Mr. Yosha replied in the affirmative and indicated that the CM is Greyhawk. Mr. Walsh asked if Greyhawk's scope was being modified or if the SDA is working with an old contract. Mr. Yosha replied that the core contract is the one currently in place with Greyhawk, but that the contract will be modified to reflect the scope needed going forward. Mr. Walsh asked if any SDA personnel would be added into the estimates. Mr. Larkins replied that, as of now, SDA personnel costs would not be included in the estimates. He explained that there is an effort to be as accurate as possible in terms of estimating what the costs should be and to develop benchmarks so that, moving forward, costs can be taken out of the operating budget and accounted for in the project budgets. Mr. Walsh said that he would be fine with an estimate. Mr. Larkins said that there can be more discussion regarding the additional costs. He noted that the approved 2012 SDA budget includes all SDA personnel expenses. Mr. Walsh stated that if personnel are to be added, it won't be accounted for in the 2012 budget. Mr. Larkins noted that the expectation for now is not to add personnel to this particular project. Mr. Walsh asked if there was a project charter approved previously for this project. Mr. Larkins answered in the affirmative. Ms. Franzini noted that the previous charter was approved for $41 million and the current charter is for $35.3 million. Ms. Franzini said that it would be helpful, working through the Audit or SRC going forward, to explore how to build cost into the process with regard to allocating additional staff costs. Mr. Larkins noted that, from an internal management perspective, SDA is tracking costs but is not building them into the project budget until the entirety of the process is worked out. Mr. Ballard noted that there is a time tracking system being established, but that it is in its testing stage. He said that the SDA is testing the software to ensure that it properly captures what is needed for inclusion in the project charters. Mr. Ballard said the software should be rolled out in the next two months. Ms. Lemelle inquired as to whether the software would be used on future projects in the coming months. Mr. Larkins replied that the expectation is to begin accounting for personnel costs in project budgets versus the operating budget in January 2013. Mr. Walsh suggested that the conversation be addressed further at the next SRC meeting. He suggested that there be a detailed discussion at the next SRC meeting regarding the PMF or CM scope. After further discussion, Ms. Franzini recommended that the award and project charter be approved by the Board.

A resolution pertaining to the approval of an award to Terminal Construction Corporation and the final project charter had been provided to the Members in advance of the meeting. Following discussion, upon a motion by Ms. Franzini, and seconded by Mr. Luckie, the award to Terminal Construction Corporation and the final project charter were approved by the Board upon its vote in favor of the resolution attached hereto as ***Exhibit 6bii.***

Final Adoption of New Rules for Delegation of School Facilities Projects, N.J.A.C. 19:34B

Next, Ms. Franzini reported that the Committee discussed the Final Adoption of New Rules for Delegation of School Facilities Projects, N.J.A.C. 19:34B ("Rules"). She noted that Ms. Haney did a fantastic job of reviewing the Rules and presenting them at the last SRC meeting. Ms. Franzini said that Ms. Haney had described the public comments that were received and thereafter reviewed by both Ms. Haney and the Attorney General's Office ("AG"). She then asked Ms. Haney to provide a brief summary to the Members. Ms. Kelly noted that, as part of her remarks, Ms. Haney will also discuss the recent Appellate Division ("AD") decision in the litigation brought relative to the Rules. Ms. Haney reported that the decision was handed down on April 3, 2012 and basically directed the SDA to do what is currently being done today, i.e. to finalize and promulgate the Rules. Ms. Haney noted that the comments received were largely spearheaded by the Education Law Center ("ELC") staff and were echoed in part by both the West New York ("WNY") and Jersey City ("JC") districts. She noted that the bulk of comments came in after the first promulgation and that SDA staff made substantive changes to the proposal in recognition of some of the points made by the commenters. Ms. Haney noted that the changes involved issues related to hearing procedures, references to the License Site Remediation Professional Program and clarifications for notices of non-compliance. She said that significant comments were received regarding delegability of design contracts but changes were not made in this regard. Ms. Haney noted that the regulations are not "etched in stone" and that amendments are possible if the Board members have any questions or issues. She said that what may result in further comment or action by the ELC would be design. Ms. Haney said that, historically, cost overruns were related to design. She informed the Members that, as mentioned in her memorandum, the adoption of these regulations is a matter of statutory mandate from the 2008 refinancing legislation. She said that the legislation amended Section 13E and provided that, moving forward, DOE and SDA would adopt regulations to manage a delegation process to return control of projects or management of projects over to the districts. In continuing, Ms. Haney reported that there was an initiative to develop the regulations. She said that delays in the process triggered ELC to file a lawsuit against the SDA in 2010. Ms. Haney said that the lawsuit was followed by the SDA's efforts to reinvigorate the regulation process in terms of current practices and draft regulations reflective of current processes. She said that these regulations were initially presented to the Members in September 2010. Since that time, Ms. Haney said, there were efforts to "stay" the litigation brought by ELC which basically sought to require that DOE and SDA adopt these regulations immediately. She said that the litigation continued and was not stayed. Ms. Haney said that yesterday's court decision recognized that the initial suit was not "moot" by virtue of the fact that the SDA had started its regulatory process because it had not yet concluded that process. She said that since the close of the comment period, by issuing interim changes, SDA had to re-initiate a separate comment period on those changes because they were substantive and changed significant portions of the Rules. Ms. Haney said SDA had to allow for that period of public comment. Ms. Haney said that the SDA is now at a place where we can satisfy the court's directives to file the Rules on or before April 18, which is when the underlying proposal expires.

A resolution pertaining to the approval of the Rules had been provided to the Members in advance of the meeting. Following discussion, upon a motion by Ms. Franzini, and seconded by Mr. Luckie, the Rules as presented were approved by the Board upon its vote in favor of the resolution attached hereto as ***Exhibit 6ci.***

Reports

Mr. Walsh asked Mr. Ballard if he had any updates regarding project closeouts. Mr. Ballard reported that there are three (3) closeouts that are a part of the prior Capital Program. He said that, in addition, the SDA has executed deeds for four (4) more projects for the H.B. Wilson Elementary School ("Wilson") in the Camden school district, the Pemberton Early Childhood Center ("PECC") in the Pemberton school district, the East Orange No. 5 School ("EO5") in the East Orange school district and the Union City Early Childhood Center ("UCECC") in the Union City school district. He said that the effective transfer of those deeds will save the Authority approximately $20,000 from an insurance perspective. Mr. Ballard said that the closeout process has hit a snag due to the attempt to retrieve documentation back from the PMFs from prior engagements. He said that staff is working through it and plans are for the transfer of several more projects. Mr. Walsh asked what else the SDA is paying for other than insurance. Mr. Ballard replied that the SDA pays mostly for insurance and is liable for the building until it is transferred. He noted that staff is attempting to transfer as many deeds to the districts as possible in connection with the legacy projects. Mr. Ballard also reported that letters have been issued to the design consultants and various consultants concerning their existing balances on invoices. He said that they were given a sixty (60) day time period within which to respond to the letter stating that there is money owed to them. If they do not respond within this timeframe, the SDA will put the money back into the program and close out the contract and transfer projects back to the districts. Mr. Walsh inquired as to why the cost of insurance cannot be reimbursed by the districts. Mr. Ballard said that staff can look into that option. Mr. Walsh suggested that it be put in the next requirements so that when the district takes over the property and the CO is given and occupancy is taken, that the district covers all expenses, including insurance. Mr. Larkins agreed with Mr. Walsh but noted that the issue has been the Supreme Court decision which essentially gave the State the responsibility to pay for insurance. After discussion, Mr. Larkins noted that the possibility will be explored.

Next, Mr. Ballard reported that the predevelopment grants are more or less closed out on time as promised, for the first quarter of the year. He said that a couple of invoices are being reviewed internally before finalization of the predevelopment grants.

Public Comments

The Chairman, Mr. Walsh, then announced that the Public Comments portion of the meeting would begin. Mr. Walsh then asked if there were any members of the public present who wished to address the Board. Hearing none, upon a motion by Ms. Franzini, and seconded by Mr. McNamara, and with unanimous consent, the Open Session 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 April 4, 2012 meeting.

Jane F. Kelly
Assistant Secretary