



# NEW YORK STATE SCHOOL FACILITIES ASSOCIATION

Planning a Capital Project From  
Concept to Final Completion



## PRESENTERS

**Matthew Erwin, Director of Facilities**  
*North Syracuse Central School*

**Kirk Narburgh, CEO/Managing Partner**  
*King + King Architects, LLP*

**Dan Fox, Partner**  
*IBC Engineering*

**Mike Shusda, Accounting Services**  
*Fiscal Advisors & Marketing, Inc*

**Ted Trespasz, Bond Counsel**  
*Trespasz & Marquardt, LLP*

**Harris Lindenfeld, Legal Counsel**  
*Alario & Fischer, P.C.*

**Jim Stoddard, Senior Vice President**  
*Haylor, Freyer & Coon*

**Todd LaBarr, President**  
*Watchdog Building Partners*

**Jeremy Clingerman, Former Supt.**  
*Watchdog Building Partners*

Presentation: September 30, 2022

# SESSION AGENDA + SCHEDULE



- **Session #1 District Vision (WHY), Stakeholders (WHO), Pre-Referendum (WHAT)** **9:00 – 10:15 AM**  
First Session Break 10:15 – 10:30 AM
- **Session #2 Financial Planning, Bond/SEQRA Resolutions, and Aid (WHAT)** **10:30 – 12:00 PM**  
Second Session Break/Lunch 12:00 – 12:45 PM
- **Session #3 Design/Pre-Construction, Estimating, Risk/Insurance, and Bidding (WHAT)** **12:45 – 2:00 PM**  
Third Session Break 2:00 – 2:15 PM
- **Session #4 Contracts, Construction Legal Obligations, Closeout/Completion (WHAT)** **2:15 – 3:45 PM**  
Additional Questions 3:45 – 4:00 PM
- **Reception / Networking** **4:00 – 5:00 PM**





# Your Project Development Team



- Core Internal Team
  - The Cornerstone to every great project
    - Superintendent, Business Official and Facilities Director
    - Balance Educational needs, financial means and infrastructure requirements
    - Establish key project objectives (The WHY)
- Key Constituents (Internal and External)
  - Building Communication, Trust & Respect
    - Support vetting of concepts and solicitation of input
    - Tiered approach to initiate appropriate level(s) of engagement
    - Lend integrity to process
    - Broaden communication and reach intended audience (PR)



# Your Project Development Team



- Financial Advisors, Legal & Bond Counsel, Insurance Brokers
  - Mitigating Risk and Forecasting outcomes
    - Maximizing Aid, Grant implications, Tax Levy Impacts
    - Navigating Contracts, SEQRA, SHPO and Bonding requirements
    - Public Bid regulations, Co-Operative Purchasing, EPC
    - Resolutions, Change Orders, Disputes, Delays, Worker's Compensation
- Architect
  - A Partner and Consultant
    - Leads and coordinates the design team's efforts
    - Aids the District in the collection and sharing of information
    - Supports required reporting and project management documentation
    - Orchestrates the form and function of our spaces



# Your Project Development Team



- Engineer(s) & Consultants
  - System Level Expertise
    - HVAC, Plumbing, Electric, Structural, Fire Protection, Landscape, Asbestos, etc.
    - Consider longevity and maintenance costs in making recommendations
    - Address every detail to ensure healthy, safe and comfortable learning spaces
- Construction Manager
  - An Advocate for the District
    - Oversight and management of the construction activities
    - Maintains accountability of Contractors for schedule and maintaining budget
- Project Team Selection for Professional Services
  - Chosen by proposal process (QBS) according to district procurement policy. GML 104(b) has no requirement for frequency of solicitations.





# Where do we start?



- First Steps (The Pre-Referendum Process)
  - Share Data, wants, needs and develop common understanding of goals
    - Full Project Team required, cover all the bases
    - Draft contracts and develop the risk management plan
    - Prepare initial scope and budgetary estimate (make sure you can deliver!)
  - Develop buy-in
    - Engage with internal and external stakeholders (Communication, trust & respect)
  - Study Cost Sharing Opportunities
    - NYSERDA, P-12 Clean Green Schools, Flex Tech, National Grid, NYSEG, and Grants
  - Prepare for a vote
    - Finalize Project Team contracts, SEQRA, SHPO, etc.
  - Review Construction delivery, Bidding Requirements, and Purchasing options



# Pre-Design and Referendum



- Design Leadership Team Meetings
  - District Reps, Design Team, and CM
  - Review, Prioritize, and Refine Scope
  - Based on Educational Plan and BCS
- SED Preliminary Communications (SEQR + New Bldgs.)
  - SEQR Type I, Type II, and Unlisted Actions
- Scope Identification and Budgeting
  - Cost/Budget Validation
- Financial Planning
  - Referendum Amount and Fiscal Planning
  - BAN's, Bonds, and Cash Flow Projections





## First Segment Break (Planning/Pre-Ref)



### QUESTIONS ...

Please get up stretch, grab some snacks/beverages, and our program will resume in 15 minutes



# District Financial Planning



- District Financial Planning
  - Capital Reserve
  - Other available funds
    - Fund Balance, Grants, Federal Stimulus, Gifts, NYSERDA
  - Debt Schedules
  - Aid Reimbursement
  - Five-Year Rolling Clock and MCA's
  - Capital Outlay Project Expenditures



# Overall District Financial Plan



- Capital Reserve
  - Savings account for future capital projects
  - Used to reduce borrowing amount
- Debt and Aid Schedules
  - Used to calculate “local share” on an annual basis
  - Maintaining a consistent local share will prevent large swings in the tax levy
  - The financial advisor will develop spreadsheets for various options to determine the projected local share of each option.
  - Assumptions will be made as to overall aidability, interest rates, and use of capital reserve.



# Capital Reserve Fund Proposition



Shall the Board of Education of the Sample Central School District, be authorized to establish a Capital Reserve Fund for a ten-year term pursuant to Section 3651 of the Education Law to be named “2023 Capital Reserve Fund” and fund such fund in an amount not to exceed \$\_\_\_\_\_, inclusive of accrued interest and other investment earnings, to be used for renovations and additions to all District facilities, including purchase of equipment, technology upgrades, classroom equipment and/or school infrastructure equipment, site development, athletic fields, storm and sanitary sewer, driveways, and parking lots, such reserve fund to be funded from (i) year-end budget surplus funds known as unassigned fund balance, as available, for the fiscal year ended June 30, 2023 and each fiscal year thereafter for the term of the reserve fund, (ii) transfers of excess monies from Board of Education designated reserves, (iii) amounts from budgetary appropriations from time to time, and (iv) New York State Aid received and made available by the Board of Education from time to time, all as permitted by law?



# Building Aid and Reimbursement



- Building Aid and Five-Year Rolling Clock for Cost Allowances
  - Building aid calculation is capped by the “cost allowance” for a school building.
  - The maximum cost allowance is decreased by each capital project and is replenished using a five-year rolling clock.
  - Only those construction and incidental expenses that are considered by SED to be aidable AND fit within the Maximum Cost allowances will be reimbursed at the District’s Building Aid ratio.
  - Any work considered “unaidable” will be paid by the district at full cost w/ no reimbursement



# Pre-Referendum Financial Considerations



- Maximize Building Aid and Engage with SED Facilities Planning
  - Review the number of building aid units (BAU) in the school building
  - Estimate the maximum cost allowances and remaining cost allowances in the school building.
- Maximum Cost Allowance Implications
  - The construction cost allowance is the maximum amount of construction cost that is eligible for building aid in a given SED project number
  - The incidental cost allowance is the maximum amount of incidental cost that is eligible for building aid in a give SED project number. Site Work is considered an incidental cost.





# Maximum Cost Allowance Example



- NYSED provides Bldg. Aid for Safety, Infrastructure, Instructional
  - Each district is eligible for aid reimbursement based on wealth
    - Most districts have building aid ratios of approximately 70% - 90%. i.e. they are reimbursed \$.70 - \$.90 of every \$1 of eligible building cost incurred for project related work. This broken into two categories of construction and incidental costs.
- Maximum Cost Allowance
  - Building aid is capped at the Maximum Cost Allowance limits for each building based on the Building Aid Units (BAU's) calculated according to the SED guidelines for instructional space. PreK-6 is different than 7-12.
  - If the maximum cost allowance is exceeded in any 5 year period that portion of any work does not receive aid reimbursement.
  - For example an Elementary School has a \$7,800,000 MCA. NYSED will provide aid (at district's bldg aid ratio) for every \$1 spent up to that \$7.8 million max cost .. Anything over the district pays 100% of the cost !

FP-MCA-P (5 / 2017)

**Preliminary 5 Year Maximum Cost Allowance Calculation for Reconstruction Projects**

The Preliminary 5 Year Maximum Cost Allowance (MCA) calculation is an estimate provided to the district for planning purposes only and is based on currently available data.

This 5 year MCA will be performed for individual projects upon submission of such project for final approval. At that time, any amount in excess of the 5 Year MCA will be considered final and entered into the ODP project management system. This amount will also be provided to the State Aid Office for determining building aid.

It is important to note that the State Aid Office will use the regional cost factor and construction project cost index associated with the contract award date when calculating the maximum cost allowance for building aid calculations.

School District: **ROCES** North Syracuse Date: **02/18/21**  
 Building Number: **1113** Project Manager: **SCB**  
 Building Name: **Carlin MS**

**BAU Summary:**

Grades	Existing BAU's
K-6	918
7-12	636
Spec Ed	135

Input Data  
 Calculated Data

Go to <http://www.p12.nysed.gov/region/finance.htm> for Regional Cost Factors and Construction Project Cost Index Tables

Calculation of Building Aid Using Cost Index for: **ROCES-21** (Enter County name)  
 Regional Cost Factor: **1.0000** (Enter Regional Cost Factor)

Grade	Existing Capacity	X	Construction Index	Construction Index	Amount
K-6	918	X	\$ 12,170	Construction Index	\$11,172,000
7-12	636	X	\$ 17,038	Construction Index	\$10,836,168
7-12	0	X	\$ 18,268	Construction Index	\$0
Spec Ed	135	X	\$ 38,510	Construction Index	\$4,928,850
<b>Subtotal Construction Allowance</b>					<b>\$26,937,018</b>
K-6	918	X	\$ 2,434	Incidental Index	\$2,234,412
7-12	636	X	\$ 4,229	Incidental Index	\$2,708,724
7-12	0	X	\$ 2,562	Incidental Index	\$0
Spec Ed	135	X	\$ 9,127	Incidental Index	\$1,232,145
<b>Subtotal Incidental Allowance</b>					<b>\$6,175,281</b>
<b>Total Maximum Cost Allowance</b>					<b>\$33,112,300</b>

Maximum Cost Allowance  
 Construction: **\$26,937,018** (1)  
 Incidental: **\$6,175,281** (1)

Include in the table below projects with a CAD within the prior 5 years:

Projects #	Response #	CAD ID	Construction	Incidental
019			\$ 48,378.00	7,380
200		305016	\$ 1,200,000.00	100,000
Other projects added out.				

Adjustment before Smart Bond revenue add-on: **\$33,112,300**  
 Adjustment for projects using Smart Bond & Other Revenue: **\$6,916,871** (2)

**Total Allowance Remaining for Current Project: \$26,195,429**

(1) Maximum Cost Allowance = BAU's for the building multiplied by the most recent cost factors and construction project cost index amounts.  
<http://www.p12.nysed.gov/region/finance.htm>  
<http://www.p12.nysed.gov/region/finance.htm>  
 (2) CAD - Commissioner's Approval Date  
 (3) The "X" indicates whether estimated costs or final costs were used. Also, estimated costs will be adjusted as necessary by any FP.  
 FI (e.g. EXCEL, Capital Outlay, ROCES)  
 (4) See worksheet tab labeled "Smart Bond Calc" for the calculation of the Smart Bond Revenue Add-Back.



# State Environmental Review Act



- Don't just complete SEQRA, complete SEQRA properly.
- Coordination between A/E Team, Local Counsel, and Bond Counsel is critical.
- Hold a SEQRA meeting or conference call ASAP once the scope of the project is determined. Consider being over-inclusive in the scope of the SEQRA review in case there are extra funds or the project scope is “tweaked” to include additional work that fits within the proposition and campaign/PR materials.
- SEQRA must be completed PRIOR to adoption of a proposition Resolution.
- Define SEQRA “Action” – Type I, II or Unlisted. SEQRA review can take months if Type I or Unlisted.



# SEQRA Compliance



- Type II under Part 617.5(c)(i) – “maintenance or repair involving no substantial changes in an existing structure or facility.”
- Project description for SEQRA, proposition and voter campaign/PR materials must all be consistent.
- The BOE will be asked to adopt a resolution making an environmental determination for SEQRA.
- The easiest and most effective way to stop a planned project dead in its tracks before or after the vote is a legal challenge to the District’s SEQRA process.



# Project Proposition



- After the SEQRA Resolution is adopted, the BOE can adopt a Proposition Resolution setting the vote date, time and place and setting forth the project proposition language. This requires: (i) a final project description, (ii) a final total project cost, (iii) a description of other funds that may be used for the project (capital reserve funds, debt service fund monies and/or available district funds) and (iv) the total amount the District is authorized to borrow for the project. Bond Counsel will prepare this resolution.
- A Notice of Special Meeting for the vote on the proposition (bond counsel will prepare) must be published four times in the District's official newspaper(s) and the first publication must be no fewer than forty-five days prior to the vote.
- Do not prepare the project proposition yourself.



# Capital Project Proposition Sample



Shall the Board of Education of the District undertake a capital project consisting of the reconstruction, renovation and improvement of and the construction of technology and cafeteria additions to the High School, including, site improvements, interior, exterior and infrastructure upgrades, acquisition and installation of original furnishings, fixtures and equipment, architectural fees and all other necessary costs incidental to such work and to expend therefore a total sum not to exceed \$52,000,000, which is estimated to be the total maximum cost thereof, and to pay for the Project by using \$7,200,000 from the reserve fund approved by the District voters on May 16, 2017 and the levy of a tax which is hereby voted for the Project in the amount of \$44,800,000, less the amount of State Aid which may be received for the Project, which tax shall be levied and collected in annual installments in such years and in such amounts as may be determined by the Board of Education and in anticipation of the collection of such tax, bonds and notes of the District are hereby authorized to be issued at one time, or from time to time, in the principal amount not to exceed \$44,800,000 and a tax is hereby voted to pay the interest on said obligations when due.



# Bond Resolution Process



- After the successful vote, Bond Counsel will prepare a Bond Resolution authorizing the BOE to go forward with the Project and the voter authorized borrowings.
- As part of the Bond Resolution, the District Clerk is authorized to publish an “Estoppel Notice” one time in the District’s official newspaper(s). This is a summary of the Bond Resolution. Twenty days after it is published, anyone seeking to challenge the process by which the Bond Resolution was adopted is generally “estopped” from challenging the legality of the proceedings.





# Bond Counsel Checklist



- Certified SEQRA Resolution
- Certified Proposition Resolution
- Affidavit of Publication – Public Notice of Vote
- Clerk's Certificate – Results of Vote
- Certified Bond Resolution
- Affidavit of Publication – Estoppel Notice



## Second Segment Break (Financial)



QUESTIONS ...

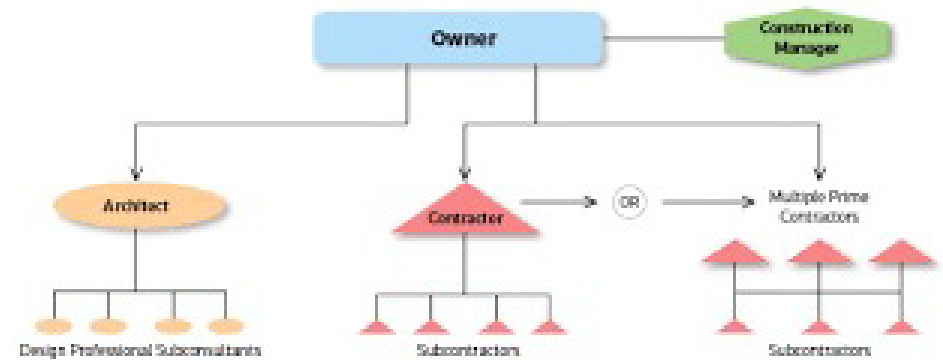
Please get up and have some LUNCH  
Our program will resume in 45 minutes



# Post-Referendum and Design Process



- Overall Design Process
  - Schematic Design through SED Submission
  - SED Approval Process (Includes Expedited)
  - Construction Documents and SED Addendum



- Schematic Design
  - Opportunity to re-align spaces with District Vision
    - Explore new concepts, STEM, Co-teaching, inclusion, etc.
    - Continued stakeholder engagement



# Design Process Phases



- Design Development and Const. Docs.
  - Lock down concepts and define outcomes
    - 85% Complete, Update schedules and estimates
    - Identify Alternates and Phasing
    - Prepare for SED submission and review
- Construction Procurement Method
  - Public Bid, Co-Op, State Contract, etc.
- Cost Estimating and Budget Controls



# Estimating and Cost Controls



- Three estimates should be completed prior to bid
  - Must quantify Construction and Incidental costs
  - 1<sup>st</sup> Based on lump sum and SF costs (Schematic)
  - 2<sup>nd</sup> is a Hybrid of take offs and SF costs (Design)
  - 3<sup>rd</sup> is a complete detailed take off (SED Submission)
- Risk Factors and Cost Controls
  - Construction (Hard) vs Incidental Costs (Soft)
  - Contingency, Escalation, and Regional Factors (Estimating)
  - Add/Deduct Alternates and Unit Pricing (Bidding)
  - Allowances (Bidding)



# Managing your District's Risk

WHAT? HOW? WHY?





# Property Insurance



- The District will need to purchase a **Builder's Risk Policy**.
- This provides property coverage to the work being completed during the construction and work phase of the project.
- We recommend that the District purchases this policy on a "Completed Value Builder's Risk" policy form.
- Contracts typically require that the interest of both the District and the Contractor(s) are covered by the same policy.
- Coverage and Claim scenarios



# Contractor Liability Insurance



- We need to ensure that all Bid Specifications require proper coverages and limits of liability to be provided by the Contractor(s).
- Contractor Insurance provisions in the Bid Specifications need to include strong “hold harmless” and “indemnification” language **favoring** the District.
- This wording should be reviewed by your Attorney and Insurance Advisor prior to their use.
- The successful completion of these documents and included language positions the District to successfully “manage” and “transfer” the additional risks created from the project to the appropriate parties that are doing the work for you.



# District Liability Insurance



- **Of significant importance is an OCP policy.** This stands for **Owners and Contractors Protective** Liability Policy. This is a policy that the Contractor purchases for the District. The policy is required in the Bid Specifications. It is actually an additional policy in the **District's** name.
- This provides “General Liability” coverage for the District from lawsuits related to activities of the Construction project. This protects the District's Liability policy that covers your day-to-day operations and exposures to loss.
- These claims do occur and the existence of this policy protects your primary insurance policy from paying claims stemming from the Project. They can be extremely valuable.
- This is **managing and transferring your additional risks from the project to the Contractors** performing the work for the District.
- Let's talk about some Claim Scenarios



# Bidding or Proposal Phase



- Design-bid-build GML § 103 Lowest Responsible Bidder
- “Responsive” bid; “Responsible” bidder
- Challenges to disqualification as “non-responsible”
- Challenges as Second low bidder
- GML § 103(16) Piggybacking and Cooperative Purchasing
- State Contract for purchases
- Standardization of Materials/Products (Board Resolution)
- Energy Performance Contracts (EPC)
- Capital Outlay Projects (\$100K)



## Third Segment Break (Design and Bidding)



### QUESTIONS ...

Please get up stretch, grab some snacks/beverages, and our program will resume in 15 minutes



# Coordinated Contracts



- Contractor, A/E, and CM agreements guide coordinated performance of project.
- Insurance, bonding, indemnification, default, and termination provisions.
- Time is of the essence; Liquidated damages vs. actual (direct and consequential) damages.
- Opportunities to cure defaults.
- Schedule of Values, Payments to Contractors, etc.





# Contractor Performance



- Contracts describe duties of each team member.
- Payments to contractors based on inspections and comparison to the Schedules of Values.
- Change process; change orders and construction change directives. Streamline change process by delegating authority to one District official.
- Owner's right to perform and Notice Letter Process.
- Substantial Completion (Not final completion).



# Construction Phase Damages



- Job injuries; Contractor indemnifies owner by contract against personal injury claims.
- Dispute resolution; record keeping. Contractor, A/E, and CM agreements all have claims and mediation provisions.
- Liens by subcontractors and suppliers against public projects are against the funds, not property (private), and filed in a lien book.
- Failure to perform in a workmanlike manner.
- Bankruptcy, abandonment, termination, delays.



# Project Execution and Construction Admin.



- Meetings shift from Architect Facilitated to CM Leading
- Meetings should be scheduled regularly between the OACM Team and secondary meetings with the Contractors
- Roles and responsibilities regarding administration should be sorted out ahead of time.
  - Who will be recording meeting events, issuing reports, administering submittals
  - Requests for Information (RFI),
  - Request for Proposal (RFP)
  - Shop Drawing and Submittal Process
- Change Order Process and Types (Allowance use)
  - Owner Requested, Unforeseen, Omissions, Errors



# Project Execution and Construction Admin.



- What is expectation of CM during construction
- What is expectation of A/E Site visits during construction
  - Stopping work (owner) vs rejecting work (Architect)
  - Notice for taking work over (Owner)
  - Required and Additional Testing for compliance
- Who creates completion lists, work to be corrected, and verifies items have been addressed
- How will information be shared with the Board of Education and the Public
- Reporting and Project Management Tools (Technology)



# Closeout



- Closeout is a Process (Be Patient)
  - AIA Substantial Completion, Punch Lists, and Inspections
    - Meaning and Responsibilities
  - Change Orders and Allowances
    - Submissions to SED and Accounting
  - Closeout Checklists given to Contractor at Pre-Const.
  - Challenges with keeping contractors proactive
    - Don't wait until the end to finish the administration req.
  - Record Drawings (As-Builts) and O/M Manuals
  - Operational Training and Materials Extra Stock
  - Commissioning and Balance Reports



# Closeout



- Closeout is a Process (Continued)
  - Contractor's Affidavit of Payment of Debts and Claims
  - Contractor's Affidavit of Release of Liens
  - Final Walkthrough and Punch List Completion
  - Claims and Claims Resolution
  - Consent of Surety to Final Payment
  - Final Payment to Contractor
  - SED Substantial Completion
  - Final Cost Reports and Timing



# Close-Out Final Cost Reports



- Final Cost Reports
  - The preparation of the Final Cost Report begins on day one.
  - Tracking all contracts, change orders, and expenditures throughout the project timeline will make the completion of the Final Cost Report much easier and accurate.
  - There are many nuances in how expenses are recorded in the Final Cost Report that can have a significant effect on the amount of building aid that a project will receive.

STAGE COST	Preparation Work	Earth work	Concrete work	Electrical work	Masonry	Additional work
PREPARED COST	0	0	0	0	0	0
LABOUR COST	340	2471	2179	94	1576	2100
TOTAL COSTS	340	2471	2179	94	1576	2100
Material markup cost	0	0	0	0	0	0
MATERIAL SUB TOTAL	0	0	0	0	0	0
LABOUR PREPARED COST	0	0	0	0	0	0
LABOUR SUB TOTAL	340	2471	2179	94	1576	2100
TOTAL WITH MATERIALS	340	2471	2179	94	1576	2100
MATERIAL TOTAL	0	0	0	0	0	0
LABOUR TOTAL	340	2471	2179	94	1576	2100
PROJECT TOTAL	340	2471	2179	94	1576	2100



# A Cycle With No End



- 11 Month Warranty walkthrough from substantial completion
- Warranties continue on for workmanship minimally for one year from substantial completion and 5+ years for certain materials
- Facilities must maintain and manage assets (CMMS)
- Debrief / Lessons Learned from Process (District, Architect, CM)
- Financial Advising and Planning Never Ends
- ... Until the Next Project (most likely in a five-year cycle)





# Questions / Reception / Sponsors



## ADDITIONAL QUESTIONS ...

Please join us for a reception and Happy Hour ☺

Special Thanks to Our Sponsors and Panelists



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