

The June 23, 2021 Board Meeting minutes were approved by the MSBA's Board of Directors at the August 25, 2021 Board meeting.

Massachusetts School Building Authority Board Meeting Minutes of June 23, 2021

A meeting of the Massachusetts School Building Authority (the “Authority” or “MSBA”) was held on June 23, 2021. The meeting was held remotely via Zoom.

Members Present: Deborah Goldberg, State Treasurer and Chair; Sean Cronin, Designee of the Secretary of Administration and Finance; Matt Deninger, Designee of the Commissioner of Education; Terry Kwan, appointed member; Greg Sullivan, appointed member; and Sheila Vanderhoef, appointed member.

Others Present: James MacDonald, Chief Executive Officer; Jack McCarthy, Executive Director/Deputy Chief Executive Officer; Mary Pichetti; Laura Guadagno; Christine Nolan; Matt Donovan; Maria Puopolo; Stacy Patino; Brian Kelley; Colleen Smith; Mike Bergquist; Siobhan Tolman; Karl Brown; Katie DeCristofaro; John Jumpe; Mike McGurl; Chris Alles; municipal representatives; legislative representatives; local elected officials; and other members of the MSBA and the public.

Call to Order

The Chair called the meeting to order at 10:02 a.m. and asked if anyone is recording the meeting. No one announced that they were recording the meeting.

She then explained that the meeting is being held subject to Chapter 20 of the Acts of 2021 signed into law by Governor Baker on June 16, 2021, which permits remote participation by all Board members and allows the MSBA to use adequate alternative means, such as a conference call line, to ensure public access to the deliberations of the Board.

Next, the Chair provided a brief overview of the items on the agenda for the meeting. She explained that the Board will be voting to: approve minutes from the May 24, 2021 Board of Directors Business meeting; invite two districts into Feasibility Study; authorize two districts to execute Project Funding Agreements for the Accelerated Repair Program; and authorize one proposed project to proceed into Preferred Schematic Design, with an estimated \$59.5 million in total project costs. The Board will also be voting to invite two districts to enter into Project Scope and Budget Agreements and Project Funding Agreements, with a combined Estimated Maximum Total Facilities Grant of approximately \$71.5 million. Additionally, the Board will be voting to approve six final audits from six districts with a combined Final Total Facilities Grant amount of approximately \$57 million. Finally, the Board will be voting to: amend the master services agreement for the MSBA’s Post Occupancy Program; revise the MSBA’s Funding Policy; and waive timing requirements for the East Gloucester Elementary School project.

Acceptance of the May 24, 2021 Minutes

The Chair asked for a motion to accept the minutes of the May 24, 2021 Board meeting. A motion was made by Mr. Sullivan and seconded by Mr. Deninger:

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Approval of the Minutes of the May 24, 2021 Board Meeting

VOTED: That the Board of Directors of the Massachusetts School Building Authority hereby approves the Minutes of the May 24, 2021 Board meeting.

There being no Board discussion, the Chair asked for a roll call vote of the Board.

Roll Call Vote:

Terry Kwan – Yes
Sheila Vanderhoef – Yes
Sean Cronin – Yes
Matt Deninger – Yes
Greg Sullivan – Yes
Deborah Goldberg – Yes

The motion passed – 6 in favor, 0 against, 0 abstaining.

Invitation to Feasibility Study

MSBA Capital Program Manager Katie DeCristofaro explained that staff are recommending that the Board vote to invite the Town of East Longmeadow and the Whittier Regional Vocational Technical School District into Feasibility Study. The two districts were invited into the Eligibility Period on December 11, 2019 and have completed all of the necessary prerequisites including: the filing of their educational profile questionnaire, finalizing enrollment, and securing feasibility study/schematic funds to proceed.

The first district for consideration is the East Longmeadow High School in the Town of East Longmeadow. In April 2020, the Town expressed to the MSBA its concerns with its original Eligibility Period commencement date of June 1, 2020 and requested an extension to October 1, 2020, due to impacts from COVID-19. After further conversations with the Town, the MSBA agreed the Town would benefit from the extension and it was approved on May 15, 2020. The MSBA will be working with the District to study options that maintain its current grade 9-12 configuration for 800 students.

The second district for consideration is the Whittier Regional Vocational Technical High School in the Whittier Regional Vocational Technical School District. The District benefited from a 30-day extension to the 270-day Eligibility Period to allow the necessary time for the District to complete the MSBA requested Chapter 74 Programming submission, to reach a mutually agreed upon enrollment, and for the District to review and return the signed study enrollment certification. The MSBA will be working with the District to study the following two options: 1,280 students in the facility's current 9-12 grade configuration; and, between 1,280 and 1,400 students for the purposes of partial proposed expansion and/or additional Chapter 74 Programming in grades 9-12.

Based on the completion of the Eligibility Period requirements, staff recommend that the Board vote to authorize these two districts to proceed into Feasibility Study.

The Chair asked for a motion, and the following motion was made by Ms. Vanderhoef and seconded by Ms. Kwan:

**Vote on Inviting Communities to Collaborate with the MSBA
to Conduct a Feasibility Study**

VOTED: That the Executive Director is hereby authorized to invite certain communities to collaborate with the MSBA to conduct and/or review a Feasibility Study, as described in 963 CMR 2.00 *et seq.*, and subject to any conditions set forth in Exhibit A, for each of the schools listed in Exhibit A attached hereto.

VOTED: That the Executive Director is hereby authorized to do all acts, to execute and deliver any and all documents and agreements, and to expend all funds necessary or desirable in connection with conducting and/or reviewing a Feasibility Study for each of the schools listed in Exhibit A.

Mr. Cronin commented that the Whittier Regional Vocational Technical School District should make sure the member communities are involved in discussions regarding the financial impact of the proposed project.

East Longmeadow Superintendent Gordon Smith thanked the Board for this opportunity and introduced other local officials who were on the call. He thanked the MSBA staff, specifically Katie DeCristofaro and Emma Parish, for all of their help.

Whittier Regional Vocational Technical School District Superintendent Maureen Lynch thanked the Board and the MSBA. She commented that the District has met with all of the communities and has also started a stabilization account. She noted that she looks forward to the next phase in the process.

A staff member from State Representative Brian Ashe's office spoke on behalf of the Representative noting that the Representative supports the proposed project at the East Longmeadow High School in East Longmeadow.

There being no more discussion, the Chair asked for a roll call vote of the Board.

Roll Call Vote:

Terry Kwan – Yes
Sheila Vanderhoef – Yes
Sean Cronin – Yes
Matt Deninger – Yes
Greg Sullivan – Yes
Deborah Goldberg – Yes

The motion passed – 6 in favor, 0 against, 0 abstaining.

Accelerated Repair Program Project Funding Agreement Authorization

Next, the MSBA's Deputy Director of Capital Planning, Mike McGurl, explained that prior to today's Board meeting, MSBA staff received Schematic Design submissions from two districts representing two schools. The schools are the first to seek approval for Project Funding Agreements from the 2020 Accelerated Repair Program invitations. The school projects combine for one roof

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replacement project and one window/door replacement project. MSBA staff have reviewed the existing conditions analysis and proposed schedule provided by each District and have discussed the scope and budget with the Districts and their consultants. The Districts have provided combined Total Project Budgets of approximately \$3.6 million, which include total construction estimates of approximately \$2.6 million. The combined Estimated Maximum Total Facilities Grants for these projects are \$1,738,655. Including potentially eligible project contingencies, the combined Maximum Facilities Grants are \$1,814,987. In conclusion, staff recommend that the two districts, representing two schools receive authorization to enter into Project Funding Agreements with the MSBA.

The Chair asked for a motion, and the following motion was made by Mr. Sullivan and seconded by Ms. Vanderhoef:

Vote to Authorize the Executive Director to Execute Project Funding Agreements for the Proposed Accelerated Repair Projects

VOTED: That the Board of Directors hereby approves the Proposed Accelerated Repair Projects, as set forth below and as further described in the materials presented to the Board and attached hereto, and as such the Proposed Projects shall be further defined in the Project Funding Agreements, and authorizes the Executive Director to take all steps necessary to execute and deliver Project Funding Agreements with the Districts set forth below, in such forms as he may determine to be acceptable, and expend funds in accordance with such Project Funding Agreements, in accordance with the following:

District	School	Scope	Total Project Budget	Estimated Maximum Total Facilities Grant	Maximum Total Facilities Grant
Cambridge	Cambridgeport Elementary School	Window/Door	\$2,242,100	\$809,827	\$843,570
Haverhill	Haverhill High School	Partial Roof	\$1,343,284	\$928,828	\$971,417
Totals			\$3,585,384	\$1,738,655	\$1,814,987

There being no Board discussion, the Chair asked for a roll call vote of the Board.

Roll Call Vote:

- Terry Kwan – Yes
- Sheila Vanderhoef – Yes
- Sean Cronin – Yes
- Matt Deninger – Yes
- Greg Sullivan – Yes
- Deborah Goldberg – Yes

The motion passed – 6 in favor, 0 against, 0 abstaining.

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Recommendation for Preferred Schematic Design

The MSBA's Director of Project Management, John Jumpe, explained that the Board is being asked to approve the Preferred Schematic Design for the Franklin Avenue Elementary School in the City of Westfield. The recommendation is to replace the existing Franklin Avenue Elementary School and the existing Abner Gibbs Elementary School with a new school on the existing Franklin Avenue site in the City of Westfield. This recommendation is contingent upon the District gaining full ownership, control, and exclusive use of the expanded site. The proposed project, which includes PreK, is designed to serve 395 students in grades K-4 and has an estimated construction budget of approximately \$50.4 million.

The Chair asked for a motion, and the following motion was made by Mr. Sullivan and seconded by Ms. Vanderhoef:

Vote on Moving the City of Westfield to Schematic Design

VOTED: That the Board of Directors hereby authorizes the Executive Director to do all acts necessary, execute and deliver any and all documents and agreements, and expend funds as deemed appropriate by the Executive Director to assist the City of Westfield with, in concept, the development of schematic designs to replace the existing Franklin Avenue Elementary School and the existing Abner Gibbs Elementary School on the site of the existing Franklin Avenue Elementary School, contingent upon the District gaining full ownership, control, and exclusive use of the proposed site, as further described in the materials presented to the Board and attached hereto, in accordance with G.L. c. 70B and 963 CMR 2.00 *et seq.* and all other guidelines and policies of the Authority.

The Executive Director noted that State Senator John Velis sent a letter offering his support for the proposed project at the Franklin Avenue Elementary School in Westfield.

Westfield Superintendent Stefan Czaporowski introduced other local officials who were on the call. He commented that the MSBA's process has been a wonderful learning experience, and he thanked the Board and the MSBA for this opportunity. He noted that the guidance from the MSBA has also been wonderful, and he looks forward to the next phase in the process.

Mr. Sullivan commented that the MSBA is a model agency. He commented that he is always happy to hear someone in municipal government compliment the MSBA. He noted that he is very proud of the Executive Director and everyone in leadership at the MSBA, adding that he thinks the agency is operating well.

There being no more discussion, the Chair asked for a roll call vote of the Board.

Roll Call Vote:

Terry Kwan – Yes
Sheila Vanderhoef – Yes
Sean Cronin – Yes
Matt Deninger – Yes
Greg Sullivan – Yes

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Deborah Goldberg – Yes

The motion passed – 6 in favor, 0 against, 0 abstaining.

Approval of Project Scope and Budget Agreement and Authorization for Project Funding Agreement

The MSBA's Design Director, Karl Brown, explained that the Board is now being asked to approve a Project Scope and Budget Agreement and to authorize the MSBA to enter into a Project Funding Agreement for a project at the Crocker Elementary School in the City of Fitchburg. The recommendation is to replace the existing Crocker Elementary School with a new facility serving grades 1-5 on the existing site. The proposed project has a design enrollment of 845 students. The District provided a Total Project Budget of approximately \$65 million, which includes an estimated construction cost of approximately \$49.7 million.

The Chair asked for a motion, and the following motion was made by Ms. Vanderhoef and seconded by Mr. Deninger:

Vote to Authorize the Executive Director to Execute a Project Scope and Budget Agreement and Project Funding Agreement with the City of Fitchburg

VOTED: That the Board of Directors of the Massachusetts School Building Authority hereby approves the Potential Project to replace the existing Crocker Elementary School with a new facility serving grades 1-5 on the site of the existing Crocker Elementary School, as further described in the materials presented to the Board and attached hereto and as such Proposed Project shall be further defined in the Project Scope and Budget Agreement, and authorizes the Executive Director to take all steps necessary to execute and deliver a Project Scope and Budget Agreement and Project Funding Agreement with the City of Fitchburg, in such forms as he may determine to be acceptable, for the Crocker Elementary School project at a reimbursement rate of eighty percent (80.00%) of approved, eligible costs, up to an Estimated Maximum Total Facilities Grant of \$39,747,562, which shall not include any funds for owner's or construction contingency expenditures; that the Board of Directors hereby further authorizes the Executive Director to increase the Estimated Maximum Total Facilities Grant up to a Maximum Total Facilities Grant of \$42,145,758, in the event that the MSBA determines, in its sole discretion, that any owner's and/or construction contingency expenditures are eligible for reimbursement pursuant to MSBA regulations, guidelines, or policies; that the Board of Directors hereby further authorizes the Executive Director to expend funds in accordance with such Project Funding Agreement.

Fitchburg Mayor Stephen DiNatale thanked the Board, Jack McCarthy, and the MSBA, noting that the MSBA staff have been outstanding.

There being no more discussion, the Chair asked for a roll call vote of the Board.

Roll Call Vote:

Terry Kwan – Yes

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Sheila Vanderhoef – Yes

Sean Cronin – Yes

Matt Deninger – Yes

Greg Sullivan – Yes

Deborah Goldberg – Yes

The motion passed – 6 in favor, 0 against, 0 abstaining.

Next, the Design Director explained that the Board is now being asked to approve a Project Scope and Budget Agreement and to authorize the MSBA to enter into a Project Funding Agreement for a project at the Hadley Elementary School in the Town of Swampscott. The recommendation is to replace the existing Hadley Elementary School, Clarke Elementary School, and Stanley Elementary School with a new District-wide grades K-4 facility on the site of the existing Stanley Elementary School. The proposed project has a design enrollment of 900 students. The District provided a Total Project Budget of \$98.3 million, which includes an estimated construction cost of approximately \$77.9 million.

This recommendation is contingent upon the District obtaining an easement, by agreement or by eminent domain, for the use of the adjacent Unitarian Universalist Church of Greater Lynn site for the purposes of vehicular circulation as described in the Preferred Schematic submittal and the plan shared with the Facilities Assessment Subcommittee of the Board on June 2, 2021. If an easement is not obtained, other options for vehicular circulation that the District may explore may be subject to further review and approval by the Board.

The Chair asked for a motion, and the following motion was made by Ms. Vanderhoef and seconded by Mr. Deninger:

Vote to Authorize the Executive Director to Execute a Project Scope and Budget Agreement and Project Funding Agreement with the Town of Swampscott

VOTED: That the Board of Directors of the Massachusetts School Building Authority hereby approves the Potential Project to replace the existing Hadley Elementary School, Clarke Elementary School, and Stanley Elementary School with a new district-wide grades K-4 facility on the site of the existing Stanley Elementary School contingent upon the District obtaining an easement for the use of the adjacent Unitarian Universalist Church of Greater Lynn site for the purposes of vehicular circulation, as further described in the materials presented to the Board and attached hereto and as such Proposed Project shall be further defined in the Project Scope and Budget Agreement, and authorizes the Executive Director to take all steps necessary to execute and deliver a Project Scope and Budget Agreement and Project Funding Agreement with the Town of Swampscott, in such forms as he may determine to be acceptable, for the Hadley Elementary School project at a reimbursement rate of forty-eight and ninety hundredths percent (48.90%) of approved, eligible costs, up to an Estimated Maximum Total Facilities Grant of \$31,809,775, which shall not include any funds for owner's or construction contingency expenditures; that the Board of Directors hereby further authorizes the Executive Director to increase the Estimated Maximum Total Facilities Grant up to a Maximum Total Facilities Grant of \$32,572,001, in the event that the MSBA determines, in its sole discretion, that any owner's and/or construction contingency expenditures are eligible for reimbursement

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pursuant to MSBA regulations, guidelines, or policies; that the Board of Directors hereby further authorizes the Executive Director to expend funds in accordance with such Project Funding Agreement.

Swampscott Superintendent Pamela Angelakis commented that she is excited to be before the Board today and introduced other local officials that were on the call. She thanked the Board and MSBA on behalf of the Town of Swampscott for their continued support.

There being no more discussion, the Chair asked for a roll call vote of the Board.

Roll Call Vote:

Terry Kwan – Yes
Sheila Vanderhoef – Yes
Sean Cronin – Yes
Matt Deninger – Yes
Greg Sullivan – Yes
Deborah Goldberg – Yes

The motion passed – 6 in favor, 0 against, 0 abstaining.

Audit

The MSBA's Chief Financial Officer, Laura Guadagno, thanked Tamia Buckingham, Wei Xu, and the Audit team, in conjunction with the Capital Planning team, for their hard work. She began her audit update by explaining that the MSBA has completed final audits for 573 Capital Pipeline Program projects plus the six projects that are being presented for final approval to the Board today, all together representing approximately \$6.9 billion in submitted and audited costs.

She continued, explaining that the MSBA has also audited approximately \$4.7 billion in submitted costs for the 234 projects currently submitting monthly requests for reimbursement. Based on the Total Project Budget information and submitted costs to date of approved projects, the MSBA estimates that approximately \$3.8 billion in additional costs will be submitted for audit for these projects.

The Chief Financial Officer then explained that monthly submitted costs have averaged \$130.3 million over the 12 months preceding this Board meeting, and the total amount submitted and audited in this 12-month period equals approximately \$1.56 billion.

Approval of Audits, New Program

The Chief Financial Officer explained that the Board is being asked to approve six Capital Pipeline Program audits listed on Exhibit B. She explained that the total combined grant amount for these six projects is \$57,320,241.

The Chair asked for a motion, and the following motion was made by Ms. Vanderhoef and seconded by Ms. Kwan:

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Approval of Audit Costs for Several Projects

VOTED: That the Board of Directors of the Massachusetts School Building Authority hereby approves the final audited approved grant amounts for the projects listed in the spreadsheet attached hereto as Exhibit B and authorizes the Executive Director to make payments consistent with this vote.

The Executive Director noted that Hank Haff, Senior Project Manager for the Needham Building Design and Construction Department, sent a letter thanking the MSBA staff on behalf of the Town for the Sunita Williams Elementary School project in Needham. The Executive Director commented that he will send a copy of the letter to the Board.

There being no more discussion, the Chair asked for a roll call vote of the Board.

Roll Call Vote:

Terry Kwan – Yes
Sheila Vanderhoef – Yes
Sean Cronin – Yes
Matt Deninger – Yes
Greg Sullivan – Yes
Deborah Goldberg – Yes

The motion passed – 6 in favor, 0 against, 0 abstaining.

MSBA Updates

Executive Director's Report

The Executive Director began his report by thanking MSBA staff members for their hard work in preparing for the Board meeting. He noted that, since the April 14, 2021 Board meeting, the MSBA has visited or had meetings with individuals from 26 projects. As of June 18, 2021, eight districts have voted affirmatively to appropriate feasibility study funds or full project funds. He explained that the MSBA anticipates 26 project visits or meetings in June, July and August and presented a list of upcoming district outreach plans as part of his PowerPoint presentation. He noted that since the last Board meeting, the MSBA has participated in six outreach and milestone events, three groundbreakings, three topping off ceremonies, and the Demystifying Net Zero event. He presented a list of the events as part of his PowerPoint presentation. The Executive Director then explained that the MSBA held a Commissioning Roundtable on May 6, 2021 regarding Owner's Project Requirements, a Contractors Roundtable on June 3, 2021 regarding Creating a Diverse, Equitable & Inclusive Project Environment, a Roundtable on June 8, 2021 regarding Safe & Healthy Buildings During COVID and Beyond, and a Designer Roundtable on June 17, 2021 regarding Healthier Building Materials.

Next, the Executive Director welcomed the new Women in Finance Fellows, Francesca Guthrie and Thirsta Savain. Then, the Executive Director welcomed the following new hires: Amy Brodeur as Senior Treasury Analyst and Yona Baer as Project Manager III - Data. Next, he congratulated MSBA Staff on the following promotions to Project Manager III: Fenton Bradley, Christina Forde, Jennifer Connarton, Evan Levesque, Christy Murray, and Kevin Sullivan.

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Then, the Executive Director congratulated Brittany Gomes on earning her Masters in Public Policy from the University of Massachusetts Dartmouth and Kevin Collins on earning his Masters in Construction Management from Wentworth Institute of Technology. He then congratulated Jenn Flynn and her husband Neil on the birth of their daughter Ellery Paige Flynn on May 11, 2021.

Post Occupancy Contract Update

The MSBA's Deputy Director of Project Management, Chris Alles, provided an update on the Post Occupancy Program and the staff recommendation to amend the term of the Post Occupancy contract with the MSBA's consultant. He presented a PowerPoint and provided an overview of the timeline for the Post Occupancy Program. He then explained that in an effort to further support the Post Occupancy Program in upcoming Fiscal Year 2022, staff recommend amending the term of the Post Occupancy contract between the MSBA and Perkins + Will from July 1, 2021 to June 30, 2022.

He explained that Perkins + Will has a vast amount of experience with conducting post occupancy evaluations in the industry and has played a key role in reaching the present milestone associated with preparation for the live testing of data collection tools and database technology. Because the combined cost of additional services will result in a total contract value that will exceed \$250,000, pursuant to the MSBA's by-laws, staff are recommending that the Board authorize the Executive Director to amend the master services agreement with the MSBA's consultant for the Post Occupancy Program.

The Chair asked for a motion, and the following motion was made by Ms. Vanderhoef and seconded by Ms. Kwan:

Vote Authorizing the Executive Director to Amend the Master Services Agreement for the Post Occupancy Program

VOTED: That the Board of Directors of the Massachusetts School Building Authority hereby authorizes the Executive Director to execute and deliver one or more amendments to the master services agreement for the Post Occupancy Program, as further described in the materials presented to the Board and attached hereto, the cost of which may exceed \$250,000.00, containing such provisions as he shall deem advisable, the definitive form of such amendment(s) to be evidenced conclusively by his execution thereof.

There being no discussion, the Chair asked for a roll call vote of the Board.

Roll Call Vote:

Terry Kwan – Yes
Sheila Vanderhoef – Yes
Sean Cronin – Yes
Matt Deninger – Yes
Greg Sullivan – Yes
Deborah Goldberg – Yes

The motion passed – 6 in favor, 0 against, 0 abstaining.

Project Status Updates

The Deputy Director of Capital Planning provided an update on substantially completed projects. He explained that eight projects were scheduled to achieve substantial completion in 2020. Of the remaining eight, six have achieved substantial completion (Lexington, Marlborough, Saugus, Taunton, Cape Cod Regional Vocational Technical High School, and Natick). The MSBA anticipates the receipt of two additional substantial completion certificates. Both projects are reporting pending revisions to their substantial completion dates (Braintree and Somerville). Meanwhile, eighteen projects are scheduled to achieve substantial completion in 2021. Staff will continue to monitor these projects.

Project Overview Report

The Deputy Director of Capital Planning then provided bid data for the MSBA's Accelerated Repair Program. He explained that for the 2019 Accelerated Repair Program, 36 of the 36 reported projects bid within the estimated budget. An additional two projects are anticipated to be reported by the August Board meeting.

Next, the Deputy Director of Capital Planning presented a PowerPoint, including a summary of bid results for the Core Program. He reported that of the 14 Core Program projects scheduled to receive sub-bids in 2021, six have reported DBB bids or GMP executions to date. Five of the reported bids came in within the estimated budget.

Then, the Deputy Director of Capital Planning presented a PowerPoint, including a bid summary for the Core Program. He summarized available data for anticipated Sub-Bids in June, July and August and anticipated DBB Bids or GMP Executions in June, July and August.

Next, the Deputy Director of Capital Planning presented maps for bidding information regarding MSBA projects. He noted that he would like to thank Christy Murray who created the slides for today's Board meeting. He explained that the MSBA is currently tracking 27 projects for filed sub bidding over the next three years. This includes all projects that have been approved for Preferred Schematic Design prior to today. The 27 projects have a total estimated construction budget of approximately \$3 billion.

For 2021, seven projects have already filed sub bids, leaving seven projects remaining for the year. Those seven projects have a total estimated construction budget of \$852 million. The MSBA is tracking sub bids for the Dexter Park School project in Orange at the end of June and Waltham High School in August.

Moving into 2022, the MSBA is currently tracking 15 projects for filed sub bids. These totals include all projects approved for Preferred Schematic Design. Those 15 projects have a total estimated construction budget of just over \$1.3 billion. The MSBA anticipates that Andover, Boston Josiah Quincy Upper School, and Somerset will be the first of the 2022 projects to bid with the filed Sub Bids scheduled for February and March.

He explained that for 2023, the MSBA now has five projects scheduled to bid with an estimated construction budget of \$853 million. The 2023 map will continue to fill in as additional projects are approved for Preferred Schematic Design.

Recommendation to Revise the MSBA Funding Policy

The MSBA's Director of Project Management presented a PowerPoint presentation and provided an overview of the staff recommendation to revise the MSBA funding policy. He explained that MSBA staff considered four potential adjustments to the MSBA funding policy and are recommending the following three adjustments to the Board: the implementation of a cap on eligible Owner's contingency of 0.5% for new construction and 1% for addition/renovation projects, an upper limit of \$500 per square foot on OPM and Designer Fees for Basic Services, and to increase the MSBA Construction Cap from \$333 per square foot plus eligible demo and abatement to \$360 per square foot plus eligible demo and abatement. He noted that the MSBA reviewed the current demolition and abatement policy but is proposing additional review before considering any recommendations to change the current policy.

He explained that implementing all of these recommendations will promote parity in the distribution of grant funds, reallocate obligated grant line items that benefit more districts, and maximize the distribution of funds available within the grant cap space without sacrificing future opportunity for districts interested in the MSBA grant program.

The Chair asked for a motion, and the following motion was made by Ms. Kwan and seconded by Ms. Vanderhoef:

Approval of Massachusetts School Building Authority's Funding Policy

VOTED: That the Board of Directors of the Massachusetts School Building Authority hereby approves the following recommended changes to the Authority's funding policy, effective for districts receiving Project Scope and Budget approval on or after June 1, 2021, as further described in the materials presented to the Board and attached hereto, and hereby authorizes the Executive Director to do all acts and things necessary to implement the following recommended changes to the funding policy:

- The current policy of funding up to 3.5% of construction budget for otherwise eligible Owner's Project Management basic services shall be adjusted to fund up to 3.5% of an upper limit of \$500/sf or construction budget, whichever is less, for otherwise eligible Owner's Project Management basic services;
- The current policy of funding up to 10% of construction budget for otherwise eligible Designer basic services shall be adjusted to fund up to 10% of an upper limit of \$500/sf or construction budget, whichever is less, for otherwise eligible Designer basic services;
- A funding limit on potentially eligible Owner's Contingency of 0.5% of the construction budget for new construction and a potentially eligible Owner's Contingency of 1.0% for an addition/renovation project shall be implemented; and
- The current policy of funding up to \$333/sf plus eligible demolition and abatement shall be adjusted to fund up to \$360/sf plus eligible demolition and abatement;

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VOTED: That, in accordance with the aforementioned changes to the Authority's Funding Policy, effective for districts receiving Project Scope and Budget approval on or after June 1, 2021, the Board of Directors of the Massachusetts School Building Authority hereby approves a revised Estimated Maximum Total Facilities Grant of \$42,248,583, and a Maximum Total Facilities Grant of \$42,845,877, for the Potential Project in the City of Fitchburg to replace the existing Crocker Elementary School with a new facility serving grades 1-5 on the site of the existing Crocker Elementary School, as further described and subject to any limitations set forth in the materials presented to the Board on June 23, 2021; provided further that the Authority shall update the Total Project Budget for the project accordingly.

VOTED: That, in accordance with the aforementioned changes to the Authority's Funding Policy, effective for districts receiving Project Scope and Budget approval on or after June 1, 2021, the Board of Directors of the Massachusetts School Building Authority hereby approves a revised Estimated Maximum Total Facilities Grant of \$33,818,941, and a Maximum Total Facilities Grant of \$34,390,610 for the Potential Project in the Town of Swampscott to replace the existing Hadley Elementary School, Clarke Elementary School, and Stanley Elementary School with a new district-wide grades K-4 facility on the site of the existing Stanley Elementary School, as further described and subject to any limitations in the materials presented to the Board on June 23, 2021; provided further that the Authority shall update the Total Project Budget for the project accordingly.

There was a brief discussion among Board members and MSBA staff regarding the MSBA's funding cap and the impact of the changes to the funding policy for communities.

Mr. Sullivan thanked the MSBA for the work that has gone into revising the funding policy.

The Chair noted that she wants to compliment the MSBA staff. She commented that the revisions to the funding policy took a tremendous amount of work and data analysis, adding that it is a complicated process.

There being no more Board discussion, the Chair asked for a roll call vote of the Board.

Roll Call Vote:

Terry Kwan – Yes
Sheila Vanderhoef – Yes
Sean Cronin – Yes
Matt Deninger – Yes
Greg Sullivan – Yes
Deborah Goldberg – Yes

The motion passed – 6 in favor, 0 against, 0 abstaining.

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Finance

Sales Tax Collection Update

The Chief Financial Officer thanked the MSBA's Director of Budget and Finance Administration, Julie Leonard, and the Finance team for their hard work. She presented a PowerPoint and provided an FY2021 SMART Collections update. The FY2021 unaudited collections for July 2020 through May 2021 are \$160.2 million (19.22%) higher than FY2020 audited collections for the same period.

She presented a slide with a graphical depiction of FY2017 – FY2021 Monthly SMART collections, and then year-to-date SMART collections by year from FY2017 – FY2021.

Grant Payments Update

The Chief Financial Officer thanked the MSBA's Treasurer, Gianpiero Tirella, for his hard work and provided an update regarding MSBA grant payments for projects, noting that the MSBA has made \$672,142,492 in grant payments to date in Fiscal Year 2021. This is for 242 Capital Pipeline Program projects in 141 districts.

FY21 Budget Update and FY21 Year-End Spending Projections

Next, the Chief Financial Officer thanked the MSBA's Director of Budget and Finance Administration, Julie Leonard, and provided the Board with a FY2021 budget update. She presented a PowerPoint with the FY2021 Year to Date Spending and provided an update on salaries and benefits, administrative expenses, and grant program expenditures. Then, she provided the Board with an overview of the FY2021 year-end spending projections.

Ms. Vanderhoef asked how many staff vacancies the MSBA currently has.

The Chief Financial Officer commented that the MSBA currently has nine open positions.

Legal

Litigation Update

The MSBA's General Counsel Christine Nolan provided an update on two projects in the MSBA's Capital Pipeline that have project related litigation.

She spoke first about the Doherty High School project in the City of Worcester noting that, during that last legal update, she reported that reimbursement payments for Worcester have been placed on hold because of pending litigation related to the project. She explained that placing payments on hold is standard when there is pending litigation related to a project. She noted that, in Worcester's case, the City decided to proceed with the project at its own risk and without receiving reimbursement payments and, during this time, the MSBA has agreed to work with the City to receive project submittals and provide feedback. She added that she will continue to provide updates to the Board regarding the status of the Doherty High School project.

Next, the General Counsel spoke about the litigation that is related to the East Gloucester Elementary School project in the City of Gloucester. She explained that, as reported at previous Board meetings,

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the MSBA has been named as a defendant in a lawsuit related to the East Gloucester Elementary School project. She added that the City of Gloucester and the Massachusetts Executive Office of Energy and Environmental Affairs have also been named as defendants. She explained that the plaintiffs are not seeking monetary relief against the MSBA and that the suit appears aimed solely at stopping the project.

The General Counsel noted that the MSBA has not entered into a Project Funding Agreement with the City and, therefore, reimbursements for costs beyond the scope of the feasibility study/schematic design are on hold while the litigation is pending. She explained that the City has decided to proceed with the project at its own risk and the MSBA has agreed, as it does with other projects with pending litigation, to continue to review project related submittals.

The General Counsel added that, the MSBA, working with outside counsel, has served a motion for summary judgement and there is a hearing scheduled for July 15, 2021.

Recommendation to waive 963 CMR 2.10 (11)(a) and other timing requirements of 963 CMR 2.10 for the East Gloucester Elementary School Project in the City of Gloucester

Next, the General Counsel spoke about a request from the City of Gloucester for a waiver of certain regulatory requirements for the East Gloucester Elementary School project.

She explained that, on June 10, 2021, the MSBA received a letter from the Plaintiff's attorney explaining that the Plaintiffs plan to amend their action to enforce a particular provision of the MSBA's regulations related to the timing of grant program participants entering into a Project Funding Agreement. She noted that the regulations refer to a 14 day time period for the Eligible Applicant to sign the Project Funding Agreement if certain requirements have been met. She explained that the regulations contemplate that the Board vote for approval of the project be rescinded if this timeline is not met.

The General Counsel explained that, on June 18, 2021, the MSBA received a request from the City asking the MSBA to retroactively waive this provision of the regulations, adding that another section of the MSBA's regulations permit the Board to waive any part of our regulations.

The General Counsel continued, explaining that the Board is being asked to consider this waiver request for several reasons. The first is timing. In November, the Plaintiff's counsel sent to the MSBA a copy of a notice of intent to sue that was sent to the City on October 28, 2020. Having been notified of pending litigation, the MSBA did not forward an execution copy of the Project Funding Agreement to the City.

She continued, noting that the next reason is related to enforcement of the Regulations. The 14 day timeline set forth in the regulations has uniformly not been enforced. This section of the regulations was promulgated when the MSBA's grant program was first created. Once the grant program was implemented, the timeline set forth has proved to be incompatible with how the grant program process actually works. She explained that, incidentally, MSBA staff is in the process of revising the MSBA's regulations and this is one of the provisions that MSBA staff plans to change.

The General Counsel continued, explaining that this is an appropriate situation for a waiver. The Plaintiffs are seeking to enforce a procedural regulation that is not enforced for other grant program

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participants. It would not be equitable to enforce this provision for the City alone. She added that, a waiver does not affect the substantive merits of the City's grant application.

Last, she added that, it is the hope of MSBA staff that waiving these provisions will prevent further delay for the Project and avoid protracted litigation.

The Chair asked for a motion for the Board to waive retroactively the 14-day provision of 963 CMR 2.10 (11)(a) and other timing requirements of 963 CMR 2.10, noting that the full vote language is in the members' Board materials under Tab 14. A motion was made by Mr. Deninger and seconded by Ms. Kwan:

Vote to waive retroactively the 14-day provision of 963 CMR 2.10 (11)(a) and other timing requirements of 963 CMR 2.10 for the project to replace the existing East Gloucester Elementary School and Veterans Memorial School with a new combined facility on the site of the existing Veterans Memorial School

WHEREAS, the administrative processing of the East Gloucester Elementary School (Project ID No. 201601070020) ("the Gloucester Project") grant application has been delayed and otherwise adversely affected by litigation related to the Gloucester Project that was filed against the City of Gloucester, the Massachusetts School Building Authority, and the Massachusetts Executive Office of Energy and Environmental Affairs; and

WHEREAS, failure to meet certain administrative deadlines, specifically those which do not otherwise affect the substantive merits of the Gloucester Project, may be exploited by opponents of the project in pending litigation; and

WHEREAS, extraordinary increases in construction costs due to materials shortages and supplier industry dislocations make further delay contrary to the public interest; and

WHEREAS, the Authority has the discretion to waive any requirement set forth in its regulations pursuant to G.L. c. 70B as expressed in 963 CMR § 2.20 (Waivers); and

WHEREAS, the Gloucester Project Applicant has requested a waiver of certain regulatory requirements,

It is VOTED that the waiver request of the Applicant be and is hereby APPROVED as follows:

- (a) With respect to the 14-day provision set forth in § 2.10(11)(a), the time limitation is waived retroactively, and shall have no effect relative to the Gloucester Project. The Executive Director is authorized to substitute any other time limitation he judges to be necessary for the orderly processing of the Gloucester Project application; and
- (b) With respect to any other time limitations set forth in § 2.10, the Executive Director is authorized to waive such limitations or substitute any other time limitation he judges, in his sole discretion, to be necessary for the orderly processing of the Gloucester Project application and in the best interests of the Authority.

Mr. Sullivan noted that the General Counsel's presentation explained the situation well and he supports this recommendation.

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There being no further Board discussion, the Chair asked for a roll call vote of the Board.

Roll Call Vote:

Terry Kwan – Yes
Sheila Vanderhoef – Yes
Sean Cronin – Yes
Matt Deninger – Yes
Greg Sullivan – Yes
Deborah Goldberg - Yes

The motion passed – 6 in favor, 0 against, 0 abstaining.

Mr. Sullivan commented that he wants to commend the Chair on the VaxMillions program.

The Chair thanked Mr. Sullivan for his comment and noted that it is a joint effort with the Governor's office. She commented that she hopes the program will encourage people to get vaccinated and that she is excited about the scholarships for students.

The Chair asked for a motion to adjourn the meeting. A motion was made by Mr. Sullivan and seconded by Mr. Deninger.

Roll Call Vote:

Terry Kwan – Yes
Sheila Vanderhoef – Yes
Sean Cronin – Yes
Matt Deninger – Yes
Greg Sullivan – Yes
Deborah Goldberg – Yes

The motion passed – 6 in favor, 0 against, 0 abstaining.

The meeting was adjourned at 11:50 a.m.

List of documents and exhibits used at the meeting:

- PowerPoint Presentation
- May 24, 2021 Board Meeting Minutes
- Invitation to Feasibility Study
- Project Funding Agreement Recommendations for the Accelerated Repair Program
- Recommendations for Preferred Schematic Design
- Invitations to Project Scope and Budget
- Audit Status Report
- Recommendation for Approval of Final Audits, Capital Pipeline Program
- Executive Director Report
- Post Occupancy Contract Update

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- Project Overview Report
- Recommendation to Revise MSBA Funding Policy
- Sales Tax Collection Update
- Grant Payments Update
- FY21 Budget Update and FY21 Year-End Spending Projections
- Recommendation to waive 963 CMR 2.10 (11)(a) and other timing requirements of 963 CMR 2.10 for the East Gloucester Elementary School Project in the City of Gloucester