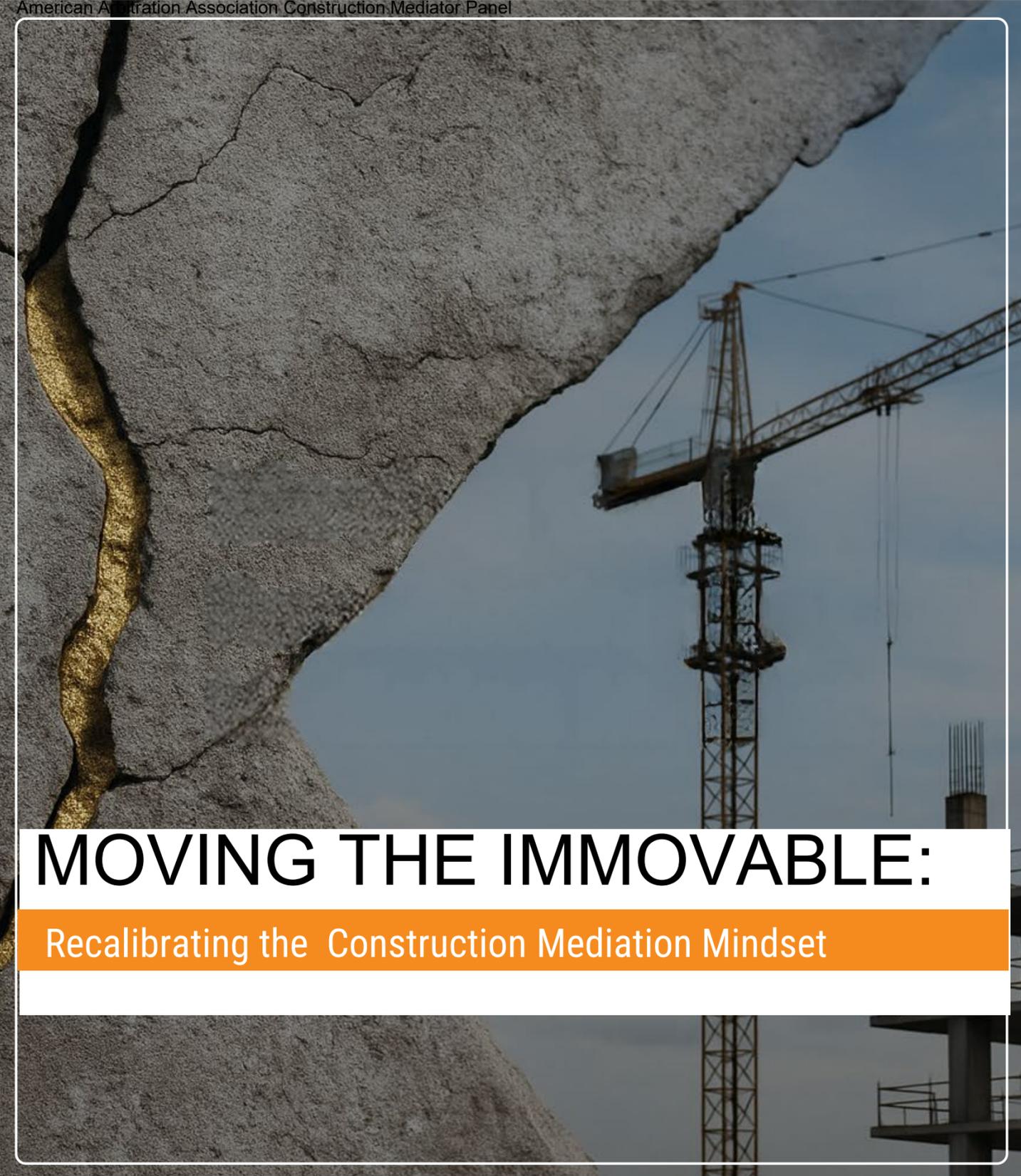




CONSTRUCTION **SUPER**CONFERENCE

2025

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MOVING THE IMMOVABLE:

Recalibrating the Construction Mediation Mindset

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THE CONSTRUCTION DISPUTE REALITY

- The Current State of Construction Disputes
- Cost of Adversarial Approaches
- What's YOUR Biggest Mediation Challenge?
- Are Traditional Methods working?



OUR ROADMAP FOR TODAY

THREE LEARNING CENTERS

- The Evolving Road to Today's Construction Mediation Process
- Preparation is Critical
- Removing the Boulders that Get in the way

LEARNING CENTER #1:

THE EVOLVING ROAD



FROM ADVERSARIAL TO COLLABORATIVE



- **Traditional litigation mindset**
 - "Winning vs. Losing"
- **Modern mediation approach**
 - Risk management + relationship preservation
- **Why construction industry relationships matter**
 - Working together for ongoing relationships

FROM ADVERSARIAL TO COLLABORATIVE

CONSTRUCTION PAYMENT & DEFECT CLAIMS: A PUBLIC WORKS PROJECT

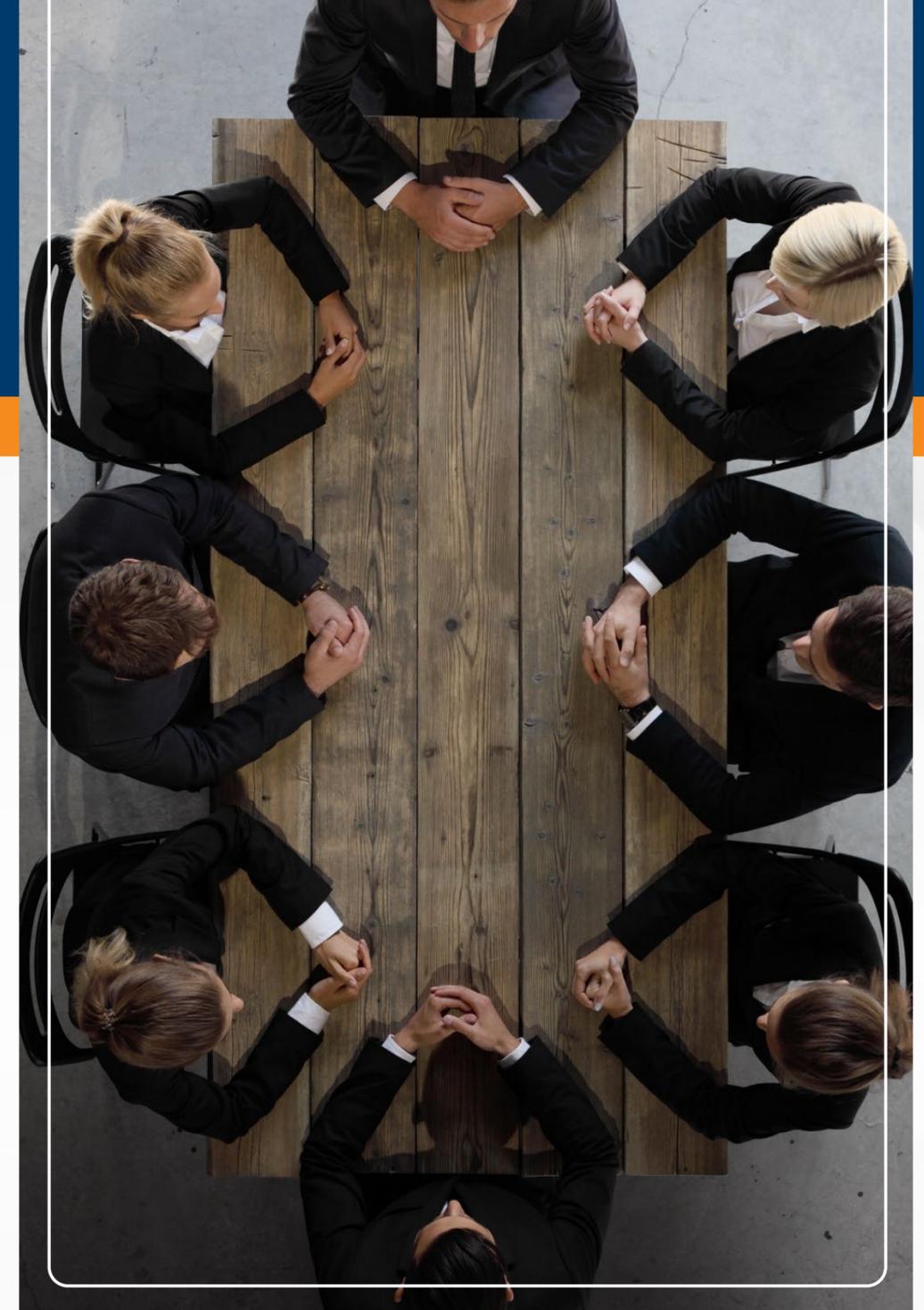
THE PLAYERS:

- Public Owner of Water Treatment Plant City of Greenfield
- Prime Contractor Waterworks Construction LLC
- Subcontractor Mechanical Solutions – (piping, pumps, etc.)
- Project Civil Engineer Engineering Solutions Group (ESG)



THE REPRESENTATIVES

- **Counsel for each party**
- **City.** Mayor City Council or Director of Water Department
- **Contractors**
 - Company Owners
 - Surety for GC: Surety Bond Company
 - Insurance Claims Adjuster: Claims Care Insurance





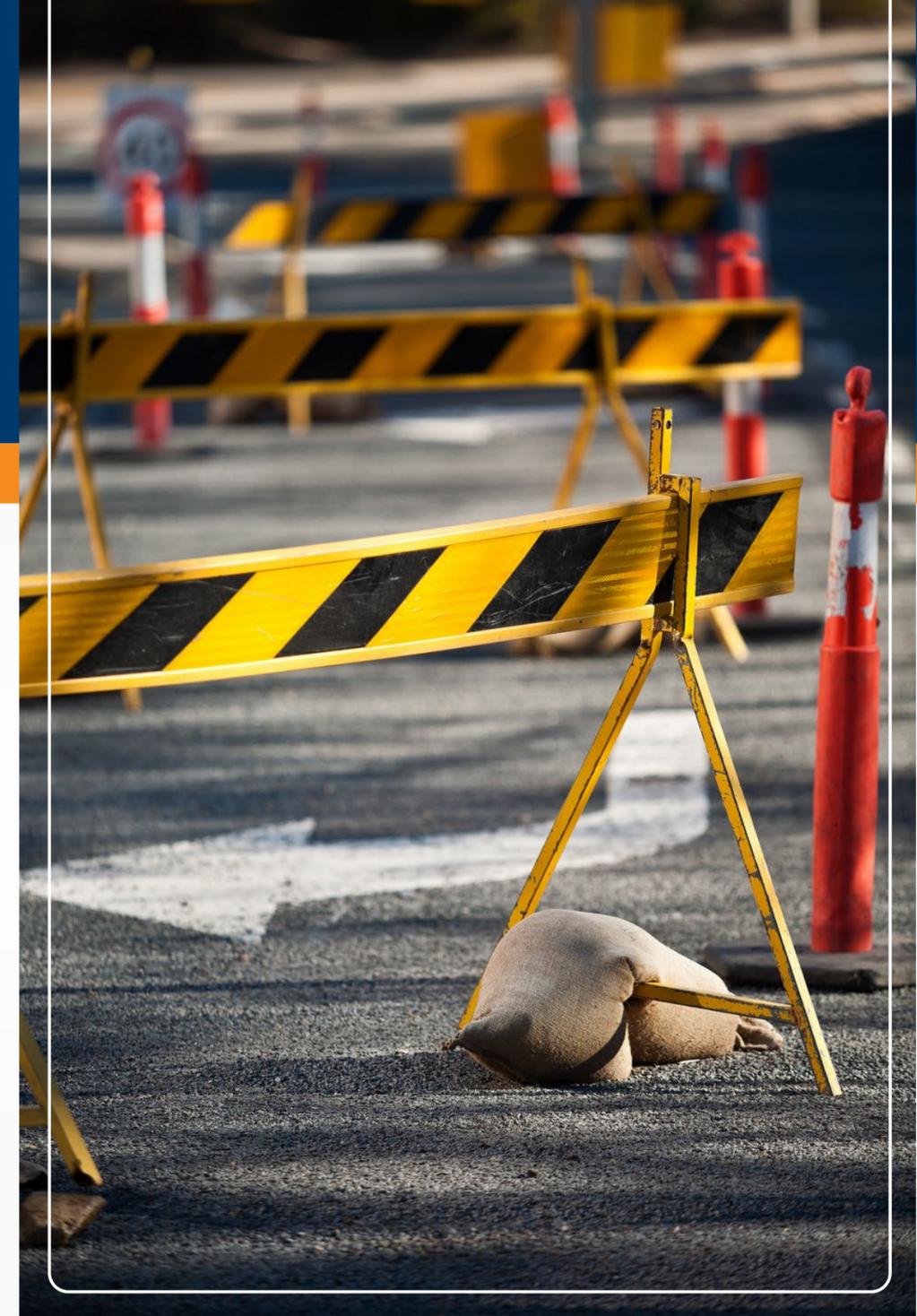
KEY FACTS:

- Stipulated Sum Contract
- Specified substantial completion date with possible LDs
- Payments partially withheld due to slow progress, alleged defects
- Owner called on Surety to finish project
- Owner declared [or did not declare] contractor in default

EXPECTATIONS & PRESSURES:

THE ROAD BLOCKS

- **One definition of success** a unilateral perspective and tunnel vision challenges
- **Black and white thinking** missing the gray areas and the opportunities in between
- **Overburdensome costs** when dispute resolution costs more than the dispute- the business problem presented
- **Minute-wash mentality** rushing early mediation without preparation and consideration of alternative approaches



BRAIN UNDER STRESS



CALM BRAIN



THE NEUROSCIENCE OF CONFLICT

- How stress and anxiety hijack decision-making
- The fight-or-flight response in mediation
- Why preparation matters for brain function
- Building trust through small agreements

LEARNING CENTER #2:

PREPARATION IS CRITICAL





PRE-MEDIATION STRATEGY FRAMEWORK

- Joint calls - mediator, counsel, and parties alignment
- Key issues identification and document exchange
- Timeline setting for information and responses
- Goal post management - honoring prior offers and/or demands
- Mediator preparation - getting your neutral ready
- Client preparation - setting expectations for meaningful dialogue

INFORMATION EXCHANGE BEST PRACTICES

- Ex parte mediator calls for readiness confirmation
- Non-confidential mediation brief exchanges
- Avoiding information surprises that trigger defensive responses



LEGAL COUNSEL'S CRITICAL ROLE

- **Decisionmaker participation** who needs to be at the table
- **Process understanding** clear objectives setting
- **Fact witness identification** early preparation
- **Pitfalls of unprepared clients** case studies
- **Hidden success definitions** uncovering undisclosed goals
- **Conflict of interest recognition** when to use independent experts
- **Collaborative counsel approach** working with, not against mediation

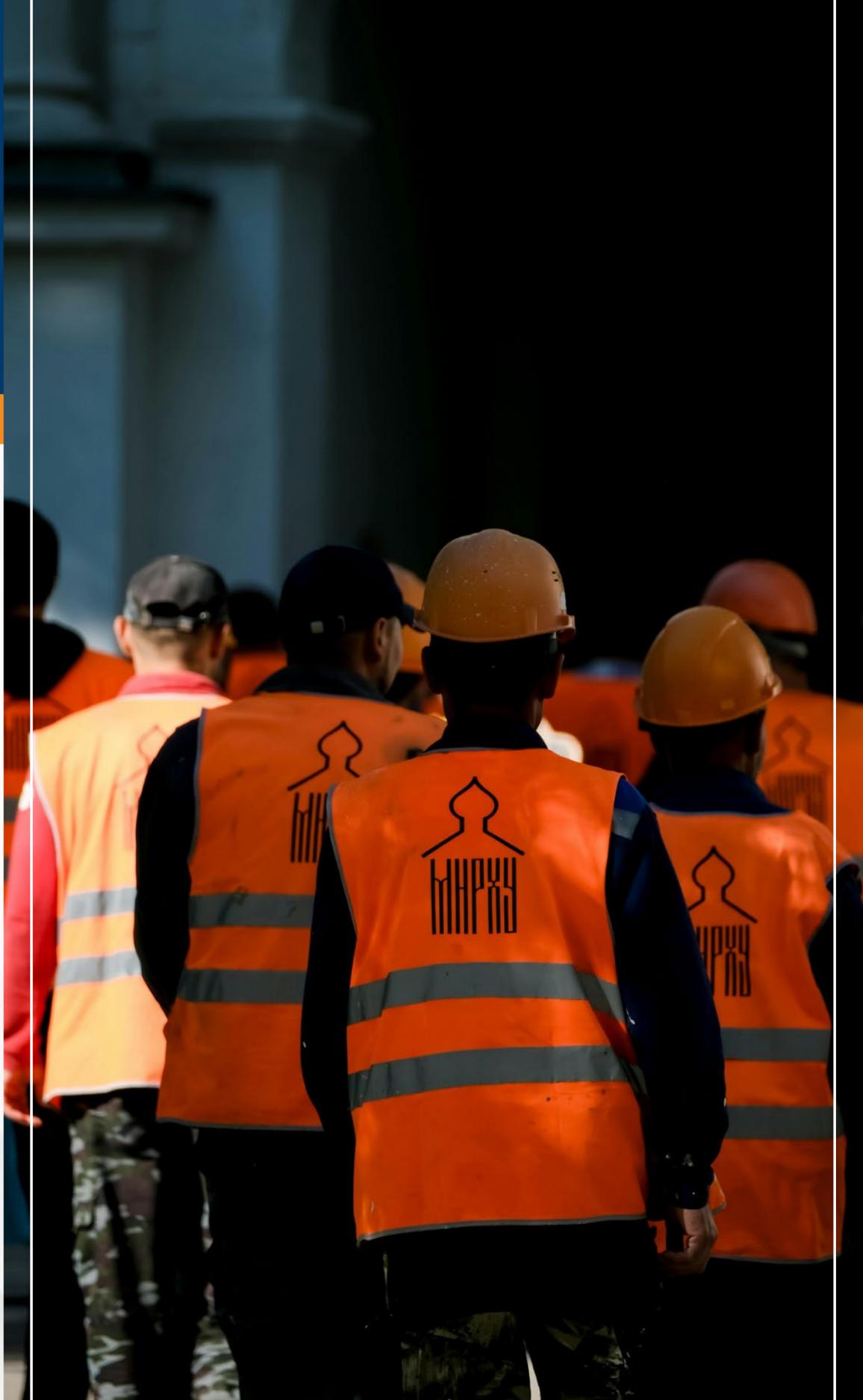
LEARNING CENTER #3:

REMOVING THE BOULDERS



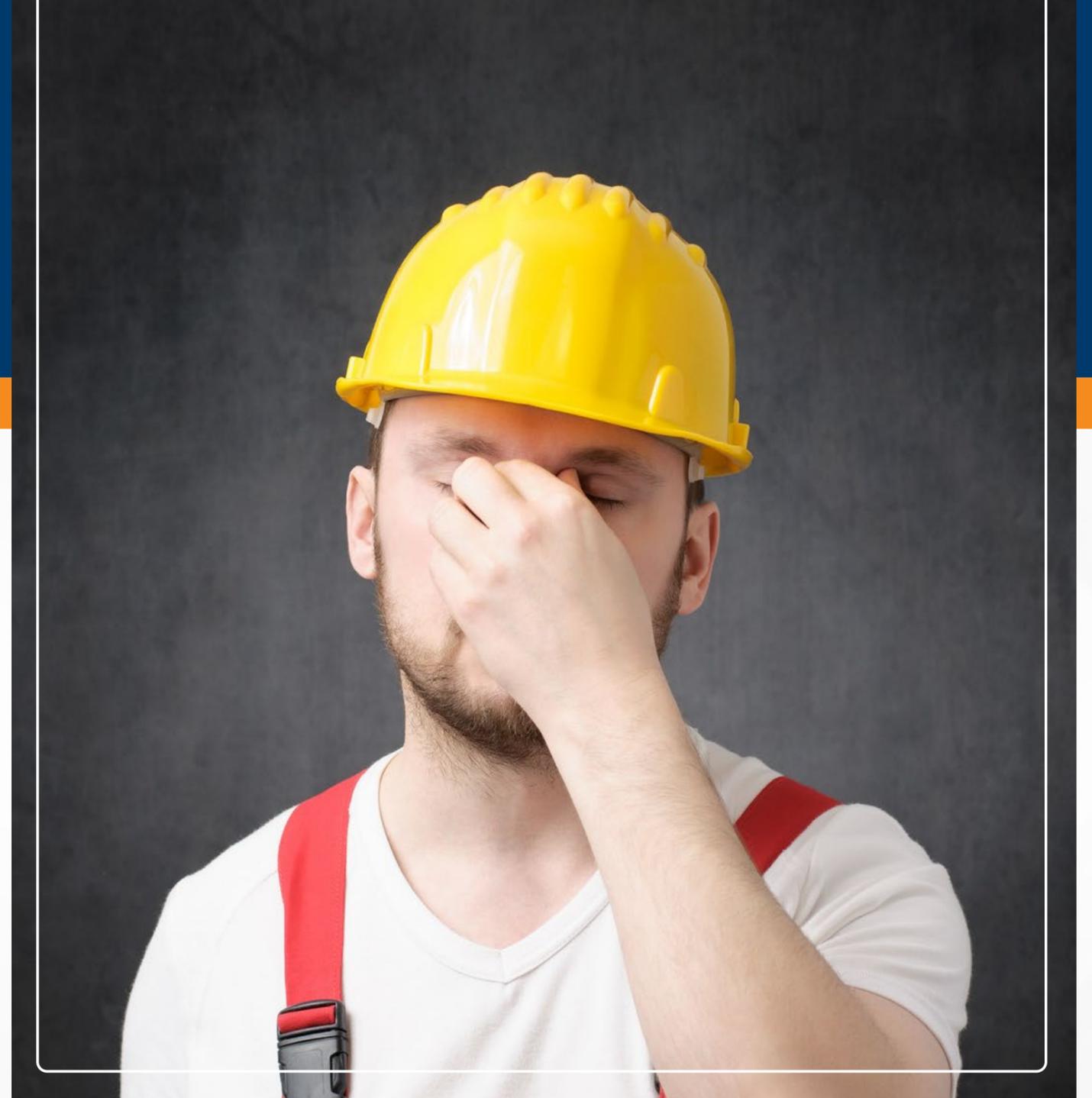
RECOGNIZING PROBLEM BEHAVIORS

- Cognitive distortions in construction disputes
- Emotional triggers specific to industry dynamics
- Communication style differences - pacing, focus, underlying needs
- *An Interactive exercise: Identifying distortions in sample scenarios*



THE EMOTIONAL HIJACK

- Neuroscience perspective on emotional escalation
- Recognizing the hijack in real-time
- When and how to take strategic breaks
- Shifting climate through pause and processing



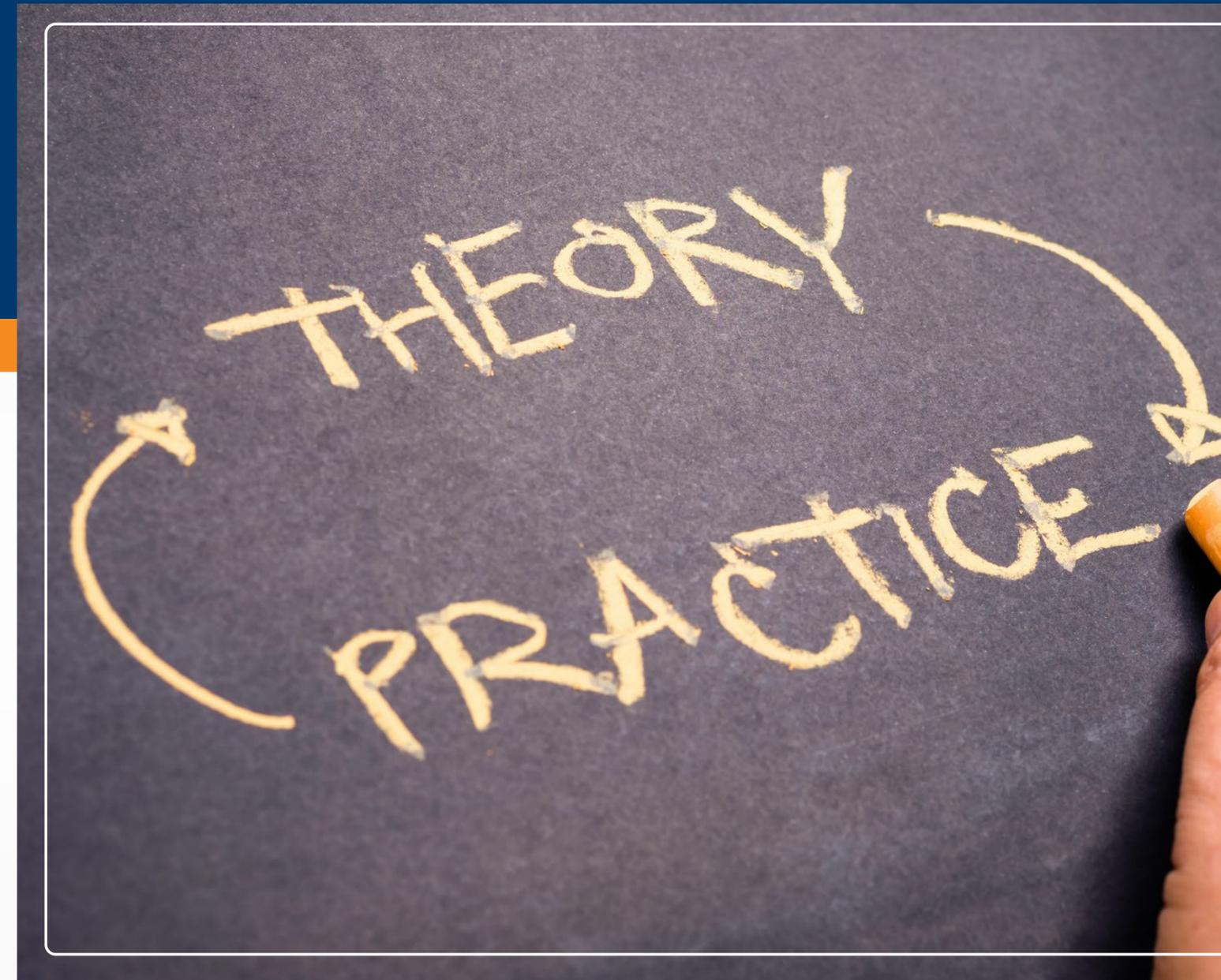
DE-ESCALATION TOOLKIT



NON - VERBAL CUES

- Reading non-verbal cues effectively
- Four quadrants of Emotional Intelligence in practice
- Clear, non-threatening position communication
- Building on small wins for momentum

PRACTICAL APPLICATION SECTION



CASE STUDY WALKTHROUGH

- Immediate implementation steps
- Pre-mediation checklist
- Red flag recognition guide
- Communication templates

YOUR ACTION PLAN

- Real construction dispute scenario
- Applying the three learning centers
- Audience participation in problem-solving
- Multiple resolution pathway analysis



KEY TAKEAWAYS REINFORCEMENT

- Adversarial → Collaborative shift
- Construction-specific barrier solutions
- Stakeholder engagement tools
- Preparation framework for success



Q AND NEXT STEPS

- Open floor for questions
- Resources for continued learning
- Contact information and follow-up opportunities
- Conference networking invitation



YOUR SESSION PRESENTERS





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