

MEMORANDUM OF UNDERSTANDING

CONSTRUCTION AND REVITALIZATION

OF

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**MEMORANDUM OF UNDERSTANDING
FOR THE CONSTRUCTION AND REVITALIZATION
OF BALTIMORE CITY PUBLIC SCHOOLS**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) for the Construction and Revitalization of the Baltimore City Public Schools is made and entered into as of this 16th day of October, 2013, by and between the **Maryland Stadium Authority** (the “Authority”); the **Mayor and City Council of Baltimore** (the “City”); the **Baltimore City Board of School Commissioners** (the “School Board”); and the **Interagency Committee on School Construction** (the “IAC”). The Authority, the City, the School Board, and the IAC are each a “Party,” and may be collectively referred to as the “Parties.”

RECITALS

WHEREAS, House Bill 860 (Ch. 647 (2013)), The Baltimore City Public Schools Construction and Revitalization Act of 2013 (the “Act” as defined herein), requires the Parties to enter into this MOU for the purpose of the construction, revitalization, relocation, and closure of certain Baltimore City public school buildings pursuant to the Act.

WHEREAS, a purpose of this MOU is to advance the beneficial relationships between the Parties to carry out their respective responsibilities under the Act in an effective and efficient manner.

WHEREAS, pursuant to the Act, the Parties are committed to providing Baltimore City Public School System students with better access to Baltimore City public schools (the “School Buildings” as defined herein) that support and encourage educational success.

WHEREAS, the Act authorizes the Authority to finance the Renovation and Replacement of School Buildings through the issuance of revenue bonds in an amount not to exceed \$1,100,000,000 and to carry out those Renovation and Replacement projects in accordance with the Baltimore City Public Schools’ 10-Year Plan approved by the School Board on January 8, 2013 (the “10-Year Plan” as defined herein), subject to certain limitations.

WHEREAS, the Parties acknowledge that the 10-Year Plan is a significant economic investment and that essential principles of this extensive undertaking are: flexibility, high-quality design and construction, sustainability, adaptability, and capacity to change in the interests of continual cooperation, efficiency, steadfastness, and the best interests of Baltimore City Public School System students.

WHEREAS, the Parties acknowledge that schools are the foundations of communities and neighborhoods and that in implementing the 10-Year Plan, the Parties will identify opportunities for students to gain work experience; for graduates of City Schools (as defined herein) to connect to career paths; for local residents, including minority and women-owned businesses, to access employment and other economic opportunities; for sustainable and green building practices to be implemented; and for stakeholders to engage in the planning process as each Renovation and Replacement project commences.

WHEREAS, except as agreed to in this MOU, the powers granted to the Authority under the Act may not in any way interfere with the enumerated powers of the School Board under Title 4, Subtitle 3, of the Education Article or the rights and responsibilities of the IAC for the design and construction of school facilities; and the powers of the School Board may not limit the ability of the Authority to carry out its obligations under the Act.

NOW, THEREFORE, in consideration of the mutual covenants, promises, conditions, representations, and agreements set forth herein, the Parties hereto AGREE AS FOLLOWS:

I. DEFINITIONS

For purposes of this MOU, the following terms have the following definitions:

“10-Year Plan” means the Baltimore City Public Schools’ 10-Year Plan approved by the School Board on January 8, 2013, as may be subsequently amended, for the renovation, replacement, and associated closures of certain Baltimore City public schools. **“Funded 10-Year Plan”** means the portion of the projected project list under the 10-Year Plan that will be financed by the Act.

“10-Year Plan Project” means a Replacement school constructed under the management of the Authority or a Renovation project performed under the management of the School Board pursuant to the Funded 10-Year Plan.

“Act” means House Bill 860 (Ch. 647 (2013)), The Baltimore City Public Schools Construction and Revitalization Act of 2013, as codified in various sections of the Annotated Code of Maryland (the “Code”) at Economic Article, Title 10, Subtitle 6; Education Article, Title 4, Subtitles 1 and 3, and Title 5, Subtitles 2 and 3; State Finance and Procurement Article, Title 6, Subtitle 2; and State Government Article, Title 9, Subtitle 1.

“Annual Report” means the report to be provided in accordance with §10-645(L) of the Economic Development Article of the Code.

“Beverage Container Tax” means the tax imposed by Baltimore City Ordinance No. 12-45 and enacted on June 26, 2012.

“Board of Public Works” or **“BPW”** means the Maryland Board of Public Works.

“Bonds” include a note, an interim certificate, refunding bond and any other evidence of obligation issued by the Authority to finance 10-Year Plan Projects in accordance with §§ 10-628 and 10-645(D) of the Economic Development Article of the Code.

“Capital Improvement Program” or **“CIP”** means the local school system capital improvement program developed consistent with COMAR 23.03.02.03.

“City Housing” means the Baltimore City Department of Housing and Community Development.

“City Recreation and Parks” means the Baltimore City Department of Recreation and Parks.

“City Planning” means the Baltimore City Planning Department.

“City Schools” means the Baltimore City Public Schools System, administered by the Chief Executive Officer under the direction and supervision of the School Board.

“Closure of a School Building” means that a School Building will no longer be retained by the School Board for public education purposes, but will instead be transferred to the City for surplusage, pursuant to the procedures set forth at §§4-115 and 9-111 of the Education Article of the Code, COMAR 23.03.02, and School Board Policy FCA and FCA-RA.

“Closure of a School Program” means that a public school that occupies a School Building will be closed and will no longer enroll students. When the Closure of a School Program occurs, the School Building may be retained by the School Board for other public education purposes or transferred by the School Board to the City for disposition.

“Completion Date” of a contract for the Construction of a Replacement under the Funded 10-Year Plan occurs when (i) approvals from Life Safety Inspections are received, and (ii) the Authority provides written notice to City Schools that performance under the contract has been achieved.

“Construction”

- a. means the process of building, altering, repairing, equipping, or improving any structure, building, or other improvement to real property;
- b. includes demolition;
- c. includes any major work necessary to repair, replace, prevent damage to, or sustain existing components of an improvement to real property; and
- d. does not include Maintenance or the routine operation of an existing improvement to real property or activities related to an energy performance contract.

“Cooperative Use Space” means co-located or shared space in a School Building, including but not limited to community meeting, health, and recreational space, that is allocated to support community initiatives to serve school children and the general community.

“Coordinating Committee” means a work group of the Parties established by this MOU to maximize the coordination of community development and revitalization goals with the 10-Year Plan Projects. .

“Day” or “days” means a day that the offices of the Executive branch agencies of the State of Maryland are open for routine business operations, unless expressly stated otherwise.

“Design” means the comprehensive development of plans, specifications, and related documents under the supervision and responsibility of an architect or engineer who is licensed to practice in the State.

“Design Development Phase” or “DD” means the phase in which design documents are continued from the approved schematic design phase, and which begins to identify site, mechanical, electrical, plumbing, structural and architectural details. This phase results in documents that include floor plans, sections, elevations, full dimensions, and narratives/outlines of material specifications.

“Education Facilities Master Plan” or **“EFMP”** means the local school system long range plan, required by §5-301(d)(3) of the Education Article of the Code and COMAR 23.03.02.02.

“Enhanced Approval Package” means a written and graphic proposal that includes:

- a. The research phase of a project, including:
 - i. site analysis;
 - ii. zoning requirements;
 - iii. jurisdictional restrictions; and
 - iv. educational specifications, feasibility studies, and design elements of educational buildings;
- and
- b. Schematic design drawings, documents, or other media that illustrate:
 - i. concepts of the design (i.e. site plan, floor plan(s), elevations, and other conceptual/illustrative documents);
 - ii. spatial relationships, scale and form; and
 - iii. overall dimensions and square footage estimates (Gross/NASF) of each usage type and any other elements for program goal(s).

“Executive Committee” means a committee of the Parties established by this MOU to oversee implementation of the MOU.

“Facilities Fund” means the Baltimore City Public School Construction Facilities Fund established under §10-657 of the Economic Development Article of the Code.

“Feasibility Study” means a detailed investigation and analysis conducted to determine the financial, economic, technical, or other advisability of a proposed project.

“Financing Fund” means the Baltimore City Public School Construction Financing Fund established under §10-656 of the Economic Development Article of the Code.

“Green Building Standards” means a jurisdiction’s required standards regarding:

- a. Energy savings;

- b. Resource conservation;
- c. Storm water management;
- d. Environmental site design;
- e. Renewable energy; and
- f. Any other sustainability strategies to achieve budgetary and life-cycle cost savings, and health benefits for building occupants.

“IAC” means the Interagency Committee on School Construction or its designee, as the context requires.

“IAC Approval” means the decision by the IAC that a project under the 10-Year Plan, or an aspect thereof, may proceed in design and construction, subject to further reviews by the Parties.

“Life Safety Inspection(s)” means the inspection(s) to approve the use and occupancy of a School Building.

“Maintenance” means all activities that are performed to a School Building to:

- a. Continue operations or upkeep;
- b. Prevent deterioration; or
- c. Correct a deficiency, which is not a part of a Renovation that has been approved by the IAC.

“MBE” means a legal entity that is certified under the Maryland State Department of Transportation Office of Minority Business Enterprise.

“Renovation” means major Construction to restore, improve, modernize, expand, reduce, or upgrade an existing School Building or a portion of an existing School Building (and any necessary improvements to the related School Site) by the School Board to achieve the educational, building performance, and aesthetic qualities of a new school, in accordance with the Funded 10-Year Plan.

“Replacement” means the Construction of a new School Building on the same site as an existing School Building or on a new site by the Authority, in accordance with the Funded 10-Year Plan.

“School Board” means the Baltimore City Board of School Commissioners of the Baltimore City Public Schools System established under §§3-108.1 and 4-303 of the Education Article of the Code.

“School Building” means a public school facility that is held in trust by the City or the School Board for the benefit of City Schools, which is used primarily for educational instruction.

“School Site” means the real property on which a School Building exists or on which a School Building is to be constructed, renovated, or replaced.

“STAT Committee” means a committee of the Parties established by this MOU to implement and oversee the STAT reporting program for the Funded 10-Year Plan.

“State-Rated Capacity” means the number of students that the IAC, with input from the School Board, determines that an individual School Building has the physical capacity to enroll, in accordance with the process set out in COMAR 23.03.02.04.

“Swing Space” means a School Building, or an area of a School Building or improvement, that is temporarily used for a public education purpose.

“Table Games Proceeds” means the amounts paid by the State Comptroller to the City, via the State Lottery, from the proceeds of table games at the video lottery facility located in the City that are dedicated to school construction, in accordance with § 9-1A-27(d)(2)(i)(1) of the State Government Article of the Code.

“Utilization Rate” means the official system-wide enrollment on September 30th of each year divided by State-Rated Capacity of all School Buildings that serve students.

“Video Lottery Facility Rent” means the participation rent paid to the City by the operator of the video lottery facility located in the City, pursuant to the Ground Lease Agreement dated as of October 31, 2012 by and between the Mayor and City Council of Baltimore and CBAC Gaming, LLC.

II. SPECIFIC UNDERSTANDINGS OF THE PARTIES

1. ROLES, RIGHTS, AND RESPONSIBILITIES

A. General

The Parties agree that the charts for New School Construction (applicable to Replacements) and for Renovation Projects (applicable to Renovations), attached as

Exhibits 1 and 2 and incorporated by reference (collectively, the “Responsibility Charts”), establish the roles, rights, and responsibilities that the Parties will perform, follow, and fulfill for each of the 10-Year Plan Projects. Any change to a line item or any other subject governed by the Responsibility Charts shall be made by formal amendment, in accordance with the provisions of Part III, ¶5 of this MOU.

B. Work-Based Learning and Local Hiring

1. The City, the School Board, and the Authority agree to establish and participate in a collaborative group (the “Collaborative”) to work together to maximize the opportunities for City Schools’ students and City residents to be informed about, prepared for, and connected to work-based learning and employment opportunities created by the 10-Year Plan Projects. The City, the School Board, and the Authority shall each appoint representatives to the Collaborative, and the Collaborative will engage representatives from community, professional, and trade organizations to provide input for recommendations to the Executive Committee

2. The Mayor’s Office of Employment Development (“MOED”) will develop and administer a comprehensive local hiring plan to support the goals of the Collaborative and will report to the Executive Committee on these subjects. MOED will utilize the resources of its One Stop Career Center Network and work collaboratively with a broad range of City, workforce, faith-based, and community organizations to assist in the training and preparation of City residents for employment opportunities created by the Ten-Year Plan Projects.

3. The Collaborative and MOED will develop a plan to consider the hiring of State-registered apprentices if such a plan is determined to be in the best interest of community hiring outreach.

4. All entities performing any on-site work on a 10-Year Plan Project shall document the number of Baltimore City residents whom they have employed on a semi-annual basis, and shall report such information for each semi-annual period to City Schools (if they are working on Renovations) or the Authority (if they are working on Replacements). City Schools and the Authority shall report this data semi-annually to the Collaborative and the STAT Committee. City Schools shall also report semi-annually to the Collaborative and the STAT Committee on the number of City Schools’ students who have been engaged in any work-based learning opportunities coordinated or sponsored by the City Schools’ Learning to Work Office (or its successor) during each semi-annual reporting period.

C. MBE Participation

1. The Collaborative and the Mayor's Office of Minority and Women-Owned Business Development ("MWBD") will work to maximize the utilization of State-certified locally based minority and women-owned businesses. The Collaborative and MWBD will develop an outreach and inclusion plan, in compliance with Maryland State procurement guidelines, to be administered by the Authority in partnership with MWBD for Funded 10-Year Plan Projects, and to make recommendations to the Executive Committee to implement this goal.

2. The Authority's MBE liaison, in conjunction with MWBD, will oversee the administration of the Collaborative's work in this area and will report to the Executive Committee on this subject.

D. Executive Committee

1. The Executive Committee, comprised of at least one (1) representative from each of the Parties, shall meet quarterly (or as frequently as otherwise agreed by the Executive Committee) for the following purposes:

- a. to oversee, review, and monitor the performance of the Parties under this MOU;
- b. to review and consider proposed amendments to this MOU;
- c. to review, mediate, and resolve certain disputes among the Parties as set forth in this MOU; and
- d. to develop the Annual Report.

2. The Executive Committee will schedule public forums to provide opportunities for public questions and comments about the 10-Year Plan.

3. Decisions and actions by the Executive Committee will be determined by majority vote, with each Party having one (1) vote.

4. The Executive Committee shall initially appoint (by majority vote) one (1) member to serve as chairperson. The chairperson will serve a one-year appointment, after which the position will be rotated among the Parties on a yearly basis.

5. In furtherance of the goals of transparency and accountability, the meetings of the Executive Committee will be conducted in compliance with the terms and provisions of the Open Meetings Act, codified as Title 10, Subtitle 5 of the State Government Article of the Code.

2. EDUCATIONAL SPECIFICATIONS, FEASIBILITY STUDIES, AND DESIGN ELEMENTS

A. General

1. The School Board shall have final approval authority over educational issues, including, but not limited to:

- a. Educational programs;
- b. 10-Year Plan amendments (subject to §3, below);
- c. Educational specifications;
- d. Educational aspects of Feasibility Studies;
- e. Design elements of School Buildings identified in the Enhanced Approval Package; and
- f. Placement of students.

2. The Parties will make maximum effort to ensure that scope, schedule, and budget for each Renovation and Replacement is agreed upon as final by no later than the date the Enhanced Approval Package is approved by the School Board for each project.

3. The Parties will make maximum effort to ensure that the building floor plan for each Renovation or Replacement is locked by the end of the Design Development Phase for each project.

4. All Replacements will meet or, to the extent possible, exceed the State's Green Building Standards applicable at the time that the Enhanced Approval Package for the Replacement is approved by the School Board.

5. All Renovations will meet or, to the extent possible, exceed the City's Green Building Standards applicable at the time that the Enhanced Approval Package for the Renovation is approved by the School Board.

6. To assess consistency with the goals of the City's adopted Sustainability Plan, City Schools and the Authority will meet with City Planning to obtain input on educational specifications, design standards, and Feasibility Studies. Sustainability and greening strategies shall be included throughout the Funded 10-Year Plan.

B. Feasibility Study

1. During the preliminary phase of each Feasibility Study for each Renovation and Replacement, the following shall occur:

- a. City Schools, the Authority, and their consultants will meet with the Coordinating Committee and the IAC to obtain City staff and IAC input on each project;
- b. Before any Feasibility Study is finalized, City Schools, the Authority, and their consultants will present the proposed final version of the Feasibility Study to the Coordinating Committee for its final review and comment;
- c. City Schools and the Authority will provide a synopsis of the proposed process for community input and engagement on each Renovation and Replacement to City staff for review and comment; and
- d. City Schools will coordinate with City Recreation and Parks and/or other City agencies to incorporate community input on community and recreational uses at School Sites, as appropriate.

2. Prior to the completion of each Feasibility Study for a Renovation or Replacement, City Schools and the Authority will meet with the Baltimore Office of Promotion and the Arts ("BOPA") and the Public Art Commission ("PAC") to incorporate public art in the Renovations and Replacements to the extent possible.

3. Prior to the completion of each Feasibility Study for each Renovation, City Schools and the Authority will consult with BOPA and PAC to assess the potential future use and condition of existing City-owned public art at each project.

C. Cooperative Use Space

1. City review of city-wide educational specifications and design standards will focus on those that impact community development, including community access to and recreational uses of Renovations and Replacements.

2. The final Master Educational Specification and Design Guideline documents for each Renovation and Replacement will include:

- a. Cooperative Use Space in addition to education program space, as appropriate; and
- b. Efficient design for Cooperative Use Space and associated public access to shared spaces to maximize benefits for City Schools, the City, and neighborhood residents.

3. Notwithstanding the provisions in this § 2.C, the City and City Schools agree to take no action that would adversely affect the tax-exempt status of the Bonds.

3. TEN-YEAR PLAN AMENDMENTS FOR CHANGES IN PROJECTS

A. City Schools shall comply with the timing and process for submitting proposed amendments to the 10-Year Plan as set forth in the Timeline that is attached as **Exhibit 3** and incorporated by reference.

B. City Schools' description of proposed amendments to the 10-Year Plan shall consist of a written analysis that includes:

1. Building, program, and community analyses;
2. Additional district or city-wide changes that will impact facility usage; and
3. Conformity with the Utilization Plan outlined in §12 of this MOU.

C. City Schools shall submit proposed 10-Year Plan amendments, with written analyses and written statements of impact (if any) on the expected Closures of School Buildings set forth on **Exhibit 6** to this MOU, for review by representatives of the following:

1. The Mayor's Office;
2. City Planning;
3. The Authority; and
4. The IAC.

D. The scope of the Authority's review power over proposed 10-Year Plan amendments will depend upon the nature of the proposal:

1. If an amendment relates to a Replacement, then the Authority shall have the right to review and approve the proposed amendment. If the Authority does not approve a proposed amendment relating to a Replacement, it may decline to fund the project set forth in the amendment after providing written justification of its decision. The Authority's decision shall be appealable to the Executive Committee in accordance with the dispute resolution process set forth in § 15.B of this MOU.

2. If an amendment relates to a Renovation, then the Authority shall have the right to review and comment on the proposed amendment.

E. The Mayor's Office, City Planning, the Authority, and the IAC will notify City Schools in writing of any objections or exceptions to the proposed amendments.

F. City Schools shall take into account any comments by the Mayor's Office, City Planning, the Authority, and the IAC, when City Schools submits proposed amendments to the School Board for review and decision.

G. Before the School Board decision, City Schools will share proposed amendments to the 10-Year Plan with the public in mid-November of any given year and the School Board will convene a public hearing.

1. Time limits on the submission of oral or written testimony and data shall be clearly defined in the notification of the School Board's public hearing.

2. The School Board will consider public input and recommendations prior to its final vote on any amendment to the 10-Year Plan.

H. The School Board will review any proposed 10-Year Plan amendments, and reject, modify, or approve them as final amendments by mid-December of any given year.

I. Any 10-Year Plan amendments approved by the School Board will then be reflected in the July EFMP and the October CIP submissions.

4. IAC AND BPW PROCESSES

A. General Procedures

1. City Schools shall update the IAC facility database upon substantial completion of each 10-Year Plan Project and for each School Building designated as an adjacent school.
2. For Replacement projects constructed by the Authority, IAC regulations with respect to procurement, change orders, and State payments do not apply.
3. For Renovation projects constructed by City Schools, project procurement shall be in accordance with COMAR 23.03.02, except that IAC regulations with respect to change orders and State payments do not apply.
4. The IAC shall develop procedures to record the close-out of the 10-Year Plan Projects.
5. Reconsideration of decisions of the IAC related to 10-Year Plan Projects may be requested in accordance with the IAC reconsideration process. If the IAC rejects a request for reconsideration, then the dispute resolution procedures set forth at §15.B of this MOU shall apply.

B. Educational Facilities Master Plan ("EFMP")

1. Annually, by the date the IAC specifies, City Schools shall submit to the IAC an EFMP approved by the School Board.
2. The EFMP shall reflect amendments to the 10-Year Plan approved by the School Board in the preceding calendar year.
3. The EFMP shall include community development goals to maximize the benefits of the investments in the 10-Year Plan Projects.
4. The School Board will report projected and proposed system-wide Utilization Rates for the next 5, 7, and 10 years as part of the annual EFMP.
5. The IAC or its designee shall:
 - a. Review the EFMP; and

- b. Notify City Schools in writing of any clarifications or revisions needed to the EFMP.

C. 10-Year Plan Project Submissions

Beginning in calendar year 2013, requests for IAC Approval of 10-Year Plan Projects will be submitted at the same time as, but separately from, the City Schools' annual CIP submissions. The requests shall:

1. Be submitted in calendar year 2013 by City Schools, with approval from the School Board, for IAC Approval of 10-Year Plan Projects for the next fiscal year, and then annually thereafter by a date the IAC specifies; and
2. Be reviewed by the IAC for concurrence between the 10-Year Plan Projects submission and the 10-Year Plan amendments approved by the School Board in the preceding calendar year.

D. Design Review

1. A 10-Year Plan Project cannot proceed to further stages of Design or to Construction until it receives approval of the Enhanced Approval Package submission from the IAC or its designee.
2. For Replacement projects undertaken by the Authority, schematic and design development documents shall be submitted to and reviewed by the IAC or its designee for confirmation of adherence to the educational specifications approved as part of the Enhanced Approval Package.
3. For Renovation projects undertaken by City Schools, the IAC or its designee shall approve design development and construction documents in accordance with applicable regulations and procedures.
4. If the IAC or its designee does not approve a schematic or design development document submission for a Renovation project, it shall refer the submission for resolution through the dispute resolution process set forth in §15.B of this MOU.

E. IAC and BPW Approvals

1. IAC Approval is required before a 10-Year Plan Project can proceed. After IAC Approval, projects will be submitted to the Board of Public Works as follows:
 - a. The Authority will submit Replacements to the BPW for approval at four (4) stages:

1. Bond issuance;
 2. Design contract;
 3. Pre-Construction contract; and
 4. Construction modification (if applicable).
- b. The Authority will submit Renovations to the BPW for approval at the stage of Bond issuance. Design and construction contracts for Renovations will be subject to approval by the School Board and the Authority.

2. Subject to the limitation in §5 of this MOU, the IAC may rescind approval of a 10-Year Plan Project if there is a material change in any of the following factors used to determine the original approval prior to Construction, and subject to the IAC appeal process:

- a. Changes in enrollment projections;
- b. Changes in educational program;
- c. Changes in the surplus of adjacent schools;
- d. Changes in Utilization Rate.

3. IAC will not rescind approval if there is a material change to any of the factors listed above after Construction has commenced, but it shall include the change of justification in the Annual Report, and it may disapprove future proposed projects based on such material changes.

5. PROCUREMENT

A. Replacements

1. The Authority's procurement policies and procedures shall apply to:
 - a. All procurements for the Design and Construction of Replacements; and
 - b. Any change orders, bid protests, or contract claims related to the Design and Construction of Replacements.

2. IAC procedures and BPW regulations used by IAC with respect to procurement, change orders, and State payments shall not apply to Replacements undertaken by the Authority.

3. All Replacements shall comply with the prevailing wage rate requirements that would apply to similar State-supported projects.

B. Renovations

1. City Schools shall procure the Design and Construction of all Renovations in accordance with School Board procurement regulations DJA-RA, IAC procedures, and relevant BPW regulations set forth in COMAR 23.03.02.03, except for contract approvals, change orders, and State payments.

2. All Renovations shall comply with the prevailing wage rate requirements that would apply to similar State-supported projects.

C. Policies and Procedure

Copies of the Authority's procurement policies and procedures and City Schools' procurement policy and regulations, all of which may be amended and supplemented from time to time, are attached as Exhibits 4 and 5, respectively, and are incorporated by reference.

6. BALTIMORE CITY'S PLEDGE

A. Pledged Funding

Beginning on July 1, 2013 and continuing until the Bonds that have been issued to finance the 10-Year Plan Projects are no longer outstanding and unpaid, the City pledges, subject to annual appropriation, the following funds solely to the Financing Fund:

1. All revenues and receipts from the Beverage Container Tax; and
2. Ten percent (10%) of the Video Lottery Facility Rent.

B. Deposit of Pledged Funding

The pledged funds, together with the Table Games Proceeds required by §10-645(G)(1)(II) of the Economic Development Article of the Code, shall be deposited into the Financing Fund on a semi-annual basis, on or before November 1 and May 1 of each

year beginning in Fiscal Year 2014 and continuing thereafter until the Bonds are no longer outstanding and unpaid.

C. Excess Funding

1. The Authority may transfer excess funds to the Facilities Fund at any time to be used by the Authority if the total amount of Beverage Container Taxes, Video Lottery Facility Rent, and Table Games Proceeds deposited into the Financing Fund during any semi-annual period exceeds the amounts required under §10-645(G)(2) of the Economic Development Article of the Code.

2. From any excess funds transferred to the Facilities Fund in accordance with §6.C.1, above, the Authority shall retain up to Two Million Five Hundred Thousand Dollars (\$2,500,000) in any given year, with a cumulative maximum of Twenty Million Dollars (\$20,000,000), as a reserve to pay any future shortfall between the amount required to be deposited by the City into the Financing Fund during any semi-annual period and the amount actually deposited.

3. If the total of excess funds transferred to the Facilities Fund in accordance with §6.C.1, above, exceeds Two Million Five Hundred Thousand Dollars (\$2,500,000) in any given year, or the cumulative maximum reserve of Twenty Million Dollars (\$20,000,000), then the Authority may use the excess amounts for the purposes permitted by §10-657(C) of the Economic Development Article of the Code.

4. Beginning on July 1, 2014, and on July 1 of each year thereafter, the City shall provide the Executive Committee with revenue projections for the Beverage Container Taxes, Video Lottery Facility Rent, and Table Games Proceeds for the next five (5) years.

5. Based on the revenue projections for the Beverage Container Taxes, Video Lottery Facility Rent, and Table Games Proceeds, the Executive Committee shall have the right, in its sole discretion, to increase the required reserve amount to be held in the Facilities Fund at any time.

6. Three (3) years prior to the final maturity of the Bonds, the Executive Committee shall have the right to use a portion of the reserve (as defined in § 6.C.2, above) held in the Facilities Fund, less the amount that the Executive Committee determines to continue to hold for projected under attainment in the final two (2) years, for the purposes permitted by §10-657(C) of the Economic Development Article of the Code.

7. COORDINATING COMMITTEE

A. The Coordinating Committee, comprised of representatives of the City (Mayor's Office), City Schools, the Authority, City Housing, City Parks and Recreation and City Planning, will work, in accordance with the 10-Year Plan, to maximize the mutual benefits of the investments in 10-Year Plan Projects and community revitalization efforts within and across City neighborhoods.

B. The Coordinating Committee will meet at least quarterly.

C. City Schools and the City will coordinate the timing, location, and scope of the school facility investments and community development efforts to support the City's revitalization and stabilization goals as appropriate.

D. Discussion at the quarterly meetings may include, but is not limited to, the following topics:

1. Coordination of the construction of Renovations and Replacements with City-sponsored neighborhood redevelopment efforts;

2. The potential for use of school and community building sites by both City Schools and the broader community to support community development efforts;

3. Citywide or specific school-level education specifications and design standards that impact community development, such as community access, recreational uses, and sustainability;

4. Location of School Sites that would benefit both City Schools and planned revitalization efforts;

5. The possibility of locating other City facilities on or adjacent to School Sites, including but not limited to, recreation facilities, community centers, libraries, health facilities, and senior centers;

6. Community and stakeholder engagement for construction projects relevant to community development;

7. The identification and use of vacant School Buildings consistent with City Schools' annual utilization plan and the potential reuse of surplus or vacated School Buildings and facilities by the City and/or others in accordance with § 10 of this MOU;

8. Input on each Feasibility Study for Renovations and Replacements during each study's preparation phase, and the opportunity for review and comment before each Feasibility Study is finalized;

9. Proposed changes and amendments to the 10-Year Plan;

10. Development of funding strategies to implement improvements not eligible for financing under the Bonds; and

11. Other topics deemed appropriate by the Coordinating Committee.

8. COMMUNITY AND RECREATIONAL SPACE OPPORTUNITIES

A. For 10-Year Plan Projects, School Buildings shall be designed to allow for recreational opportunities for the community and other Cooperative Use Space.

B. Recreational opportunities for the community and other Cooperative Use Space may include, but are not limited to:

1. Athletic fields and tracks;
2. Playgrounds;
3. Game courts;
4. Gymnasiums;
5. Pools and associated locker rooms;
6. Multi-purpose designated and resource rooms;
7. Cafeterias;
8. Libraries; and
9. Bathrooms.

C. The multi-purpose designated rooms shall be made available for community meetings and events as provided in a separate agreement between the City and City Schools.

D. Decisions regarding recreational opportunities for the community and other Cooperative Use Space at each 10-Year Plan Project will be informed by community input and by discussions between the City, City Schools, and the Authority.

E. Decisions regarding recreational opportunities for the community and other Cooperative Use Space at each 10-Year Plan Project shall be made on a case-by-case basis, and be reflected in each Feasibility Study, Enhanced Approval Package, and subsequent design submission as agreed to by the Parties.

F. The City agrees that any direct and ancillary costs for the current operation of any such program under the auspices of City Recreation and Parks shall remain the responsibility of the City.

G. The City and City Schools agree to enter into a separate MOU to further define the parameters of after-hours property use, including but not limited to:

1. Access;
2. Operations;
3. Costs;
4. Security;
5. Liability insurance;
6. Permit processes; and
7. Maintenance.

H. Notwithstanding the provisions in this § 8 regarding the use of space in the 10-Year Plan Projects, the City and City Schools agree to take no action that would adversely affect the tax-exempt status of the Bonds.

9. UDARP ARCHITECTURAL PLAN REVIEW AND PERMIT PROCESS

A. The architectural plans for the construction of all Renovations and Replacements shall be submitted to the Baltimore City Planning Department's Urban Design and Architectural Review Panel ("UDARP") for review and comment on both schematic and final Design.

1. Submittals and presentations will comply with current UDARP requirements as published on the City Planning website.

2. Submittals shall be presented at the following design stages:
 - a. Initial presentation will be made at approximately 30% Design completion;
 - b. Final presentation will be made at approximately 90% Design completion.

3. A follow-up presentation will be made to UDARP if significant changes are proposed to a School Building, School Site, or site landscaping following the 30% Design presentation.

4. City Schools and the Authority will work with City Planning to ensure that all necessary plan reviews are coordinated with appropriate City agencies. Plan reviews include, but are not limited to:

- a. Site Plan Review;
- b. Forest Conservation requirements;
- c. Critical Area requirements;
- d. Flood Plain requirements; and
- e. Storm Water Management requirements.

B. The applicable building permit process for all Renovations and Replacements will be as follows:

1. For Renovations conducted by City Schools, the City's process shall apply. The City agrees to waive the permit fees on City Schools' Renovations.

2. For Replacements or Renovations conducted by the Authority, the Authority's process shall apply per §10-620(e) of the Economic Development Article of the Code. The Authority will consult with the City for building code review and comment on plan submissions and project inspections, as needed.

10. SCHOOL CLOSURES

A. General Process

1. Pursuant to and in compliance with School Board Policy FCA and COMAR 13A.02.09.01, City Schools shall prepare the necessary study whenever the closure of a school is proposed.

2. Consistent with the requirements of § 4-115 of the Education Article of the Code, no later than thirty (30) days after receipt of the City Schools' study, City Planning shall provide a recommendation with respect to the proposed Closure of a School Building. The recommendation will be based on factors that may impact or contribute to community development goals derived from the City Comprehensive Master Plan, recent neighborhood planning efforts encompassing or adjacent to the subject site, knowledge of community association or other stakeholders' interests, and knowledge of the needs of public agencies. The School Board shall consider City Planning's recommendations before taking final action on the Closure of a School Building. If no recommendation is submitted by City Planning within thirty (30) days, then the course of action recommended in the City Schools' study will be deemed to be accepted by the City.

3. City Schools has compiled a list of the School Programs and School Buildings that it expects to close, and their dates of expected closure, under the Funded 10-Year Plan, which list is attached as Exhibit 6 and incorporated by reference. Based on the information available as of the date of this MOU, the Parties have further set forth on Exhibit 6 whether tax-exempt debt will remain outstanding on the dates provided by City Schools for the Closures of the School Buildings.

4. At least sixty (60) days prior to making a final decision to proceed with the Closure of a School Building, the School Board shall notify the Authority, the City, the IAC, and the Director of Debt Management for the State Treasurer's Office ("STO") of the proposed closure. The City and STO shall have forty-five (45) days from the date of receipt of written notice to conduct their analysis of tax law implications and other financial issues presented by each Closure of a School Building, and each shall provide all Parties with separately completed checklists for each such closure in a form acceptable to the Executive Committee.

5. City Planning may make specific recommendations as to the development potential of a School Building or School Site to be closed and the highest and best future use of each. City Planning may request that School Buildings and/or School Sites be transferred to the City.

6. The checklists for the Closure of School Buildings from the City and STO and the recommendations of City Planning will be sent to the School Board for consideration before making a final decision to retain a property for an educational use or

to transfer the property back to the City for disposition. Any change in use of a School Building will be made with paramount consideration of the Funded 10-Year Plan and applicable federal tax laws.

7. After the School Board gives final approval for the Closure of a School Building, it shall then begin the process of transferring the School Building for surplus, as provided by §§4-115 and 9-111 of the Education Article of the Code, COMAR 23.03.02, and Board Policy FCA and FCA-RA. Any School Building transferred to the City shall be in the same structural and operational condition as existing when last occupied by students. The School Board shall also provide all available floor plans, system schematics, and other relevant building documents to the City at the time of transfer.

B. Financial Issues

1. Upon the Closure of a School Building, to the extent required by State law, the City shall reimburse the State for any outstanding State debt service on the School Building, in accordance with §5-308 of the Education Article of the Code. The City may request flexibility from the Board of Public Works in the terms of such reimbursement, to the extent feasible and legally permissible.

2. Continued reporting following the Closure of a School Program or the Closure of a School Building shall be required as follows:

- a. Retained Facilities. Beginning on June 30, 2014 and continuing on each June 30 thereafter, the School Board shall report to the City and the STO on the use of any School Building that the School Board retains after the Closure of a School Program, including, but not limited to, whether the retained School Building is used by a charter school. The report shall be in a form acceptable to the Executive Committee.
- b. Transferred Facilities. Beginning on June 30, 2014 and continuing on each June 30 thereafter, the City shall report to the School Board and the STO on the use of any School Building that the City retains after it has been closed by the School Board and transferred to the City. The report shall be in a form acceptable to the Executive Committee.
- c. Subsequent Changes in Use. In addition to the reporting requirements set forth above, the School Board and the City shall each give written notice of any change in the dedicated

use of a School Building that has been closed or transferred to the City at least thirty (30) days prior to entering into any legally binding agreement that involves a change in the use of the School Building, including, but not limited to, an agreement to use the School Building as a charter school. Written notice shall be in a form acceptable to the Executive Committee and shall be provided as follows:

<u>If building is:</u>	<u>Then, notice to:</u>
Retained by School Board	STO and City
Transferred to City	STO and School Board

- d. Reporting Period. The reporting requirements set forth herein shall apply to all School Buildings within the control of the City or City Schools, respectively, so long as any School Board, City, or State tax-exempt bonds remain outstanding on the subject School Buildings.

C. Delay or Failure to Close

1. The Authority shall have the right to withhold funding for future Renovations or Replacements (which are not yet in Construction) if the School Board fails to proceed with the Closure of a School Program or the Closure of a School Building as reflected on Exhibit 6, unless: (i) in the case of a delay in the Closure of a School Program or the Closure of a School Building, the School Board provides justification acceptable to the Authority; or (ii) in the case of a decision not to proceed with the Closure of a School Program or the Closure of a School Building, the School Board provides justification acceptable to the Authority that includes the substitution of another closure with subsequent approval of an amendment to the 10-Year Plan to be incorporated in accordance with the School Board's timeline for 10-Year Plan Amendments as set forth on Exhibit 3.

2. In the event of its acceptance of a delay or failure to close as set forth in this §10.C, the Authority will update Exhibit 6 accordingly, without any necessary amendment to this MOU. Any such updated version of Exhibit 6 shall become a part of this MOU, and copies thereof shall be provided to all Parties and the STO.

11. COMPREHENSIVE AND BUILDING MAINTENANCE PLANS

A. Comprehensive Maintenance Plan General Provisions

City Schools shall develop, for approval by the IAC, a Comprehensive Maintenance Plan ("CMP") for preventative and ongoing maintenance of all School

Buildings, which shall provide for sufficient funding to implement the CMP. The following requirements shall apply to the CMP:

1. The CMP shall be a written plan approved by the School Board that describes a strategy for maintaining all School Buildings and for achieving progress toward the Metrics that are described below.
2. The CMP shall ensure that Maintenance is performed for all School Buildings for which City Schools has operational responsibility.
3. The CMP shall apply to all School Buildings, which include:
 - a. The 10-Year Plan Projects under the Act;
 - b. All existing School Buildings for which the School Board has operational responsibility; and
 - c. All other School Buildings that the School Board replaces or funds improvements for through the CIP.
4. The CMP will be submitted for IAC Approval, with comment by the Authority, by December 15, 2013.
5. The CMP shall be updated annually in accordance with the BPW Regulations (COMAR 23.03.02) and shall be submitted annually by October 15 of each year.

B. Required Content of CMP

At a minimum, the CMP must demonstrate specific staffing, budget, and organizational components to make significant improvement over the five (5) years following the date of approval of the CMP by the IAC, as measured by the Metrics agreed to by the IAC and the School Board in § 11.E, below. The content of the CMP shall be as provided in Exhibit 7.

C. Building Maintenance Plan

1. The CMP shall contain a template or templates for the Building Maintenance Plan ("BMP") of individual new, renovated, and existing School Buildings.
2. City Schools shall develop a BMP for the entire School Building, inclusive of custodial requirements, during the Design phase of any project in or about a School Building for which City Schools has operational responsibility, including:
 - a. Replacement schools;

- b. Renovations (major or systemic); and
 - c. Science classroom renovations.
- 3. The BMP must include at a minimum:
 - a. The staffing plan for the School Building;
 - b. The budget required to support the BMP; and
 - c. Custodial requirements.
- 4. The BMP submitted shall be in accordance with the appropriate template.
- 5. The BMP is supplemental to and complementary to the Operations and Maintenance (O&M) manuals that are required as a condition of the contract.
- 6. At substantial completion of a 10-Year Plan Project, the BMP will be finalized as modified per the commissioning agent's requirements and will be submitted to the Authority for review and comment.
- 7. After the initial submission of the BMP, the IAC will review the BMP during the course of annual maintenance inspections of major new, replacement and major renovation projects that are funded through the CIP.

D. School Building Maintenance Performance Metrics

- 1. The CMP shall contain specific Metrics (as defined in §11.E, below) for the system-wide maintenance and performance of all School Buildings.
- 2. Within six (6) months of approval of the CMP by the IAC, City Schools will:
 - a. Establish a format and annual assessment of the Metrics; and
 - b. Establish a multiple-year projected budget to achieve progress towards the Metrics.
- 3. The IAC, with comment from the Authority, must approve the Metrics and the annual assessment format.

4. The School Board will submit an initial report on achievement of the Metrics to the Parties within twelve (12) months of the approval of the CMP.

5. City Schools will assess the Metrics annually no later than June 30th, and a report on the progress toward attainment of the Metrics shall be included in the CMP submitted to the IAC in accordance with COMAR 23.03.02.18.

6. City Schools' annual maintenance budget shall include funds sufficient to achieve progress toward the attainment of the Metrics.

7. Progress toward attainment of the Metrics shall be a factor considered by the IAC in the review of 10-Year Plan Projects for approval and the recommended approval of future CIP projects, consistent with COMAR 23.03.02.03.B(1) and 23.03.02.03.B(2). The IAC will assess progress toward attainment of Metrics in the Annual Report submitted by the Parties.

E. Metrics

City Schools shall measure and report to the STAT Committee for inclusion in the STAT reporting program the progress toward attainment of the following metrics (the "Metrics"):

1. Staffing parameters, measured as:
 - a. Target staffing and organizational structure.
 - b. Target square footage per FTE for various categories of work (HVAC, roofing, electrical, etc.).
2. Work order parameters, measured as:
 - a. Turn-around time for work orders in various categories (HVAC, roof leak, electrical, etc.).
 - b. Number of outstanding work orders permissible at any time.
 - c. Work orders received and completed, measured as both raw data and as percentages.
3. Inspection parameters:
 - a. Routine scheduled tours of all School Buildings by maintenance teams.

- b. Roofing inspections.
 - c. Other inspections: HVAC, boilers, bleachers, etc., as defined in Standard Operating Procedures.
3. Implementation of a CMMS system:
- a. In Replacement and Renovations, including all necessary staffing and computer resources.
 - b. In all other School Buildings, as budget and staffing permit.
 - c. Ratio of scheduled to unscheduled maintenance work orders.
 - d. Percentage of major building systems operating within industry age standards.
 - e. Deferred maintenance backlog (as percentage of total building plant value).
 - f. Other metrics, as agreed upon between City Schools and the IAC.

F. Release of Construction Funding

1. The Authority will release Construction funds for a specific 10-Year Plan Project, taking into account the project schedule, after:
 - a. The BMP provided by City Schools for the subject school is received and approved by the IAC with comment from the Authority; and
 - b. The maintenance Metrics have been established and the annual CMP that has been submitted as required by § 11.D.5, above, demonstrates progress acceptable to the IAC with comment by the Authority.
2. Any dispute regarding the release of Construction funds shall be resolved in accordance with the dispute resolution procedures set forth at §15.A of this MOU.

12. SCHOOL UTILIZATION PLAN

A. General

1. A primary goal of the 10-Year Plan is to increase the average Utilization Rate of School Buildings upon completion of the 10-Year Plan Projects and the closing and surplus of existing School Buildings.

2. The School Board will establish both a final Utilization Rate target to be met upon completion of the 10-Year Plan Projects, as well as intermediate Utilization Rate targets to be met at intervals to be agreed upon by the Parties by December 31, 2013.

3. The intermediate and final Utilization Rate targets must be approved by the IAC.

4. The IAC and City Schools will collaborate on Utilization Rates as outlined in §12.B, below.

5. Future IAC project approvals may be withheld if projected Utilization Rates do not meet the established Utilization Rate targets.

B. Utilization Plan

1. City Schools and the IAC shall jointly agree on the following:

a. The factors that will be included in the annual calculation of the Utilization Rate.

b. Utilization Rate shall be calculated annually in two (2) ways: (i) including Swing Space; and (ii) excluding Swing Space.

c. A methodology for designating certain schools as "adjacent" to a School Building submitted for IAC Approval under the 10-Year Plan or CIP.

1. City Schools shall record these adjacencies in the IAC facilities inventory database.

2. City Schools shall update the database each year no later than June 30.

- d. Projected 5, 7, and 10 year kindergarten to grade 12 total enrollments each spring as required pursuant to COMAR 23.03.02.02.
2. City Schools shall provide projected 5, 7, and 10 year prekindergarten total enrollments each summer.
3. City Schools shall track past, existing, projected, and proposed, system-wide school Utilization Rates based on agreed upon:
 - a. Total enrollment projections for prekindergarten to grade 12;
 - b. State-Rated Capacities of all buildings for which the School Board is responsible; and
 - c. Current Construction project schedules.
4. City Schools will report projected and proposed system-wide Utilization Rates for the next 5, 7, and 10 years as part of the annual EFMP.
5. The IAC shall review and comment annually on the projected and proposed school Utilization Rates reported in the EFMP.
6. The IAC will incorporate the School Board's attainment of the Utilization Rate targets as a factor in the approval of 10-Year Plan Projects and the recommendation of CIP projects that affect capacity.

C. School Board Review

1. The School Board shall review facility utilization issues on an annual basis, as part of the 10-Year Plan amendment process described in Section 3, above.
2. The School Board will make necessary adjustments towards meeting the Utilization Rate targets.
3. Progress on achieving the Utilization Rate targets will be included and set forth in the Annual Report submitted by the Parties.

13. STAT REPORTING PROGRAM

A. General

The STAT reporting program for the Funded 10-Year Plan will be a performance measurement and management tool to make government more efficient through a process of continually evaluating and refining State performance.

B. Software Program

1. The Authority will procure a comprehensive Project Management Software Program (“PMSP”) that will:

- a. Assist tracking and reporting the status of:
 1. Schedule;
 2. Budget;
 3. Contracts;
 4. Procurements;
 5. Change Orders;
 6. Payments;
 7. Contingency;
 8. MBE participation; and
 9. Project documentation.
- b. Assist tracking and reporting during the following stages of the 10- Year Plan Projects:
 1. Planning/Pre-Design
 - i. Educational Specifications, Feasibility Studies and Schematic Design Schedules; and
 - ii. Budget/Cost Modeling.
 2. Replacements managed by the Authority
 - i. Design;
 - ii. Bidding Phases;
 - iii. Construction; and
 - iv. Warranty/Maintenance.

3. Renovations managed by the School Board

- i. Design;
- ii. Bidding Phases;
- iii. Construction; and
- iv. Warranty/Maintenance.

c. Allow for real time snapshots of project status and reporting capability based on parameters established per project (i.e., weekly, monthly, quarterly, annually).

d. Be available for access and/or use by the Parties.

2. City Schools will be included as a PMSP selection committee member.

C. STAT Committee

1. A STAT Committee will be comprised of representatives from each Party and chaired by the Authority.

2. The STAT Committee shall hold meetings monthly (or as otherwise agreed by all Parties) to review the data in the PMSP, once selection of design consultants for 10-Year Plan Projects is complete.

3. All Parties will jointly determine the format and timing of the reports to be provided in advance of each monthly meeting of the STAT Committee.

4. At least two (2) days prior to each meeting of the STAT Committee, the Authority will deliver a set of standard reports on the status of progress in the areas outlined above in §§ 13.B.1.a and 13.B.1.b to all Parties.

5. If a Party seeks information that is not available in the standard reports or otherwise accessible via the PMSP, the Parties agree to use their best efforts to provide that information along with the standard reports in a reasonable amount of time but at least two (2) days prior to the next meeting of the STAT Committee.

6. The STAT Committee will review the data and updates in the PMSP.

7. The STAT Committee will review the data of Baltimore City resident employment and work-based student learning opportunity engagement.

8. The STAT Committee meetings shall be a forum for the Parties to raise any questions or issues regarding the management and/or financing of the 10-Year Plan Projects.

9. Each Party shall ensure the attendance of appropriate staff representatives who will be able to respond substantively to questions and issues at the meetings of the STAT Committee.

10. The STAT Committee will report status updates regularly to the Executive Committee.

11. As work progresses on the 10-Year Plan Projects, the Parties may determine that there are other areas not outlined above that shall be included in the standard, periodic reporting.

14. INDEMNIFICATION AND INSURANCE

A. Prior to Completion of Projects

1. Indemnification

Contracts for the Construction of any Renovation or Replacement shall require the contractors to defend, indemnify, and hold harmless the School Board, City Schools, the City, the Authority, the State, and each of their architects/engineers, elected/appointed officials, employees, and agents from and against any and all claims, demands, damages, actions, suits, or proceedings of any kind whatsoever for damages, losses, liabilities, liens, or costs of any kind or type (including reasonable attorneys' fees as and when incurred) (collectively, the "Claims") that are caused by or arise from any direct or indirect, willful or negligent, act or omission of the contractor, its officials, employees, and agents, *unless* such Claims are the sole result of intentional conduct or gross negligence by the Party seeking to enforce this right of indemnification.

2. Insurance

During the Construction of any Renovation or Replacement, the following insurance shall be required of all architects, engineers, and contractors, as applicable: Professional Liability Errors and Omissions, Commercial General Liability, Commercial Umbrella/Excess Liability, Workers' Compensation, Commercial Automobile Liability, Environmental Liability, and Builders' Risk. Coverage limits shall be established on a project-by-project basis, subject to the review and approval of the Authority. All parties with an insurable interest in the Renovation or Replacement (i.e., the City, the Authority, and City Schools) shall be covered by endorsement as additional insureds, and

requirements as to notice of cancellation, acceptability of insurers, verification of coverage, and the inclusion of subcontractors as insureds shall be determined on a project-by project basis, subject to the review and approval of the Authority. Any and all amounts paid to any Party under such policies for damages or loss to a Funded 10-Year Plan Project shall be deposited into the Facilities Fund and used for restoration or reconstruction of the applicable Renovation or Replacement. During the Construction of any Replacement, the Authority shall also be named an additional insured with respect to any property insurance covering any portion of the School Site on which the Replacement is being constructed.

3. Project-by-Project Review and Comment

City Schools and the City shall have the right to review and comment on the insurance requirements set forth in §14.A.2, above, in accordance with their assessment of the scope of work, and the size and cost of the specific project involved.

B. Post Completion of Projects

Upon receipt of approvals from Life Safety Inspections and written notice from the Authority that the performance under a contract for the Construction of a Replacement has been achieved (the "Completion Date"), City Schools shall assume immediate responsibility for the operation, management, and maintenance (both preventative and ongoing) of the Replacement, in accordance with the standards and requirements set forth in §11 of this MOU.

1. Indemnification

As of the Completion Date of a Renovation or Replacement, City Schools shall, to the fullest extent permitted by law, defend, indemnify and hold harmless the State, the Authority, the City, and their architects, agents and employees, from and against any and all claims, demands, damages, actions, suits or proceedings of any kind whatsoever for damages, losses, liabilities, liens, or costs of any kind or type (including reasonable attorneys' fees as and when incurred) (collectively, the "Claims") that are caused by or arise from (i) performance under a Design or Construction contract; (ii) Construction or tear-down activities at a School Site; or (iii) any occurrence within a School Site, whether or not proximately caused by or attributable to any act or omission by the State, the Authority, the City, or their architects, agents, or employees, *unless* such act or omission by the State, the Authority, the City, or their architects, agents, or employees was intentional or the result of the gross negligence of any of them. The terms of this subsection shall extend to any Claim for actual or threatened bodily injury, sickness, disease or death and to any Claim for actual or threatened injury to or destruction of property including the loss of use resulting therefrom, and including but not limited to purely economic loss.

2. Insurance

City Schools shall procure and maintain the following insurance coverage (or any higher or broader coverage), to be effective as of the Completion Date of each Renovation and Replacement and to continue throughout the period of use of each Renovation and Replacement.

- a. **Property Insurance.** Each Renovation and Replacement shall be covered against loss, damage, or destruction under the All-Risk Master Commercial Property Insurance Policy, the City Property Insurance Fund, the Self-Insurance Fund and any other insurance or excess insurance policies maintained or administered by the Office of Risk Management in the Department of Baltimore City (the "Office of Risk Management"), in accordance with Subtitles 10 and 12 of Article 5 of the Baltimore City Code. City Schools shall take all action necessary to ensure that each Renovation and Replacement is added as a covered property under all policies and insurance funds, as of the Completion date for each Renovation or Replacement. Commercial Property insurance policies applicable to the Renovations and Replacements shall meet the following requirements:
 - i. Commercial Property coverage shall be written on an all-risk policy to include flood and earthquake losses;
 - ii. Commercial Property coverage shall be written on a "replacement cost" basis in the amount that it would cost to rebuild the same building as of the time of loss;
 - iii. The value of each Renovation and Replacement shall be adjusted annually to reflect updated replacement costs for Commercial Property coverage;
 - iv. The self-insured property deductible shall be in an amount that City Schools can afford to pay in the event of a loss;
 - v. Commercial Property coverage shall be procured from a carrier that is rated "A-" or

above by A.M. Best, or a comparable ratings institution; and

- vi. City Schools shall comply with any property improvement recommendations that the Commercial Property insurance carrier may make over the life of the insured building.
- b. **Liability Insurance.** Each Renovation and Replacement shall be covered against third-party general liability and any other categories of claims and losses consistent with the insurance and risk management program purposes of the Self-Insurance Fund and any other insurance or excess insurance policies maintained or administered by the Office of Risk Management, in accordance with Subtitle 12 of Article 5 of the Baltimore City Code. City Schools shall take all action necessary to ensure that each Renovation and Replacement is included and/or added as a covered property under the Self-Insurance Fund and any other available insurance or excess insurance policies, as of the Completion date for each such project.
- c. **Proof of Coverage.** Prior to the use or occupancy of any portion of a Renovation or Replacement, City Schools shall provide the Authority with written proof, issued by the Office of Risk Management, of the School Board's and City Schools' good standing, coverage and participation under the insurance funds and policies set forth in this §14. Annual certificates of insurance, updated to include the current financial ratings of the applicable carriers, shall be provided by City Schools to the Authority.
- d. **Continuous Coverage.** City Schools shall make all required payments to the City in accordance with the Memorandum of Understanding Concerning Self-Insurance, dated July 1, 2006, by and between the City and City Schools, in order to maintain continuous coverage under the funds and policies set forth in this §14. The coverage afforded by the funds and policies set forth in this §14 shall not be cancelled or materially changed in any respect (by the City or the insurer) unless at least ninety (90) days' prior written notice is provided to the Authority. Upon receipt of any notice of cancellation or material change, the Authority shall have the right to determine if the cancellation or change results in a

failure to meet commercially reasonable standards for insuring against losses potentially arising from the Renovations and Replacements. In the event of such determination, the Authority may require City Schools to secure additional or other amounts of insurance coverage, upon thirty (30) days' prior written notice.

15. DISPUTE RESOLUTION

A. Disputes Regarding Funding, Scheduling, Procurements

Resolution of any disputes pertaining to or having an impact on project budget, financing, and/or scheduling, shall occur as follows:

1. **Procurements**: All bid protests and third-party procurement claims related to any Replacement projects shall be resolved by the Authority pursuant to its Procurement Policies and Procedures. All bid protests and third-party procurement claims related to any Renovation projects shall be resolved by City Schools, with review and comment by the Authority, in accordance with the School Board's Procurement Policies and Procedures.

2. **Project Budget, Financing, and Scheduling**: The Authority shall review and decide all disputes that pertain to or have an impact on project budget, financing, and/or scheduling of Renovation or Replacement projects, as follows:

- a. Such disputes or claims may be submitted by any Party at any time to the Authority.
- b. The Authority shall provide a timely written decision on any such disputes or claims.
- c. The CEO of City Schools shall have the right to appeal to the Board of the Authority from any written decision provided pursuant to § 15.A.2.b, above. Any such appeal shall be in writing and shall identify the nature of the dispute and the relief sought. City Schools may include a request for a hearing before the Board of the Authority in its written notice of appeal. The Board of the Authority will provide a prompt written decision on the appeal, which decision shall be final and not subject to further appeal.

B. All Other Disputes

Unless a review process is otherwise specifically set forth in this MOU (e.g., §§ 4, 5, 10, 11 and 15.A), the resolution of all other disputes between or among the Parties shall be determined by the Executive Committee, as follows:

1. A Party seeking resolution of a dispute shall submit a written claim to the Executive Committee, describing the dispute and providing any relevant information and/or documents.

2. Provided that a written claim of dispute is received at least five (5) days in advance, then the Executive Committee shall consider the dispute at the first regularly scheduled Executive Committee meeting following receipt of the written claim. If the written claim of dispute is received by the Executive Committee fewer than five (5) days in advance of a scheduled meeting, then the Executive Committee may consider the dispute at the next subsequently scheduled meeting.

3. The Executive Committee shall attempt to resolve the dispute by way of a unanimous vote at a regularly scheduled meeting. If the Executive Committee is unable to reach a unanimous decision within five (5) business days after the meeting at which a dispute has been considered, then the claim of dispute shall be re-submitted at the next scheduled meeting, at which point resolution shall be determined by majority vote of the Executive Committee. Any such decision by the Executive Committee shall be final.

4. If the Executive Committee is unable to render a decision via majority vote at the second hearing on the claim of dispute, then the claim of dispute shall be forwarded to the State Superintendent of Schools for resolution. Any such decision of the State Superintendent of Schools shall be final and not subject to further appeal.

III. MISCELLANEOUS

1. This MOU shall be effective upon execution by all Parties and approval by the Board of Public Works, and it shall remain in effect until the Bonds are no longer outstanding and unpaid or all Parties agree to terminate the MOU.

2. The City, the School Board, and the IAC understand that the Authority intends for the interest on the Bonds to be exempt from federal income taxation under Section 103 of the Internal Revenue Code. Neither the City nor the School Board nor the IAC will perform, or permit to be performed, any act that would adversely affect

the tax-exempt status of the interest on the Bonds, or fail or refuse to perform any act, the result of which failure or refusal would adversely affect such tax-exempt status. Each of the City, the School Board, and the IAC agrees that it will cooperate fully with the Authority in maintaining the tax-exempt status of the Bonds including, without limitation, entering into tax certificate and compliance agreements upon the issuance of each series of Bonds, the performance of post-issuance compliance monitoring, and the submission of annual compliance reports to the Authority.

3. Upon reasonable advance notice, each Party, or its auditor or designee, shall have the right, upon request and during normal business hours, to examine the books and records of each Party which relate to the use, expenditure, or accounting of any disbursements from the Bond proceeds, the Facilities Fund, or the Financing Fund.

4. On an annual basis, the Authority will perform agreed upon procedures relating to all expenditures by the Authority from the Bonds, the Facilities Fund, and the Financing Fund.

5. Any of the Parties may request amendments to this MOU if any change in law or circumstance impacts the implementation of the Act or this MOU. Except for as provided in §10.C.2, above, any amendment to this MOU must be in writing, executed by all Parties, and approved with the same formality as that approval required for this MOU. Approved amendments will become a part of this MOU as if they had been original terms and conditions of the MOU.

6. If any of the provisions in this MOU is found by a court of competent jurisdiction to be void or unenforceable, then that provision shall be deemed to be deleted and the remaining provisions of this MOU shall continue in full force and effect.

7. If the Authority should undertake a Renovation as defined in this MOU, all Parties agree that the provisions and procedures set forth in this MOU with respect to the Authority's Design and Construction of a Replacement shall govern and apply to the Authority's Renovation.

8. This MOU shall inure to and be binding upon the Parties hereto, their respective agents, successors, and assigns. No Party shall assign its interests in this MOU without the prior written consent of all Parties.

9. This MOU and the rights and responsibilities of the Parties hereto shall be governed in accordance with Maryland law.

10. The Parties to this MOU shall retain all documents and records pertaining to each of the 10-Year Plan Projects until the later of: (a) three (3) years after the expiration of any warranty period applicable to each Renovation or Replacement; or

(b) the date that destruction of the documents and records is permitted pursuant to the Party's established document retention policy.

11. This MOU shall not be construed to provide a private right of action for or by any person or entity that is not a Party to this MOU.

12. The headings used in this MOU are for convenience only and shall not control or affect the meaning or construction of any of the provision of this MOU.

13. If the context of this MOU requires, words or terms used in the singular shall be deemed to be plural, and vice versa.

14. All notices required in this MOU shall be in writing and shall be made by hand delivery, by certified mail return receipt requested, or by next-business-day delivery/signature required messenger or courier service. Notices shall be given as follows:

If to the AUTHORITY:

Name: Gary McGuigan, LEED AP
Title: Project Executive
Maryland Stadium Authority
The Warehouse at Camden Yards
333 West Camden Street, Suite 500
Baltimore, Maryland 21201-2435
Phone: 410-333-1560
Email: gmcguigan@mdstad.com

with a copy to:

Name: Cynthia M. Hahn
Title: Assistant Attorney General
Office of the Attorney General
200 Saint Paul Place, 20th Floor
Baltimore, Maryland 21202
Phone: 410-576-6319
Email: chahn@oag.state.md.us

If to CITY SCHOOLS or the SCHOOL BOARD:

Name: Tisha S. Edwards
Title: Interim Chief Executive Officer
Baltimore City Public Schools
200 E. North Avenue, Room 405
Baltimore, Maryland 21202
Phone: 410-396-8803
Email: tsedwards@bcps.k12.md.us

with a copy to:
Tammy L. Turner, Esq.
Chief Legal Counsel
Baltimore City Public Schools
200 E. North Avenue, Room 405
Baltimore, Maryland 21202
Phone: 410-396-8542
Email: tturner@bcps.k12.md.us

Any Party may change its address or recipients for notices by providing the other Parties with written notice, to be effective upon receipt.

15. This MOU may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

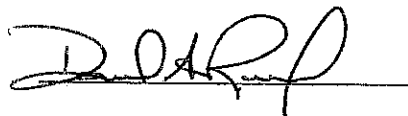
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9.16.13

IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be executed on its behalf by its duly authorized representatives, the day and year first above written.

WITNESS:

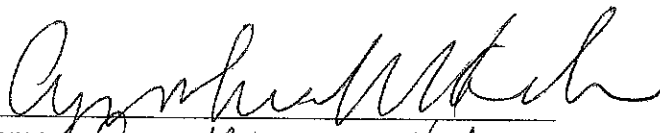
MARYLAND STADIUM AUTHORITY,
a body politic and corporate and a public
instrumentality of the State of Maryland



BY:  (SEAL)

Approved as to form and legal sufficiency this

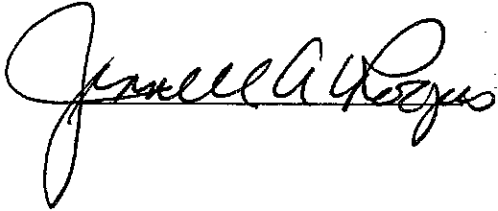
1st day of October, 2013.

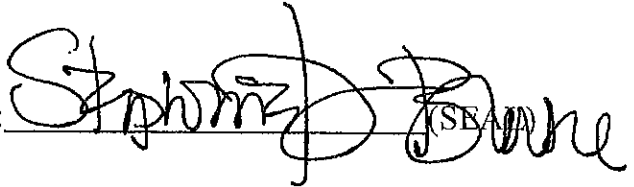

Name: Cynthia M. Hahn
Assistant Attorney General

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9.16.13

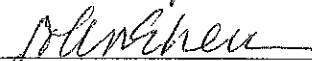
MAYOR AND CITY COUNCIL OF
BALTIMORE



BY:  (SEAL)

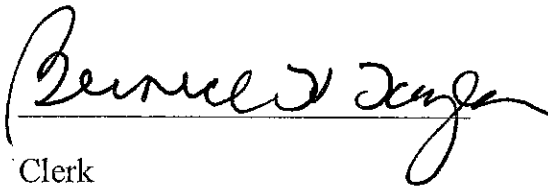
Approved as to form and legal sufficiency this

18th day of September, 2013.


Name: JO ANNE E. LEVIN
Chief Solicitor
City of Baltimore

Alternate

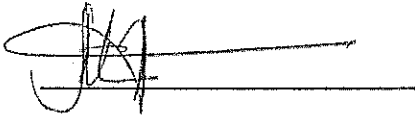
Approved by the Board of Estimates this ___ day of SEP 25 2013, 2013


Clerk

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9.16.13

**BALTIMORE CITY BOARD OF
SCHOOL COMMISSIONERS**



BY:



(SEAL)

Tisha S. Edwards

Interim Chief Executive Officer

Approved as to form and legal sufficiency this

_____ day of _____, 2013:



Name: Tammy L. Turner

~~Assistant General Counsel~~

Chief Legal Counsel

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9.16.13

INTERAGENCY COMMITTEE ON
SCHOOL CONSTRUCTION

9/27/13

BY: [Signature] (SEAL)

Approved as to form and legal sufficiency this

27 day of September, 2013:

Name: [Signature]
Assistant Attorney General

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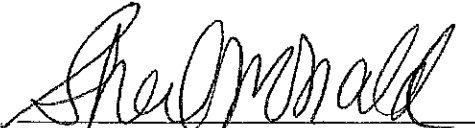
9.16.13

Approved by the Board of Public Works
on October 16, 2013 as
Item 14 on the Secretary's Agenda.

**BOARD OF PUBLIC WORKS OF THE
STATE OF MARYLAND**

BY:  (SEAL)
MARTIN O'MALLEY, GOVERNOR

ATTEST:


Sheila C. McDonald
Executive Secretary
Board of Public Works

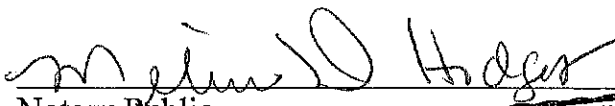
BY: Nancy K. Kopp (SEAL)
NANCY K. KOPP, TREASURER

BY:  (SEAL)
PETER FRANCHOT, COMPTROLLER

STATE OF MARYLAND, COUNTY OF Anne Arundel, TO WIT:

I HEREBY CERTIFY that, on this 14th day of November, 2013, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared MARTIN O'MALLEY, Governor, NANCY K. KOPP, Treasurer, and PETER FRANCHOT, Comptroller, constituting the Board of Public Works of the State of Maryland, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within Interagency Agreement, who signed the same in my presence and acknowledged that they executed the same for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.


Notary Public

My commission expires:

MELISSA D HODGES
Notary Public-Maryland
Anne Arundel County
My Commission Expires
October 07, 2016

9.16.13

Approved by the Board of Public Works of the State of Maryland at a meeting held on the 16 day of October, 2013 as Item No. 14 on the Secretary's Agenda.

EXHIBIT LIST

1. Responsibility Chart for Replacements (w/key)
2. Responsibility Chart for Renovations (w/key)
3. Timeline for 10-Year Plan Amendments, EGO Report, COMAR, Renewal Process Annual Calendar from July 1 – June 30 (w/key)
4. Authority Procurement Policies
5. School Board Procurement Policies
6. List of Expected Closures of School Buildings
7. Maintenance Plan Appendix