PROGRAM MEMORANDUM OF UNDERSTANDING

BUILT TO LEARN ACT OF 2020

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TABLE OF CONTENTS

I. INCORPORATION OF RECITALS 1
II. DEFINED TERMS 2
III. SELECTION OF PROJECTS 5
IV. LIMITS OF MSA OBLIGATIONS TO FUND PROGRAM AND PROJECTS 5
V. PROJECTS 6
A. COSTS 6
B. MSA PROJECTS 6
C. PROJECT MANAGEMENT BY AN LEA 7
D. PRINCE GEORGE'S COUNTY P3 MOU 9
VI. FUNDING OF PROGRAM 9
A. COST PROJECTIONS 9
B. ISSUANCE OF BONDS 9
VII. ALLOCATIONS 10
A. GENERALLY 10
B. SPECIFIC PROJECT IN BALTIMORE CITY 10
C. PRINCE GEORGE'S COUNTY 10
D. REALLOCATION 10
VIII. REPORTS, EVALUATIONS, AND CTE PROGRAM 11
A. MSA ANNUAL REPORT 11
B. PRINCE GEORGE'S COUNTY ALTERNATIVE FINANCING REPORTS 11
C. COST & EXPENDITURE REPORTING 11
D. LIFE CYCLE COST REPORTS 11
E. 2030 REPORT 12
F. CTE PROGRAM 12
IX. DISPUTES 12
A. DISPUTES BETWEEN THE IAC AND MSA 12
B. DENIAL OF AUTHORIZATION FOR A COUNTY BOARD TO CONTRACT FOR, MANAGE, AND OVERSEE A PROJECT 13
C. DISPUTES UNDER A PROJECT MOU 13
D. PROCUREMENT DISPUTES 13

X. NOTICES 14
XI. MISCELLANEOUS 15
A. GOVERNING LAW 15
B. TERM 15
C. TAX-EXEMPT BONDS 15
D. RETENTION OF RECORDS 15
E. INSPECTION OF BOOKS AND RECORDS 15
F. AMENDMENTS 15
G. COUNTERPARTS 15

SCHEDULES AND APPENDICES

SCHEDULE A – Responsibilities Matrix – MSA Projects

SCHEDULE B – Responsibilities Matrix – LEA Projects

SCHEDULE C – Estimated Cash Flow Projection

APPENDIX 1 – Tracking and Reporting of Costs & Expenditures Related To Ownership

PROGRAM MEMORANDUM OF UNDERSTANDING
BUILT TO LEARN ACT OF 2020

THIS PROGRAM MEMORANDUM OF UNDERSTANDING (this "**MOU**") is entered into as of the 23 day of July, 2021 by and between the INTERAGENCY COMMISSION ON SCHOOL CONSTRUCTION, an independent unit within the Maryland Department of Education (the "**IAC**"), and the MARYLAND STADIUM AUTHORITY, a body politic and corporate and an instrumentality of the State of Maryland ("**MSA**").

RECITALS

WHEREAS, Chapter 20 of the 2020 Laws of Maryland (House Bill 1) entitled the Built to Learn Act of 2020 (as the same has been and may be amended from time to time, the "**Act**") became law on May 8, 2020;

WHEREAS, notwithstanding any other effective date contained in the Act, Section 13 of the Act provided that the effectiveness of the Act was contingent on the taking effect of House Bill 1300 (2020) entitled the Blueprint for Maryland's Future – Implementation; and

WHEREAS, House Bill 1300 (2020) became law as Chapter 36 of the 2021 Laws of Maryland with a general effective date of March 14, 2021;

WHEREAS, the Act requires the IAC and MSA to enter into this MOU to provide for each party's roles and responsibilities in implementing the school construction program established by the Act;

NOW, THEREFORE, in consideration of the mutual covenants, promises, conditions, representations, and agreements set forth herein, the parties hereto agree as follows:

NOW, THEREFORE, for and in consideration of the Recitals, which shall be deemed a substantive part hereof, the promises and the mutual obligations of the IAC and MSA, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the IAC and MSA, for themselves and their respective successors and assigns, hereby covenant, agree, represent, and warrant as follows:

I. INCORPORATION OF RECITALS

The foregoing recitals are incorporated herein by reference and made a part of this MOU

II. DEFINED TERMS

Certain terms are defined in the Act, in the heading and the Recitals to this Agreement, and elsewhere in this Agreement. In addition, unless the context or use clearly indicates another or different meaning or intent, the following terms shall have the meanings shown:

"**Act**" has the meaning set forth in the Recitals.

"**Baltimore City Program**" means the program for the revitalization and construction of Baltimore City Public Schools in accordance with the Baltimore City Program Act.

"**Baltimore City Program Act**" means Chapter 647 of the 2013 Laws of Maryland (House Bill 860) entitled The Baltimore City Public Schools Construction and Revitalization Act of 2013, as codified and as the same has been and may be amended from time to time.

"**Baltimore City Program Facilities Fund**" means the Baltimore City Public School Construction Facilities Fund established in accordance with the Baltimore City Program Act.

"**Baltimore City Program MOU**" means the Memorandum of Understanding, effective as of October 16, 2013, by and among the IAC (formerly known as the Interagency Committee on School Construction), MSA, the Mayor and City Council of Baltimore, and the Baltimore City Board of School Commissioners on behalf of the Baltimore City Public Schools System with respect to the roles and responsibilities of the parties with respect to the Baltimore City Program, as the same has been and may be amended, supplemented, or otherwise modified from time to time.

"**Bonds**" means the bonds issued by MSA in accordance with the Act and this MOU to be secured by and repaid from the Financing Fund.

"**Bond Proceeds**" means the proceeds of the Bonds.

"**Choice Neighborhood Program**" means the grant program of that name administered by the federal Department of Housing and Urban Development and coordinated in Baltimore City by the Housing Authority of Baltimore City.

"**Construction**" means and includes planning, design, engineering (including testing), alteration, construction, reconstruction, enlargement, expansion, extension, improvement, replacement, rehabilitation, renovation, upgrading, capital equipping, furniture-fixtures-equipment, related demolition, and post-occupancy and warranty-related work.

"**Cost Projection**" is defined in Section VI.A.

"**County**" means, as the context requires: (i) the geographic area of a county in the State of Maryland, including the geographic area of Baltimore City, or (ii) the governing body of a county in the State of Maryland, including the Mayor and City Council of Baltimore with respect to Baltimore City.

"**County Board**" means the board of education of a county, including the Baltimore City Board of School Commissioners with respect to Baltimore City.

"**Depletion**" means the remaining useful lifespan (RUL), as determined by the IAC, subtracted from the expected useful lifespan (EUL), as determined by the IAC based upon industry standards, expressed as a percentage of the EUL, the result of which is the FCI.

"**Facilities Fund**" means the Supplemental Public School Construction Facilities Fund established under § 10-658.1 of the Economic Development Article.

"**Facility Condition Index**" or "**(FCI)**" means a measure of physical condition calculated with the formula: ((1 - the observed percentage of remaining life) x replacement value) / current replacement value. The FCI is represented as a percentage of depleted expected lifespan and can neither exceed 100% nor be less than 0%. Lower percentages represent better conditions.

"**Financing Fund**" means the Supplemental Public School Construction Financing Fund established under § 10-658 of the Economic Development Article.

"**Fiscal Year**" or "**FY**" means a fiscal year of the State of Maryland, which, unless altered by statute, is the period from July 1 through June 30 of the following calendar year. For example, the period from July 1, 2021 through June 30, 2022 is FY 2022.

"**LEA**" or "**Local Educational Agency**" means a County Board and its corresponding school system.

"**LEA Project**" means a Project for which the applicable LEA will contract for, manage, and oversee the construction of the Project.

"**Maximum State Funding Allocation**" is the maximum State allocation for each approved project through the Act, which must be approved by the IAC in accordance with Title 5, Subtitle 3 of the Education Article and COMAR Title 14, Subtitle 39 Interagency Commission on School Construction.

"**MSA Obligation**" means MSA's responsibilities to ensure the best and most efficient use of state funding for Program school facilities with respect to, in connection with, or arising from the issuance, repayment, and/or refunding of Bonds and the use of Bond Proceeds; MSA's compliance with the terms and conditions of Bonds, including all obligations owed by MSA to the trustee and/or bondholders of such Bonds and compliance with all conditions required to maintain the tax-exempt status of Bonds; with respect to an MSA Project, MSA's responsibility to contract for, manage, and oversee the construction of such Project; with respect to an LEA Project, MSA's oversight of the applicable LEA's use of Bond Proceeds and compliance with the terms of the applicable Project MOU, as well as the decision to assume the contracts for and then manage and oversee the completion of the construction of such Project; and any other obligation now or hereafter expressly imposed on MSA by the Act, any amendment to the Act, or any other statute enacted that is applicable to the Program.

"**MSA Project**" means a Project for which MSA will contract for, manage, and oversee the construction of the Project.

"**Prince George's County P3 Agreement**" means an agreement by and among Prince George's County, the Prince George's County Board, and a private entity for the acquisition, design, construction, improvement, renovation, expansion, equipping, or financing of a public school, and must include provisions for operation and maintenance of a school to a specified and sustained level of condition, cooperative use for the school or an adjacent property, and generation of revenue to offset the cost of construction or use of the school that has been reviewed by MSA and approved by the IAC in accordance with the Act, as codified in § 4-126.1 of the Education Article

"**Prince George's County P3 Fund**" means the Prince George's County Public-Private Partnership Fund established under § 4-126.2 of the Education Article.

"**Prince George's County P3 MOU**" means a memorandum of understanding by and among the IAC, MSA, Prince George's County, and the Prince George's County Board in accordance with the Act, as codified in § 4-126 of the Education Article.

"**Prince George's County P3 Project**" means the construction of a one or more public school buildings under the Prince George's County P3 Agreement.

"**Program**" means the program undertaken by the IAC and MSA in accordance with the Act and this MOU for (i) the financing and construction of certain public school buildings in the State of Maryland with Bond Proceeds, the Financing Fund, the Facilities Fund, local funds, and other available funds, and (ii) the contracting for, management, and overseeing of Projects.

"**Program Funds**" means Bond Proceeds and amounts on deposit in the Facilities Fund.

"**Project**" means the construction of a one or more public school buildings in accordance with this MOU and any applicable Project MOU.

"**Project Budget**" means the total project cost, inclusive of the State and local shares of eligible costs and additional ineligible costs funded locally.

"**Project Completion**" means that the Project is substantially complete to the point that the facility can be occupied and functionally utilized to substantially perform all of its purposes as defined by the contract documents. This includes, but is not limited to: access to, from, and within all areas of the facility; all major building systems are operating as specified such as finishes, roofs, site drainage, safety features, and those that regulate temperature, ventilation, humidity, and lighting; and all systems can be routinely maintained as recommended by manufacturers.

"**Project Cost**" means any cost exclusively associated with a specific project.

"**Project MOU**" means a memorandum of understanding between MSA and the applicable County Board with respect to a Project within the Program.

"**Public School Construction Program**" means the public school construction and capital improvement program administered by the IAC pursuant to §§4-126, 5-112, and 5-303 of the Education Article, Annotated Code of Maryland, and §5-7B-07 of the State Finance and

Procurement Article, Annotated Code of Maryland, and the regulations adopted by the IAC with respect thereto.

"**Reimbursement Project**" means any Project for which a notice to proceed was issued after June 1, 2020, but prior to IAC approval and allocation of funding from the Program.

"**Renewal Project**" means a facility has been returned to a "like new" condition of the facility with a Facility Condition Index of 15% or lower, as verified by a licensed architect or design professional.

III. SELECTION OF PROJECTS

Subject to the satisfaction of all applicable requirements for funding the Program, the Projects to be funded by the Program shall be Projects that the IAC determines: (1) for FY 2022 only, would be eligible for funding but State funding has been deferred due to fiscal constraints; and (2) the Project began construction on or after June 1, 2020, provided, however, the Project was not completed prior to the effective date of this MOU. In selecting Projects for the Program, priority shall be given to schools:

1. That are the oldest or most depleted buildings in the school system with significant facility deficiencies;

2. With high concentrations of students eligible for free or reduced-price meals;

3. With a high number of relocatable classrooms;

4. With a high utilization based on the school's State-rated capacity;

5. With space needs for full-day prekindergarten or career and technical education programs;

6. That meet selection requirements to be funded for construction within three (3) years; or

7. That have completed or nearly completed design documents, a well-established budget, and are ready to be bid.

IV. LIMITS OF MSA OBLIGATIONS TO FUND PROGRAM AND PROJECTS

Except as otherwise specifically provided in the Act, the sole source of payment for:

1. Debt service and any other costs associated with the Bonds shall be the Financing Fund;

2. Any costs or expenses related to the administration of the Program shall be the Program Funds; and

3. Any costs or expenses related to each Project shall be the Program Funds together with any additional local or State funds made available for such Project.

MSA shall not use any of MSA's other funds, whether appropriated or non-budgeted, to pay for any costs or expenses related to the Program or the Projects.

V. PROJECTS

A. COSTS

In addition to any requirement of the Act or any regulations adopted in accordance therewith, including IAC determination of eligible costs in accordance with § 10-650(c)(1) of the Economic Development Article, § 5-303 of the Education Article, and the regulations of the Interagency Commission on School Construction in COMAR Title 14, Subtitle 39, the eligibility for costs of Projects to be paid with Program Funds shall be subject to the availability of Program Funds and any applicable federal requirements for qualified use of the Bond Proceeds.

B. MSA PROJECTS

1. Generally. Except as otherwise provided by the Act and this MOU, MSA shall be responsible for contracting for, managing, and overseeing each Project, including ensuring that the requirements stated within Appendix 1 (Tracking and Reporting Of Costs & Expenditures Related To Ownership) are met.

2. Roles and Responsibilities. Except as otherwise specifically provided in the Act, this MOU, or an applicable Project MOU, the roles and responsibilities of the IAC, MSA, and the LEA with respect to an MSA Project shall be those set forth on Schedule A (Responsibilities Matrix – MSA Projects) attached hereto and incorporated herein by this reference.

3. Project MOU for MSA Project. For each MSA Project, MSA shall enter into a Project MOU with the applicable County and County Board that:

(a) Subjects the Project to the applicable terms and conditions set forth in this MOU, including the provisions of Section IX regarding disputes;

(b) Identifies specific parameters regarding the roles and responsibilities of each party with respect to budget review and approval (subject to MSA's authority to make all final determinations with respect to the budget for an MSA Project), procurement, design, schedule, construction administration, and contract compliance and reporting;

(c) Fixes the State and local cost-share and the Maximum State Funding Allocation for the Project in accordance with regulations of the IAC, subject to modification only as set forth in the Act and this MOU;

(d) Requires the applicable County and/or County Board to deposit the amount of the local share of Project costs into the Facilities Fund in accordance with a schedule approved by MSA;

(e) Requires the County Board to:

(i) Deliver to MSA one or more buildable sites for the Project, ready for improvement and free from any restrictions, easements, impediments, hazards, or conditions that would affect MSA's schedule or budget for the Project;

(ii) Deliver to MSA one or more sites for the Project with title that has vested in the County Board or in an entity approved by the County Board (but not MSA); and

(iii) Covenant to MSA that for so long as Bond Proceeds remain outstanding and unpaid, no public school facility constructed or renovated with Bond Proceeds may be sold, assigned, mortgaged, pledged, or encumbered without the bond balance having been repaid to the Program Fund and with the consent of the Authority;

(f) Establishes a comprehensive plan for local hiring and the maximization of the utilization of State-certified locally based minority and women-owned businesses as part of the procurement for the Project; and

(g) Includes other terms deemed necessary or appropriate by the parties thereto.

4. Projects in Baltimore City. With respect to Baltimore City Program projects in Baltimore City under the Baltimore City Program Act, if a provision of this MOU or the applicable Project MOU conflicts with a provision of the Baltimore City Program MOU, the provision of the Baltimore City Program MOU shall prevail.

C. PROJECT MANAGEMENT BY AN LEA

1. Reimbursement Projects. All Reimbursement Projects shall be designated LEA Projects and shall be subject to the same requirements and processes for reimbursement as a Public School Construction Program project.

2. Procedure for Designation of an LEA Project (other than Reimbursement Projects).

(a) Request by a County Board. Except for the County Boards for Baltimore City and Prince George's County, a County Board may request, in writing to MSA a minimum of 120 days prior to proposed bidding of the Project, that MSA authorize the LEA to contract for, manage, and oversee a Project.

(b) MSA Evaluation of Request by a County Board. In deciding whether to authorize an LEA Project, MSA shall consider the LEA's (i) track record in managing public school facility projects on schedule and within budget, and (ii) expertise and capacity to

manage the proposed Project. The IAC shall make available to MSA all relevant information in its records pertinent to the evaluation.

(c) Dispute of Negative Determination by MSA. If MSA declines a request by a County Board under this paragraph, such action shall be reported to the MSA Board in a public meeting. The County Board may appeal a negative decision in accordance with the relevant provisions of Section IX (Disputes) of this MOU.

3. Roles and Responsibilities. Except as otherwise specifically provided in the Act, this MOU, or an applicable Project MOU, the roles and responsibilities of the IAC, MSA, and the applicable LEA with respect to an LEA Project shall be those set forth on Schedule B (Responsibilities Matrix – LEA Projects) attached hereto and incorporated herein by this reference.

4. Project MOU for LEA Project. For each LEA Project, MSA shall enter into a Project MOU with the applicable County and County Board that:

(a) Subjects the Project to the applicable terms and conditions set forth in this MOU, including the provisions of Section IX regarding disputes;

(b) Identifies specific parameters regarding the roles and responsibilities of each party with respect to budget review and approval (including MSA's authority to review and comment on the budget for the Project as provided below), procurement, design, schedule, construction administration, and contract compliance and reporting;

(c) Requires that MSA be given at least 30 days to review and comment on any revisions to the budget for the Project;

(d) Fixes the State and local cost-share and the Maximum State Funding Allocation for the Project in accordance with regulations of the IAC, subject to modification only as set forth in the Act and this MOU and as approved by the IAC in an open meeting;

(e) Requires the applicable County and/or County Board to deposit the amount of the school share of Project costs into the Facilities Fund in accordance with a schedule approved by MSA;

(f) The County Board represents, warrants, and covenants to and for the benefit of MSA that:

(i) The site for the Project is a buildable site, ready for improvement and free from any restrictions, easements, impediments, hazards, or conditions that would affect the County Board's schedule or budget for the Project,

(ii) Title for the Project site has vested in the County Board or in an entity approved by the County Board (but not MSA); and

(iii) For so long as Bond Proceeds remain outstanding and unpaid, no public school facility constructed or renovated with Bond Proceeds may be sold,

assigned, mortgaged, pledged, or encumbered without the bond balance having been repaid to the Program Fund and with the consent of the Authority;

(g) The Project shall be subject to the same requirements and procedures that govern the Public School Construction Program;

(h) Authorizes MSA to assume the Project under certain circumstances as set forth in such Project MOU;

(i) Establishes a comprehensive plan for local hiring and the maximization of the utilization of State-certified locally based minority and women-owned businesses as part of the procurement for the Project; and

(j) Includes other terms deemed necessary or appropriate by the parties thereto.

D. PRINCE GEORGE'S COUNTY P3 MOU

1. Obligation to Enter into the Prince George's County P3 MOU. MSA and the IAC shall not be obligated to enter into the Prince George's County P3 MOU unless the conditions set forth in the Act have been timely satisfied.

2. Terms of the Prince George's County P3 MOU. The terms of the Prince George's County P3 MOU shall conform with the requirements of the Act and shall also provide that MSA shall be afforded the opportunity to review and submit comments to the IAC and Prince George's County Board with respect to any procurement dispute.

VI. FUNDING OF PROGRAM

A. COST PROJECTIONS

Attached hereto as Schedule C (Estimated Cash Flow Projection) is the IAC's initial estimated cash flow projection for known eligible Projects to be funded by the Program over the next two (2) years, including a summary of planning and funding requests submitted by each LEA (the "**Cost Projection**"). This list is representative and actual Projects shall be determined on an ongoing basis. On June 1, 2021 and at the beginning of each subsequent fiscal quarter, the IAC shall provide to MSA an update to the Cost Projection that notes any changes from previous versions and extends the projection over at least two (2) years from and after the date of such updated Cost Projection.

B. ISSUANCE OF BONDS

Subject to the terms of the Act, MSA shall issue Bonds at such intervals and in such amounts as MSA determines, in its sole discretion, necessary and prudent to meet the expected costs of the Program as set forth in the Cost Projection. MSA anticipates issuing Bonds in the Fall

of 2021 and in April of each year thereafter and the IAC agrees to use its reasonable best efforts to provide MSA with the information needed in accordance with that schedule.

VII. ALLOCATIONS

A. GENERALLY

Subject to the other provisions of this Section VII, percentages of the Bond Proceeds shall be reserved for allocation to Projects in the following counties in the following amounts:

1. Anne Arundel County – 12.5%
2. Baltimore City – 21.0%
3. Baltimore County – 21.0%
4. Frederick County – 5.1%
5. Howard County – 6.6%
6. Montgomery County – 21.0%
7. Prince George's County – see Subsection C below
8. All other counties – 11.5%

The remaining unreserved percentage of the Bond Proceeds may be allocated as approved by MSA.

B. SPECIFIC PROJECT IN BALTIMORE CITY

With respect to the funding of a Project in Baltimore City that is within an area designated as eligible for grant funding from the Choice Neighborhood Program, if the Mayor and City Council of Baltimore secure additional revenues for the Project of at least $30,000,000, six percent (6%) of the allocation provided under Section VII.A.2 shall be reserved for such Project.

C. PRINCE GEORGE'S COUNTY

Prince George's County's allocation of Bond Proceeds shall be the amounts designated for transfer to the Prince George's County P3 Fund, if any, in accordance with the terms of the Act and the Prince George's County P3 MOU.

D. REALLOCATION

Subject to any restrictions applicable to the Bond Proceeds, any allocations not utilized within ten (10) years after the allocation shall be subject to reallocation to the Program.

VIII. REPORTS, EVALUATIONS, AND CTE PROGRAM

A. MSA ANNUAL REPORT

On January 15, 2022 and each January 15 thereafter, MSA shall report to the Governor, the Board of Public Works, and, in accordance with § 2-1257 of the State Government Article, the fiscal committees of the General Assembly on the progress of construction and renovations of public school facilities, including actions taken during the previous fiscal year and planned for the current fiscal year.

B. PRINCE GEORGE'S COUNTY ALTERNATIVE FINANCING REPORTS

On January 15, 2025 and each January 15 thereafter for so long as required by law, the Prince George's County Board, Prince George's County, MSA, and the IAC jointly shall report to the Governor and, in accordance with § 2-1257 of the State Government Article, the fiscal committees of the General Assembly on the progress of construction and renovations of public school facilities under the Prince George's County P3 Agreement, including actions taken during the previous fiscal year and planned for the current fiscal year.

C. COST & EXPENDITURE REPORTING

§ 5-304(e) of the Education Article mandates that the IAC serve as a central repository for information on school facility design and construction as well as best practices in school construction. In order to enable the identification of best practices and the reconciliation of project costs with allocations of funding to projects, on each Project, the entity managing the Project shall report to the IAC, pursuant to Appendix 1, all project costs and expenditures within 180 days after Project Completion.

D. LIFE CYCLE COST REPORTS

The IAC shall evaluate the life cycle costs of public school buildings over both 30-year and 50-year periods, including:

1. An evaluation, based on 30-year and 50-year periods, of the cost and efficiency of using alternative energy systems, including geothermal, solar, wind, and energy storage compared to a traditional energy system;

2. An energy consumption and systems replacement analysis, based on a 50-year period, of each major piece of equipment in the any of the following systems serving the public school building:

   (a) The cooling system;

   (b) The heating system;

   (c) The hot water system;

(d) The lighting system;

(e) The ventilation system; or

(f) Any other major system that uses energy; and

3. The impact of innovative building design and materials on energy consumption, including white roofs and green roofs.

The IAC may contract with a third party to conduct such evaluation.

On or before October 1, 2021 and again on or before October 1, 2022, the IAC shall provide an annual update on the progress of the evaluation to the General Assembly, in accordance with § 2-1257 of the State Government Article.

The IAC shall submit their final evaluation to the General Assembly in accordance with § 2-1257 of the State Government Article on or before October 1, 2023.

E. 2030 REPORT

On or before July 1, 2030, MSA shall complete and deliver to the IAC an evaluation of the effectiveness of the issuance of bonds to finance construction and renovations of public school facilities. On or before December 31, 2030, the IAC shall submit a report on the results of MSA's evaluation to the Governor and, in accordance with § 2-1257 of the State Government Article, the fiscal committees of the General Assembly.

F. CTE PROGRAM

In accordance with the provisions of the Act, the IAC and MSA shall support the State Department of Education and collaborate with LEAs and community colleges to develop a career and technical education program or an apprenticeship pathway in school building maintenance that leads to an industry-recognized certificate or credential.

IX. DISPUTES

A. DISPUTES BETWEEN THE IAC AND MSA

1. Generally. Except as otherwise provided in this section and those other instances in which a party is expressly granted by this MOU or the Act the right to grant or withhold approvals that may be exercised in the discretion of that party, the IAC and MSA shall seek mutually acceptable solutions to any administrative or coordination problems arising from or under this Agreement and shall use their respective reasonable best efforts to resolve such problems as expeditiously as possible.

2. IAC Input. If, after the Executive Director of the IAC and the Executive Director of MSA are unable to reach a mutually agreeable resolution to a dispute, issues shall be heard by the IAC who shall provide a written opinion to the MSA Board on the matter.

3. MSA Obligations. A decision by the dispute committee comprised of members of MSA's board shall be a final decision involving any dispute that may impact any of MSA's obligations under the Act, including whether a dispute is one that may impact any of MSA's obligations under the Act.

4. Project Selection and Allocation. A decision in an open meeting by at least five (5) members of the IAC shall be a final decision involving any dispute over Projects under the Act and this MOU, including which Projects are eligible and the total State allocation available for eligible portions of the Project.

5. Bond-Related Issues. Notwithstanding any other provisions of the Act or this MOU, decisions related to or impacting on MSA's issuance of Bonds pursuant to the Act shall be decided by MSA with advice of its bond counsel, the Attorney General's Office, or MSA's financial advisor as the circumstances may require.

B. DENIAL OF AUTHORIZATION FOR A COUNTY BOARD TO CONTRACT FOR, MANAGE, AND OVERSEE A PROJECT

A County Board that has been denied authorization by MSA to contract for, manage, and oversee a Project may request in writing that such decision be reviewed by MSA's board. A decision by the dispute committee comprised of members of MSA's board shall be a final and unappealable decision regarding whether the County Board shall be granted or denied such authorization.

C. DISPUTES UNDER A PROJECT MOU

Each Project MOU shall provide for dispute resolutions consistent with the terms of this MOU and the Act, including the provisions of Section IX.D regarding procurement disputes.

D. PROCUREMENT DISPUTES

1. MSA Projects. All bid protests and other third-party procurement claims related to any MSA Project shall be resolved by MSA pursuant to MSA's procurement policies and procedures.

2. LEA Projects. All bid protests and other third-party procurement claims related to any LEA Project shall be resolved in accordance with the applicable County Board's procurement policies and procedures, provided that MSA shall be afforded the opportunity to review and submit comments to the County Board with respect to such dispute.

3. Prince George's County P3 Projects. All bid protests and other third-party procurement claims related to a Prince George's County P3 Project shall be resolved as provided in the Prince George's County P3 MOU.

X. NOTICES

A notice or communication under this Agreement shall be sufficiently given or delivered if dispatched by either (a) certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight delivery service, (c) hand-delivery (if receipt is evidenced by a signature of the addressee or authorized agent), or (d) by an electronic system that provides a unique identifier of sender and includes date, time, and verification of delivery.

In the case of a notice or communication regarding this MOU to MSA, as follows:

Maryland Stadium Authority
The Warehouse at Camden Yards, Suite 500
333 West Camden Street
Baltimore, Maryland 21201
Attention: Executive Director

With a copy to:

Office of the Attorney General
200 St. Paul Place
Baltimore, MD 21202
Attention: Cynthia M. Hahn, Esq.

In the case of a notice or communication regarding this MOU to the IAC, as follows:

Interagency Commission on School Construction
c/o State Department of Education
Nancy S. Grasmick State Education Building
200 West Baltimore Street
2nd Floor
Baltimore, MD 21201
Attention: Executive Director

With a copy to:

Office of the Attorney General
200 St. Paul Place
Baltimore, MD 21202
Attention: Elliott L. Schoen, Esq.

Either party may change its address or recipients for notice by providing the other party with notice thereof, to be effective upon receipt.

XI. MISCELLANEOUS

A. GOVERNING LAW.

The Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

B. TERM

This MOU shall be effective from the later date of execution by the IAC or MSA set forth below and, unless both parties agree to an earlier termination of this MOU, shall remain in effect until all Bonds are no longer outstanding and unpaid.

C. TAX-EXEMPT BONDS

The IAC understands that MSA intends for the interest on the Bonds to be exempt from federal income taxation under Section 103 of the Internal Revenue Code. The IAC agrees not to perform 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.

D. RETENTION OF RECORDS

The parties to this MOU shall retain all documents and records pertaining to each Project until the later of: (1) three (3) years after the expiration of any warranty period applicable to such Project; or (2) the date that destruction or other disposal of the documents and records is permitted pursuant to the party's established document retention policy.

E. INSPECTION OF BOOKS AND RECORDS

Upon reasonable advance request, either party, or its auditor or other designee, shall have the right, during normal business hours, to examine the books and records of the other party which relate to the use, expenditure, or account of any disbursements from the Bond Proceeds, the Facilities Fund, and/or the Financing Fund.

F. AMENDMENTS

Any amendment to this MOU must be in writing and executed by both parties hereto.

G. COUNTERPARTS

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.

IN WITNESS WHEREOF, each party has caused this MOU to be executed on its behalf by its duly authorized representative on the respective dates set forth below.

WITNESS:

INTERAGENCY COMMISSION ON SCHOOL CONSTRUCTION

Approved as to form and legal sufficiency for the Interagency Commission on School Construction

By: _____
Robert A. Gorrell
Executive Director

Elliott Schoen
Assistant Attorney General

WITNESS:

Approved as to form and legal sufficiency for the Maryland Stadium Authority

MARYLAND STADIUM AUTHORITY

Bruce Benshoof
Assistant Attorney General

By: Michael J. Frenz
Michael J. Frenz
Executive Director

Schedule A: Responsibilities Matrix - MSA Projects

		Responsible Party			
	Phase/Task	**LEA**	**MSA**	**IAC**	**Notes**
1	**Planning**				
1.1	Consider and approve LEA request for CIP-based funding for planning (IF APPLICABLE)			X	• If the request is out of sequence from existing project pipeline prioritization, LEA will explain why.
1.2	Determine expected enrollments eligible for State funding participation	X		X	• Includes review of utilization at school, cluster/region, and portfolio levels.
1.3	Determine expected total gross square footage (GSF) eligible for State funding participation			X	• The APG CIP/BTL Computation worksheet will be used to calculate the estimated Net State Funding.
1.4	Educational Specifications (Ed Specs)				
1.4.1	Procure Ed Spec Consultant (if needed) and plan and execute public-engagement process	X			Project must be well defined through ed specs before beginning the design process.
1.4.2	Develop & submit project-specific Ed Specs in compliance with IAC's Administrative Procedures Guide (APG), including initial TCO Estimate and analysis of project impact on portfolio utilization, to IAC; LEA must submit project-specific Ed Specs for IAC review at least 60 days prior to release of design services solicitation	X			
1.4.3	Review & comment on Ed Specs package			X	• Includes review of proposed GSF vs. GAB, TCO, seats utilization, time utilization, and effect(s) on utilization at portfolio and cluster/region levels.
1.5	Feasibility Study (FS) to evaluate potential renewal/replacement options (If necessary)				

		Responsible Party			
	Phase/Task	**LEA**	**MSA**	**IAC**	**Notes**
1.5.1	Procure FS Consultant (if needed)	X			• MSA assistance upon request of LEA.
1.5.2	Conduct FS, produce FS document including proposed project option with specified cooperative-use spaces if any; and submit to IAC, or request FS waiver	X			• LEA shall include proposed joint-use agreement with any Cooperative-use Space users.
1.5.3	Review FS or FS waiver request & provide optional comments			X	• Includes review of facility FCI and MDCI; estimated TCO of project options; coordination with other planned and potential portfolio actions.
1.5.4	Approve/disapprove selected renewal/replacement option, scope, and estimated cost, including cooperative-use spaces; and provide approval for the LEA to proceed with design			X	
1.6	Submit request to IAC for local planning approval (and, if desired, funding for planning (OPTIONAL))	X			
1.7	Consider and approve LEA request for local planning approval and CIP-based funding for planning (IF APPLICABLE)			X	
1.8	Consult with MSA on planned procurement methods.	X	X	X	• MSA must review and comment on the planned procurement method to ensure that engaged design services can support intended construction procurement.
2	**Design**				• SFB, RFM, and owner field rep must be invited to all design meetings. • Every submission phase should include analysis of proposed GSF/student, projected TCO, and estimated cost/GSF.
2.1	Submit request to IAC for funding for design services	X			
2.2	Review and comment on LEA request for funding for design		X		

		Responsible Party			
	Phase/Task	**LEA**	**MSA**	**IAC**	**Notes**
2.3	Consider and approve LEA request for funding for design			X	• Check that all pre-design requirements have been met (site, planning, etc.)
2.4	Prepare contract(s) for design services		X		• Scope/cost of contract must match IAC approval requirements • • Must include real-time utilities metering & reporting program compliant with IAC standards.
2.5	Initiate procurement of design services		X		
2.6	Develop Schematic Drawings (SDs) and submit to IAC	X	X		• LEA must also submit to State Historic Preservation Board if applicable.
2.7	Review and approve SDs, including any changes to scope since approval of planning		X	X	
2.8	Develop Design Documents (DDs) and submit to IAC	X	X		
2.9	Development of Life Cycle Analysis and TCO Estimate	X	X		
2.10	Review of Life Cycle Analysis and TCO Estimate by review of IAC (including DGS)			X	
2.11	Review and approve DDs, including any changes to scope since approval of planning		X	X	
2.12	Develop Construction Documents (CDs) and submit to MSA and IAC.	X	X		• If scope changes from approved DDs, LEA and MSA must notify IAC.
2.13	Review and approve CDs, including any significant changes to scope since approval of previous phases	X	X	X	
2.14	Review and make recommendations regarding MSFA, draw schedule, and requested State funding for construction		X		

		Responsible Party			
	Phase/Task	**LEA**	**MSA**	**IAC**	**Notes**
2.15	Review proposed draw schedule and approve		X		To support allocation for State funding for construction
2.16	Determine final Maximum State Funding Allocation (MSFA) per COMAR 14.39.02.06 and approve State funding for construction			X	
3	**Construction**				
3.1	Delivery method				
3.1.1	Verify proposed delivery method		X	X	
3.2	Prepare contract(s) for construction services		X		
3.3	Monthly reporting for duration of construction contract to include: ● Project progress overview including project status, cost, & budget controls; potential change order (including cause of change order) & contingency expenditures/balances, and CPM schedule review/forecast as well as any schedule or budget recovery plans.		X		
3.4	Value engineering, including production of VE log that includes proposed change, reasoning, and action taken	X	X		
3.5	Punch list development, both pre and post substantial completion	X	X		
3.6	Reporting of punch list, including ● Total number of items ● Percentage of punch items closed, monthly ● Percentage of punch items closed after approval by design team, by month		X		● Punch list goes monthly to LEA, MSA, and IAC.

		Responsible Party			
	Phase/Task	**LEA**	**MSA**	**IAC**	**Notes**
	• Percentage of punch items still not closed 12 months after substantial completion				
3.7	Warranty Claims	X	X		
3.7.1	Maintain log of all warranty **claims** and warranty **work** scheduled and performed.	X			• Includes notation of any claims that are contested.
3.7.2	Enter required warranty **work** as work orders in the LEA's CMMS and record resolution of such work.	X			
3.7.3	Verify that all required warranty work was performed and was acceptable to LEA.	X	X	X	
3.7.4	Generate monthly reports to all parties on status of all warranty claims and warranty work.	X	X		
4	**Turnover and Occupancy**				
4.1	Verify substantial completion	X	X		
4.2	Enter all appropriate preventive-maintenance (PM) schedules into the LEA's computerized maintenance-management system (CMMS) before occupancy of the facility so that PM work orders begin auto-generating.	X			
4.3	Review and approve PM schedule in CMMS			X	
4.4	Train maintenance and custodial staff on operation and maintenance of all building systems	X	X		Recommend including training requirement in specifications and trade contracts
4.5	Complete Post Occupancy Evaluation (POE) in alignment with contract requirements 12-18 months after occupancy and prior to the end of the warranty period	X	X		• Includes review of any joint uses of cooperative-use spaces (CUS).
4.6	Report project budget and cost information to IAC for reconciliation	X	X		• See MOU section VIII.C. and Appendix 1.

		Responsible Party			
	Phase/Task	**LEA**	**MSA**	**IAC**	**Notes**
5	**Operations & Maintenance**				
5.1	Between occupancy date and date of POE, provide monthly reports to IAC showing: ● Number of work orders entered per month ● Average work order age before closure ● Percentage of corrective MWOs entered by building-level operations staff ● Percentage of corrective MWOs entered by building-level maintenance staff	X			● This requirement applies unless the IAC has direct access to this information in the LEA's CMMS.
6	**Annual Report**	X	X	X	LEAs will provide supporting information as needed

Schedule B: Responsibilities Matrix - LEA Projects

		Responsible Party			
	Phase/Task	**LEA**	**MSA**	**IAC**	**Notes**
1	**Planning**				
1.1	Consider and approve LEA request for CIP-based funding for planning (IF APPLICABLE)			X	• If the request is out of sequence from existing project pipeline prioritization, LEA will explain why.
1.2	Determine expected enrollments eligible for State funding participation	X		X	• Includes review of utilization at school, cluster/region, and portfolio levels.
1.3	Determine expected total gross square footage (GSF) eligible for State funding participation			X	
1.4	Educational Specifications				
1.4.1	Procure Ed Spec Consultant (if needed) and plan and execute public-engagement process	X			Project must be well defined through ed specs before beginning design process.
1.4.2	Develop & submit project specific Ed Specs in compliance with IAC's Administrative Procedures Guide (APG), including initial TCO Estimate and analysis of project impact on portfolio utilization, to IAC; LEA must submit Project Specific Ed Specs for IAC review at least 60 days prior to release of design services solicitation	X			
1.4.3	Review & comment on Ed Specs package			X	• Includes review of proposed GSF vs. GAB, TCO, seats utilization, time utilization, and effect(s) on utilization at portfolio and cluster/region levels.
1.5	Feasibility Study (FS) to evaluate potential renewal/replacement options (If necessary)				

		Responsible Party			
	Phase/Task	**LEA**	**MSA**	**IAC**	**Notes**
1.5.1	Procure FS Consultant (if needed)	X			• MSA assistance upon request of LEA.
1.5.2	Conduct FS, produce FS document including proposed project option with specified cooperative-use spaces if any; and submit to IAC, or request FS waiver	X			• LEA shall include proposed joint-use agreement with any cooperative-use space users.
1.5.3	Review FS or FS waiver request & provide optional comments			X	• Includes review of facility FCI and MDCI; estimated TCO of project options; coordination with other planned and potential portfolio actions.
1.5.4	Approve/disapprove selected renewal/replacement option, scope, and estimated cost, including cooperative-use spaces (CUS); and approve LEA to proceed with design			X	
1.6	Submit request to IAC for local planning approval (and, if desired, funding for planning (OPTIONAL))	X			
1.7	Consider and approve LEA request for local planning approval and CIP-based funding for planning (IF APPLICABLE)			X	
1.8	Consult with MSA on planned procurement methods.	X	X	X	• MSA must review and comment on the planned procurement method to ensure that engaged design services can support intended construction procurement.
2	**Design**				• SFB, RFM, and owner field rep must be invited to all design meetings. • Every submission phase should include analysis of proposed GSF/student, projected TCO, and estimated cost/GSF.
2.1	Submit request to IAC for funding for design services	X			
2.2	Review and comment on LEA request for funding for design		X		

		Responsible Party			
	Phase/Task	**LEA**	**MSA**	**IAC**	**Notes**
2.3	Consider and approve LEA request for funding for design			X	• Check that all pre-design requirements have been met (site, planning, etc.)
2.4	Prepare contract(s) for design services and submit to MSA and IAC	X			• Scope/cost of DP contract must match IAC approval • Must include real-time utilities metering & reporting program compliant with IAC standards.
2.5	Review/comment on contracts for design services		X	X	
2.6	Initiate procurement of design services	X			
2.7	Develop Schematic Drawings (SDs) and submit to MSA and IAC	X	X		• LEA must also submit to the State Historical Preservation Board if applicable.
2.8	Review and approve SDs, including any changes to scope since approval of planning		X	X	• MSA Review/Comment
2.9	Develop Design Documents (DDs) and submit to MSA and IAC	X			
2.10	Development of Life Cycle Analysis and TCO Estimate	X			
2.11	Review of Life Cycle Analysis and TCO Estimate by review of IAC (including DGS)			X	
2.12	Review and approve DDs, including any changes to scope since approval of planning		X	X	• MSA Review/Comment
2.13	Develop Construction Documents (CDs) and submit to MSA and IAC.	X			• If scope changes from approved DDs, LEA must notify IAC.
2.14	Review and approve CDs, including any significant changes to scope since approval of previous phases		X	X	• MSA Review/Comment
2.15	Review and make recommendations regarding MSFA, draw schedule, and requested State funding for construction		X		

		Responsible Party			
	Phase/Task	**LEA**	**MSA**	**IAC**	**Notes**
2.16	Review proposed draw schedule and approve		X		To support allocation for State funding for construction
2.17	Determine final Maximum State Funding Allocation (MSFA) per COMAR 14.39.02.06, review draw schedule, and approve State funding for construction			X	
3	**Construction**				
3.1	Delivery method				
3.1.1	Submit request to IAC for proposed delivery method (if not DBB and if not already submitted before/during design)	X			
3.1.2	Approve proposed delivery method			X	For alternative delivery methods, LEAs must receive IAC approval prior to selection as required by COMAR.
3.2	Prepare contract(s) for construction services	X			
3.3	Monthly reporting for duration of construction contract ● Change orders, including who/what caused the additional costs and potential additional costs with estimates from the CM/GC ● Number of days project milestones have been delayed ● Actual draws compared to projected draw schedule established at the time of contract award	X	X		
3.4	Value engineering, including production of VE log that includes proposed change, reasoning, and action taken	X		X	● VE must maintain design standards and all VE activities must be approved by all parties
3.5	Punch list development, both pre and post substantial completion	X	X		
3.6	Reporting of punch list, including	X	X		● Punch list goes monthly to MSA and IAC.

		Responsible Party			
	Phase/Task	**LEA**	**MSA**	**IAC**	**Notes**
	• Total number of items • Percentage of punch items closed, monthly • Percentage of punch items closed after approval by design team, by month • Percentage of punch items still not closed 12 months after substantial completion				
3.7	Warranty Claims	X			
3.7.1	Maintain log of all warranty **claims** and warranty **work** scheduled and performed..	X			• Includes notation of any claims that are contested.
3.7.2	Enter required warranty **work** as work orders in the LEA's CMMS and record resolution of such work.	X			
3.7.3	Verify that all required warranty work was performed and was acceptable to LEA.	X		X	
3.7.4	Generate monthly reports to all parties on status of all warranty claims and warranty work.	X			
4	**Turnover and Occupancy**				
4.1	Verify substantial completion	X	X	X	
4.2	Enter all appropriate preventive-maintenance (PM) schedules into the LEA's computerized maintenance-management system (CMMS) before occupancy of the facility so that PM work orders begin auto-generating.	X			
4.3	Review and approve PM schedule in CMMS			X	
4.4	Train maintenance and custodial staff on operation and maintenance of all building systems	X			
4.5	Complete Post Occupancy Evaluation (POE) in alignment with IAC	X			• Includes review of any joint uses of cooperative-use

		Responsible Party			
	Phase/Task	**LEA**	**MSA**	**IAC**	**Notes**
	requirements 18 to 24 months after occupancy and prior to the end of the warranty period				spaces (CUS).
4.6	Review and approve POE			X	
5	**Operations & Maintenance**				
5.1	Between occupancy date and date of POE, provide monthly reports to IAC showing: ● Number of work orders entered per month ● Average work order age before closure ● Percentage of corrective MWOs entered by building-level operations staff ● Percentage of corrective MWOs entered by building-level maintenance staff	X			● This requirement applies unless the IAC has direct access to this information in the LEA's CMMS.
6	**Annual Report**	X	X	X	LEAs will provide supporting information as needed

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SCHEDULE C – Estimated Cash Flow Projection

APPENDIX 1: TRACKING AND REPORTING OF COSTS & EXPENDITURES RELATED TO OWNERSHIP

Effective management of a portfolio of facilities requires measuring and tracking of each of the costs that comprise the total cost of ownership of each facility within the portfolio. The total cost of ownership includes all costs of planning, design, construction, funding, operations, and maintenance of the facility over the life of the facility.

I. DURING PROJECT DELIVERY

Using the facility's PSC Number as an identifier and using a reporting system as determined by the IAC, the reporting entity shall report to the IAC [on [an annual?] basis] each cost and expenditure incurred on the project by the following categories and subcategories and pursuant to the following definitions:

A. FUND [FUND SOURCE]

1. LEA Funds
2. BTL Funds [coming from MSA, even if paid through IAC]
3. PSCP Funds

B. FUNCTION

Category	Definition
Planning	The identification and maintenance of the next steps—including funding sources and planning coordination with 'outside' entities—that are required to most efficiently and effectively provide the facilities necessary to adequately support the institution's intended outcomes. Includes stakeholder meetings and the development of preliminary or pre-design project information regarding potential sites, facilities, and buildings; budgets; and timelines; as well as educational specifications and funding commitments. The educational specifications providing project-specific and detailed owner requirements must be complete; see the Educational Specifications Guidelines in the IAC's Administrative Procedures Guide (APG).
Design	The development of construction documents necessary to complete the school facility project beginning with the verification of owner requirements through the project's Program Statement phase of the design.
Renewal of Existing Facility	Renovation of an entire campus to like-new condition (equal to a Facility Condition Index of 15% or lower) during a period of time not to exceed four years, including its support infrastructure both on-site and off-site.

Construction of New or Replacement Facility	Construction of a new or replacement campus, including support infrastructure—both on-site and off-site—such as water, sewer, drainage, gas, power, access roads, etc.

II. AFTER PROJECT COMPLETION

A. FUNCTION

Category	Subcategory	Definition
Post-Occupancy & Warranty		Owner activities related to the resolution of all post-project responsibilities, including resolution of incomplete punch list work, work related to successful performance of warranty items, and post-occupancy evaluation (POE) - see IAC POE Guidelines.
Operations		The services required to keep a facility clean, sanitary, and tidy such that its occupants are comfortable, healthy, and productive. Includes the provision of utilities such as fuel, electricity, water, and sewerage; support services to assist occupants; and disposal and recycling of unnecessary structures, equipment, and trash.
	Custodial Services	The day-to-day janitorial and grounds tasks necessary to keep a facility sanitary, polished, and tidy. Includes trash removal, cleaning, waxing, weed removal, trimming, mowing, irrigating, snow and ice removal, and otherwise caring for school facilities and grounds. Also includes non-cleaning tasks such as opening the school, checking for vandalism, and identifying safety and maintenance needs.
	Utilities	The energy, water, communications, and waste disposal services purchased to enable the operation of a school facility. Includes but is not limited to electricity, natural gas, liquid propane, oil, water, sewerage, telephone, Internet access, recycling, and trash disposal services.
	Support Services	Routine and non-routine work tasks to support occupant functions. Includes responding to teachers' and principals' requests; setting up spaces for special activities and events; ordering and delivering supplies; raising and lowering the flag; and management of equipment for physical-education and athletic activities.
	Demolition & Disposal of Facilities	End-of-life removal of assets including furniture, equipment, and buildings. Includes spot removal of any unsafe product such as lead or asbestos as well as cleanup of spills, mold, and other contaminants. Does not include demolition,

		disposal, or environmental cleanups as part of facility acquisition (construction or replacement of a new facility, or renewal of an existing facility) or capital maintenance.
Maintenance		The work required to keep a facility (plant, building, structure, ground facility, utility system, or other real property) in such condition that it may be fully functional and continuously utilized for its expected lifespan, for its intended purpose, and at its maximum energy efficiency. Includes both routine and capital maintenance.
	Routine Maintenance	Routine, preventive, predictive, and emergent-unscheduled tasks and repairs required to ensure that a facility functions according to its design and for its expected lifespan. Includes scheduled inspections, record keeping, equipment servicing, replacement of lamps and filters, replacement of failed equipment components such as motors, pumps and switches, responding to calls for emergency repairs, patching holes, and repairing furniture and fixtures.
	Capital Maintenance	Major repair, alteration, and replacement of building systems, equipment, finishes and components, including their removal and disposal. These system and component renewals occur more often at the end of a building system's or equipment's useful life. They will sustain or extend the useful life of the entire facility but are insufficient to result in the facility becoming "like new." Includes improvement of roadways and drainage; replacement of playing fields, roofs, HVAC systems, windows, and doors; structural repairs; and installation or replacement of long-life assets in a facility such furniture, fixtures, and equipment.
Alteration		Building addition, renovation, modernization, or other major modification to a school campus that may add or reduce capacity and otherwise supports the facility's function but is insufficient to renew the facility
Non-permanent Addition		Augmentation of the capacity of a facility through the installation of portable classrooms or similar assets—along with associated support systems—that are not permanent. (When de-installed, any recovered value remaining in the portable assets should be deducted from this account code).