## SETTLEMENT AGREEMENT AND LIMITED RELEASE

This SETTLEMENT AGREEMENT AND LIMITED RELEASE ("Settlement Agreement") is made as of the 18th day of November, 2019 (the "Effective Date"), by and between the City of Aberdeen, a/k/a City of Aberdeen, Maryland ("Aberdeen" or the "City") and Tufton Professional Baseball, LLC ("Tufton). Both Aberdeen and Tufton are referred to herein as a "Party" and collectively as the "Parties."

WHEREAS, Tufton is a Maryland limited liability company with its principal place of business in Aberdeen, Maryland;

WHEREAS, Aberdeen, is a municipal corporation organized and existing under the Constitution and laws of the State of Maryland that has its principal offices in Aberdeen, Maryland;

WHEREAS, Aberdeen and Tufton are parties to that certain Concession Agreement by and between the City of Aberdeen, Maryland and Tufton Professional Baseball LLC for Ripken Stadium dated December 7, 2000 (the "Concession Agreement");

WHEREAS, disputes have arisen between the Parties regarding their respective rights and obligations under the Concession Agreement, as well as the interpretation of certain terms thereof;

WHEREAS, on October 10, 2018, Tufton filed a Complaint For Breach Of Contract, Anticipatory Breach Of Contract, Declaratory Judgment, Specific Performance, And Injunctive Relief, (the "Complaint") in the Circuit Court for Harford County Maryland, Civil Case No. C-12-CV-18-000731 and styled Tufton Professional Baseball LLC, v. City of Aberdeen (the "Litigation");

WHEREAS, on January 11, 2019, Aberdeen filed a Counterclaim in the Litigation (the "Counterclaim"), which is included as part of the Litigation;

WHEREAS, the Maryland General Assembly (the "General Assembly") authorized a grant titled "Ripken Stadium" (the "Stadium") in the amount of $300,000 (the "Grant") to the Maryland Stadium Authority ("MSA") for the purposes set forth in the legislation authorizing the Grant (the "Grant Projects"), providing however, that Grant funds may not be expended until the MSA, Tufton and Aberdeen enter into a memorandum of understanding for the scheduling of the work and expenditure of the funds on the Grant Projects (the "2019 Legislation");

WHEREAS, the General Assembly also pre-authorized a grant for the 2021 State Fiscal Year titled "Ripken Stadium" in the amount of $700,000 to MSA, which grant funds may not be expended until the General Assembly appropriates such grant funds ("Additional Grant Funds");

WHEREAS, as a condition to the effectiveness of this Settlement Agreement and as required by the Grant, the Parties have entered into a Memorandum of Understanding with the MSA (the "MOU"), a copy of which is attached hereto as <u>Exhibit A</u>;

WHEREAS, the Parties intend for the MOU to satisfy the memorandum of understanding requirement contained in the 2019 Legislation, and nothing contained herein amends or modifies the MOU;

WHEREAS, Exhibit B to the MOU is a list of "City Projects," and Exhibit B attached to this Settlement Agreement and incorporated by reference sets forth in greater detail the Parties' understandings and agreements regarding the scope of the City Projects;

WHEREAS, as set forth in the MOU, MSA will conduct a facility assessment of the Stadium and the Site, will recommend an ordinary maintenance plan and related template for the parties' future use, and will manage the preparation of a capital maintenance plan (collectively, the "Additional Projects");

WHEREAS, the Parties enter into this Settlement Agreement to resolve the pending Litigation without prejudice, and to resolve and release certain claims as more particularly set forth herein;

WHEREAS, each of Tufton and Aberdeen specifically deny any liability with respect to all issues or claims arising from the allegations set forth in the Complaint and Counterclaim;

WHEREAS, the Parties mutually desire to resolve the Litigation without resort to further or additional proceedings; and

WHEREAS, it is the intent of the Parties that this Settlement Agreement shall bind them and also bind and inure to the benefit of their successors and assigns.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged and accepted as adequate, and in consideration of the foregoing recitals, which are incorporated herein and made a material part hereof, the Parties agree as follows:

1. **Resolved Claims**: the following are certain claims or disputes at issue in the Litigation that are being resolved pursuant to the terms hereof or the MOU, and with respect to which the claims and disputes are being released to the extent set forth in this Settlement Agreement, and for the purpose of the releases provided herein shall be deemed the "Released Claims":

a. Recoupment. Aberdeen and Tufton agree that for the purposes of the Concession Agreement, including, but not limited to Section 4.05 thereof, Aberdeen shall be deemed to have recouped its initial investment in the Stadium (as such term is defined in the Concession Agreement) in accordance with Section 4.05 of the Concession Agreement on October 31, 2019 (the "Recoupment Date"). Notwithstanding the Recoupment Date, Tufton's exercise of its post-recoupment rights under the Concession Agreement shall be effective upon the Effective Date, and Tufton shall have no claim against Aberdeen for any revenues received by or payable to Aberdeen for events conducted at the Stadium prior to the Effective Date. Tufton agrees to cooperate with Aberdeen's current contractor HSG for transition purposes in connection with non-baseball events to be held at the Stadium after the Effective Date.

b. Renewal of Concession Agreement.

i. Aberdeen agrees that as of the Effective Date, Tufton is not in default of any provision of the Concession Agreement or in violation in the performance of any covenant contained in the Concession Agreement, including but not limited to its obligations under Section 5.01 of the Concession Agreement.

ii. The Parties agree that Tufton retains the right to renew the Concession Agreement per the terms of Section 3.02 of the Concession Agreement by notifying Aberdeen of its intent to exercise said option, in writing at least one hundred twenty (120) days prior to the expiration of the then current Term, provided that Tufton is not in default of any provision of the Concession Agreement at the end of the current term as provided in Section 3.02 of the Concession Agreement.

2. **Renewal Fee**. Notwithstanding anything set forth in Section 1 above, the Parties agree to expressly reserve and not resolve the amount of the additional yearly fee that Aberdeen may impose upon Tufton pursuant to Section 3.02 of the Concession Agreement upon Tufton's exercise of its renewal option. If Tufton exercises its renewal option, the Parties shall meet at least 90 days before the end of the Initial Term of the Concession Agreement, confer in good faith and attempt to mutually agree on the amount of the additional yearly fee before the commencement of the twenty (20) year renewal term. If the parties are unable to agree on the amount of the additional yearly fee no later than sixty (60) days before the commencement of the twenty (20) year renewal term, the parties shall arbitrate the dispute under the auspices of the American Arbitration Association as further provided in Section 5 of this Settlement Agreement, with each Party bearing its own costs and attorney fees and the Parties jointly sharing the costs of the arbitrator and the administrative costs of the arbitration. Notwithstanding any such unresolved dispute, Tufton shall be permitted to continue its occupancy until entry of a final order resolving the dispute as long as Tufton timely pays Aberdeen the additional yearly fee Tufton contends it is otherwise obligated to pay Aberdeen under Section 3.02 of the Concession Agreement upon renewal therefor and Tufton performs under the current terms of the Concession Agreement.

3. **Aberdeen Contributions to Capital Maintenance and Repairs**.

a. The Parties agree to the creation of a capital maintenance and repair fund (the "**CapEx Fund**") in order to provide a designated funding mechanism for Aberdeen to use to perform capital maintenance, repairs, replacements and improvements to the Stadium and the Site, except for additional funds Aberdeen shall be required to expend to address capital emergencies in accordance with the terms of the Concession Agreement. The CapEx Fund shall not be used to pay for the preparation of the "Assessment", the "Capital Plan" or the "Ordinary Maintenance Plan", as such terms are defined in the MOU. Furthermore, any expense incurred or payment made by Aberdeen in connection with the Assessment, Capital Plan or Ordinary Maintenance Plan shall not reduce any amounts Aberdeen is obligated to appropriate pursuant to Section 3.b. below.

b. Aberdeen agrees it shall appropriate funds on an annual basis to be deposited into the CapEx Fund as follows:

- FY 2020 - $300,000
- FY 2021 - $300,000
- FY 2022 - $300,000
- FY 2023-2043 – $450,000/each FY through Concession Agreement expiration; provided however,

if the Assessment and/or Capital Plan provides or demonstrates that $450,000 will be insufficient to pay or be available for the capital maintenance, repair, replacement and improvements anticipated, required or necessitated at the Stadium and the Site for any particular fiscal year from 2023 through 2043, then Aberdeen's annual appropriation to the CapEx Fund for that year shall be increased to an amount reasonably required to meet such needs.

c. The CapEx Fund shall be invested in interest-bearing accounts or in investments guaranteed by the United States or by a department, agency or instrumentality of the United States or backed by the full faith and credit of the United States If the CapEx Fund shall be held in the name of the MSA or other governmental agency, then the Parties agree that any withdrawal(s) and/or expenditure(s) will require the prior written consent of both Parties, such consent not to be unreasonably withheld, conditioned or delayed. Notwithstanding the preceding sentence, Tufton's consent is not required if the withdrawal or expenditure is for work performed in accordance with a joint plan approved by Tufton pursuant to Section 4 and within the cost estimate of the approved joint plan for such work.

d. On or before October 1 of each calendar year, Aberdeen shall deposit its annual appropriation in the CapEx fund, provided that the appropriation for FY 2020 shall be deposited within thirty (30) days of the Effective Date.

e. To the extent funds become available and are authorized for deposit into the CapEx fund from bond proceeds or other loan source, debt service on such bonds or loans may be paid from the CapEx Fund. However, the deposit of such bond or loan proceeds (to the extent there are any) shall not be used to off-set Aberdeen's appropriations obligations contained in Section 3.b. above.

f. The CapEx Fund shall not be used to pay for any salaries, expenses, services, overhead or other fees of or for Aberdeen. Further, should Aberdeen utilize the services of MSA or any third-party project manager, the CapEx Fund shall not be used to pay MSA (or such third-party project manager) for any salaries or other fees, expenses, services (including but not limited to management or supervisory services) or overhead, except to the limited extent that MSA (or such third-party manager) is directly performing capital maintenance, repair, replacement and improvement work contained in the approved Capital Plan and performed in accordance with a joint plan approved by Tufton pursuant to Section 4 and within the cost estimate of the approved joint plan for such work.

g. The parties agree that upon the (i) completion of the Grant Projects contained in Article III, Section F of the MOU in accordance with the procedures set forth in the MOU and this Settlement Agreement and (ii) to the extent applicable, reimbursement of Tufton pursuant to Section 7.a. of this Settlement Agreement, the City shall be deemed to have satisfied its obligation owed as of the date of this Settlement Agreement under the Concession Agreement with respect to those completed projects.

4. **Annual Joint Plan**.

a. The Parties shall meet on an annual basis and shall jointly approve a capital maintenance, repair and improvements plan for the Stadium for work/projects to be completed during each upcoming off-season and following year, taking into consideration the Capital Plan, Section 7 of the Settlement Agreement and the amounts available, or to be available, in the CapEx Fund.

b. i. On or before March 31 of each year (or other date mutually agreed upon between the Parties), each of Aberdeen and Tufton will develop, in good faith, and present to the other a plan for work projects to be completed during the upcoming off-season and year. Aberdeen and Tufton will then have sixty (60) days within which to agree upon a joint plan for the coming off-season and year. In accordance with the MOU, Aberdeen may request that MSA prepare a cost estimate for such work, provided that CapEx Funds are not used for this purpose.

ii. Notwithstanding the foregoing, if Tufton believes in good faith that circumstances have arisen during the baseball season necessitating a revised capital maintenance plan, Tufton may submit to Aberdeen a revised plan to be completed during the upcoming off-season and year.

c. i. If Aberdeen and Tufton do not agree on a joint plan within this sixty (60) day period, subject to Section 4.b. above, any disagreement shall be settled by binding arbitration in accordance with Section 5 below.

ii. Once agreed upon or resolved in accordance with Section 5 below, Aberdeen shall reasonably and as expeditiously as practicable execute and complete such agreed-upon work in a first-class, workmanlike manner.

d. All Capital work performed during the Term of the Concession Agreement shall be planned and executed, to the extent practicable using best efforts, so as to minimize inconvenience to patrons of baseball and baseball-related events and other events conducted at the Stadium, to minimize any diminution in seating capacity, and to avoid interference with Tufton's and Aberdeen's use and enjoyment of the Stadium and associated parking and facilities.

e. Notwithstanding anything contained in Section 4(a) or Section 7(a), Aberdeen has represented that it intends to perform the "ADA Compliant Ramps and Walks" and "Joint Repairs between Slab and Wall" and/or "Concrete Slab Cracks and Isolation Joint Sealing" City Projects identified on Exhibit B, attached hereto and incorporated herein, during the 2019 off-season (2020 Fiscal Year). Aberdeen further contends that the cost of these projects is expected to cost Aberdeen approximately $300,000 in FY2020 and funds for the completion thereof up to $300,000 in FY2020 have been appropriated by Aberdeen. Accordingly, the Parties agree that Aberdeen shall perform the foregoing repair/replacement projects in advance of the 2020 baseball season and Aberdeen shall be "credited" for the cost of such work up to $300,000 towards its FY2020 CapEx Fund contribution obligations contained in Section 3 above; provided that, Aberdeen shall provide Tufton with reasonable documentation of its expenditures and that the work has been completed satisfactorily.

5. **Arbitration.**

a. In the event of a dispute referenced in either (i) Section 2 with respect to the amount of the additional yearly fee payable upon renewal of the Concession Agreement, (ii) Section 4 above or (iii) Section IV.C.(7) of the MOU with respect to the joint approval of the recommended Capital Plan, Aberdeen and Tufton shall submit the dispute to binding arbitration to be conducted under the auspices of the American Arbitration Association, and in accordance with the Commercial Rules of the American Arbitration Association (the "**AAA Rules**"), with the following provisions:

i. Arbitration shall be heard and determined by one arbitrator. Aberdeen and Tufton shall attempt to select the arbitrator. In the event Aberdeen and Tufton are unable to agree upon the arbitrator within ten (10) business days of the filing by either party of a Demand for Arbitration, the selection of the arbitrator shall then be determined in accordance with the AAA Rules.

ii. in a controversy greater than or equal to Four Hundred Fifty Thousand Dollars ($450,000), the parties shall have the right, with approval of the arbitrator, to conduct pursuant to the AAA Rules exchange of information, depositions and discovery, including but not limited to third party discovery; otherwise, if the amount in controversy is less than Four Hundred Fifty Thousand Dollars ($450,000), only information exchange of the parties, and no depositions or third party discovery, will be allowed; provided however, in any event the parties shall have the right to conduct depositions and discovery, including but not limited to third party discovery concerning a dispute under Section 2 with respect to the amount of the additional yearly fee payable upon renewal of the Concession Agreement.

v. The arbitration will take place in Harford County, in the State of Maryland. The arbitrator(s) will apply the laws of the State of Maryland.

vi. Each party shall bear its own attorney fees in the arbitration.

vii. Following the hearing the arbitrator shall issue a decision in writing, briefly explaining the decision in writing. The decision shall be final, binding, and shall not be appealable to any Court or Administrative Agency, except as provided by law. Judgment if appropriate may be entered in any Court having jurisdiction.

b. This Section shall apply only to the disputes referenced above. For all other disputes, the parties reserve all of their contractual, legal and equitable rights.

6. **Emergencies.** The Settlement Agreement shall not limit, or be construed as a limitation on, Aberdeen's obligation to perform and pay for any emergency capital maintenance, repair, replacement and improvement at the Stadium or the Site, or Aberdeen's obligation to reimburse Tufton for emergency actions as set forth in Section 5.02 the Concession Agreement.

7. **Other Capital Maintenance, Repair and Replacement by Aberdeen.**

a. Grant Projects. The Parties agree that the Grant Projects will be completed in accordance with the procedures set forth in the MOU and as further described in Exhibit B to this Settlement Agreement.

i. In the event insufficient Grant funds (and/or Additional Grant Funds) remain available to pay the full cost to correct and remediate the (1) Identified City Projects referenced in Article III, Section F of the MOU and as more particularly described and agreed in Exhibit B of this Settlement Agreement and (2) the Bird Project referenced in Article III, Section F, of the MOU, Aberdeen agrees to undertake all necessary maintenance, repairs, replacements and improvements for such Grant Projects on a prioritized basis in accordance with the procedure set forth in Section 4. The foregoing projects shall be included on a prioritized basis in the Capital Plan and the cost of such work is eligible for payment or reimbursement from the CapEx Fund established pursuant to this Settlement Agreement. The Parties shall agree on the scope of the work to be performed pursuant to this paragraph; provided that Aberdeen's and Tufton's consent shall not be unreasonably withheld, conditioned or delayed.

ii. In the event there are not sufficient Grant Funds (and/or Additional Grant Funds) to pay the full cost to correct and remediate the Field Replacement referenced in Article III, Section F of the MOU, then Tufton may, but shall not be obligated to, advance funds for the cost of the Field Replacement, in which event Tufton shall be reimbursed from the CapEx Fund established pursuant to this Settlement Agreement on such priority basis as Tufton and the City may agree, taking into account the amount of funds available in the CapEx Fund and other capital maintenance, repair and improvements projects scheduled to be paid from the CapEx Fund as part of the joint annual plan agreed to in accordance with Section 4; and further provided, that if Tufton is unable, for any reason, to be reimbursed from the CapEx Fund, then Tufton shall be reimbursed by Aberdeen for any advancement of funds by Tufton and Aberdeen's contribution to the CapEx Fund shall be proportionately reduced.

iii. Without limiting the foregoing, in the event that either party is unable to receive reimbursement from the Grant Funds (or Additional Grant Funds, if they become available) for the Field Netting Cost or other Grant Project work (or Additional Projects as defined in the MOU) contained in Article III, Section F of the MOU and as more particularly described and agreed in Exhibit B of this Settlement Agreement performed by either Party after the Effective Date of this Settlement Agreement, the Parties agree that the cost of such unreimbursed Grant Project work (or Additional Projects) is eligible for reimbursement from the CapEx Fund established pursuant to this Settlement Agreement. If a Party is unable, for any reason, to be reimbursed from the CapEx Fund, then as the case may be (x) Tufton shall be reimbursed by Aberdeen for any advancement of funds by Tufton and Aberdeen's contribution to the CapEx Fund for such year shall be proportionately reduced, or (y) Aberdeen's contribution to the CapEx Fund for such year shall be proportionately reduced.

b. 3rd Base Picnic Area Deck. Aberdeen agrees that the 3rd Base Picnic Area Deck shall not be removed by Aberdeen without the prior written consent of Tufton. The parties acknowledge that the deck is a significant generator of core business revenue for Tufton and is an area where Tufton is able to accommodate hospitality, all-inclusive seats. Aberdeen agrees to engage an engineer during Aberdeen's 2020 Fiscal Year to assess the condition of the deck, at Aberdeen's sole cost and expense (which payment shall not off-set Aberdeen's appropriations obligations contained in Section 3.b above). Upon receipt of the engineering assessment, the parties shall meet to jointly determine what, if any, corrective action should be taken regarding the 3rd Base Picnic Area Deck. The cost of any capital maintenance, repair, replacement or improvement of the 3rd Base Picnic Area Deck agreed upon by the parties shall be paid or reimbursed from the CapEx Fund.

8. **Future Legislative Initiatives.** Aberdeen and Tufton agree to cooperatively seek legislation from the General Assembly during the FY2020 Session to provide MSA with the necessary enabling authority to accomplish the goals of the Parties contemplated by this Settlement Agreement, including but not limited to seeking appropriation of the Additional Grant Funds.

9. **MSA Services.**

a. To the extent permitted by law, Aberdeen desires for the MSA to serve as Aberdeen's representative to perform, and supervise the performance of, Aberdeen's capital maintenance, repair and replacement obligations under the Concession Agreement, at Aberdeen's sole cost and expense (which cost and expense shall not be used to off-set Aberdeen's appropriations obligations contained in Section 3.b above, except as specifically provided in Section ___ above). Aberdeen shall use reasonable efforts to ensure that MSA keeps the Parties regularly informed on the status of MSA's services and the work at the Ripken Stadium and Site.

b. To the extent permitted by law and provided that MSA agrees, Aberdeen desires for MSA to serve as Aberdeen's representative and agent for the administration of the CapEx Fund at Aberdeen's sole cost and expense (which cost and expense shall not be used to off-set Aberdeen's appropriations obligations contained in Section 3.b above), with funds to be withdrawn by MSA from the CapEx Fund for payment of agreed upon expenses upon dual sign-off on acceptance of the work by Aberdeen and Tufton. Tufton consents to MSA serving in this role.

c. To the extent permitted by law, in the event the Parties jointly agree, the Parties shall jointly request MSA (or other third party issuer) to issue bonds or other evidence of indebtedness to leverage Aberdeen's contribution to the CapEx Fund, with the proceeds of such bond issuance to be deposited into the CapEx Fund and used to pay for capital maintenance, repairs or improvements which are agreed upon by Aberdeen and Tufton. The Parties shall be required to agree on any program of paygo and/or debt funding and the issuance of bonds or other debt in connection therewith, and the Parties shall be required to agree in writing to the projects and uses for any such proceeds or funds prior to any expenditure by Aberdeen or MSA.

10. **Limited Release.**

a. Aberdeen Limited Release. Upon the Effective Date, Aberdeen, for itself, and on behalf of its elected officials, officers, directors, administrators, managers, employees, agents, successors and assigns, shall be deemed to have fully released and forever discharged Tufton and each of its officers, directors, administrators, managers, employees, agents, attorneys, members, successors and assigns, from and against any and all complaints, actions, liabilities, obligations, promises, agreements, controversies, damages, claims, causes of action, lawsuits (including attorneys' fees, costs, and punitive damages), of any nature whatsoever, asserted or unasserted, known or unknown, suspected or unsuspected, with respect to the Released Claims. No other claims are released. The Parties agree that the assertion and release of the Released Claims shall have no res judicata or other claim preclusion effect as to claims not explicitly released herein.

b. Tufton Limited Release. Upon the Effective Date, Tufton, for itself, and on behalf of its officers, directors, administrators, managers, employees, agents, successors and assigns, shall be deemed to have fully released and forever discharged Aberdeen and each of its elected officials, officers, directors, administrators, managers, employees, agents, attorneys, members, successors and assigns, from and against any and all complaints, actions, liabilities, obligations, promises, agreements, controversies, damages, claims, causes of action, lawsuits (including attorneys' fees, costs, and punitive damages), of any nature whatsoever, asserted or unasserted, known or unknown, suspected or unsuspected, with respect to the Released Claims. No other claims are released. The Parties agree that the assertion and release of the Released Claims shall have no res judicata or other claim preclusion effect as to claims not explicitly released herein.

11. **Stipulation of Voluntary Dismissal.** Each of Tufton and Aberdeen agree to sign and file the Stipulation of Voluntary Dismissal Without Prejudice of the Complaint and Counterclaim, attached hereto as Exhibit C, within five (5) calendar days of the Effective Date.

12. **Effectiveness of Settlement Agreement.** This Settlement Agreement shall be deemed effective as of the date above which is the date this Settlement Agreement and the MOU are both fully executed and delivered by all its respective parties.

13. **Warranty of Due Authorization**. Each party warrants and represents that it is duly organized and validly existing under the laws of the state of its incorporation or organization, that it has full corporate or municipal power and authority to enter into this Settlement Agreement and carry out the provisions hereof, that it is duly authorized to enter into and deliver this Settlement Agreement and that this Settlement Agreement has been duly executed and delivered on behalf of it and constitutes a legal and binding obligation of it, enforceable against it in accordance with its terms. In particular, and without limiting the generality of the foregoing, each party represents and warrants that it is fully entitled to grant the Limited Releases, enter into the covenants, and undertake the obligations set forth herein.

14. **Miscellaneous.**

a. Binding Effect: This Settlement Agreement shall be binding on and inure to the benefit of the parties and their successors and assigns.

b. Concession Agreement: Unless expressly amended or modified herein or in the MOU, all terms, conditions and provisions of the Concession Agreement remain unchanged and in full force and effect.

c. Defined Terms: Unless otherwise defined in this Settlement Agreement, any capitalized term shall have the meaning ascribed thereto in the MOU or the Concession Agreement as the case may be.

d. Construction: The terms, provisions, and conditions of this Settlement Agreement represent the results of negotiations among the Parties, each of which has been represented by legal counsel of its own choosing. Each Party expressly, knowingly and voluntarily, waives the application, in connection with the interpretation and construction of this Settlement Agreement, of any rule of law or procedure to the effect that ambiguous or conflicting terms, conditions or provisions shall be interpreted or construed against the Party whose legal counsel prepared the executed version or any prior drafts of this Settlement Agreement. Whenever the words "include," "includes," or "including" are used in this Settlement Agreement, they shall be deemed to be followed by the words "without limitation..

e. Cumulative Remedies: The various rights, options, elections, powers, and remedies of the respective parties hereto contained in, granted, or reserved by this Settlement Agreement, are in addition to any others that said parties may be entitled to by law, shall be construed as cumulative, and no one of them is exclusive of any of the others, or of any right or priority allowed by law.

f. Entire Agreement; Cross-Default: This Settlement Agreement and the Exhibits attached hereto and the MOU constitute the entire agreement of the Parties with respect to the matters contained in this Settlement Agreement and the MOU, respectively, and may not be changed, modified, discharged or extended by oral agreement or representation or otherwise except by written amendment duly executed by an authorized representative of Aberdeen and Tufton. No Party may rely upon any prior drafts, writings, oral representations or communications with respect to this Settlement Agreement. Notwithstanding anything to the contrary contained in this Settlement Agreement, a breach or default by a party of any covenant or other term or condition contained in the MOU, after the passage of all applicable notice and cure or grace periods, shall, at the option of the non-breaching party, be considered a default under this Settlement Agreement, in which event the non-breaching party shall be entitled to rights and remedies under the terms of this Settlement Agreement and/or the MOU by reason of such breach or default, including but not limited to all rights and remedies available at law or in equity.

g. Legal Fees. Each Party hereto shall bear all its respective attorneys' fees, costs, expenses, and disbursements arising from the Litigation and this Settlement Agreement.

h. Governing Law; Venue: This Settlement Agreement shall be governed by and enforced in accordance with the laws of the State of Maryland without regard to its conflict of laws principles. The parties agree that all actions or proceedings arising in connection with this Settlement Agreement shall be tried and litigated exclusively in the State courts located in Harford County, Maryland or the Federal courts located in the State of Maryland. To the fullest extent permitted by law, and as separately bargained-for consideration, each Party hereby waives any right to trial by jury in any action, suit, proceeding, or counterclaim of any kind arising out of this Settlement Agreement.

i. Specific Performance. Aberdeen and Tufton, respectively, shall have the right to seek the specific performance of this Settlement Agreement and to enjoin the other Party from violating the provisions hereof.

j. No Joint Venture: This Settlement Agreement shall not constitute a partnership, joint venture or create an agency relationship between the parties.

k. No Waiver: The making or failure to make any payments, take any action, or waive any rights shall not be deemed an amendment of this Settlement Agreement, nor consent to such action or to any future action or failure to act, unless the party required to so consent or act expressly agrees in writing. Moreover, nothing contained in this Settlement Agreement shall be construed as a waiver of any rights either party hereto may have to seek damages, or specific performance, or other appropriate remedies from the other for breach of this Settlement Agreement.

l. Severability: If any section, paragraph, subparagraph, sentence, clause, phrase, or portion of this Settlement Agreement is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Settlement Agreement.

m. Time: Time is of the essence with regard to the Parties' obligations under this Settlement Agreement.

n. Counterparts: This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall be one and the same instrument.

o. Cooperation. The parties agree to cooperate fully and execute any and all supplementary documents and take any and all reasonable additional actions that may be necessary or appropriate to give full force and effect to the terms of this Settlement Agreement.

[SIGNATURES APPEAR ON NEXT PAGE]

**IN WITNESS WHEREOF, this Settlement Agreement is executed by the parties as of the Effective Date set forth above.**

**WITNESS:**

**CITY OF ABERDEEN**

By: Randy Robertson
Its: City Manager

**WITNESS:**

**TUFTON PROFESSIONAL BASEBALL, LLC**
**By: IB PROFESSIONAL BASEBALL, LLC, its Sole Member**

By:________________________

Its:

IN WITNESS WHEREOF, this Settlement Agreement is executed by the parties as of the Effective Date set forth above.

WITNESS:

____________________________

CITY OF ABERDEEN

____________________________

By: Randy Robertson
Its: City Manager

WITNESS:

____________________________

TUFTON PROFESSIONAL BASEBALL, LLC
By: IB PROFESSIONAL BASEBALL, LLC, its Sole Member

By:____________________________

Its: MANAGING MBR

EXHIBIT A

MEMORANDUM OF UNDERSTANDING

# MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING (this "**Agreement**") is made the 18 day of November, 2019 by and between the City of Aberdeen ("**Aberdeen**" or the "**City**"), Tufton Professional Baseball LLC ("**Tufton**" and together with the City, the "**Grantee**"), and the Maryland Stadium Authority a body corporate and politic and an instrumentality of the State of Maryland ("**MSA**")."

## RECITALS

A. WHEREAS, Tufton requested grant assistance from the State; and

B WHEREAS, the Maryland General Assembly (the "**General Assembly**") authorized a grant titled "Ripken Stadium" (the "**Stadium**") in the amount of $300,000 (the "**Grant**") to MSA for the purposes set forth in Article III below (the "**Grant Projects**"); and

C. WHEREAS, the Grant funds may not be expended until MSA, Tufton, and the City enter into a memorandum of understanding for the scheduling of the work and expenditure of the funds on the Grant Projects; and

D. WHEREAS, MSA agrees to expend the Grant Funds for the projects authorized by the Enabling Act (defined below) and in accordance with this Agreement; and

E. WHEREAS, the General Assembly pre-authorized a grant for the 2021 State Fiscal Year titled "Ripken Stadium" in the amount of $700,000 to MSA, which grant funds may not be expended until the General Assembly appropriates such grant funds ("Additional Grant Funds");

F. WHEREAS, Tufton and the City have also requested that MSA conduct a facility assessment, recommend an ordinary maintenance plan and related template for Grantees' future use, and a capital plan (collectively, the "**Additional Projects**"); and

G. WHEREAS, MSA agrees to conduct the Additional Projects subject to the terms and conditions set forth in this Agreement; and

H. WHEREAS, the parties enter into this Agreement pursuant to the conditions set forth in the Enabling Act and to provide the conditions and requirements relative to the Additional Projects; and

I. WHEREAS, Aberdeen and Tufton are involved in litigation in the Circuit Court for Harford County Maryland, Civil Case NO C-12-CV-18-000731 styled Tufton Professional Baseball, LLC v. City of Aberdeen ("**Litigation**") and Aberdeen and Tufton have agreed to enter into this Agreement with MSA, in part, as a precondition to the effectiveness of a settlement agreement between Aberdeen and Tufton effective on even date herewith (the "Settlement Agreement").

## AGREEMENT

**Incorporation of Recitals**. The foregoing recitals are incorporated herein by reference and made a part of this Agreement.

NOW, THEREFORE**,** in consideration of the promises and covenants made herein, and other good and valuable consideration, the parties agree as follows:

## ARTICLE I
## DEFINITIONS

For the purposes of this Agreement, the following words have the meanings set forth:

"**Additional Projects**" means those projects MSA agrees to manage and oversee pursuant to its authority in § 10-622 of the Economic Development Article of the Annotated Code of Maryland.

"**Agreement**" means this Memorandum of Understanding by and between MSA, the City and Tufton.

"**Assessment**" means the Facility Assessment described in Article IV B of this Agreement.

"**BPW**" means the Maryland Board of Public Works.

"**Capital Plan**" means the Capital Plan described in Article IV C of this Agreement.

"**City**" means the City of Aberdeen.

"**Concession Agreement**" means the Agreement dated December 7, 2000 regarding Ripken Stadium between the City and Tufton.

"**Enabling Act**" means Creation of State Debt- Maryland Consolidated Capital Bond Loan of 2019" enacted by Chapter 14 of the Acts of 2019.

"**Grant**" means the funds made available in the Enabling Act to MSA for projects at the Stadium.

"**Grant Projects**" means those projects authorized by the Enabling Act.

"**Grantee**" means the City and Tufton.

"**Litigation**" means that case styled *Tufton Professional Baseball, LLC v. City of Aberdeen* filed in the Circuit Court for Harford County.

"**MSA**" means the Maryland Stadium Authority which may be referred to herein also as the "Authority."

"**Site**" means the Site as described in Section 1.01 of the Concession Agreement.

"**Stadium**" means Ripken Stadium.

"**State**" means the State of Maryland.

"**Tufton**" means Tufton Professional Baseball, LLC.

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## ARTICLE II
## GENERAL CONDITIONS

1. MSA shall not be required to advance or expend any of its own funds in connection with the Grant Projects, the Additional Projects or this Agreement.

2. MSA shall be reimbursed the actual amount of its management and administrative costs related to the Grant Projects and the Additional Projects.

3. MSA shall engage, contract with or employ such consultants, contractors and professionals (collectively, "**Contractors**") as may be required to provide necessary expertise, including architect and engineering firms as MSA determines are necessary or appropriate for the Grant Projects and the Additional Projects.

4. Any procurement or solicitation undertaken in connection with this Agreement shall be conducted in accordance with, and subject to MSA's procurement policies. However, MSA and the Grantees shall work collaboratively on the scopes of services, and as a team in the procurement process.

5. MSA shall be responsible for supervising the preparation and performance of all Grant Projects and Additional Projects work and paying all invoices in connection therewith from the amounts funded as set forth herein.

## ARTICLE III
## GRANT PROJECTS

A. Purpose. The Grant funds may be used only for the purposes set forth in the **Enabling Act**: "Creation of a State Debt – Maryland Consolidated Capital Bond Loan of 2019 ..." Chapter 14 of the Acts of 2019 which is incorporated herein by reference.

B. Termination or Reduction of Authorization. The BPW, in its sole discretion, may reduce or terminate the authorization to provide the Grant in the event no part of the Grant Projects are:

(1) Under contract by July 1, 2022 or;

(2) The Grant Projects are abandoned. The Enabling Act's authorization automatically terminates for any Grant funds that are unexpended or unencumbered by June 30, 2026.

C. Procurement/Contract Information.

(1) Only those contracts and purchases MSA determines are both eligible in furtherance of the Grant's purpose; and eligible project expenditures (see the Maryland Capital Grant Projects Information Booklet September 2018, 9th Edition (the "**Information Booklet**" attached hereto as Exhibit C) will be procured by MSA subject to Sections F and G below.

D. State's Policies and Requirements. Grantee covenants that it has reviewed and understands the State's Policies and Requirements, including eligible and ineligible project expenditures, set forth in the Information Booklet.

E. Term. The terms and provisions of this Agreement relating to the Grant and the Grant Projects terminate if the BPW terminates the grant authorization under Article III B without issuing bonds. Otherwise, the terms and provisions of this Agreement relating to the Grant and the Grant Projects are in effect so long as any State general obligation bonds issued, sold, and delivered to provide funds for this Grant, remain outstanding, or for such longer period as approved by BPW.

F. Grant Projects. Tufton and the City have agreed that the Grant Projects shall be prioritized in the following order:

(1) Field Netting. Field Netting is identified in the Enabling Act as an authorized Project. Tufton has expended funds for replacement of field netting at the Stadium in order for the netting to be installed prior to the 2019 baseball season. Tufton has submitted an invoice to Aberdeen in the amount of Eighteen Thousand Eight Hundred Twenty Dollars and 00/100 ($18,820.00) for the cost of the field netting (the "**Field Netting Cost**").

(a) Tufton either directly from MSA or through the City will request reimbursement for the Field Netting Costs. Reimbursement to either Tufton or the City shall occur *subject* to the following:

(i) MSA's satisfactory receipt of (i) an explanation of the process used to select the vendor for the contract; (ii) an explanation of the basis on which the bid was awarded (e.g. low bid, high score, or other basis); (iii) statement certifying that to the best of Tufton's knowledge the selected contractor is not debarred or suspended. (The State's debarment list is available at http://bpw.maryland.gov/Pages/debarments.aspx.); (iv) a copy of the contract awarded, and an explanation if the contract amount differs from the bid award; (v) copies of all amendments or changes to the contract; (vi) Schedule (chronological listing) of paid invoice(s) and corresponding check numbers indicating payments; (vii) evidence satisfactory to MSA that the invoices have been paid (e.g. copies of cancelled checks front and back); (viii) copies of the vendor invoices; (ix) Federal Identification Number of party to be reimbursed; and

(ii) Approval by the Board of Public Works ("**BPW**") or its designee for Capital Grant Projects, the Department of General Services.

(2) Field Replacement. Replacement of the playing field is identified in the Enabling Act as an authorized Project.

(a) The Grantee desires that the project commence as soon as practicable after the conclusion of the 2019 baseball season, or at such other time as determined by Tufton and approved by the City, such approval not to be unreasonably withheld, conditioned or delayed.

(b) Subject to Article II Sections 3 and 4, MSA shall procure a contractor to perform the field replacement work based upon a scope of work agreed to by Tufton and Aberdeen. Tufton and Aberdeen intend the scope of the field replacement work to include replacement of the turf, underlying dirt, and infield dirt and any other replacements necessary so that the playing field dimensions meet minor league baseball standards and the playing field is professional grade.

(3) LED Lighting System. Replacement of the current lighting system with LED lighting is identified in the Enabling Act as an authorized Project.

(a) To the extent Grant funds are available after the field netting (if reimbursement is approved pursuant to Section F(1) above) and replacement of the playing field, the Grantee agrees to replace the current lighting system with LED lighting.

(b) Subject to Article II Section 3 and 4, MSA shall procure a designer and/or contractor to replace the current lighting system based upon a scope of work agreed to by Tufton and Aberdeen.

(4) Identified City Projects and Bird Project. Provided that the following qualify as eligible for funding under this Agreement, Grantee agrees that the following projects are additional prioritized projects pursuant to the Enabling Act and each is an authorized Grant Project, and the order of prioritization of the following projects shall be determined by Tufton:

(a) The "City Projects" identified by Tufton in the Litigation, a list of which is attached hereto as Exhibit B and incorporated herein, excluding any of the City Projects that have been completed or initiated by the City prior to the effective date of this Agreement, which are identified on Exhibit B (the "**Identified City Projects**"); and

(b) Work in connection with eliminating the bird nesting problems in the Stadium (including, but not limited to, installation of insulation in the decking above the concourse), excluding any work completed or initiated by the City prior to the effective date of this Agreement (the "**Bird Project**").

G. Insufficient Grant Funds.

(1) If MSA determines that insufficient Grant funds remain available to pay the full cost of a proposed Grant Project, MSA shall advise the Grantee either of whom may provide the source of funding to pay the difference between the total cost and available Grant funds as the Grantee agrees; or the Grantee shall advise MSA not to proceed with the proposed Grant Project. If either Tufton or the City (or both) provides the source of funding to pay the difference between the total cost and available Grant funds and, subsequently, the General Assembly authorizes Additional Grant Funds, then the party providing the source of funding shall be reimbursed for the advancement of such funds for a Grant Project from the Additional Grant Funds subject to any requirements imposed by the General Assembly for the Additional Grant Funds.

(2) MSA shall not be required to advance or expend any of its own funds in connection with the Grant Project or this Agreement.

(3) Funds pre-authorized but not yet available may not be encumbered or spent, except as provided in G.(1) above.

H. Grant Funds Remaining.

(1) Any Grant funds that have not been spent within seven (7) years shall automatically expire.

# ARTICLE IV
# ADDITIONAL PROJECTS

A. Generally.

(1) Pursuant to Economic Development Article § 10-622, Md. Code Ann., MSA is authorized to prepare studies for political subdivisions of the State, provided that before beginning work the Authority must give written notice of the proposed project to the budget committees of the General Assembly (the "**Budget Committees**"), which shall have 30 days to review and comment on the proposed project(s).

(2) MSA's agreement to perform work on the Additional Projects is subject to the approval of the MSA Board of Directors (the "**MSA Board**"). Approval of this Agreement by the MSA Board will satisfy this requirement.

(3) Written notice of the proposed Additional Projects will be provided to the Budget Committees on or about the business day following receipt of MSA Board approval of this Agreement.

(4) Upon MSA Board approval, expiration of the review and comment period by the Budget Committees, and agreement on the scope of services and confirmation of available funding by the City, MSA will begin the procurement processes in connection with the Additional Projects.

(5) (i) In providing services under this Agreement, MSA and its Contractors will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

(ii) Any assessment, plan, recommendation or other outcome (collectively, a "**Report**") of the Additional Projects which is based in part upon documents, data, information and assumptions made /or supplied by the City or another party on behalf of the City, unless expressly stated otherwise in a Report, may be relied upon without independent verification of the accuracy or sufficiency of such documents, data, information and assumptions. MSA does not warrant or guarantee the correctness of such documents, data, information or assumptions nor does it accept any responsibility or liability for the accuracy, sufficiency, reliability or validity of such documents, information, data and assumptions or for any findings, observations and conclusions based upon such documents, information, data and assumptions.

(6) The scope of services for each of the Additional Projects will be defined by and agreed upon by the City and Tufton with input from MSA. The available funding for an Additional Project will determine the limits of a Report.

(7) MSA shall be provided with the "2016 Duffield Report" and "2017-2026 City Project List" (which terms are defined in the Litigation) for its review and, in its sole discretion, inclusion in the Assessment and the Capital Plan (defined below).

B. Facility Assessment.

(1) Aberdeen requests MSA, and MSA agrees to manage and oversee a facility assessment of the Stadium and the Site (the "**Assessment**"). The Assessment will analyze the existing and projected future condition of facilities and the building systems within those buildings subject to and limited by the scope of services agreed upon in Section A (6) above. MSA shall provide the City and Tufton with an estimate of the time for completion of the Assessment.

(2) MSA shall prepare and provide the City and Tufton with a written report of its Assessment findings and observations. The Parties intend to use the Assessment to develop the Capital Plan and the Ordinary Maintenance Plan, as more particularly described below. Aberdeen and Tufton, by and through their Representatives (identified in Article VIII herein), shall have the right to review and comment on the Assessment, prior to its finalization by MSA.

(3) The cost for conducting the Assessment shall not exceed Five Hundred Thousand Dollars ($500,000). Aberdeen agrees to pay MSA for the cost of the Assessment, which amount shall be paid by Aberdeen to MSA promptly when invoiced by MSA.

C. Capital Plan.

(1) Utilizing the Assessment, Aberdeen requests MSA, and MSA agrees to manage the preparation of a capital maintenance, repair, replacement and improvement plan for the Stadium and the Site (the "**Capital Plan**").

(2) The Capital Plan shall identify and estimate costs for capital maintenance, repair, replacement and improvement items at the Stadium and Site for ten (10) years beginning within thirty (30) days following receipt and approval of the Facility Assessment pursuant to Section B above.

(3) Prior to the end of the fifth (5) year of the Capital Plan, and each five (5) years thereafter, Tufton and Aberdeen shall review and agree upon revisions or amendments to the Capital Plan if reasonably necessary to address changed conditions at the Stadium and Site.

(4) The Capital Plan is intended to address capital maintenance, repair, replacement and improvement items at the Stadium and Site in accordance with the City's obligations under Section 5.02 of the Concession Agreement within the time periods specified in Section C (2) above and to provide the City with information and procedures to meet its obligations under Section 5.02 of the Concession Agreement. The Capital Plan shall not exceed the scope of Aberdeen's obligations contained in Section 5.02 of the Concession Agreement, and Aberdeen shall not be obligated to perform, nor be responsible for, any additional work or obligation not already contained in Section 5.02 of the Concession Agreement.

(5) Upon confirmation of the scope, MSA shall provide the City and Tufton with an estimate of the cost and time for completion of the Capital Plan. Aberdeen agrees to pay MSA for the cost of the preparation of the Capital Plan, which Aberdeen shall pay promptly when invoiced by MSA in accordance with terms of payment agreed to by MSA and Aberdeen. With Aberdeen's payment of any amounts then required by MSA in accordance with the agreed

terms of payment, MSA will proceed with procurement of necessary services in connection with delivery of the Capital Plan.

(6) In developing the Capital Plan, MSA shall clearly identify those capital maintenance, repair, replacement and improvement items needed to address matters affecting life, health and safety that should be prioritized over other projects if necessary.

(7) Aberdeen and Tufton, by and through their Representatives (identified in Article VIII herein), shall review the Assessment and Capital Plan and jointly approve the recommended Capital Plan or come to an agreement on an amended initial Capital Plan satisfactory to both Aberdeen and Tufton. Subsequent to the approval of the initial Capital Plan, the Capital Plan may be amended from time to time by the City and Tufton.

(8) Although the initial Capital Plan shall contain cost estimates, upon the request of the City MSA shall provide the City and Tufton with updated detailed cost estimates for individual work projects contained in the Capital Plan, as such Capital Plan may be amended by the City and Tufton from time to time.

D. Ordinary Maintenance Plan.

(1) Aberdeen and Tufton request of MSA, and MSA agrees to manage the preparation of an ordinary maintenance plan to address the responsibilities contained in Section 5.01 of the Concession Agreement (the "**Ordinary Maintenance Plan**"). The Ordinary Maintenance Plan shall be documented as a template for a five (5) year period within the scope of services and budget agreed upon by the City and Tufton. The City and Tufton shall have an opportunity to review and comment on the proposed Ordinary Maintenance Plan prior to its finalization. In formulating the Ordinary Maintenance Plan, MSA shall consider the maintenance plan currently in place by Tufton.

(2) Prior to the end of the initial five (5) year period accounted for in the Ordinary Maintenance Plan, and each five (5) years thereafter, Tufton and Aberdeen shall review and agree upon revisions or amendments to the Ordinary Maintenance Plan if reasonably necessary to address changed conditions at the Stadium and Site, subject at all times to the Section D (5) below.

(3) The Ordinary Maintenance Plan is intended to satisfy Tufton's obligations under Section 5.03 of the Concession Agreement. Annually, Tufton shall provide Aberdeen with a list of all scheduled work pursuant to the Ordinary Maintenance Plan that was completed during the previous calendar year.

(4) The cost for the preparation of the Ordinary Maintenance Plan shall not exceed Twenty Five Thousand Dollars ($25,000). Aberdeen and Tufton agree to each pay MSA 50% of the cost of the preparation of the Ordinary Maintenance Plan, which Aberdeen and Tufton each shall pay promptly when invoiced by MSA.

(5) The Ordinary Maintenance Plan is intended to address Tufton's responsibilities under Section 5.01 of the Concession Agreement and to provide Tufton with information and procedures to meet its obligations under Section 5.01 of the Concession Agreement. The Ordinary Maintenance Plan shall not exceed the scope of Tufton's obligations contained in

Section 5.01 and Section 5.03 of the Concession Agreement, and Tufton shall not be obligated to perform, nor be responsible for, any additional work or obligation not already contained in Section 5.01 of the Concession Agreement.

E. Notwithstanding any provision contained herein which anticipates or requires satisfaction of a term, obligation, provision, or agreement of any type contained in the Concession Agreement, MSA has no obligation to, or responsibility for interpretation of the Concession Agreement, or Tufton's or the City's respective obligations in connection therewith.

F. Termination for Convenience. Upon written notice to the Grantee, MSA may terminate this Agreement, in whole or in part as it pertains to the Additional Projects, whenever MSA shall determine that such termination is in the best interest of the State or MSA. MSA shall pay all reasonable costs incurred up to the date of termination and all reasonable costs associated with termination of contracts it has procured and entered into pursuant to this Agreement. However, neither the Grantees nor Contractors may be reimbursed for anticipatory profits. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of MSA's Procurement Policies and Procedures.

G. The provisions of this Agreement, including but not limited to Article IV, of this Agreement, shall not limit, or be construed as a limitation on, Aberdeen's obligation to perform and pay for any emergency capital maintenance, repair, replacement and improvement at the Stadium and the Site or to reimburse Tufton for emergency actions as set forth in Section 5.02 the Concession Agreement.

## ARTICLE V
## FUTURE STATE GOVERNMENTAL INITIATIVES

Aberdeen and Tufton understand that MSA has limited statutory authority with regard to its ability to provide certain other services or perform certain other work outside the scope of this Agreement as may be desired by the Grantees. Therefore, Aberdeen and Tufton agree that they may pursue future State governmental initiatives relating to this Agreement, which may include, but not be limited to, seeking appropriation of the Additional Grant Funds. Aberdeen and Tufton hereby agree to notify MSA of any legislative initiatives they may pursue which would impact MSA's statute, operations, or responsibilities.

## ARTICLE VI
## MISCELLANEOUS TERMS AND PROVISIONS

A. Agreement to Meet and Confer. In addition to any other provisions of the Agreement that require any of the parties to meet, Aberdeen and Tufton agree that it is in their respective interests to meet periodically to confer and discuss issues relating to, or arising under this Agreement. Accordingly, the Representatives designated by each of the parties pursuant to Article VIII B shall meet not less frequently than quarterly and more frequently during the baseball season or otherwise as the parties may deem advisable. Any Representative may request the other Representatives to convene at times when a meeting is not scheduled.

B. Effectiveness; Term. This Agreement shall be effective as of the later of either (i) the date this Agreement is fully executed by all parties; or (ii) the Settlement Agreement to which it shall be attached is executed by Aberdeen and Tufton. Except as provided in Article III B this Agreement shall continue throughout the Initial Term and any Renewal Term(s) of the Concession Agreement (as such terms are defined in the Concession Agreement). Upon the expiration or termination of the Concession Agreement in accordance with its terms, this Agreement shall immediately terminate.

C. Concession Agreement. Unless expressly amended or modified herein, all terms, conditions and provisions of the Concession Agreement remain unchanged and in full force and effect.

D. Construction. Tufton and Aberdeen hereby acknowledge that this Agreement is the product of negotiation between the parties and/or their respective legal counsel and that no provision of this Agreement shall be construed against a party solely because that party or that party's counsel drafted such provision.

E. Cumulative Remedies. The various rights, options, elections, powers, and remedies of the respective parties hereto contained in, granted, or reserved by this Agreement, are in addition to any others that said parties may be entitled to by law or in equity, shall be construed as cumulative, and no one of them is exclusive of any of the others, or of any right or priority allowed by law or in equity.

F. Definitions; Use of Singular and Plural. A defined term in the Agreement which references a document which is attached as an Exhibit or Schedule to the Agreement shall have the meaning ascribed to such defined term in such Exhibit or Schedule as of the Effective Date of the Agreement and shall not be automatically amended as a result of amendments to the Schedule documents, except as agreed by written amendment duly executed by an authorized representative of the Aberdeen and Tufton. All references made, and all nouns and pronouns used herein shall be construed in the singular or plural, and in such gender as the sense and circumstances require.

G. Entire Agreement. No amendment, modification or alteration of this Agreement shall be binding unless in writing, dated subsequent to the date hereof and duly executed by an authorized representative of Aberdeen and Tufton; provided however, that any change to the responsibilities of the MSA shall require MSA's written approval. No party may rely upon any prior drafts, writings, oral representations or communications with respect to this Agreement.

H. Exhibits, Schedules; Headings. The Exhibits and Schedules attached hereto are substantive parts hereof. The headings of the Sections and paragraphs contained in this Agreement are for convenience and reference only and are not intended to define or limit the scope of any provisions of this Agreement.

I. No Joint Venture. This Agreement shall not constitute a partnership, joint venture or create an agency relationship between the parties.

J. No Waiver. The making or failure to make any payments, take any action, or waive any rights shall not be deemed an amendment of this Agreement, nor consent to such action or to any future action or failure to act, unless the party required to so consent or act expressly agrees in writing. Moreover, nothing contained in this Agreement shall be construed as a waiver of any rights either party hereto may have to seek damages, or specific performance, or other appropriate remedies from the other for breach of this Agreement.

K. Severability. If any one or more of the provisions contained in this Agreement shall for any reasons be held to be invalid, illegal or unenforceable in any respect, the Agreement shall be construed as if such invalid, illegal or unenforceable provision were not contained herein.

L. Cooperation. Aberdeen and Tufton agree to cooperate fully and execute any and all supplementary documents and take any and all reasonable additional actions that may be necessary or appropriate to give full force and effect to the terms of this Agreement.

M. Binding Effect. Subject to Article VIII Section T, this Agreement shall be binding on and inure to the benefit of the parties hereto, and their successors and assigns.

## ARTICLE VIII
## STATE TERMS AND PROVISIONS

A. Reports: (1) Section 7-402 of the State Finance and Procurement Article, Annotated Code of Maryland, requires Grantee to submit a verified report that fully and accurately accounts for appropriate Grant expenditures if applicable.

(2) Grantee shall submit other reports or information as the State may periodically require, including project status reports and certified audit reports.

B. Default. A default is Grantee's breach of any of the covenants, agreements, or certifications contained in this Agreement.

C. Remedies Upon Default.

(1) Upon the occurrence of any default with respect to the Grant funds, the State, as the BPW in its sole discretion determines, may do one or more of the following:

(a) Require Grantee to repay the Grant, in whole or in part.

(b) Recoup the amount of the Grant already paid from funds due the Grantee from any other current or future State grant or loan or any other funds, otherwise due and owing Grantee.

(c) Withhold further payments under this Agreement.

(d) Terminate this Agreement.

(2) In addition to the rights and remedies contained in this Agreement, the State may at any time proceed to protect and enforce all rights available to it. All rights and remedies survive the termination of this Agreement.

D. Disposition of Property. Except for Concession Agreement renewals to Tufton, its successors or assigns, Aberdeen may not sell, lease, exchange, give away, or otherwise transfer or dispose of any interest in real or personal property acquired or improved with Grant funds (**"Grant-Funded Property"**) unless the BPW gives prior written consent. This includes transfer or disposition to a successor or the merger, dissolution, or other termination of the existence of Aberdeen. Aberdeen shall give the BPW written notice at least 60 days before any proposed transfer or disposition. When consenting to a transfer or disposition, the Board of Public Works may in its sole discretion require the Grantee to repay a percentage of the proceeds that are allocable to the grant.

E. Inspection and Retention of Records. Grantee shall permit any duly authorized representative of the State to inspect and audit all records and documents of Grantee relating to this Grant. Grantee shall retain such records for at least three years after this Agreement terminates.

F. Insurance. Tufton and the City have agreed that the City shall provide the insurance required under this Agreement to satisfy the conditions of the Grant.

(1) For any item of Grant-Funded Property that has an original fair market value of $5,000 or more, the City shall, at its own expense and for the reasonable useful life of that item, obtain and maintain all risk of fire and extended coverage insurance or such similar insurance coverage as may be appropriate for the full value of the item or in amounts as may be commercially reasonable under the circumstances. City's insurer must be authorized to issue the policy in the State. Each such policy shall by its terms:

(a) Name the State as an additional loss payee thereunder.

(b) Be considered primary and non-contributory with respect to any other insurance, if any, provided by the State.

(c) Be cancelable only on at least 30 days written notice to City and to the BPW.

(2) On request, the City shall provide the BPW or its designee with satisfactory evidence of insurance.

(3) Proceeds of insurance required by this Paragraph may be applied as the BPW, in its sole discretion, shall determine toward replacement of Grant-Funded Property or toward repayment of the Grant to the State.

(4) The BPW or its designee in its sole discretion may determine that the City may self-insure Grant-Funded Property if the City has adequate financial resources.

H. Indemnification. Grantee is responsible for, and shall defend, indemnify, and hold harmless the State and MSA, their officers, agents, and employees, whether or not the State or MSA be deemed contributorily negligent, from all suits, actions, liability, or claims of liability (including reasonable attorneys' fees) arising out of:

(a) The Grant or Additional Project, including its construction.

(b) Grantee's use, occupancy, conduct, operation, or management of the Grant or Additional Project.

(c) Any negligent, intentionally tortious, or other act or omission of Grantee or any of its agents, contractors, servants, employees, subtenants, licensees, or invitees in connection with the Grant or Additional Project.

(d) Any injury to or death of any person or damage to any property occurring in, on, or as a direct or indirect result of the Grant or Additional Project or any of Grantee's activities in connection therewith.

I. Commercial and Employment Nondiscrimination.

Grantee shall:

(1) Not discriminate in the selection, hiring, or treatment of any employee, employment applicant, vendor, supplier, subcontractor, or commercial customer on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any other unlawful use of characteristics unrelated to performance.

(2) Include a clause similar to sub-paragraph (a) in any contract under this Grant.

(3) Post, and cause contractors to post, in conspicuous places notices setting forth the nondiscrimination policy.

J. Drug and Alcohol Policy. Grantee certifies that it shall make a good faith effort to eliminate illegal drug use and alcohol and drug abuse from its workplace. Specifically, Grantee shall:

(1) Prohibit the unlawful manufacture, distribution, dispensation, possession, or use of drugs in its workplace.

(2) Prohibit its employees from working under the influence of alcohol or drugs.

(3) Not hire or assign to work on an activity funded in whole or part with State funds, anyone whom it knows, or in the exercise of due diligence should know, currently abuses alcohol or drugs and is not actively engaged in a bona fide rehabilitation program.

(4) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if it or its employee has observed the violation or otherwise has reliable information that a violation has occurred.

(5) Notify employees that drugs and alcohol abuse are banned in the workplace, impose sanctions on employees who abuse drugs and alcohol in the workplace, and institute steps to maintain a drug-free and alcohol-free workplace.

K. Compliance with Applicable Law. Grantee hereby represents and warrants that it:

(1) Is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

(2) Is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the Grant term;

(3) Shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Grant.

(4) Shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Grant.

L. Non-Debarment. Neither Grantee nor any of its officers, directors, or any of its employees directly involved in obtaining or performing grants or contracts with public bodies has:

(1) Been convicted of bribery, attempted bribery, or conspiracy to bribe in violation of any state or federal law.

(2) Been convicted under any state or federal statute of any offense enumerated in Section 16-203 of the State Finance and Procurement Article, Annotated Code of Maryland.

(3) Been found civilly liable under any state or federal antitrust statute as provided in Section 16-203 of the State Finance and Procurement Article, Annotated Code of Maryland.

M. Non-Collusion. Neither Grantee nor any of its officers, directors, or any of its employees directly involved in obtaining or performing grants or contracts with public bodies has:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in obtaining or performing this Grant.

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of any bidder or offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with this Grant.

N. Financial Disclosure. Grantee is aware of, and will comply with, Section 13-221 of the State Finance and Procurement Article, Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate $200,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases or other agreements reaches $200,000, file with the Maryland Secretary of State certain specified information to include disclosure of beneficial ownership of the business.

O. Political Contributions. Grantee is aware of, and will comply with, Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate $200,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of $500 made during the reporting period to a candidate for elective office in any primary or general election.

P. No Contingent Fees. Grantee has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for Grantee, to solicit or secure the Grant. Grantee has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of the Grant.

Q. No Lobbying Fees. In accordance with Section 7-221 of the State Finance and Procurement Article, Annotated Code of Maryland, Grantee certifies that no State money has been paid or promised to any legislative agent, lawyer, or lobbyist for any service to obtain the legislation establishing or appropriating funds for the Grant.

R. Non-hiring of State Employees. No State employee whose duties as such employee include matters relating to or affecting the subject matter of this Grant, shall, while so employed, become or be an employee of Grantee.

S. Amendment. The Agreement may be amended only in a writing signed by the parties.

T. Assignment. Grantees may not assign this Agreement relating to the Grant without the prior written approval of the BPW. If the BPW approves an assignment, this Agreement shall bind Grantees' successors and assigns. Assignment of this Agreement pertaining to the Additional Projects shall require approval of MSA.

U. Entire Agreement MSA. This Agreement represents the complete and final understanding of the parties with respect to the matters by an between the Grantees and MSA addressed in this Agreement The Settlement Agreement by and between Tufton and the City notwithstanding, no other understanding or representations, oral or written, regarding the matters addressed in this Agreement, shall be deemed to exist or to bind MSA, Tufton or the City at the time the parties sign the Agreement.

V. Entire Agreement Tufton and City. This Agreement and the Settlement Agreement represents the complete and final understanding of Tufton and the City with respect to the matters by and between Tufton and the City addressed in this Agreement and the Settlement Agreement. No other understanding or representations, oral or written, regarding the matters addressed in this Agreement and the Settlement Agreement shall be deemed to exist or to bind Tufton or the City at the time the parties sign the Agreement.

W. Maryland Law. Maryland laws govern the interpretation and enforcement of this Agreement.

## ARTICLE VIII
## NOTICE AND DESIGNATED REPRESENTATIVES

A. Notices. In the event that any notices are required, same shall be adequately given in writing, and personally delivered or mailed by registered or certified mail to the parties at their respective addresses as follows: (or such other address as either party shall designate by written notice to the other party.)

**If to Aberdeen**:
City of Aberdeen
ATTN: City Manager
City Hall
60 North Parke Street
Aberdeen, MD 21001

**With a copy** (which shall not constitute notice) to:
Council Baradel
ATTN: Frederick C. Sussman, Esq
125 West Street, Fourth Floor
Annapolis, Maryland 21401

**If to Tufton**:
Calvin E. Ripken, Jr.
C/O Geier Asset Management
2205 Warwick Way Suite 200
Marriottsville, MD 21104

**With a copy** (which shall not constitute notice) to:

Rifkin Weiner Livingston LLC
ATTN: Alan M. Rifkin, Esq.
225 Duke of Gloucester Street
Annapolis, MD 21401

**If to MSA**:
Maryland Stadium Authority
Attn: Michael J. Frenz, Executive Director
333 W. Camden Street, Suite 300
Baltimore, MD 21201

**With a copy to**:
Office of the Attorney General
Attn: Cynthia Hahn, Counsel
200 St. Paul Place, 20th Floor
Baltimore, MD 21202

Notices hand-delivered in accordance with this provision shall be deemed to have been received on the date so hand-delivered, and notices sent via U.S. mail shall be deemed to have been received three (3) days after the date so mailed.

B. The designated representatives of the Parties for this Agreement are as follows:

For Aberdeen: City Manager and Deputy City Engineer

For Tufton:
Calvin E. Ripken, Jr.
C/O Geier Asset Management
2205 Warwick Way Suite 200
Marriottsville, MD 21104

For MSA: Al Tyler, Vice President

Any Party may change its designated representative by notice to the other Parties.

## ARTICLE IX
## EXECUTION

Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall be one and the same instrument.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

WITNESS:

TUFTON PROFESSIONAL BASEBALL LLC

By: IB PROFESSIONAL HOLDINGS LLC
its Sole Member

By: ______________________
Calvin E. Ripken, Jr. Managing Member

Signature Page for Tufton Professional Baseball LLC

IN WITNESS WHEREOF, this AGREEMENT is executed by the parties as of the date set forth above.

WITNESS:

MARYLAND STADIUM AUTHORITY

By: Michael J. Frenz
Executive Director

Approved for legal form and sufficiency
on behalf of the Maryland Stadium Authority.

Amy K. Mataban
Assistant Attorney General

**Signature pages for the City of Aberdeen and Tufton Professional Baseball LLC on following two pages.**

ATTACHMENTS:

Exhibit A – Capital Grant Projects Information Book
Exhibit B – Identified City Projects
Exhibit C – Information Booklet

IN WITNESS WHEREOF, this AGREEMENT is executed by the parties as of the date set forth above.

WITNESS:

CITY OF ABERDEEN

By: RANDYE. ROBERTSON
Its: CITY MGR

WITNESS:

TUFTON PROFESSIONAL BASEBALL LLC

By: IB PROFESSIONAL HOLDINGS LLC, its Sole Member

By:

Calvin E. Ripken, Jr., Managing Member

WITNESS:

MARYLAND STADIUM AUTHORITY

By: Michael J. Frenz
Executive Director

Approved for legal form and sufficiency on behalf of the Maryland Stadium Authority.

Amy K. Mataban
Assistant Attorney General

ATTACHMENTS:

**Memorandum of Understanding**

**Exhibit A**

**INTENTIONALLY OMITTED**

**(Memorandum of Understanding Does not Reference an Exhibit A)**

**MEMORANDUM OF UNDERSTANDING**

**EXHIBIT B**

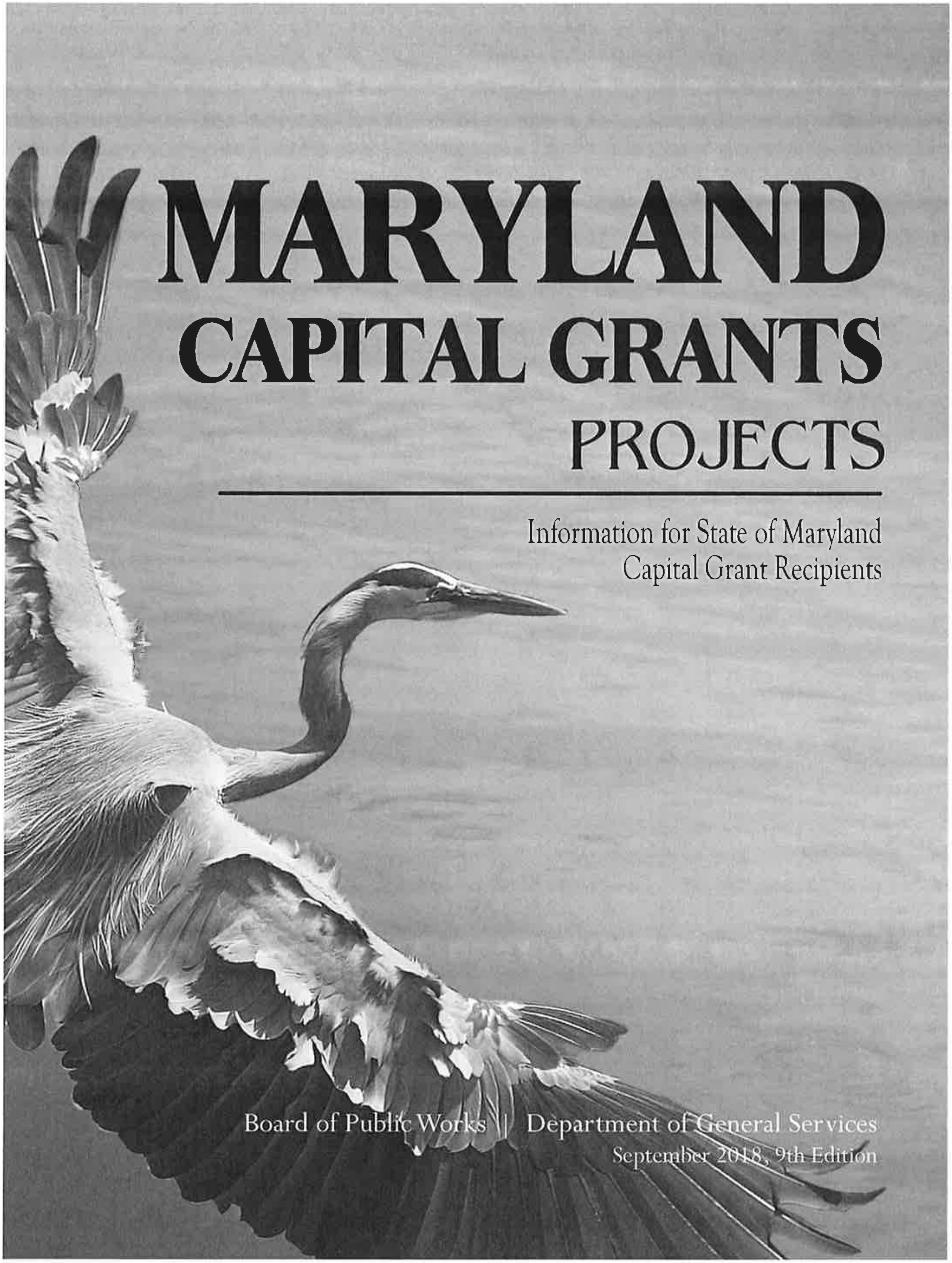
**CITY PROJECTS**

Pursuant to Article III F(4) of the Agreement, the following is a list of the Identified City Projects (the "City Projects"). The scope of the City's responsibility for each of the enumerated City Projects is set forth in greater detail in Exhibit B of the Settlement Agreement. For purposes of Article III F(4) of the Agreement, if MSA performs procurement or solicitation services for such City Projects pursuant to the Agreement then, as set forth in Article II section 4, MSA and the Grantees shall work collaboratively on the scopes of services and as a team in the procurement process in order to address the matters contained in Exhibit B of the Settlement Agreement.

1. ADA Compliant Ramps and Walks.
2. Joint Repairs Between Slab and Wall.
3. Cracks and Spalling at Wall Corners.
4. Concrete Slab Cracks and Isolation Joint Sealing.
5. Displaced Soil Anchor and Bearing Plate. (Completed by the City)
6. Interior Walls.
7. Concrete Wall Coping.
8. Exhaust Fans.
9. Exterior Wall Louvers.
10. Warning Track Drainage.
11. Unpaved Maintenance Road.
12. Replacement of Audio System.
13. Stormwater Management Facilities.

**Memorandum of Understanding**

**Exhibit C**

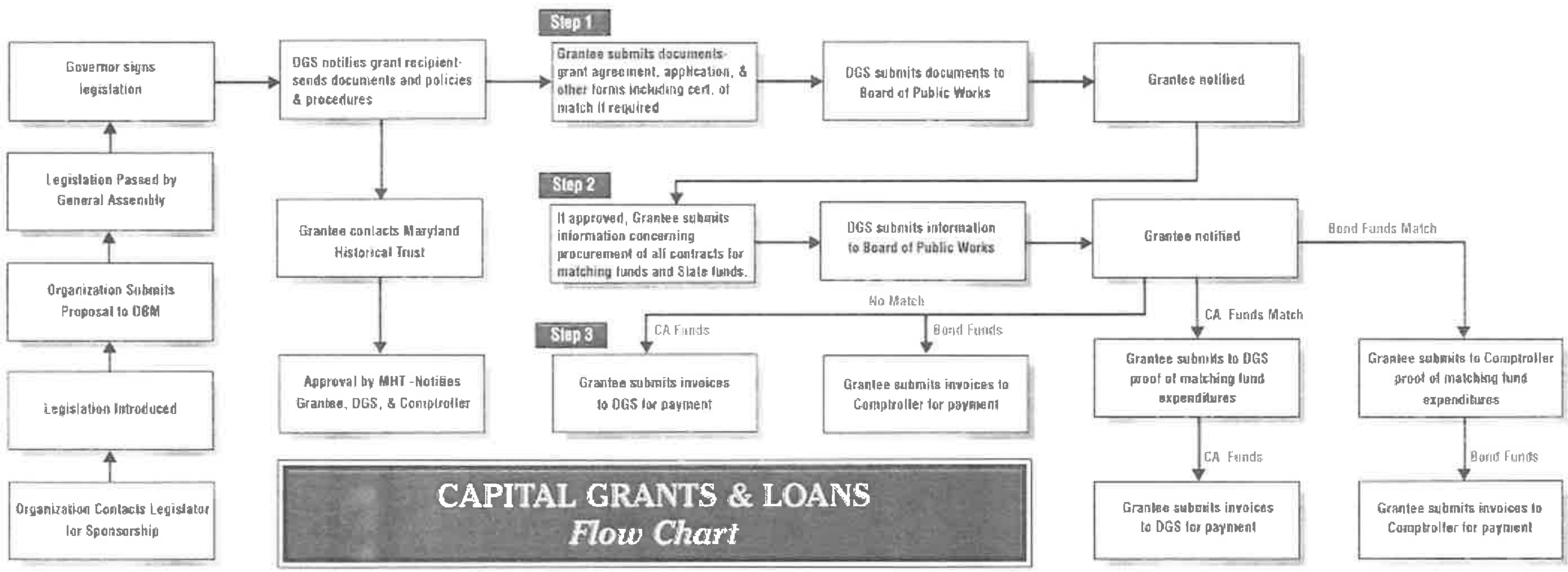


# MARYLAND CAPITAL GRANTS PROJECTS

Information for State of Maryland Capital Grant Recipients

Board of Public Works || Department of General Services

September 2018, 9th Edition



CAPITAL GRANTS & LOANS
Flow Chart
Organization Contacts Legislator for Sponsorship
Legislation Introduced
Organization Submits Proposal to DBM
Legislation Passed by General Assembly
Governor signs legislation
DGS notifies grant recipient- sends documents and policies & procedures
Grantee contacts Maryland Historical Trust
Approval by MHT -Notifies Grantee, DGS, & Comptroller
Step 1
Grantee submits documents- grant agreement, application, & other forms including cert. of match if required
DGS submits documents to Board of Public Works
Grantee notified
Step 2
If approved, Grantee submits information concerning procurement of all contracts for matching funds and State funds.
DGS submits information to Board of Public Works
Grantee notified
No Match
CA Funds
Bond Funds
CA Funds Match
Bond Funds Match
Step 3
Grantee submits invoices to DGS for payment
Grantee submits invoices to Comptroller for payment
Grantee submits to DGS proof of matching fund expenditures
CA Funds
Grantee submits invoices to DGS for payment
Grantee submits to Comptroller proof of matching fund expenditures
Bond Funds
Grantee submits invoices to Comptroller for payment

# For State of Maryland Capital Grant Recipients

This booklet is for you if your organization has been named as a capital grant recipient either in Maryland's annual consolidated bond bill or in an individual bond bill. This booklet serves as a guide to obtaining your funds.

While you may have worked with other people to become an official grant recipient, going forward you will work with the Department of General Services to obtain your grant funds. Although the Board of Public Works ultimately determines whether you have met the requirements to receive your grant, the Department of General Services is your point of contact because DGS administers the Capital Grants Program on behalf of the Board of Public Works.

## Board of Public Works

**Governor Larry Hogan • Treasurer Nancy K. Kopp • Comptroller Peter L. Franchot**

*Sheila McDonald, Esq.*, Executive Secretary
80 Calvert Street, Annapolis, Maryland 21401
410.260.7335

## Department of General Services

*Ellington Churchill*, Secretary
*Shirley Kennedy*, Capital Grants Program Manager
301 W. Preston Street, Room 1405
Baltimore, Maryland 21201
410.767.4107

# Table of Contents

# REMEMBER THIS:

## The Two-Year Rule and The Seven-Year Rule

Your grant of capital money is governed by State Finance laws. Those laws have two requirements that can cause you to lose your grant if you do not comply with them.[1] So familiarize yourself with these two rules now and keep them in mind as you make your way through the process of obtaining and spending your grant.

## The Two-Year Rule:

You have two years from the effective date of your grant to present proof of your matching fund and to finalize your grant agreement with the State. Even if your grant does not require a matching fund, you still must finalize your grant agreement within two years. **YOUR GRANT EXPIRES IN TWO YEARS IF you do not submit the complete proof of your matching fund and do not finalize the grant agreement in that time.**

**The Two-Year Rule Worksheet:**

Effective date of my grant: ___________.
Two years from that date will be: __________.
I must prove my matching fund and finalize my grant agreement with the State before this date.

## The Seven-Year Rule:

You have seven years from the effective date of your grant to spend your grant money. **ANY GRANT MONEY THAT HAS NOT BEEN SPENT WITHIN SEVEN YEARS EXPIRES AUTOMATICALLY.** If you are five or six years into your grant term and you have not spent your entire grant, contact us so we can work together to avoid the loss of your grant.

**The Seven-Year Rule Worksheet:**

Effective date of my grant: ___________.
Seven years from that date will be: __________.
All grants funds not spent will expire on this date.

1 State Finance and Procurement Article, §8-128, Annotated Code of Maryland.

# THE GRANT PROCESS

## Step 1: Submit Your Grant Information

After the annual legislative session, DGS sends each grant recipient a package with forms. You need to complete the forms and return the package to:

Department of General Services
Capital Grants Program
301 W. Preston Street, Room 1405
Baltimore, MD 21201

*Note: This is a good time to again review the State's Two-Year Rule (page 5).*

The package you return to DGS must include:

- *Capital Projects Grant Application*
  Take this opportunity to provide updated personnel information, project details, and more specifics about your project's status.

- *Matching-Fund Documentation* (if required by your bond bill)
  The documentation may be a letter or table that lists the sources and amounts that make up your matching fund. Your organization's authorized representative must verify the match by signing the letter. **Include your supporting documents.** Further information about matching funds is on page 14.

- *Capital Projects Grant Agreement* (sign and return both originals)
  DGS includes in your package two originals of the grant agreement that you and the State will sign. Your authorized representative must sign both grant agreements; return both grant agreements with original signatures in your package. DGS will obtain the Board of Public Works signature after you have returned the package. After the Board of Public Works has signed both originals, DGS will return one-fully signed original agreement to you and will retain one in the DGS file.

  Even though the grant agreement may appear to be a "form document," the form DGS sends you is specific to your grant as each bond bill has individual requirements. This is why DGS does not put the grant agreement on its Web site with the other forms. So please, take special care with the two grant agreement originals in your package – you won't be able to retrieve them from the DGS Web site.

- *Affidavit*: Funds Will Not Be Used For Lobbying

- *Affidavit*: Funds Not To Be Used For Religious Purposes (if required by your bond bill)

## Step 2: Submit Your Procurement/Contract Information

The State will release grant funds only for contracts and purchases that the State deems eligible in furtherance of your grant's purpose. Payment of grant funds will be authorized only for expenses related to approved contracts and purchases. DGS is available to work with you during your project's procurement solicitation and contract administration phases to help ensure that your contracts and purchases will be approved.

*Note: This is a good time to take stock of the State's Policies (page 9) and to review again the Seven-Year Rule (page 5).*

You need to submit the following to DGS:

1. Project Schedule: Estimated start and completion dates for design and construction.
2. Scope of Work: Plans/specifications including contract documents for each contract.
3. Engineer's Cost Estimate (if available): For each contract.
4. Procurement Procedures/Basis for Selection: Explain the process used to select the vendor for each contract.
5. Bids/Offers: Include the name, address, bid amount (or score), and any other selection criteria result for each bidder. Explain the basis on which the bid was awarded (e.g., low bid, high score, other basis).
6. Green Technologies: Describe any green building technologies used in construction and renovation projects.
7. Debarment Certification: Statement certifying that – to the best of your knowledge – the selected contractor is not debarred or suspended. (The State's debarment list is available at http://bpw.maryland.gov/Pages/debarments.aspx.)
8. Prevailing Wage Rate Certification: Statement certifying State wage rates are used when a contract in the amount of $500,000 or more is 50% or more State-funded. (See page 9)
9. Contracts: Copy of each contract awarded. Explain if the contract amount differs from the bid award.
10. Change Orders: Copies of all amendments or changes to awarded contracts.

## Step 3: Submit Proof of Expending Your Matching Fund to the Comptroller's Office

If your grant has a matching fund requirement, you must show that you have spent your matching fund. Please refer to page 14 for fuller discussion of matching funds, including "hard" match and "soft" match.

1. The State will begin paying your grant funds only after you spend 100% of your hard matching funds. To demonstrate that you have spent the matching fund as required, submit documentation (e.g., copies of invoices with corresponding canceled checks) to the Comptroller's Office that:

   - Shows that your organization has expended funds on contracts (including change orders) and other purchases approved as eligible for grant participation; and
   - Is verified by your chief financial officer or chief administrative officer as showing that the required matching funds were spent in accordance with the bond bill and the grant agreement approved by the Board of Public Works. "Verify" means the person must sign a statement: "I verify under penalty of perjury that the foregoing is, to the best of my information and belief, a true statement of costs incurred and paid for."

2. The Comptroller's Office will review your documentation – and may request further information – to ensure that your organization's expenditures of matching funds are eligible for reimbursement.

3. If you had a soft match certified, DGS will forward your information to the Comptroller's Office.

# Step 4: Submit Your Request for Payment

For matching grants, payment request forms are available on the Web site: www.dgs.maryland.gov/grants. For non-matching grants, submit payment requests to DGS with a cover letter indicating the amount claimed and the federal ID number for the party to be paid.

The State will ensure that it uses grant funds only for eligible expenses. The State will not pay for ineligible expenses. (A full explanation of eligibility criteria begins on page 16.) The State may verify or audit to ensure that the work has been performed or that the goods or services have been received and that payment is due the vendor or grantee.

The State will pay the vendor directly unless we agree to reimburse your organization for invoices you have paid already. The State requires the following before paying grant funds:

- For payments to be made directly to vendors on your behalf, submit:
    - Schedule (chronological listing) of invoice(s) to be paid
    - Original vendor invoices
    - Vendors' Federal Identification Numbers
- For reimbursements to be made to your organization for invoices that your organization has already paid, submit:
    - Schedule (chronological listing) of paid invoice(s) and corresponding check numbers indicating payments
    - Evidence satisfactory to the Comptroller that the invoices have been paid (e.g., copies of canceled checks - front and back)
    - Copies of the vendor invoices
    - Your Federal Identification Number

# Step 5: You Are Done!

Please notify the Comptroller's Office and DGS in writing when your grant-funded project is complete. The Comptroller's Office will then prepare a final accounting to determine if the State has paid its share. If the State has underfunded its share, the Comptroller's Office will review all approved expenditures and examine paid invoices and canceled checks. The Comptroller's Office will work with you to make sure that the State has paid its complete share of project costs.

# State Policies and Requirements

To ensure that State funds are spent equitably and for the benefit of all taxpayers, the Board of Public Works strongly urges you to be mindful of important State policies and requirements while you plan and implement your capital project. Failing to comply with requirements, policies, and procedures or with the terms of your specific bond bill may result in the delay or loss of grant funds.

*Minority Businesses.* Minority Business Enterprises (MBEs) are available to provide all kinds of goods and services related to your grant project. The State's goal is to achieve at least 29% certified MBE participation in its own contracting.[2] We urge you to solicit and hire certified MBEs for all your contracts, especially those funded by State grants. You may obtain a list of Maryland-certified MBEs from the Maryland Department of Transportation, Office of Minority Business Enterprises at 410-865-1269. Contact the Governor's Office on Minority Affairs at 410-767-8232 for more information about MBE participation on your project.

*Resident Businesses.* State grants not only benefit the grant recipient but can also serve as an economic engine. We encourage you to solicit and hire Maryland resident businesses to design and construct your grant project. A resident business is a business that has a Maryland address, is registered to do business in the State, employs Maryland residents, and regularly conducts business within Maryland.

*Maryland Correctional Enterprises.* Furniture & Equipment. Maryland Correctional Enterprises – a State organization providing meaningful work experiences for inmates – manufactures and sells various furniture and equipment. If you are purchasing eligible furniture and equipment, please check to see if Maryland Correctional Enterprises can meet your needs. (See the Contacts section at page 20.)

*Prevailing Wage Requirements.* Whenever a capital project in the amount of $500,000 or more is at least 50% State-funded, the State Prevailing Wage Law applies.[3] You or your project architect or engineer must obtain the prevailing wage rate for the project from the State Commissioner of Labor and Industry. (See the Contacts section at page 20.) When this requirement applies, you will have to certify to the State that you used the appropriate wages.

*High Performance Buildings.* The State encourages the use of green building technologies to construct and renovate buildings and other capital projects.[4]

*Maryland Historical Trust Requirements.* The Maryland Historical Trust determines whether your project will have significant adverse effects on historic properties and will help you develop measures to avoid, mitigate, or reduce significant adverse effects.[5] You must contact the Trust early enough to allow adequate time to resolve any historic-preservation concerns before you begin your project. The Trust must finish your consultation before the State will disburse funds to you. Funds will not be released until the Trust has issued a letter stating that its review of your project is complete and that it does not object to the release of funds. (See the Contacts section at page 20.)

2 State Finance and Procurement Article, §§ 14-301–14-308, Annotated Code of Maryland.

3 State Finance and Procurement Article, §§ 17-201–17-202, Annotated Code of Maryland.

4 State Finance and Procurement Article, §§ 3-602, 3-602.1, Annotated Code of Maryland.

5 State Finance and Procurement Article, §§5A-325, Annotated Code of Maryland.

***Roofs.*** If you spend grant funds on roofing projects, you must comply with the same State roofing policy that we use for State buildings. Any roof purchased with State funds must have at least a 20-year, no-dollar-limit warranty. In the case of new construction, the proper roofing system is to be determined on the basis of a 60-year life cycle cost analysis. In the case of roof replacement projects, analysis of the proper roofing system must consider all relevant factors, including span dimension, structural condition, foundation design and capacity, roof top equipment, costs, and so forth.

***Religious Purposes Prohibited.*** You may not use any project funds (State or matching) to further sectarian religious instruction or in connection with sectarian religious buildings or programs. If your bond bill includes language prohibiting expenditures for religious purposes, you must sign the Affidavit Not to Use Funds for Religious Purposes.

***Forest Conservation.*** The Forest Conservation Program applies to construction activities on land greater than 40,000 square feet.[6] (See the Contacts section at page 20 .)

***Debarred Businesses.*** The Board of Public Works will not permit a grant recipient to spend State funds on an individual or firm that is suspended or debarred from entering into contracts with the State.[7] You must check the debarment list for all prospective contractors. The list of debarred and suspended contractors is available on the Board of Public Works web page at http://bpw.maryland.gov/Pages/debarments.aspx.

6 Natural Resources Article, §§ 5-1601–5-1613, Annotated Code of Maryland.

7 State Finance and Procurement Article, §§ 16-101–16-312, Annotated Code of Maryland.

# Acquiring Real Property with Grant Funds

Some bond bills authorize grant recipients to buy real property. If your bond bill grants your organization funds to buy real property, you must submit to the Department of General Services:

1. Current appraisal acceptable to DGS
2. Contract of sale signed by all parties
3. Loan or mortgage commitment (if purchase financed in whole or part)
4. Preliminary settlement sheet

*Note: The appraisal cost is not an eligible project cost.*

Before you receive grant funds, you must expend your full matching fund. If any part of the purchase is financed, then the amount of the loan or mortgage is treated as a matching-fund expenditure at the time of settlement.

Within 15 days after settlement, you must provide DGS with proof that you purchased the property.

# Competition is Key

Many bond bills authorize grant recipients to obtain contractor services. The State encourages grant recipients to use competition to obtain the best value for the dollar. Paramount to ensuring that State funds are spent responsibly and responsively is for you to competitively select the businesses that will perform the project. County and local government entities should adhere to their respective procurement regulations. Non-profit organizations should develop their own competitive process to ensure they receive the best value for the grant funds expended. The following is a model you can use to develop your own competitive process.

1. Develop Specifications of Work to Be Performed

First, you must draft precise and thorough "specifications" or a "scope of services" for the work to be performed. Inexact or vague specifications result in bids that do not respond to your needs. You may wish to describe how the products or services will be used, what performance level is required, and what physical characteristics are needed.

2. Prepare a Bid Package

Your bid package should include at a minimum:

- Detailed Specifications or Scope of Services
- Bid Form (if appropriate)
- Evaluation factors when contract award basis is other than low bid (if appropriate)
- Date, time, and location for bid opening
- Project Manager's name and contact information
- Prevailing Wage Notice, if applicable

3. Advertise the Bid

Once you complete the bid documents, you should advertise the opportunity at least thirty days before the bid due-date. The advertisement should include a brief description of the project, the due date and time for bids, and the project contact's name and information. See the Contacts section of this material for a list of media sources in which to place your advertisement. (This list is not comprehensive nor does it constitute a State endorsement.)

4. Bid Evaluation

The preferred procurement method is competitive-sealed-bidding where the bidders submit sealed envelopes containing their prices to perform the work. Your option is to select a contractor based on price and technical factors such as past performance on similar projects, financial and management resources of the firm, and the firm's approach to the project. Any evaluation factor you choose to use must be disclosed upfront in the bid package. Please be aware that if you use other than a competitive procurement method, DGS may ask you to justify your action.

5. Contract

Make sure to include in your contract:

*Contract Delivery Schedule.* Establish the interim dates and the final date for delivery of your project's components. A delivery schedule protects your interests and the State's by keeping the project on schedule.

*Insurance Requirements.* You must ensure that the project is adequately insured during construction; the State must be named as protected for the grant amount. After the project is completed, you must annually provide a fire-insurance certificate to the State Treasurer's Office in an amount at least equal to the grant.

# Matching Fund

The bond bill that authorizes a grant to an organization often requires the organization to raise a matching fund. This required match is usually equal to the amount of the grant; sometimes a different amount is specified. The specific language in your bond bill describes your matching-fund requirement. Your bond bill might require a hard match or, less frequently, a soft match.

Grant recipients must submit proof of their matching-fund to the State to be certified in full within two years after your bond bill is enacted. Incremental certification of matching funds is not permitted unless your legislation provides otherwise. Remember the Two-Year Rule (see page 5): failure to have your match timely certified may result in the loss of grant funds.

The authorized representative for the grantee organization must sign the match documentation, which may be a letter listing the sources and amounts that make up the matching fund. The letter must include supporting documents as described below. The Board of Public Works is the ultimate arbiter of whether you have met the match set forth in your bond bill.

**Hard Match:** Examples of documentation for hard-match items are:

- If the grant recipient is a government agency, a certified record of the county's or municipality's approved appropriations.
- Bank statements showing cash on hand.
- Canceled checks/invoices showing expenditures made after the bond-bill effective date.[8]
- Commitment letters from commercial lending institutions.
- Bona fide loan agreements.
- Agreement/commitment letters for federal or local government grants.
- Commitment letters for foundation or private grants received (pledges are not acceptable).
- Statements for stocks, bonds, CDs, and other convertible-cash items (investments must be converted and proceeds spent before grant funds will be released).

8 For these expenditures to be determined eligible toward your match, you must also provide:
- Name and address of all vendors
- Date and amount of payments
- Descriptions of goods/services and how they relate to the project
- Any contracts, agreements, purchase orders, etc.

**Soft Match:** Examples of documentation for soft-match items (if allowed by your bond bill) are:

- Real Property. The value of real property may be used if the property is:
  - Titled to the grant recipient,
  - The property on which the capital project will be constructed, and
  - Appraised to DGS's satisfaction. (Appraisals may be no more than two years old. The appraisal cost is not an eligible project cost. Contact the DGS Real Estate Office at 410-767-4329 for more information.)

- In-Kind Contributions. The value of goods or services donated to you may be counted toward your match if the goods or services[9] contribute directly to your grant project. Volunteer hours will not be counted as in-kind contributions.
- Canceled checks/invoices showing expenditures made up to two years before the bond-bill effective date.[10]

9 For donated goods or services to count toward your match, you must submit:
- Name and address of donor
- Canceled invoice or itemized correspondence from vendor including dates goods/services were delivered, descriptions of goods/services, how they relate to project, number of hours and value of service per hour (include basis for valuation)
- Total value
- Your certification that the goods/services were provided to your organization

10 For eligible expenditures to count toward your match, you must submit:
- Same information listed in 8 above
- Proof of payment
- Any contracts, purchase orders, invoices

# Eligible Project Expenditures

The State may disburse grant funds only to pay for eligible expenses. Your bond bill will state what types of activities your grant funds. In general, to qualify as an eligible use of grant funds, the object of the expenditure must have a useful life expectancy of at least 15 years. This section describes expenditures eligible for grant funding. Consult with DGS before committing to any costs.

I. Real Property Acquisition

Acquiring land interests (freehold, fee, or leasehold) and real property improvements.

II. Architectural/Engineering Services

A. Preliminary design; project design; preparing plans/specifications and related contract documents; preparing site plans, floor plans, specifications for architectural, structural, site improvements, civil, mechanical and electrical work, and related contract documents.

B. Construction phase basic engineering; inspection; testing services.

C. Post-construction phase start-up services.

III. Construction

A. Work necessary to produce a complete and usable improvement to real property. Examples of construction projects are: erecting, installing, or assembling a new structure; installing, extending, or replacing utility systems; installing fixed equipment that becomes part of the structure; and developing and improving the site. All roofing projects must comply with the State's roofing policy. (See State Policies at page 9.)

B. Construction projects are categorized:

1. Addition/Expansion/Extension: Increasing an existing structure's overall external dimension.
2. Alteration: Modifying or adapting the interior arrangement and other physical characteristics of an existing structure so that it may be better used for its present functions.
3. Conversion: Modifying or adapting the interior arrangement and other physical characteristics of an existing structure so that it may be better used for new functions.

*Note: Adjusting exterior space is categorized as addition/expansion/extension and is not normally deemed a conversion.*

4. Relocation: Moving an existing structure from one site to another including moving utility lines. Relocation of roads, pavements or similar facilities is excluded. Relocating two or more existing structures resulting in a single structure is deemed a single project.

*Note: When a structure is relocated but the structure consists primarily of new components, the project is categorized as a replacement rather than a relocation.*

5. Renovation: Restoring and modernizing a structure or its systems, including building code compliance work, so that the structure may be effectively used for its present functions.

*Note: Renovation is needed to counter deterioration and obsolescence due to age, deferred maintenance, original faulty construction, or damage from natural disasters. Renovation differs from alteration primarily because alteration significantly modifies interior space arrangements, while renovation does not.*

6. Replacement: Completely reconstructing a structure, or a mechanical or utility system, which, because of age, unsafe conditions, obsolescence, or other causes, cannot be economically repaired or renovated and cannot be used for its intended function.

*Note: Reconstructing minor components of a mechanical or utility system is categorized as maintenance and is not normally included as a replacement. Replacement will be allowed as an eligible expenditure only if maintenance or renovation cannot resolve the problem.*

7. Restoration: Work required to bring a structure, to the maximum extent possible, to its former state. Ordinarily, restoration is authorized only for historic properties.
8. Site Development and Improvements: Includes grading; installing drainage facilities; constructing new roads, walks, parking areas, retaining walls, recreational areas, and fences; standard and essential landscaping; outdoor lighting.
9. Utilities: Includes installing, extending or replacing items such as sewer, water and electrical-service systems; power plant facilities; heating, ventilating and air conditioning; elevators; fire escapes, sprinklers and fire alarms; and telephone communications and associated control systems.

IV. Equipment and Furnishings

Some equipment and furnishings are eligible expenditures while others are ineligible. Initial equipment and furnishings are eligible expenditures if they:

- Have a life expectancy of at least 15 years, with normal maintenance
- Are unlikely to become technically obsolete for 15 years
- Are of durable construction
- Are heavy enough to prevent easy removal (chairs, however, may be eligible expenditures even if they do not meet this requirement)
- Are not intended to replace adequate items already on hand [replacement equipment is not eligible for funding]
- Are necessary to accommodate the functions for which the structure is intended AND
- Are not elaborate or extravagant. Review is guided by the reasonableness of the cost, the items' durability, and the items' appropriateness.

*Note: In the case of conversion or expansion, only equipment and furnishings needed to support a new function are eligible for funding. In the case of alteration, relocation or renovation, equipment and furnishings will not normally be eligible for funding. Because these projects are related to existing functions, it is expected that existing equipment can be used.*

# Ineligible Project Expenditures

The State will not disburse grant funds for ineligible expenses. This section describes expenditures ineligible for grant funding. This list is not exhaustive. The State will determine eligibility on a case-by-case basis. Consult with DGS before committing to any costs.

I. Feasibility studies or program development needed before authorizing funds (e.g., master plans)

II. Existing debt, interest (e.g., mortgage, rent, loans)

III. Fund-raising activities

IV. Salaries or wages paid to employees for project work

V. Administrative or legal costs

VI. Maintenance

A. Maintenance is ineligible because it does not have a useful life expectancy of 15 years. Maintenance is the recurring periodic (daily, weekly, monthly, annual) or scheduled upkeep required to maintain or fix a structure or a system, or its components, so that it may continue to be appropriately and effectively used for its intended purpose during its life expectancy. Maintenance includes overhauling, reprocessing, and replacing parts or materials that have deteriorated through normal wear and tear. Maintenance includes work undertaken to prevent damage that otherwise would be more costly to restore.

B. Maintenance includes upkeep necessary to meet prescribed standards and codes. Maintenance does not include major changes necessary to cover new accreditation standards.

C. Maintenance does not include constructing new maintenance sheds or buildings. Maintenance does not include extending or expanding utilities.

D. Following are examples of ineligible maintenance projects:

1. Painting, decorating, caulking, repainting, or treating masonry and other surfaces
2. Repairing wall or floor tiles, shingles or siding, and roofs
3. Sealing asphalt surfaces, ditching, replacing gutters and curbs, patching road surfaces
4. Repairing sprinklers and alarm systems
5. Repairing an elevator or escalator
6. Repairing plumbing, sanitary facilities, or the heating, ventilating and air conditioning system
7. Repairing lighting-and-electrical-systems components.

VII. Non-Capital Furnishings & Equipment

A. Office machines and equipment. Examples: typewriters; computers, printers, and other computer peripherals, including software; calculators; fax machines; copying machines.

B. Household furnishings. Examples: mattresses, pillows, rugs, mats, pads, curtains, draperies, pictures, statuary, interior-design items susceptible to the influence of style and frequent turnover, and other similar furnishings.

C. Small household furniture, appliances and accessories. Examples: coat-trees, folding chairs and tables, canisters, wastebaskets, trash cans and receptacles, paper roll dispensers, ironing boards, magazine racks, foot stools, dishes, pans, cutlery, glasses, desk sets, ladders, washing machines, dryers, refrigerators, ovens, stoves, fryers, griddles, hot plates, warmers, including hot food loaders, scales, pegboards, lamps, grills, toasters, irons, clocks, vacuum cleaners, scrubbers and floor polishers, bulletin boards, easels, planter boxes, movable chalk boards, towel racks not fixed, other similar furniture, equipment and accessories.

D. Small equipment, machinery, and appliances. Examples: power tools, electric fans, movable air conditioning units, paint sprayers and paint mixers, welding machines, movie and slide projectors, portable screens, film splicers, slide viewers, audiovisual aids, CD and DVD players, video cassette recorders, record players, television sets, radios, stereo systems, portable paging systems, and other similar machinery and appliances.

E. Major medical equipment and medical instruments – Examples: ophthalmoscopes, cystoscopes, otoscopes, oxygen tents, porta-lifts, bath lifts, cardiac arrest units, autoclaves, blood volume machines, serological baths, cryostat microtome units, ultra-violet lamps, resuscitators, inhalators, suction devices, refraction machines, eye charts, EEG and EKG machines, X-ray equipment, CT scan and MRI equipment, anesthesia units, obstetrical apparatus, whirlpool baths, and other similar equipment.

*Note: Exception may be made for major medical equipment and medical instruments that exceed $20,000 if the useful life expectancy exceeds 15 years. Consult with DGS.*

F. Professional, scientific and controlling instruments. Examples: photographic and optical equipment such as spectrophotometers, colorimeters, catheterization trays, fluoroscopes, microscopes, oscilloscopes, balance scales, recorders, lenses and binoculars.

*Note: Exception may be made for professional, scientific and controlling instruments that exceed $20,000 if the useful life expectancy exceeds 15 years. Consult with DGS.*

G. Glass and glass products, flat, blown or pressed. Examples: distilling apparatus, beakers, vials, test tubes, slides, basins, lamps, chinaware, dishes, mirrors, glass-top tables, and other similar products.

H. Game equipment. Examples: bowling games, shuffleboards, billiard tables and equipment, ping-pong tables, and game tables.

I. Vehicular and motorized equipment. Examples: automobiles, trucks, boats, cleaning trucks, food trucks, heated or refrigerated tray trucks, dumpsters, fork lifts, farming equipment, trailers or carts, wheel chairs, wheeled carts for maintenance use, and other similar equipment.

J. Supplies and materials. Examples: blankets, sheets, pillowcases, table linens, janitorial supplies, laboratory supplies, medical products, candle holders, books, flags and bunting, audio or visual tapes or discs, small hand tools, tool boxes, office supplies and other similar supplies and materials.

# CONTACTS

## State Agencies to be Contacted Listed by Subject

*Application*
Department of General Services
301 West Preston Street, Room 1405
Baltimore, MD 21201
410.767.4107 or 410.767.4058
1.800.449.4347 ext. 4107
**Applications are on the Internet at: www.dgs.maryland.gov/pages/grants/index.aspx**

*Appraisals of Real Property*
Department of General Services
300 West Preston Street, Room 601
Baltimore, MD 21201
410.767.4329

*Bond Bills - Future*
Division of Capital Budgeting
Department of Budget and Management
301 West Preston Street, Room 1209
Baltimore, MD 21201
410.767.4530

*Bond Sale Schedules/*
*Cash Requirements Forecast Surveys*
State Treasurer's Office
Treasury Building, Room 109
Annapolis, MD 21401.1991
410.260.7920

*Contracts —Advertising the Bid*
SUGGESTED SOURCES
Baltimore Sun
Washington Post
The Afro American
The Daily Record
Dodge Reports
Your Local Paper

*Contracts — Prevailing Wage Law*
Prevailing Wage
Division of Labor and Industry
Dept of Labor, Licensing & Regulation
1100 North Eutaw Street
6th Floor, Room 607
Baltimore, MD 21201
410.767.2342

*Contracts – Procurement Issues*
Department of General Services
301 West Preston Street, Room 1405
Baltimore, MD 21201
410.767.4107

*Debarred and Suspended Contractors*
www.bpw.state.md.us

*Design and Construction - Coordination and Approval*
Department of General Services
301 West Preston Street, Room 1405
Baltimore, MD 21201
410.767.4107

*Forest Conservation*
Department of Natural Resources
State Forest Conservation Program
E-1 Tawes State Office Building
Annapolis, MD 21401
410.260.8511

# CONTACTS

## State Agencies to be Contacted
## Listed by Subject

*Furniture and Equipment*
Maryland Correctional Enterprises
7275 Waterloo Road
Jessup, MD 20794
410.540.5400

*General Questions*
Department of General Services
301 West Preston Street, Room 1405
Baltimore, MD 21201
410.767.4107

*Historic Preservation*
Office of Preservation Services
Maryland Historical Trust
Department of Planning
100 Community Place
Crownsville, MD 21032
410.697.9541

*Matching Funds*
Department of General Services
301 West Preston Street, Room 1405
Baltimore, MD 21201
410.767.4107

*Minority Business Enterprise Directory*
Department of Transportation
7201 Corporate Center Drive
Hanover, MD 21076
410.865.1269
**www.mdot.state.md.us/MBE_Program/directory**

*Payments and Reimbursements*
Capital Projects Administration
Office of Administration and Finance
Comptroller of the Treasury
P. O. Box 466
80 Calvert Street
Annapolis, MD 21404-0466
Phone: 410.260.7851
Fax: 410.974.2737
E-mail: capital_grants@comp.state.md.us

EXHIBIT B

CITY PROJECTS

**ADA Compliant Ramps and Walks.**

• Modify and/or replace any sidewalk handicap ramps that are not compliant with ADA code, including the ramp located on the first base side of Ripken Stadium.

• Rectify, repair, remove, and/or replace the sidewalk areas that are heaving and spalling, regardless of whether the sidewalks are part of an ADA accessible route.

• Remove and replace the non-compliant handicap sidewalk ramps with ADA compliant concrete ramps.

**Joint Repairs Between Slab and Wall.**

• Address the separation between the concrete slabs and the CMU walls and retaining wall.

• Professionally clean joints and place adequate isolation materials in the joints. The Slabs should be raised to original grade where they have settled.

**Cracks and Spalling at Wall Corners.**

• Expose sound concrete in areas showing cracks/spalling at the corners of the concrete walls identified in the 2017 City Report, except for at the end of the retaining wall on 3rd base side that has been addressed and completed, provided that the City provides reasonable documentation that the work has been completed appropriately.

• Clean and apply a bonding agent to the exposed concrete and reinforcing steel surfaces.

• Apply a one-component, self-consolidating concrete mix to achieve the original dimensions of the wall construction.

**Concrete Slab Cracks and Isolation Joint Sealing.**

• Rout the concrete slab cracks and use a flexible sealant material to seal the cracks.

**Displaced Soil Anchor and Bearing Plate.**

(Completed by the City)

**Interior Walls.**

• Clean and seal the isolated locations of cracks along the face shell and mortar joints at the second level on the first base side of Ripken Stadium (adjacent to the elevator).

**Concrete Wall Coping.**

• Rake out, repoint, and seal the walls around the flat roof areas that have a precast concrete coping that caps the wall.

**Exhaust Fans.**

• Upgrade the existing exhaust fans in order to minimize grease from damaging the rubber roof.

**Exterior Wall Louvers.**

• Upgrade the exterior wall louvers to prevent rain from penetrating into the interior spaces.

**Warning Track Drainage.**

• To the extent not addressed by the Playing Field Replacement, regrade the area along the outfield wall in the right-centerfield area of the Stadium.

**Unpaved Maintenance Road.**

• The City will repair the Unpaved Maintenance Road, including any and all rolling, grading, filling, etc. that is needed to level and correct it.

**Replacement of Audio System.**

• The City:

(i) Will perform all necessary repairs and perform additional necessary audio system replacements to make the current system operational;

(ii) Agrees that the replacement of the audio system in its entirety will be addressed in the Assessment and included in the Capital Plan; and

(iii) With regard to the audio system items identified by Tufton in the list ("list") furnished to the City on or about October 10, 2019, the City :

a. Will furnish the list to the City's audio contractor for the purpose of conducting a professional assessment of the condition of the audio system;

b. Will arrange and conduct a walk-through of the Stadium with the audio contractor and representatives of Tufton and the City. The purpose of the walk-through is for the audio contractor to assess the accuracy of the list and determine if there are other audio system repairs/replacements that also should be undertaken now. The list will be the starting point for the professional assessment that the City's audio contractor will undertake;

c. Will share the audio contractor's professional assessment with Tufton;

d. Will make repairs/replacements to the audio system as determined necessary by the audio contractor's professional assessment; and

e. Will complete the audio system assessment and repairs/replacements before the start of the Ironbirds' 2020 baseball season.

**Stormwater Management Facilities.**

1. The City will remove phragmites and sediment from the Storm Water Management Facility, and perform all necessary, appropriate, or required capital and non-capital maintenance, repair and replacement to the Storm Water Management Facility.

2. Tufton will reimburse the City in an amount up to $1,000 per year for the cost of mowing and litter pick up at the Storm Water Management Facility. Other than the reimbursement in the preceding sentence, Tufton will not assume nor be responsible for any maintenance in connection with the Storm Water Management Facility, including, but not limited to, the retention pond.

EXHIBIT C

STIPULATION OF DISMISSAL

| | | |
|---|---|---|
| **TUFTON PROFESSIONAL BASEBALL LLC** | * | **IN THE** |
| | * | **CIRCUIT COURT** |
| **Plaintiff,** | * | **OF MARYLAND** |
| **v.** | * | **FOR** |
| **CITY OF ABERDEEN, MARYLAND** | * | **HARFORD COUNTY** |
| **Defendants.** | * | **Case No.: C-12-CV-18-000731** |

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## JOINT STIPULATION OF DISMISSAL WITHOUT PREJUDICE

Plaintiff Tufton Professional Baseball LLC ("Plaintiff") and Defendant City of Aberdeen, Maryland ("Defendant"), by and through their undersigned counsel, voluntarily stipulate and agree that the Complaint and Counterclaim in this case are dismissed without prejudice, each party to bear its own costs.

Dated: ____________, 2020

Respectfully submitted,

______________________________

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