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November 8, 2021

The Honorable Brian E. Frosh
Office of the Attorney General
200 St. Paul Place
Baltimore, MD 21202

Re: Request for Opinion on funding mandate of The Built to Learn Act of 2020 set forth in Md. Code Ann., Economic Development (“ED”) § 10-649; and Article XIX, § 1 of the State Constitution requiring the Governor to include in his annual budget certain sums for public education

Dear Attorney General Frosh:

The purpose of this letter is to request the Opinion of the Attorney General on behalf of the Maryland Stadium Authority (the “Authority”) regarding (i) whether the funding mandate set forth in ED § 10-649 for public school construction by the Authority can be reduced or re-allocated to another purpose by either the Governor or the General Assembly; (ii) whether the funding required by Article XIX, § 1 of the State Constitution (“Article XIX”) can be reduced by the Governor or the General Assembly, or be re-allocated for a purpose other than as set forth in Md. Code Ann., State Gov’t (“SG”) § 9-1A-30 (the “Education Trust Fund”); and (iii) what funding priority, if any, applies to the funds in the Education Trust Fund?

By way of background, the Built to Learn Act of 2020 (the “Act”) was enacted as Chapter 20 of the laws of 2020. Pursuant to Section 13 of the Act, its effective date of June 1, 2020 was contingent upon enactment of House Bill 1300 (cross-filed with Senate Bill 1000) and titled “Blueprint for Maryland’s Future – Implementation.” House Bill 1300 was vetoed by the Governor and the effective date of the Act was delayed until February 12, 2021, when the Governor’s veto was overridden and House Bill 1300 was enacted as Chapter 36 of the laws of 2021.

The Act authorizes the Authority to issue up to \$2.2 billion in taxable or tax-exempt bonds to pay for public school construction throughout the State. Bonds issued under the Act are secured by the Supplemental Public School Construction Financing Fund (the “Financing Fund”) established under ED § 10-649. ED § 10-649(g)(1) provides that “[i]n accordance with [SG] § 9-1A-30 ... the Comptroller shall deposit a portion of the money in the Education Trust Fund into the [Financing Fund].” ED § 10-649(g)(2) and (3) require that the Comptroller shall make equal semi-annual deposits of the following amounts on or before November 1 and May 1 of each year: (i) in FY 2022 - \$30 million; (ii) in FY 2023 - \$60 million; and (iii) in FY 2024 and each fiscal year thereafter - \$125 million. Pursuant to ED §10-650(c)(1), the allocation of the total bond proceeds of \$2.2 billion authorized by

ED § 10-628 (g)(1) represents the “State share of eligible public school construction or capital improvement costs as established by regulation in accordance with § 5–303 of the Education Article.”

Article XIX, §1(c)(1) and § 1(f), as amended and added by Chapter 357 of the Acts of 2018, requires the Governor’s budget submission to include as supplemental funding for prekindergarten through grade 12 in public schools the revenues from video lottery operating licenses throughout the State in not less than the following amounts: (i) for FY 2020 - \$125 million; (ii) for FY 2021 - \$250 million; (iii) for FY 2022 - \$375 million; and (iv) for FY 2023 and for each fiscal year thereafter, 100% of revenues raised for public education from video lottery operation licenses and any other commercial gaming revenues *dedicated to public education* (emphasis added). Eligible uses of supplemental funds include, among others, maintenance, renovation, or construction of public schools. (Article XIX, § 1(f)(2)(vi)). Supplemental funding shall be in addition to the State funding provided through the funding formulas established in the Bridge to Excellence Public Schools Act of 2002. “The General Assembly may from time to time enact laws not inconsistent with this provision” (Article XIX, § 1(g))

Pursuant to SG § 9-1A-30, “[t]here shall be credited to the Education Trust Fund all proceeds allocated to the Fund under [SG] § 9-1A-27....”SG § 9-1A-27 sets forth the distribution of video lottery terminal proceeds from each lottery facility. The percentage of proceeds allocated to the Education Trust Fund is determined by a number of factors such as the jurisdiction in which the video lottery facility is located, and years in operation. The Act also amended SG § 9-1A-30, including subsection (e), to reflect the requirements of the amendment to Article XIX, §1(f).

On October 6, 2021, the Authority posted its Preliminary Official Statement in connection with issuance of the first series of bonds under the Act (the “Bonds”).¹ In accordance with the terms of the Act, the security for the Bonds is identified as the Financing Fund; and the source of funds the Authority will rely upon to pay debt service on the Bonds shall be those monies deposited by the Comptroller from the Education Trust Fund into the Financing Fund. The Bond underwriter received numerous questions from potential investors regarding (i) the intersection of ED §10-649, Article XIX, § 1, SG § 9-1A-27, and SG § 9-1A-30 - and how the provisions of those laws may be amended by the General Assembly in such a way as to negatively affect funds available to pay debt service on the Bonds; (ii) the ability of the Governor and the General Assembly to reduce or eliminate the funding mandated under ED § 10-649; and (iii) whether the funding mandate under ED § 10-649 amounts to a funding priority of funds available in the Education Trust Fund.

To compare and contrast, the Baltimore City Public Schools and Revitalization Act of 2013, codified in ED, Title 10, subtitle 6, authorized the Authority to issue up to \$1.1

¹ The Bonds closed on November 6, 2021. This was the first of several anticipated bond issues under the Act to fund public school construction throughout the State.

billion in taxable or tax-exempt bonds to construct public school facilities in Baltimore City. The Budget Reconciliation and Financing Act of 2017 (the “BRFA”) diverted \$4.6 million due from the State’s General fund to the Baltimore City Public School Construction Financing Fund (the “BCPS Fund”) established under ED § 10-656 directly to the Baltimore City Board of School Commissioners. The \$4.6 million was a portion of the \$20 million due to the Financing Fund pursuant to ED § 10-645(h). While the BRFA created an immediate and ongoing obligation of the Authority to disclose the reduction of funding to current and future investors, unlike the Act, the BCPS Fund had the benefit of several sources of funding for debt service, an income tax backstop (where the Comptroller can withhold income tax payments due to Baltimore City if necessary to pay debt service); and at least one prior bond issue to show the history of deposits, and existing balances that were more than adequate to pay debt service. However, the sole source of funding provided for under the Act is (currently) proceeds from video lottery terminals and table games – proceeds which are (a) subject to priority distribution to others under SG § 9-1A-27, and (b) subject to the requirement that expenditures each year from the Education Trust Fund shall be made each fiscal year in accordance with the State budget.

The Authority’s role is to issue bonds in accordance with its enabling statute and the Act. However, in order to do so it is necessary to for the Authority to interpret and attest in disclosure documents as to the impact of SG § 9-1A-27, SG § 9-1A-30, and Article XIX, §1 on the authority of the Governor and the General Assembly with respect to the laws, and the potential risks to bondholders as a result of actions taken by the Governor or the General Assembly with respect to funding.

Accordingly, the Authority requests the Opinion of the Attorney General as to the following: (i) whether the funding mandated in ED § 10-649 can be reduced or re-allocated to another purpose by either the Governor or the General Assembly; (ii) whether the funding required by Article XIX, §1 of the State Constitution can be reduced by the Governor or the General Assembly, or be re-allocated for a purpose other than as set forth in SG § 9-1A-30; and (iii) what funding priority, if any, applies to the funds in the Education Trust Fund?

Included herewith is a copy of the Preliminary Official Statement, and contact information for David Raith, CFO for the Authority. Thank you for your assistance with this matter.

Sincerely,



Michael J Frenz
Executive Director

Enclosure