

Contract No. ME 300-1028

FC # 4100036585



CONTRACT BETWEEN

COMMONWEALTH OF PENNSYLVANIA
(acting through the OFFICE OF THE BUDGET)

AND

Multi Purpose Stadium Authority

Vendor

REDEVELOPMENT ASSISTANCE GRANT AGREEMENT

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CONTRACT BETWEEN
COMMONWEALTH OF PENNSYLVANIA
(acting through the OFFICE OF THE BUDGET)

AND

Multi Purpose Stadium Authority

This CONTRACT is entered into by and between the Commonwealth of Pennsylvania (hereinafter referred to as the "COMMONWEALTH"), acting through the Office of the Budget (hereinafter referred to as "OB"), and the Multi Purpose Stadium Authority (hereinafter referred to as the "GRANTEE").

WHEREAS, the COMMONWEALTH, through OB, is authorized to approve for funding projects which have been listed in a Capital Budget Project Authorization Act as Redevelopment Assistance Projects and which meet the standards established in the Capital Facilities Debt Enabling Act, Act of February 9, 1999 (P.L. ___, No. 1) (hereinafter referred to as "CFDEA"); and

WHEREAS, the GRANTEE has requested approval for the project known as the Lackawanna County Baseball Stadium (hereinafter referred to as the "PROJECT")

WHEREAS, the GRANTEE is desirous of obtaining funding, and is willing to comply with all applicable laws and requirements of OB relevant to the PROJECT; and

WHEREAS, OB has determined that the PROJECT meets the requirements of the CFDEA and has approved the PROJECT for funding.

NOW, THEREFORE, in consideration of the foregoing, the parties, intending to be legally bound, agree as follows:

**ARTICLE 1
EFFECTIVE DATES**

This CONTRACT will commence on the date of final execution by all parties hereto and will terminate on December 31, 2015, unless terminated earlier pursuant to the provisions of Article 13 hereof.

**ARTICLE 2
AMOUNT OF CONTRACT AND DISBURSEMENTS**

A. This CONTRACT shall be in an amount up to \$20,000,000. Payments to the GRANTEE will be made periodically based upon the funding schedule attached hereto as Appendix C and approved by OB during the application phase.

B. The funding of the full amount of this CONTRACT is conditioned upon the GRANTEE complying with all statutory and program requirements throughout the construction and funding phase including, but not limited to, the requirement to furnish qualified matching funds in an amount at least equivalent to the amounts funded under this CONTRACT and the requirement to complete the Project within the term of this CONTRACT.

C. The value of any real estate to be utilized by the GRANTEE toward meeting the requirement for matching funds will be determined by OB on the basis of an appraisal performed by a certified appraiser at GRANTEE's expense. Additional statutory and programmatic requirements relating to the PROJECT are listed in the Project Application and related documents, which are attached hereto as Appendices A, B and C and are hereby incorporated in full into this CONTRACT.

D. If, at any time prior to final completion of the PROJECT, OB determines that the reasonably estimated cost to complete the PROJECT exceeds the amount of committed funds that GRANTEE has demonstrated to OB remain available for such purpose. OB may suspend the funding of the CONTRACT, and GRANTEE shall pay all PROJECT costs without reimbursement from the CONTRACT, until the remaining reasonably estimated cost to complete the PROJECT

does not exceed the remaining amount of committed funds that GRANTEE has demonstrated to OB are available for such purpose.

ARTICLE 3 PROJECT ACTIVITIES

GRANTEE agrees that the funds granted by this CONTRACT, or as much as may be necessary, will be used solely in furtherance of the activities of the PROJECT, as described in Appendices A, B and C, in accordance with the terms of this CONTRACT and the approved Project Application. GRANTEE covenants and agrees that it shall fully complete the Project within the term of this CONTRACT.

In the event the GRANTEE has not fully completed the Project on or before the termination date referenced in Article 1, the GRANTEE shall immediately thereafter return to the Office of the Budget any and all funds previously paid to GRANTEE under this CONTRACT. The provisions of this Article 3 shall survive the expiration or earlier termination of this CONTRACT.

ARTICLE 4 SUBGRANTEES AND SUBCONTRACTORS

GRANTEE shall not enter into any subgrant or subcontract of this CONTRACT without the prior written consent of OB, which consent may be granted or withheld at OB's discretion. GRANTEE agrees to require, in any such subgrant or subcontract approved by OB, that any subgrantees or subcontractors comply with all of the applicable provisions of this CONTRACT and make the same representations and warranties as to itself as made herein by GRANTEE, except to the extent any such provisions are waived by OB in its written consent. Such subgrant agreements or subcontracts shall also provide OB with the right but not the obligation to enforce the terms thereof against the subgrantee or subcontractor on behalf of the GRANTEE.

**ARTICLE 5
RECORDS AND AUDITS**

A. GRANTEE will maintain books, records, documents, correspondence, and other data described in Article 15, along with any other evidence pertaining to the costs and expenses of this CONTRACT (hereinafter referred to collectively as "the records"), to the extent and in such detail as will properly reflect all costs, direct and operating, of acquisition of real estate and of labor, materials, equipment, supplies, and services, and other costs and expenses of whatever nature for which funding has been provided under the provisions of this CONTRACT. The books and records required under this Article shall be maintained in accordance with generally accepted accounting principles. GRANTEE agrees to require any permitted subcontractors, subgrantees, assigns, or agents to comply with the record keeping and retention requirements of this Article.

B. GRANTEE will retain the records and make them available for a period ending the later of (i) seven years after final payment is made by GRANTEE with funds awarded under this CONTRACT, or (ii) seven years after the CONTRACT has expired pursuant to the provisions of Article 1, hereof, or (iii) seven years after the effective date of any termination of this CONTRACT, pursuant to the terms of Article 13 hereof.

C. The Commonwealth, including but not limited to OB, the Office of Inspector General, and the Office of the Auditor General, or any of their duly-authorized representatives, shall have access at all times during the term hereof and the period set forth in subsection B above to the records of GRANTEE or its subcontractors, subgrantees, assigns, or agents pertaining to work performed under this CONTRACT, and to the PROJECT site, for the purpose of reviewing and making audits of financial transactions, determining compliance with contract terms and program requirements, and evaluating contract performance. When COMMONWEALTH representatives have access to such records, they shall be authorized to examine such records and to make excerpts, copies, and transcripts of such records.

D. In accordance with the CFDEA, OB or its designated agent shall perform a final close-out audit for the PROJECT. The GRANTEE agrees that, if the final audit of the CONTRACT discloses that the full amount of the CONTRACT was not required to complete the PROJECT or that amounts were expended on ineligible costs, the unused portion of the contract amount or the portion of the CONTRACT funds expended on ineligible items shall be repaid by the GRANTEE to the COMMONWEALTH with interest, unless otherwise directed in writing by OB.

E. If the PROJECT funded under this CONTRACT by OB is the recipient of federal grants or loans, the GRANTEE shall submit to OB copies of any and all audits performed on such federal assistance to the PROJECT by federal or non-federal auditors, including private auditors. Copies of such audits shall be submitted to OB within a reasonable period of time, not to exceed 30 days after receipt by the GRANTEE of its copy of the audit(s).

ARTICLE 6 REVIEW OF PROJECT ACTIVITIES/NOTIFICATION

OB or its authorized representatives will monitor and/or audit the PROJECT and shall have access to the PROJECT site and all information or documents relating to PROJECT activities throughout the course of the funding and/or construction phases of the PROJECT. The Grantee shall promptly notify OB of any violation of the terms of this CONTRACT or upon the occurrence of any event which shall have any material adverse effect on the Grantee or the prospect for the completion of the Project.

ARTICLE 7 INSURANCE AND INDEMNIFICATION

A. The GRANTEE shall perform the activities under the CONTRACT as an independent contractor. It shall also provide Worker's Compensation Insurance where the same is required, and shall accept full responsibility for the payment of premiums for Worker's Compensation Insurance and Social Security, as well as income tax withholding and any other

taxes or payroll deductions required by law for its employees who are performing services specified by this CONTRACT.

B. The GRANTEE shall hold the COMMONWEALTH harmless from, and indemnify the COMMONWEALTH against, any and all claims, liabilities, demands, and actions based upon or arising out of any activities performed by the GRANTEE, its employees, agents, assigns, officers, or subcontractors under this CONTRACT, including claims arising under the Eminent Domain Code, and shall defend any and all actions brought against the COMMONWEALTH based upon any such claims or demands.

C. Without limiting the foregoing obligations, the GRANTEE will provide and maintain comprehensive general liability and property damage insurance in the minimum amount of \$250,000.00 per person for injury and death in a single occurrence; \$1,000,000.00 per occurrence for injury or death of more than one person in a single occurrence; and \$500,000.00 for a single occurrence of property damage, and which shall be endorsed to protect the COMMONWEALTH from claims of bodily injury and of property damage arising out of any services or activities performed by the GRANTEE or its employees, agents, officers, assigns, or subcontractors under this CONTRACT, including claims for damages by business invitees and all other claims for damage to property as a direct or indirect result of the execution of this PROJECT.

D. The COMMONWEALTH shall be listed on the above insurance policies as an additional insured. Such policies shall not include any provision limiting the existing sovereign immunity of the COMMONWEALTH or its agents or employees. GRANTEE certifies, by signing this CONTRACT, that it has the insurance coverage required by this Article; that such coverage will be in effect for the duration of this CONTRACT; and that the policies will not be cancelled or changed unless at least 30 days prior notice has been given to OB. Upon request, the GRANTEE shall furnish proof of insurance as required by this section to OB.

**ARTICLE 8
TAX-EXEMPT RESPONSIBILITIES OF GRANTEE**

As the PROJECT is funded from the proceeds of tax-exempt debt of the COMMONWEALTH:

A. The GRANTEE hereby specifically acknowledges that such debt proceeds are used in a "private business use" for the purposes of federal income tax laws, when

1. the GRANTEE expends such debt proceeds on the PROJECT; and
2. the PROJECT is used (other than through use as a member of the general public), directly or indirectly, by an entity or entities that are not governmental units, such use occurring as a result of: a. ownership of the PROJECT; b. actual use or management of the PROJECT; or c. any other arrangement such as a take-or-pay or other type of output contract.

B. In order that the COMMONWEALTH'S debt issued to finance the PROJECT shall retain its tax-exempt status under federal income tax law, the GRANTEE:

1. shall not directly or indirectly require or permit any payment representing a charge for the use of the COMMONWEALTH'S debt proceeds or that portion of the PROJECT funded from such COMMONWEALTH debt proceeds to be made directly or indirectly, by any person or persons treated under the Internal Revenue Code of 1986 as using the PROJECT for a private business use; however, payments by a nongovernmental user for direct operating expenses (except rent) are not prohibited; and

2. shall not sell, transfer or convey the PROJECT to a nongovernmental entity for a consideration whose value exceeds the fair market value of the PROJECT less the amount of this CONTRACT and any amendments thereto, and all such determinations and calculations of the fair market value of the PROJECT and any and all considerations received with respect to the sale, transfer, and conveyance of the PROJECT shall be retained in the records of the PROJECT by the GRANTEE; and

3. shall not make or finance any loans or leases to any persons or entities if such loans or leases are attributable to or secured by proceeds of tax-exempt COMMONWEALTH debt.

4. shall take any and all actions necessary to maintain the tax-exempt status of such debt and refrain from taking any action which would negatively affect the tax exempt status of such debt.

5. shall enter into such agreements and provide such certificates as OB may require to maintain and/or evidence the tax exempt status of such debt.

C. In the event of any breach of the provisions of this Article 8 by GRANTEE, GRANTEE shall immediately repay to the Commonwealth any and all amounts paid by the Commonwealth to GRANTEE under this CONTRACT. The provisions of this Article 8 shall survive the expiration or earlier termination of this CONTRACT and shall remain in effect until the earlier of (i) seventy (70) years from such date of expiration or termination or (ii) the date upon which all bond indebtedness used to finance the payments made hereunder is fully paid and discharged by the Commonwealth.

ARTICLE 9 FISCAL DUTIES OF THE GRANTEE

A. To the extent that funds awarded under this CONTRACT represent the proceeds of the sale of tax-exempt debt of the COMMONWEALTH, and in order to ensure continued compliance with the requirements of the Internal Revenue Code and applicable regulations, investment of funds awarded under this CONTRACT may be made in approved instruments exempt from tax under the Internal Revenue Code, if such instruments are rated in one of the two highest categories for such debt by either Moody's or Standards & Poor's rating services.

B. Except where paragraph A above is applicable, the funds paid to the GRANTEE in accordance with this CONTRACT shall be used immediately to pay incurred

expenses or deposited in a bank or other financial institution approved by OB in a separate and specific PROJECT expenditures account, the same being insured to the extent applicable by FDIC. These accounts may not be taxable interest-bearing accounts, however, unless the prior approval of OB is obtained.

C. Any interest, other income, or accumulations earned on funds awarded pursuant to this CONTRACT shall be returned to OB within 45 days after the end of each calendar quarter.

D. In the event of any breach of the provisions of this Article 9 by GRANTEE, GRANTEE shall immediately repay to the Commonwealth any and all amounts paid by the Commonwealth to GRANTEE under this CONTRACT. The provisions of this Article 9 shall survive the expiration or earlier termination of this CONTRACT and shall remain in effect until the earlier of (i) seventy (70) years from such date of expiration or termination or (ii) the date upon which any and all bond indebtedness used to finance the payments made hereunder is fully paid and discharged by the Commonwealth.

ARTICLE 10 FIDELITY BOND

A. The GRANTEE shall procure and furnish evidence to OB of fidelity bonds with coverage to be maintained under the administrative title of the position in amounts and for such positions as are reasonably determined by OB.

B. No person shall be bonded under more than one position. An employee who performs more than one function requiring bonding shall be bonded under the position requiring the larger coverage.

ARTICLE 11 INTEREST OF GRANTEE

The GRANTEE covenants that it presently has no interest, and shall not acquire any interest, direct or indirect (as defined in the Public Official and Employee Ethics Act, 65

Pa.C.S.A. Sections 1101 - 1113) which would conflict in any manner or degree with the performance of its activities hereunder. The GRANTEE further covenants that, in the performance of this CONTRACT, it will not knowingly employ, or contract for services from, any person having any such interest.

**ARTICLE 12
INTEREST OF OFFICERS AND EMPLOYEES OF THE COMMONWEALTH AND OTHERS**

No officer, employee, or elected official of the COMMONWEALTH, and no officer, employee, or elected official of the GRANTEE, who exercises any function or responsibility under this CONTRACT shall participate in any decision relating to this CONTRACT which affects his/her personal interest or the interest of any corporation, partnership, or association in which he/she is directly or indirectly interested, nor shall any such officer, elected official, or employee of the COMMONWEALTH or GRANTEE have any interest, direct or indirect, in this CONTRACT, or the proceeds thereof.

**ARTICLE 13
TERMINATION AND AVAILABILITY OF FUNDS**

A. Termination for Default: OB shall have the right to withhold the funding granted by this CONTRACT and terminate this CONTRACT, in whole or in part, by giving not less than 30 days' prior written notice to the GRANTEE specifying the effective date of termination. Such notice may be given for any of the following reasons:

1. Failure of the GRANTEE to fulfill in a timely and proper manner its obligations under this CONTRACT.
2. Failure of Grantee to remain in compliance with all terms of this CONTRACT or the documents approved during the PROJECT application phase, including, without limitation, that all representations and warranties contained in this CONTRACT are and remain true and correct.
3. Violation of laws applicable to implementation of the PROJECT contemplated by this CONTRACT.

4. Misuse of funds, gross mismanagement, criminal activity, or malfeasance in the implementation of this CONTRACT.

In such event, all PROJECT records, unused grant monies, and such amounts as may have been paid by the COMMONWEALTH pursuant to the terms of this CONTRACT shall be returned to the COMMONWEALTH, with any accrued interest.

B. Right to Cure: In the event that OB gives notice of intent to withhold funding, or terminate this CONTRACT pursuant to section A of this Article, the GRANTEE shall have the right to cure its default within 30 days of receipt of notice of termination if such default is capable of being cured.

C. Availability of Funds: COMMONWEALTH obligations under this CONTRACT are conditioned upon and payable solely from available funds appropriated by the General Assembly for the purposes of this CONTRACT, are contingent upon the verification by OB or its designee of the GRANTEE's matching funds for the PROJECT, and are to be paid out of the proceeds of the sale of bonds of the COMMONWEALTH at such times as OB shall determine to be appropriate in its sole discretion.

D. Preservation of Rights and Remedies: Any action under this Article will not limit or deprive the COMMONWEALTH from exercising any other rights and remedies concerning this CONTRACT that it has under law or in equity.

ARTICLE 14 TEMPORARY SUSPENSION OF PROJECT

A. The GRANTEE shall suspend all or any part of its activities utilizing funds granted by OB at any time during the period covered by this CONTRACT upon receiving written notice from OB. OB may give notice to suspend for breaches of this CONTRACT by GRANTEE, violations of law, audit exceptions, misuse of funds, gross mismanagement, malfeasance, or criminal activity.

B. During the term of suspension, OB and the GRANTEE shall retain and hold any and all funds previously approved for application to the activities. During this period, all such funds held by the GRANTEE shall be placed in an FDIC insured PROJECT expenditures account. The GRANTEE may not expend any such funds during the period that this CONTRACT is suspended, except pursuant to order of a court of competent jurisdiction.

C. The GRANTEE shall have the right to cure, within a reasonable period of time (as determined by OB in its sole discretion), any default or other circumstance that is the basis for suspension of this CONTRACT.

ARTICLE 15 RIGHTS IN DATA, COPYRIGHTS, AND DISCLOSURE

A. Rights in Data: Data submitted to and accepted by OB under this CONTRACT shall be the property of the COMMONWEALTH, and the COMMONWEALTH shall have full right to use such data for any official purpose in whatever manner deemed desirable and appropriate, including making it available to the general public. Such use shall be without any additional payment to or approval of the GRANTEE.

B. Copyright: The GRANTEE relinquishes any and all copyrights and/or all copyright rights, and/or privileges to data developed under this CONTRACT. The GRANTEE shall not include in the data submitted any copyrighted matter, without the written approval of OB, unless the GRANTEE provides OB with written permission of the copyright owner for OB to use such copyrighted matter in the manner provided for in this Article.

C. The term, "data," as used in this CONTRACT, includes written reports, studies, drawings, or other graphic, electronic, chemical, or mechanical representations, and work of any similar nature which are required to be delivered under this CONTRACT.

ARTICLE 16
NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE (Grants)

The Grantee agrees:

A. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the grant agreement or any subgrant agreement, contract, or subcontract, the Grantee, a subgrantee, a contractor, a subcontractor, or any person acting on behalf of the Grantee shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

B. The Grantee, any subgrantee, contractor or any subcontractor or any person on their behalf shall not in any manner discriminate against or intimidate any of its employees on account of gender, race, creed, or color.

C. The Grantee, any subgrantee, contractor or any subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

D. The Grantee, any subgrantee, contractor or any subcontractor shall not discriminate by reason of gender, race, creed, or color against any subgrantee, contractor, subcontractor or supplier who is qualified to perform the work to which the contracts relates.

E. The Grantee, any subgrantee, any contractor or any subcontractor shall, within the time periods requested by the Commonwealth, furnish all necessary employment documents and records and permit access to their books, records, and accounts by the granting agency and the Bureau of Minority and Women Business Opportunities (BMWBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. Within thirty (30) days after award of any grant, the Grantee shall be required to complete, sign and submit Form STD-21, the "Initial Contract Compliance Data" form. Grantees who have fewer than five employees or whose employees are all from the same family or who

have completed the STD-21 form within the past 12 months may, within the 15 days, request an exemption from the STD-21 form from the granting agency.

F. The Grantee, any subgrantee, contractor or any subcontractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subgrant agreement, contract or subcontract so that those provisions applicable to subgrantees, contractors or subcontractors will be binding upon each subgrantee, contractor or subcontractor.

G. The Commonwealth may cancel or terminate the grant agreement and all money due or to become due under the grant agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the granting agency may proceed with debarment or suspension and may place the Grantee, subgrantee, contractor, or subcontractor in the Contractor Responsibility File.

ARTICLE 17 ASSIGNMENT, TRANSFER, OR COLLATERAL USE

The GRANTEE shall not assign any interest in this CONTRACT, and shall not transfer any interest in this CONTRACT by novation or assignment without the prior written consent of OB which consent may be granted or withheld at OB's discretion. Approval of such assignment shall not release or relieve GRANTEE from any liability or obligation to perform under this CONTRACT.

ARTICLE 18 COMPLIANCE WITH APPLICABLE LAWS

GRANTEE agrees for itself, its agents, successors, and assigns that it will comply with all laws, codes, ordinances, and regulations, local, state, and federal, applicable to the implementation of the PROJECT contemplated by this CONTRACT.

**ARTICLE 19
GRANTEE RESPONSIBILITY**

A. The GRANTEE certifies, for itself and all its subgrantees, that as of the date of its execution of this CONTRACT, that neither the GRANTEE, nor any subgrantees, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the GRANTEE cannot so certify, then it agrees to submit, with this CONTRACT, a written explanation of why such certification cannot be made.

B. The GRANTEE also certifies, that as of the date of its execution of this CONTRACT, it has no tax liabilities or other Commonwealth obligations.

C. The GRANTEE's obligations pursuant to these provisions are ongoing from and after the effective date of this CONTRACT through the termination date hereof. Accordingly, the GRANTEE shall have an obligation to inform the Commonwealth if, at any time during the term of the CONTRACT, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subgrantees are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

D. The failure of the GRANTEE to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default under this CONTRACT.

E. The GRANTEE agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the GRANTEE's compliance with the terms of this or any other agreement between the GRANTEE and the Commonwealth, which results in the suspension or debarment of the GRANTEE. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The GRANTEE shall not be responsible for investigative costs for investigations that do not result in the GRANTEE's suspension or debarment.

F. The GRANTEE may obtain a current list of suspended and debarred Commonwealth Grantees by either searching the internet at <http://www.dgs.state.pa.us/debarment.htm> or contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No. (717) 783-6472 / FAX No. (717) 787-9138

**ARTICLE 20
OFFSET CLAUSE**

The GRANTEE agrees that the COMMONWEALTH may set off the amount of any state tax liability or other debt of the GRANTEE or its subsidiaries that is owed to the COMMONWEALTH and not being contested on appeal against any payments due the GRANTEE under this or any other CONTRACT with the COMMONWEALTH.

**ARTICLE 21
NONWAIVER OF REMEDIES**

No delay or failure on the part of OB in exercising any right, power or privilege hereunder shall affect such right, power or privilege; nor shall any single or partial exercise thereof or any abandonment, waiver, or discontinuance of steps to enforce such a right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies of OB hereunder are cumulative and concurrent and not exclusive of any rights or remedies which it might otherwise have. OB shall have the right at all times to enforce the provisions of this CONTRACT in accordance with the terms hereof notwithstanding any conduct or custom on the part of OB in refraining from so doing at any time or times. The failure of the OB at any time or times to enforce its rights under such provisions, in accordance with the same, shall not be construed as having created a custom in any way or manner contrary to specific provisions of this CONTRACT or as having in any way or manner modified or waived the same.

**ARTICLE 22
ABSENCE OF RIGHTS IN THIRD PARTIES**

No provision of this CONTRACT shall be construed in any manner so as to create any rights in third parties not party to this CONTRACT. It shall be interpreted solely to define specific duties and responsibilities between OB and the GRANTEE, and shall not provide any basis for claims of any other individual, partnership, corporation, organization, or municipal entity.

**ARTICLE 23
INTEGRATION CLAUSE**

This contract and attachments herelo constitute the entire agreement between the parties. No agent, representative, employee or officer of either the Commonwealth or the GRANTEE has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with this Contract, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of this contract. Except as provided in this Article 23, no modifications, alterations, changes, or waiver to this contract or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties. All such amendments or modifications will be made using the appropriate Commonwealth form. Notwithstanding the foregoing, revisions to the time for satisfaction of the Special Conditions, the PROJECT proposal, CONTRACT budget, funding schedule and other provisions of Appendices A and B not affecting the amount of the funding, may be proposed by the GRANTEE and approved and made a part hereof upon written notification by OB's Secretary or his/her authorized designee without the necessity of an amendment.

**ARTICLE 24
NAME AND ADDRESS OF PROJECT OFFICER AND NOTICES**

A. The GRANTEE shall designate a Project Officer who shall be its authorized representative in all matters relating to this CONTRACT.

B. The GRANTEE's Project Officer shall be its chief administrative officer, or his/her designee.

C. Any notices required to be given to the GRANTEE pursuant to this CONTRACT may be given to the Project Officer. Any notices required to be given to OB may be given to the address below. Such notices shall be given in writing and shall be delivered by hand, by registered or certified mail, return receipt requested, or by some other appropriate method of express delivery, addressed as follows:

Project Officer

Frank Tunis
Multi Purpose Stadium Authority of Lackawanna County
200 Adams Ave., 6th Fl.
Scranton, PA 18503

Office of the Budget

Mr. Richard Dreher
Director
Bureau of Revenue, Cash Flow & Debt
Office of the Budget
Verizon Tower, 7th Floor
303 Walnut Street
Harrisburg, Pennsylvania 17101-1825

If notice is delivered by hand, it is to be considered as given on the date of delivery; otherwise, it will be considered as given on the date of receipt, as evidenced by the receipt for delivery. Either party may change its notice address or the name of its Project Officer and/or notice designee, as applicable and appropriate, by giving written notice of such change in accordance with the provisions of this Article.

**ARTICLE 25
ACKNOWLEDGEMENT OF COMMONWEALTH FINANCIAL ASSISTANCE**

COMMONWEALTH financial assistance in this PROJECT will be acknowledged by signs erected in the PROJECT area as soon as possible after the effective date of this CONTRACT stating Financial Assistance provided by the Commonwealth of Pennsylvania, Honorable [name of current governor], Governor or in such other manner designated by OB. Any publication concerning the PROJECT shall also acknowledge COMMONWEALTH financial assistance in the same manner. Acknowledgement of COMMONWEALTH financial assistance may be combined with an acknowledgement of other funding sources on PROJECT signs and in PROJECT publications, provided that the acknowledgement of Commonwealth assistance shall be listed first and no less prominently than any other source.

**ARTICLE 26
GRANTEE INTEGRITY PROVISIONS**

It is essential that those who seek to contract with the Commonwealth of Pennsylvania ("Commonwealth") observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth procurement process.

In furtherance of this policy, GRANTEE agrees to the following:

A. GRANTEE shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to GRANTEE or that govern contracting with the Commonwealth.

B. GRANTEE shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to GRANTEE employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all GRANTEE employees.

C. GRANTEE, its affiliates, agents and employees shall not influence, or attempt to influence, any Commonwealth employee to breach the standards of ethical conduct for Commonwealth employees set forth in the *Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 et seq.*; the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*; and the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.*, or to breach any other state or federal law or regulation.

D. GRANTEE, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person at the direction or request of any Commonwealth official or employee.

E. GRANTEE, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person, the acceptance of which would violate the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.* or any statute, regulation, statement of policy, management directive or any other published standard of the Commonwealth.

F. GRANTEE, its affiliates, agents and employees shall not, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any Commonwealth official or employee.

G. GRANTEE, its affiliates, agents, employees, or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the contract, except as provided in the contract.

H. GRANTEE shall not have a financial interest in any other GRANTEE, subgrantee, or supplier providing services, labor, or material on this project, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to GRANTEE's financial interest prior to Commonwealth execution of the contract. GRANTEE shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than GRANTEE's submission of the contract signed by GRANTEE.

I. GRANTEE, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, GRANTEE under this contract without the prior written approval of the Commonwealth, except as required by the *Pennsylvania Right-to-Know Law*, 65 P.S. §§ 67.101-3104, or other applicable law or as otherwise provided in this contract. Any information, documents, reports, data, or records secured by GRANTEE from the Commonwealth or a third party in connection with the performance of this contract shall be kept confidential unless disclosure of such information is:

1. Approved in writing by the Commonwealth prior to its disclosure; or
2. Directed by a court or other tribunal of competent jurisdiction unless the contract requires prior Commonwealth approval; or
3. Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
4. Necessary for purposes of GRANTEE's internal assessment and review; or
5. Deemed necessary by GRANTEE in any action to enforce the provisions of this contract or to defend or prosecute claims by or against parties other than the Commonwealth; or
6. Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain; or
7. Otherwise required by law.

J. GRANTEE certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has not been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the Commonwealth agency contracting officer in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:

1. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

2. Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by GRANTEE or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:

(a) obtaining;

(b) attempting to obtain; or

(c) performing a public contract or subcontract.

GRANTEE's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.

3. Violation of federal or state antitrust statutes.

4. Violation of any federal or state law regulating campaign contributions.

5. Violation of any federal or state environmental law.

6. Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.

7. Violation of the *Act of June 2, 1915 [P.L.736, No. 338]*, known as the *Workers' Compensation Act, 77 P.S. 1 et seq.*

8. Violation of any federal or state law prohibiting discrimination in employment.

9. Debarment by any agency or department of the federal government or by any other state.

10. Any other crime involving moral turpitude or business honesty or integrity.

GRANTEE acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause upon such notification or when the Commonwealth otherwise learns that GRANTEE has been officially notified, charged, or convicted.

K. If this contract was awarded to GRANTEE on a non-bid basis, GRANTEE must, (as required by *Section 1641 of the Pennsylvania Election Code*) file a report of political contributions with the Secretary of the Commonwealth on or before February 15 of the next calendar year. The report must include an itemized list of all political contributions known to

GRANTEE by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:

1. Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family when the contributions exceed an aggregate of one thousand dollars (\$1,000) by any individual during the preceding year; or

2. Any employee or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

To obtain a copy of the reporting form, GRANTEE shall contact the Bureau of Commissions, Elections and Legislation, Division of Campaign Finance and Lobbying Disclosure, Room 210, North Office Building, Harrisburg, PA 17120.

L. GRANTEE shall comply with requirements of the *Lobbying Disclosure Act, 65 Pa.C.S. § 13A01 et seq.*, and the regulations promulgated pursuant to that law. GRANTEE employee activities prior to or outside of formal Commonwealth procurement communication protocol are considered lobbying and subjects the GRANTEE employees to the registration and reporting requirements of the law. Actions by outside lobbyists on GRANTEE's behalf, no matter the procurement stage, are not exempt and must be reported.

M. When GRANTEE has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, GRANTEE shall immediately notify the Commonwealth contracting officer or Commonwealth Inspector General in writing.

N. GRANTEE, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these GRANTEE integrity provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract.

O. GRANTEE shall cooperate with the Office of Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged GRANTEE non-compliance with these provisions. GRANTEE agrees to make identified GRANTEE employees available for interviews at reasonable times and places. GRANTEE, upon the inquiry or request of the Office of Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to GRANTEE's integrity and compliance with these provisions. Such information may include, but shall not be limited to, GRANTEE's business or financial records, documents or files of any type or form that refers to or concern this contract.

P. For violation of any of these GRANTEE Integrity Provisions, the Commonwealth may terminate this and any other contract with GRANTEE, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining another GRANTEE to complete performance under this contract, and debar and suspend GRANTEE from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

Q. For purposes of these GRANTEE Integrity Provisions, the following terms shall have the meanings found in this Paragraph 17.

1. "Confidential information" means information that a) is not already in the public domain; b) is not available to the public upon request; c) is not or does not become generally known to GRANTEE from a third party without an obligation to maintain its confidentiality; d) has not become generally known to the public through an act or omission of GRANTEE; or e) has not been independently developed by GRANTEE without the use of confidential information of the Commonwealth.

2. "Consent" means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing,

by pre-qualification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this contract.

3. "GRANTEE" means the individual or entity that has entered into this contract with the Commonwealth, including those directors, officers, partners, managers, and owners having more than a five percent interest in GRANTEE.

4. "Financial interest" means:

(a) Ownership of more than a five percent interest in any business; or

(b) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.

5. "Gratuity" means tendering, giving or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor's Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.

6. "Immediate family" means a spouse and any unemancipated child.

7. "Non-bid basis" means a contract awarded or executed by the Commonwealth with GRANTEE without seeking bids or proposals from any other potential bidder or offeror.

8. "Political contribution" means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

**ARTICLE 27
PUBLIC WORKS CONSTRUCTION CONTRACTS**

In consideration of the funds awarded and activities funded under this CONTRACT which involve construction, reconstruction, alteration, repair, improvement, or maintenance of a building, structure, or improvement ("the Work"), the GRANTEE agrees to perform in accordance with the following:

A. Steel Products Procurement Act. In the performance of any contract awarded for Work, the contractor, subcontractors, materialmen, or suppliers shall use only steel products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed, or processed by a combination of two or more of such operations, from steel made in the United States by the open hearth, basic oxygen, electric furnace, Bessemer, or other steel-making process. Steel products include not only cast iron products, but also machinery and equipment listed in United States Department of Commerce Standard Industrial Classifications 25 (furniture and fixtures), 35 (machinery, except electrical), and 37 (transportation equipment), and made of, fabricated from, or containing, steel components. If a product contains both foreign and United States steel, it shall be determined to be a United States steel product only if at least 75 percent of the cost of the articles, materials, and supplies have been mined, produced, or manufactured, as the case may be, in the United States. Transportation equipment shall be determined to be a United States steel product only if it complies with Section 165 of P.L. 97-424 (96 Stat. 2136).

When unidentified steel products are supplied under a contract for Work, before any payment will be made, the contractor must provide documentation including, but not limited to, invoices, bills of lading, and mill certification that the steel was melted and manufactured in the United States. If a steel product is identifiable from its face, the contractor must submit certification which satisfies the using agency that the contractor has fully complied with this provision. OB shall not provide for or make any payments to any person who has not complied with the Steel Products Procurement Act (hereinafter referred to as the "SPPA"). Any

such payments made to any person by OB which should not have been made as a result of the SPPA shall be recoverable directly from the contractor, subcontractor, manufacturer, or supplier who did not comply with the SPPA.

In addition to the withholding of payments, any person who willfully violates any of the provisions of the SPPA shall be prohibited from submitting any bids to any public agency for a period of five years from the date of the determination that a violation has occurred. In the event the person who violates the provisions of the SPPA is a subcontractor, manufacturer, or supplier, such person shall be prohibited from performing any work for, or supplying any materials to, a public agency for a period of five years from the date of the determination that a violation has occurred.

The GRANTEE shall include the provisions of the SPPA in every subcontract and supply contract so that the provisions of the SPPA shall be binding upon each subcontractor and supplier.

B. Trade Practices Act. In accordance with the *Trade Practices Act of July 23, 1968, P.L. 686 (71 P.S. § 773.101 et seq.)*, the GRANTEE cannot and shall not use or permit to be used in the Work any aluminum or steel products made in a foreign country which is listed below as a foreign country which discriminates against aluminum or steel products manufactured in Pennsylvania. The countries of Argentina, Brazil, South Korea, and Spain have been found to discriminate against certain products manufactured in Pennsylvania. Therefore, the purchase or use of those countries' products, as listed below, is not permitted:

1. Argentina: carbon steel wire rod and cold-rolled carbon steel sheet.
2. Brazil: welded carbon steel pipes and tubes; carbon steel wire rod; tool steel; certain stainless steel products, including hot-rolled stainless steel bar; stainless steel wire rod and cold-formed stainless steel bar; prestressed concrete steel wire strand; hot-rolled carbon steel plate in coil; hot-rolled carbon steel sheet; and cold-rolled carbon steel sheet.
3. South Korea: welded carbon steel pipes and tubes; hot-rolled carbon steel plate; hot-rolled carbon steel sheet; and galvanized steel sheet.

4. Spain: certain stainless steel products, including stainless steel wire rod, hot-rolled stainless steel bars; and cold-formed stainless steel bars; prestressed concrete steel wire strand; and certain steel products, including hot-rolled steel plate, cold-rolled carbon steel plate, carbon steel structural shapes; galvanized carbon steel sheet, hot-rolled carbon steel bars, and cold-formed carbon steel bars.

Penalties for violation of the above paragraphs may be found in the Trade Practices Act, which penalties include becoming ineligible for public works contracts for a period of three years.

This provision in no way relieves the GRANTEE of responsibility to comply with those provisions of this CONTRACT which prohibit the use of foreign-made steel and cast iron products.

C. Public Works Contractor's Bond Law of 1967. Prior to the award of any contract for any Work on the Project, the contractor to whom the contract is to be awarded must furnish the following bonds which shall become binding upon the award of such contract:

1. A performance bond at 100 percent of the contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications, and conditions of the contract. Such bond shall be solely for the protection of the contracting body which awarded said contract.

2. A payment bond at 100 percent of the contract amount. Such bond shall be solely for the protection of claimants supplying labor or materials to the GRANTEE, its contractor or to any of its subcontractors, in the prosecution of the work provided for in such contract, and shall be conditioned for the prompt payment of all such material furnished or labor supplied or performed in the prosecution of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

D. Pennsylvania Prevailing Wage Act. The GRANTEE, its subgrantees, contractors and subcontractors shall comply with the provisions, duties, obligations, remedies, and penalties of the *Pennsylvania Prevailing Wage Act*, 43 P.S. § 165-1 et seq., which is incorporated herein by

reference as if fully set forth herein. The general prevailing minimum wage rates, as determined by the Secretary of Labor and Industry, shall be paid for each craft or classification of all workmen needed to perform work on the Project during the term hereof for the locality in which the work is to be performed.

**ARTICLE 28
SEVERABILITY**

Should any section or any part of any section of this CONTRACT be rendered void, invalid, or unenforceable by any court of law, for any reason, such a determination shall not render void, invalid, or unenforceable any other section or part of any section of this CONTRACT.

**ARTICLE 29
AMERICANS WITH DISABILITIES ACT**

During the term of this CONTRACT, the GRANTEE agrees as follows:

A. Pursuant to federal regulations promulgated under the authority of *The Americans with Disabilities Act*, 28 C.F.R. § 35.101 et seq., the GRANTEE understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this CONTRACT or from activities provided for under this CONTRACT. As a condition of accepting and executing this CONTRACT, the GRANTEE agrees to comply with the General Prohibitions Against Discrimination, 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of *The Americans with Disabilities Act* which are applicable to all benefits, services, programs, and activities provided by the COMMONWEALTH through contracts.

B. The GRANTEE shall be responsible for and agrees to indemnify and hold harmless the COMMONWEALTH from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the COMMONWEALTH as a result of the GRANTEE's failure to comply with the provisions of paragraph A above.

**ARTICLE 30
SPECIAL CONDITIONS**

GRANTEE acknowledges and agrees that the Special Conditions attached hereto as part of Appendix B are to be satisfied by GRANTEE prior to the disbursement of any funds hereunder and that the failure by GRANTEE to satisfy said Special Conditions within the time period outlined in Appendix B of this contract shall be a breach of this CONTRACT and such failure shall release and relieve the COMMONWEALTH of any obligation to provide funding and this CONTRACT shall be thereafter null and void and of no further force or effect.

**ARTICLE 31
REPRESENTATIONS AND WARRANTIES**

To induce OB to enter into this CONTRACT, the GRANTEE represents and warrants the statements contained in this Article.

A. The GRANTEE is duly organized and existing under the laws of the Commonwealth of Pennsylvania or is duly authorized to do business in the Commonwealth of Pennsylvania and has the power and authority to carry on its business as now conducted.

B. The GRANTEE has the requisite power and authority to sign and deliver this CONTRACT and to perform its promises in this CONTRACT and the people signing this CONTRACT for the GRANTEE are authorized to do so.

C. The GRANTEE's execution and delivery of this CONTRACT and the GRANTEE's compliance with the terms and provisions of this CONTRACT, will not conflict with or cause a violation of any of its organizational documents or agreement that affects the GRANTEE, its property or the PROJECT.

D. The GRANTEE has duly and validly executed and delivered this CONTRACT. This CONTRACT is the valid and legally binding obligation of the GRANTEE, enforceable in accordance with its terms.

E. The GRANTEE does not know of any material litigation or governmental proceeding pending or threatened against the GRANTEE or related to the PROJECT other than that which has been previously disclosed to OB in writing.

F. The GRANTEE has filed all required federal, state and local tax returns and has paid all taxes shown on such returns as they have become due.

G. Except as previously disclosed to OB in writing and described to OB in writing, neither GRANTEE, nor any officer or principal of the GRANTEE, has ever (i) been convicted of any crime (other than minor traffic offenses), (ii) filed for bankruptcy or had a bankruptcy proceeding filed against it or him/her, or entered into an arrangement with creditors or comparable agreement, or (iii) had any trustee or guardian of his/her affairs appointed.

H. All information in the application concerning the GRANTEE and PROJECT or submitted by or on behalf of the GRANTEE was true, complete and correct in all material respects when made and remains true, correct and complete as of the date hereof.

410056585

James H. ... 6/3/11

CERTIFICATION OF AVAILABILITY OF FUNDS

Richard ... 5/19/11
Office of Money General
Deputy Attorney General

Chief Counsel
Date 1/4/2011
Office of the Budget
Date 1/7/11
Deputy General Counsel
Office of General Counsel

APPROVED AS TO FORM AND LEGALITY:

03-2067660

FEDERAL IDENTIFICATION NUMBER:

Mary ... 1/6/2011
Date
Mary H. ...
Secretary of the Budget

Anthony ... 12-30-10
Date
Anthony ...
Chairman

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE BUDGET

MULTI PURPOSE
STADIUM AUTHORITY

DATE OF COMMENCEMENT:

BOUND BY THE TERMS AND CONDITIONS SET FORTH ABOVE, HAVE EXECUTED THIS CONTRACT AS OF THE

THE PARTIES TO THIS CONTRACT, MAKING AGREED TO AND INTENDING TO BE LEGAL

APPENDIX A

APPLICATION ROUTE SHEET

I. CONTRACT INFORMATION

Project Name: Lackawanna County Baseball Stadium
Termination Date: December 31, 2015
Grant Amount: \$20,000,000
Total Project Cost: \$46,090,000

II. APPLICANT IDENTIFICATION

Applicant Name: Multi Purpose Stadium Authority

Address: PO Box 3449
Scranton, PA 18505-0449

Telephone Number: 570-961-1166

Federal ID No.: 23-2367660
County: Lackawanna

Project Officer: Frank Tunis

Chief Official: Anthony Zaleski

Legislative Districts: Senatorial 22
House 114

III. CODING INFORMATION

Funding Source: Redevelopment Assistance Capital
Coding: 3016608000 = \$20,000,000

IV. COMMENTS/CONDITIONS

- Approved funding schedule is attached.
- Special conditions for this project are outlined in Appendix B.
- Supporting documentation is on file in the Office of the Budget.

V. DISPOSITION

Task Force Recommendation:

Approved


Elias Joseph

Date

1/3/2011

**APPENDIX B
PROJECT ACTIVITIES AND SPECIAL CONDITIONS**

A. Project Activities: The GRANTEE will use Redevelopment Assistance Capital funding to undertake the Lackawanna County Baseball Stadium project in Lackawanna County.

The project to be supported with Redevelopment Assistance Capital funding shall include, but be limited to the following activities: site acquisition, site preparation and construction.

Expenses paid after this project's authorization in the Act of July 4, 2008 (P.L., No. 41) that are related to the development and construction of the Lackawanna County Baseball Stadium project as determined by OB, are eligible to be used as part of the non-state matching contribution and may be eligible for state reimbursement.

B. General Conditions: Each of the following must be completed by the GRANTEE before any Redevelopment Assistance Capital funds can be released for the project.

C. Special Conditions: Each of the following, as related to the appropriate Phase of the project, must be completed by the GRANTEE before any Redevelopment Assistance Capital funds can be released for each phase of the project. Evidence of completion must be submitted to the following address no later than six months after the execution date of this contract:

Richard C. Dreher
Director
Bureau of Revenue, Cash Flow and Debt
Office of the Budget
Verizon Tower - 7th Floor
303 Walnut Street
Harrisburg, Pennsylvania 17101-1525
Telephone (717) 787-7342
Fax (717) 783-3368

Failure to submit documentation indicating completion of each Special Condition within the time period as originally specified, or modified, may constitute a default under the terms of the grant agreement and could lead to a termination of the Redevelopment Assistance Capital grant.

Satisfaction of each condition shall be determined by the Office of the Budget (OB) at its sole discretion. All agreements to be executed and all documents or information to be delivered in order to satisfy these Special Conditions shall be and are, in form, content and substance, subject to the approval of the Office of the Budget, which approval may be withheld or delayed at the discretion of the Office of the Budget. Documents requiring the signature of OB shall also be conditioned upon the approval of the Governor's Office of General Counsel and the Attorney General of Pennsylvania. All agreements required to be submitted as fully executed in order to satisfy the Special Conditions should be submitted in draft form to OB as soon as available in order for OB to provide comments. Notwithstanding the foregoing, OB's right to approve or disapprove the final executed

document at its sole discretion shall not be affected or deemed waived by any comments or lack of comment with respect to any drafts submitted.

1. GRANTEE shall submit documentation indicating at least \$22.59 million in local matching funds have been fully secured and received for use on project-related expenses.
2. GRANTEE shall submit documentation indicating site control for all properties involved in the project. Documentation should include settlement sheets and also include the title or deed to the properties or executed long-term leases.
3. GRANTEE shall submit certified appraisals to support the values claimed for all parcels of property acquired for the project.
4. GRANTEE shall submit final plans and specifications for the project.
5. GRANTEE shall submit proof of bid compliance, as required in the Capital Facilities Debt Enabling Act (Act 67 of 2004), which states, "Notwithstanding any other provision of law, the solicitation of a minimum of three written bids for all contracted construction work on redevelopment assistance capital projects shall be the sole requirement for the composition, solicitation, opening and award of bids on such projects." Should the bid tabulations associated with the RACP project exceed the construction cost estimate, the GRANTEE shall submit documentation that either costs have been reduced or that additional funds have been raised to support the project.
6. GRANTEE shall submit all necessary construction-related documents or agreements for the project. These agreements can include guaranteed maximum price contracts, construction management agreements, contracts with general contractors and so on.
7. GRANTEE shall submit updated construction schedules for the project. The updated construction schedules should list all pertinent activities and dates in which construction activities and milestones are to occur.
8. GRANTEE shall provide an updated cash flow statement for the entire project that outlines, on a monthly basis, all sources and uses of funds for the project. The cash flow statement should address monthly funding surpluses and/or deficits and indicate the need for interim financing to bridge Commonwealth reimbursements.
9. GRANTEE shall provide documentation of interim financing necessary to bridge project costs as well as the Commonwealth's reimbursement schedule. The amount of required interim financing, based on the GRANTEE's own cash flow, should be sufficient to carry the project through monthly construction expenses before and after access to the RACP funding has been granted. Please, refer to payment intervals listed on the FAQS section of our Web site (www.budget.state.pa.us).
10. GRANTEE shall provide documentation indicating that necessary permits and approvals have been achieved at appropriate stages of the project.
11. GRANTEE shall submit all applicable Environmental Studies for the project.

12. GRANTEE shall submit an enacted resolution authorizing the filing of the Redevelopment Assistance Capital Program application.
13. GRANTEE shall submit an executed Cooperation Agreement with SWB Yankees, LLC., which obligates the SWB Yankees, LLC to comply with RACP terms and conditions of the Grant Agreement and the Redevelopment Assistance program.
14. GRANTEE shall submit an executed Cooperation Agreement/ordinance from the Lackawanna County that authorizes the project and obligates Lackawanna County to reimburse the Commonwealth for any reimbursements that may later be determined to have been ineligible.
15. GRANTEE shall submit an opinion of counsel.
16. GRANTEE shall submit an executed Statement of Compliance which indicates that all RACP terms and conditions, policies and procedures will be adhered to during the completion of the project.
17. GRANTEE shall submit an executed Flood Plan Certification, which indicates that areas of the site within the 100 years flood plain are adequately covered via proper flood insurance during the life of the RACP delineated project.
18. GRANTEE shall submit an executed 30-year lease agreement with SWB Yankees, LLC.
19. GRANTEE shall submit an executed Development and Operations agreement between the SWB Yankees, LLC. and the Multi-Purpose Stadium Authority of Lackawanna County, which delineates the responsibilities of all interested parties during the term of the lease.
20. GRANTEE shall submit an agreement obligating SWB Yankees, LLC or the GRANTEE to be responsible for all capital improvements to the baseball stadium and all operating expenses relating to the use of the ballpark, including security, cleaning, insurance, maintenance and utilities, etc. during the term of the 30-year lease.
21. GRANTEE represents that the Multi-Purpose Stadium Authority of Lackawanna County holds fee simple title to the land upon which the baseball Stadium (stadium) is built. Further, the GRANTEE represents that the Multi-Purpose Stadium Authority of Lackawanna County is the GRANTEE, and SWB Yankees, LLC is the team owner. As such, the GRANTEE and SWB Yankees, LLC shall enter into a Restrictive Covenant Agreement with the Commonwealth running with and binding the land for a period of 30 years, providing for the restrictions set forth below. The Multi-Purpose Stadium Authority of Lackawanna County shall record the Agreement in the appropriate land records office at its expense. The Agreement shall provide that in consideration of the Commonwealth's grant of funds provided for in the Grant Agreement the GRANTEE and SWB Yankees, LLC agree to enter into the restrictions which shall run with the land and the GRANTEE and SWB Yankees, LLC shall further agree that the Commonwealth, in addition to any other remedies available to it at law or in equity, shall have the right to injunctive relief to enforce such restriction.

In the event there are other parties of interest in the land/stadium

such as mortgagees, lessees, lien holders, easement holders or other such parties, the Multi-Purpose Stadium Authority of Lackawanna County shall make certain that all other parties with interests in the land/stadium (the "interested parties") are made parties to the Restrictive Covenant Agreement which shall bind such interested parties, their heirs, successors and assigns or that an acknowledgement of and agreement to abide by the covenants is contained in whatever agreement is executed between the Project Administrator/stadium owner and such party.

The covenant shall provide that neither the GRANTEE, nor the interested parties, nor their heirs, successors or assigns shall permit the use of the land or the stadium to be built thereon by or for, or enter into any lease, license, concession agreement, joint venture agreement, agreement of sale or other agreement affecting the use or occupancy of the land which would permit the use of the land and stadium to be built thereon by or for, any Existing Major/Minor League Baseball Franchise without the express written consent of the Commonwealth, which consent may be withheld or delayed at the sole discretion of the Commonwealth.

The terms Existing Major/Minor League Baseball Franchise shall be defined to mean:

1) Any Team or Franchise located and operating in the Commonwealth of Pennsylvania and in existence on the date of the Restrictive Covenant Agreement; 2) Any Team or Franchise which is located and operating in the Commonwealth of Pennsylvania and in existence within five (5) years prior to the date of the Restrictive Covenant Agreement; and 3) Any Team or Franchise granted to, established in or entering or moving into the Commonwealth of Pennsylvania from outside the Commonwealth during the term of the Restrictive Covenant Agreement except for a Team or Franchise granted to, established in or entering or moving into the Commonwealth of Pennsylvania for the express purpose of establishing the stadium as its home; and for a period of five (5) years after any such relocation, any Team or Franchise defined in items 1, 2 and 3 which relocates to an area outside the Commonwealth of Pennsylvania.

The term "Team or Franchise" shall be defined to mean any professional baseball team operating under the Authority of Major/Minor League Baseball or any Independent Leagues as may be established, and any minor league authority, as may be established by Major/Minor League Baseball or other such organizations from time to time and/or teams affiliated with or sponsored or funded by Major League Baseball clubs.

**APPENDIX C
PROJECT FUNDING SCHEDULE**

Project Name: Lackawanna County Baseball Stadium

Total Project Cost: \$46,090,000

Redevelopment Assistance Amount: \$20,000,000

<u>Date</u>	<u>Redevelopment Assistance Drawdown</u>
Month 1	\$2,000,000
Month 2	\$2,000,000
Month 3	\$2,000,000
Month 4	\$2,000,000
Month 5	\$2,000,000
Month 6	\$2,000,000
Month 7	\$2,000,000
Month 8	\$2,000,000
Month 9	\$2,000,000
Month 10	\$2,000,000

TOTAL \$20,000,000

The drawdown schedule is hereby approved


Elias Joseph

Date

1/3/2011