District Name:
School Name:
Project ID Number:

PROJECT SCOPE AND BUDGET AGREEMENT

This PROJECT SCOPE AND BUDGET AGREEMENT, (the "Project Scope and Budget Agreement"), dated as of _____, 20_____ (the "Effective Date") is between the Massachusetts School Building Authority, a public instrumentality of the Commonwealth of Massachusetts (the "Authority"), and the _____, Massachusetts, together with its successors and assigns (the "District" or "Owner") (Authority and District collectively referred to as the "Parties").

RECITALS

WHEREAS, chapter 70B of the Massachusetts General Laws ("Chapter 70B"), chapters 208 and 210 of the Acts of 2004, and 963 CMR 2.00 *et seq.* authorize the Authority to approve Proposed Projects for a grant pursuant to the school building construction and renovation program developed and managed by the Authority; and

WHEREAS, the District submitted a Statement of Interest to the Authority for the _____ School, and the District prioritized this Statement of Interest as its priority to receive any potential funding from the Authority;

WHEREAS, the Authority and the District conducted a project scope and budget conference as described in 963 CMR 2.00 *et seq*., related to the facility deficiencies at the _____ School;

WHEREAS, on _____ the Board of Directors of the Authority voted to authorize the Authority's Executive Director to enter a Project Scope and Budget Agreement with the District upon the terms and conditions stated herein and further authorized the Executive Director do all acts and things and execute and deliver any and all documents and agreements in connection with such project scope and budget conference;

WHEREAS, the Project Scope and Budget Agreement is one step in the multi-step process of the Authority's grant program for school building construction and renovation projects;

WHEREAS, the Authority's grant program for school building renovation and construction projects is a non-entitlement, discretionary program based on need, as determined by the Authority;

WHEREAS, the District has submitted a signed Initial Compliance Certification, as described in 963 CMR 2.02 and 2.06(2)(a), in the form prescribed by the Authority, and it has been accepted by the Authority;

WHEREAS, the District has formed a School Building Committee to monitor the Project and advise the District during the course of the Project;

Execution Copy

WHEREAS, the District has procured an Owner's Project Manager, as defined in Section 1 herein, using a qualifications-based selection process and such Owner's Project Manager has been approved by the Authority;

WHEREAS, the District has procured a Designer for the Project in accordance with the provisions of M.G.L. c. 7C, s. 44 through 58, 963 CMR 2.04, 963 CMR 2.07(3) and any other applicable laws and regulations and said Designer has been approved by the Authority's Designer Selection Panel;

WHEREAS, the Authority may reimburse the District for a portion of eligible, approved costs incurred in connection with the Project undertaken by the District to _____ under certain terms and conditions, hereinafter provided, and subject to the provisions of M.G.L. c. 70B, 963 CMR 2.00 *et seq*., and all applicable policies and guidelines of the Authority.

NOW THEREFORE, in consideration of the promises and the agreements, provisions and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the District intending to be legally bound, hereby agree as follows:

1. DEFINITIONS

Capitalized terms that are not specifically defined in this Definitions section shall have the meanings ascribed to them in either M.G.L. c. 70B or 963 CMR 2.00 *et seq*.

For purposes of this Project Scope and Budget Agreement, the following words shall have the following meanings:

"Assisted Facility" means the school facility that is eligible for and will receive either a Total Facilities Grant or partial payment of a Total Facilities Grant pursuant to Chapter 70B, chapter 645 of the Acts of 1948, or chapters 208 and 210 of the Acts of 2004 and a Project Funding Agreement to be executed by the Authority and the District.

"Board" means the Board of Directors of the Authority, as established pursuant to Chapter 70B and the bylaws of the Authority.

"Construction Manager" or "Construction Manager at Risk" means a sole proprietorship, partnership, corporation, or other legal entity that provides construction management at risk services as defined in G.L. c. 149A, § 2 and is the person or entity procured as such by the District in accordance with G.L. c. 149A, *et seq*., and who is primarily responsible for the performance and execution of the construction work on the Project.

"Contractor" is the person or entity identified as such throughout the Construction Contract Documents and who is primarily responsible for the performance and execution of the construction work on the Project.

Execution Copy

"Designer" shall mean the individual, corporation, partnership, sole proprietorship, joint stock company, joint venture, or other entity engaged in the practice of architecture, landscape architecture, or engineering that meets the requirements of M.G.L. c. 7C, § 44 and has been procured and contracted by the District to perform professional design services.

"Effective Date" means the date of this Project Scope and Budget Agreement, as stated in the first paragraph of this Project Scope and Budget Agreement.

"Monthly" means once each calendar month.

"Owner's Project Manager" means a person under contract with, designated, or assigned by the District and approved by the Authority, to fully and completely manage and coordinate administration of the Project to completion. The Owner's Project Manager must meet the qualifications of G.L. c. 149, § 44A ½, 963 CMR 2.00 *et seq*., and all other qualifications of the Authority.

"Project Cash Flow" means a detailed accounting of the projected amount of funding being received and expended by the District during the course of the Proposed Project on a monthly basis and attached hereto as Exhibit D.

"Project Schedule" means the schedule for the Proposed Project, including a detailed estimated timeline as described in 963 CMR 2.09(11), which schedule shall be updated from time to time and approved by the Authority and attached hereto as Exhibit C.

"Project Scope" means the scope of the Proposed Project that has been mutually agreed to by the Authority and District and further described in Exhibit B attached hereto, as may be updated from time to time.

"Project Scope and Budget Conference" means the conference described in 963 CMR 2.09(9).

"Project Site" means the specific location of the Proposed Project, as more fully described in Exhibit E attached hereto.

"Proposed Project" refers to the proposal to _____ at _____ that meets the requirements of Chapter 70B and 963 CMR 2.00 *et seq*.

"School" means the _____ School located at _____.

"Statement of Interest" means the Statement of Interest, as defined in 963 CMR 2.02 and all applicable policies and guidelines of the Authority, submitted by the District for the _____ School;

Execution Copy

"Total Facilities Grant" means the Authority's final, approved, total financial contribution to an Approved School Project, which is calculated pursuant to Chapter 70B and chapter 208 of the Acts of 2004, and paid to the District pursuant to a payment schedule developed by the Authority.

"Estimated Maximum Total Facilities Grant" shall mean the estimated Total Facilities Grant amount, as set forth in the Total Project Budget ("Exhibit A'), which amount does not include reimbursement amounts for any potentially eligible costs within the owner's contingency and construction contingency line items in the Total Project Budget ("Exhibit A"). The actual Total Facilities Grant for the Project may be an amount less than the Estimated Maximum Total Facilities Grant pursuant to the Authority's regulations, policies, and guidelines and the provisions of this Agreement.

"Maximum Total Facilities Grant" shall mean the maximum Total Facilities Grant amount, as set forth in the Total Project Budget ("Exhibit A"), that shall not be exceeded under any circumstances. The Maximum Total Facilities Grant amount includes reimbursement amounts for any potentially eligible costs that may be expended from the owner's contingency and the construction contingency line items in the Total Project Budget ("Exhibit "A") in accordance with the Authority's regulations, policies and guidelines and the provisions of this Agreement. The eligibility of any such costs for reimbursement shall be determined by the Authority within its sole discretion provided that the total amount of Project costs eligible for reimbursement, including any eligible costs expended from the owner's contingency and construction contingency line items, shall not exceed the Maximum Total Facilities Grant amount under any circumstances. The actual Total Facilities Grant for the Project may be an amount less than the Maximum Total Facilities Grant pursuant to the Authority's regulations, policies, and guidelines and the provisions of this Agreement.

"Total Project Budget" means a complete and full enumeration of all costs, including both hard costs and soft costs, so-called, that the District reasonably estimates, to the best of its knowledge and belief, has been or will be incurred in connection with the planning, design, construction, development, the mobilization of the operation, and the completion of the Project, approved by the Authority, which may be updated from time to time by mutual agreement of the Parties and which is attached hereto as Exhibit A.

"Vendor" means any person, entity, business, or service provider under contract or agreement with the District to provide goods or services to the District in connection with the Project.

2. THE PROJECT

2.1 Total Project Budget. The Parties hereby agree that the Total Project Budget shall be as set forth in Exhibit A as attached hereto. In the event that the Authority approves a Total Facilities Grant for the Proposed Project, the Total Facilities Grant would be based on the Total Project Budget set forth in Exhibit A as of the Effective Date and contingent upon the District maintaining this Total Project Budget. The Total Project Budget shall not be altered, modified, or changed without the prior written approval of the Authority. Any increases to the Total Project Budget as set forth in Exhibit A as of the Effective Date, shall not result in any changes to the

Executive Copy

amount of the Total Facilities Grant set forth in Section 3 of this Project Scope and Budget Agreement. The District hereby acknowledges and agrees that all costs related to the Proposed Project, including without limitation all site costs, shall be subject to review and audit by the Authority, and the Authority shall determine, in its sole discretion, whether such costs are eligible for reimbursement pursuant to the Authority's regulations and policies.

2.1.1 Construction Bids. The Parties hereby acknowledge and agree that, in the event that the lowest, responsible bid or the Guaranteed Maximum Price accepted by the District for the construction of the Proposed Project is lower than the corresponding amount set forth in Exhibit A, the Authority shall reduce the Estimated Maximum Total Facilities Grant and the Maximum Total Facilities Grant amount set forth in Section 3.1 of this Agreement and in Exhibit A accordingly. The Parties hereby further acknowledge and agree that, in the event that the lowest, responsible bid or Guaranteed Maximum Price accepted by the District for the construction of the Proposed Project exceeds the corresponding amount set forth in Exhibit A, the Authority shall not make any adjustments to its Estimated Maximum Total Facilities Grant or Maximum Total Facilities Grant on account of the bid, and the increased costs shall be the sole responsibility of the District. The Parties hereby further acknowledge and agree that, in the event that the lowest, responsible bid or Guaranteed Maximum Price accepted by the District for construction of the Project exceeds the corresponding amount set forth in Exhibit A, the District may use a reasonable amount of the owner's and/or construction contingency to fund the cost of any such budget overrun, provided, however, that the expenditures of owner's and/or construction contingency funds for the purpose of funding such budget overruns shall not be eligible for reimbursement by the Authority and shall be the sole responsibility of the District.

2.2 Project Scope. The Parties hereby agree that the Project Scope shall be as set forth in Exhibit B, which is attached hereto. Any Total Facilities Grant approved by the Authority for the Project shall be contingent upon the District maintaining the Project Scope set forth in Exhibit B, and the Authority may revoke, suspend, withhold, and/or recoup any Total Facilities Grant payments if the Authority determines that the Scope has not been adhered to. The Project Scope shall not be altered, modified, enlarged, or reduced without the written mutual agreement of the Parties. The District hereby acknowledges and agrees that all of the items appearing in the Project Scope set forth in Exhibit B shall be subject to review and audit by the Authority, and the Authority shall determine, in its sole discretion, whether the cost of such Project Scope items are eligible for reimbursement pursuant to the Authority's regulations and policies.

2.3 Project Schedule. The Parties hereby agree that the projected Project Schedule for the Proposed Project shall be as set forth in Exhibit C as attached hereto, as may be updated from time to time. The District shall provide an updated Project Schedule

Executed Copy

to the Authority at least once every calendar month and more frequently if requested by the Authority. When submitting a revised or updated Project Schedule to the Authority, the District shall also submit a detailed explanation for any changes in the Project Schedule from the previous Project Schedule submitted to the Authority.

2.4 Project Cash Flow. The Parties hereby agree that the projected Project Cash Flow for the Proposed Project shall be as set forth in Exhibit D as attached hereto, as may be updated from time to time. The District shall provide an updated Project Cash Flow to the Authority at least once every calendar month and more frequently if requested by the Authority. When submitting a revised or updated Project Cash Flow to the Authority, the District shall also submit a detailed explanation for any changes in the Project Cash Flow from the previous Project Cash Flow submitted to the Authority.

2.5 Project Site. The Parties hereby agree that the site of the Proposed Project shall be as described in Exhibit E attached hereto. The site of the Proposed Project shall not be altered, modified, enlarged or reduced without the prior written approval of the Authority.

2.6 Furnishings and Equipment. The Parties hereby agree that a listing of all furniture, fixtures and equipment that will be purchased, leased, acquired, or received by the District in connection with the Proposed Project is set forth on Exhibit F attached hereto, which shall be updated from time to time. Costs associated with the furnishings and equipment listed on Exhibit F may not be eligible for reimbursement by the Authority. All such costs shall be subject to review and audit by the Authority, and the Authority shall determine, in its sole discretion, whether such costs are eligible for reimbursement pursuant to the Authority's regulations and policies. All costs associated with furniture, fixtures and equipment that are not specifically delineated in Exhibit F shall not be eligible for reimbursement by the Authority unless mutually agreed to in writing by the Parties.

3. TOTAL FACILITIES GRANT

3.1 The Parties hereby agreed that, subject to the execution of a Project Funding Agreement for the Proposed Project and subject to the satisfaction of or compliance with, as reasonably determined by the Authority, (a) all of the terms and conditions of this Project Scope and Budget Agreement, (b) the applicable provisions of Chapter 70B, Chapters 208 and 210 of the Acts of 2004, and 963 CMR 2.00 *et seq*., and (c) any other rule, regulation, policy, guideline, approval, or directive of the Authority, the Authority hereby approves the following Estimated Maximum Total Facilities Grant for the Project: an amount that, except as specifically provided in this Section 3.1, shall not exceed the lesser of (i)_____% of the final approved, total eligible Project costs, as determined by the Authority, ("Reimbursement Rate") or (ii) an estimated Total Facilities Grant of $_____ ("Estimated Maximum Total Facilities Grant"). Notwithstanding the foregoing, the Authority may determine, in its sole discretion, and subject to the limitations set forth in Section 2.1 of this Agreement, that expenditures from the owner's contingency and construction contingency

Executive Copy

line items of the Total Project Budget, so-called, are eligible for reimbursement, and in the event of any such determination, the Authority may adjust the above-stated Estimated Maximum Total Facilities Grant amount to account for the eligible, approved owner's contingency and construction contingency expenditures up to a final, maximum Total Facilities Grant of $_____ ("Maximum Total Facilities Grant"). In no event shall the Maximum Total Facilities Grant, including any eligible owner's and construction contingency amounts, exceed $_____. The Parties hereby acknowledge and agree that the Estimated Maximum Total Facilities Grant and the Maximum Total Facilities Grant amounts set forth in this Section 3.1 and Exhibit A, are maximum amounts of funding that the District may receive from the Authority for the Project, and that the final amount of the Total Facilities Grant may equal an amount less than either the Estimated Maximum Total Facilities Grant or the Maximum Total Facilities Grant set forth herein, as determined by an audit conducted by the Authority. Any costs and expenditures that are determined by the Authority to be either in excess of the Total Facilities Grant or otherwise ineligible for payment by the Authority shall be the sole responsibility of the District. The Reimbursement Rate set forth above, and as more fully described in the reimbursement rate summary, attached hereto as Exhibit H, includes a total of ____ incentive reimbursement points which includes _____ points for _____, ____ points for _____, and ____ points for _____ pursuant to G.L. c. 70B, § 10(a)(C). The incentive reimbursement points for Energy Efficiency/Green Schools have been provisionally assigned and are subject to a final determination by the Authority as to the District's eligibility to receive such incentive reimbursement points. The Reimbursement Rate, Estimated Maximum Total Facilities Grant, and Maximum Total Facilities Grant set forth above and in Exhibit A shall be subject to a decrease, as provided in Section 3.2 of this Agreement, if the Authority determines, in its sole discretion, that the District is ineligible to receive any portion of the incentive reimbursement points that have been provisionally assigned, as described herein, or such other incentive reimbursement points that may be assigned by the Authority.

3.2 The Reimbursement Rate for the Proposed Project is calculated as set forth in the reimbursement rate summary, attached hereto as Exhibit H, and shall be subject to the provisions of M.G.L. c. 70B, 963 CMR 2.00 *et seq.,* and the policies and guidelines of the Authority. Any incentive reimbursement points that may be included in the calculation of the Reimbursement Rate, as it may be amended from time to time by the written agreement of the Authority, must be earned, as determined by the Authority in its sole discretion, and shall be subject to audit by the Authority. If the Authority determines, in its sole discretion, that the District is ineligible to receive any portion of the incentive reimbursement points that may be included in the calculation of the Reimbursement Rate, as it may be amended from time to time by the written agreement of the Authority, the Authority may, in its sole discretion, decrease the Reimbursement Rate, the Estimated Maximum Total Facilities Grant and the Maximum Total Facilities Grant accordingly. Any such decrease in the Reimbursement Rate, and the corresponding decreases in the Estimated Maximum Total Facilities Grant and the Maximum Total Facilities Grant, shall be applied retroactively to all payments made to the District by the Authority under the terms of the Project Funding Agreement between the Parties, if any, and to all requests for reimbursement of eligible Project costs made by the District to the Authority under the terms of said Project Funding Agreement, if any. If the Authority determines that, as a result of a decrease in the

Executive Copy

Reimbursement Rate, or a corresponding decrease in the Estimated Maximum Total Facilities Grant and the Maximum Total Facilities Grant, it has made overpayments to the District, the Authority may recover the amount of such overpayments from the District by whatever remedies are available to it under a Project Funding Agreement, if any, or under applicable law, including, but not limited to, set off against any future payments owed to the District for reimbursement of eligible Project costs, as determined by the Authority. Upon written demand by the Authority, the District shall promptly return to the Authority the amount of any such overpayments unless otherwise agreed to in writing by the Authority.

3.3 The Basis of both the Estimated Maximum Total Facilities Grant and the Maximum Total Facilities Grant set forth in Exhibit A to this Agreement includes all budgeted costs for the Feasibility Study authorized by the Authority for the Project ("Feasibility Study Budget") and supersedes and replaces any other Feasibility Study budget that may have been authorized by the Authority and set forth in any Feasibility Study Agreement between the Authority and the District. The Feasibility Study Budget included in this Agreement does not take into account any payments that may already have been made to the District by the Authority for the costs of any Feasibility Study under any Feasibility Study Agreement between the Authority and the District. The Estimated Maximum Total Facilities Grant and Maximum Total Facilities Grant set forth in Section 3.1 of this Agreement is calculated by applying the Reimbursement Rate set forth in Exhibit H of this Agreement to the Basis of Total Facilities Grant, which includes the Feasibility Study Budget for the Project. Notwithstanding the provisions of any Feasibility Study Agreement between the Authority and the District, the approved, eligible costs of a Feasibility Study authorized by the Authority for the Project will be reimbursed, retroactively and prospectively, based upon the Reimbursement Rate set forth in Section 3.1 and Exhibit H to this Agreement. The Authority shall deduct from the Total Facilities Grant set forth in this Agreement the amount of any payments already made to the District by the Authority for the costs of a Feasibility Study pursuant to the provisions of any Feasibility Study Agreement. Nothing stated in this section of this Agreement shall impair the right of the Authority to make adjustments to the Reimbursement Rate and the Total Facilities Grant or to audit and determine ineligible costs as provided elsewhere in this Agreement and in the Authority's statutes, regulations, policies, guidelines and standards.

Execution Copy

4. COVENANTS

The Parties covenant and agree that as long as this Agreement is in effect, the Parties shall and shall cause its employees, agents, and representatives to perform and comply with all covenants of this Project Scope and Budget Agreement.

4.1 Of the Authority.

(a.) The Authority shall prepare a Project Funding Agreement for the Project, which Funding Agreement shall set forth the terms and conditions pursuant to which the District may receive a Total Facilities Grant for the Approved Project.

4.2 Of the District.

(a.) The District shall by no later than 120 days after _____, obtain all necessary votes, resolutions, appropriations, and voter approvals, in accordance with the format prescribed by the Authority, for the Proposed Project. The District shall immediately notify the Authority of the date by which the District shall have received all necessary votes, resolutions, appropriations, and local approvals for the Proposed Project.

(b.) By no later than the twelfth of each calendar month, the District shall provide the Authority with a progress report, prepared by the Owner's Project Manager, that summarizes all Proposed Project activity during the preceding calendar month, in a format approved by the Authority.

(c.) The District shall promptly provide the Authority with any additional information, documents, plans, specifications, budgets, timelines, schedules, or other materials that may be requested by the Authority.

(d.) The District hereby acknowledges and agrees that the Authority shall not provide any amounts in excess of the amount determined under Section 3.1 of this Agreement and the final Total Facilities Grant may be an amount less than the amount stated in Section 3.1.

(e.) The District hereby acknowledges and agrees that the District's Educational Program for the _____School is subject to further review by the Commissioner of Education, pursuant to M.G.L. c. 70B.

(f.) The District hereby acknowledges and agrees that all costs related to the Proposed Project, including the costs identified in the Total Project Budget set forth in Exhibit A and costs of the items appearing in the Project Scope set forth in Exhibit B, shall be subject to review and audit by the Authority, and the Authority shall determine, in its sole discretion, whether such costs are eligible for reimbursement pursuant to the Authority's regulations and policies.

(g.) The District hereby acknowledges and agrees that it shall not submit any false or intentionally misleading information or documentation

Execution Copy

to the Authority in connection with this Project Scope and Budget Agreement, and further acknowledges and agrees that the submission of any such information or documentation may cause the Authority to revoke any and all payments otherwise due to the District and/or recover any previous payments made to the District, and the District may be ineligible for any funding from the Authority. The District hereby further agrees that it shall have a continuing obligation to update and notify the Authority in writing when it knows or has any reason to know that any information or documentation submitted to the Authority contains false, misleading or incorrect information.

(h.) The District hereby acknowledges and agrees that, in the event that it receives, has received, or is eligible to receive any insurance proceeds, damages, awards, payments, rebates, grants, or donations from any third party or funding sources, other than the Authority, for or in connection with the Project, all such amounts shall be disclosed to the Authority in writing. Further, any amounts that are subject to the MSBA's Third-Party Funding Policy shall be deducted from the total amount of eligible project costs (also known as Basis of Total Facilities Grant), as determined by the Authority, and the remaining amount of eligible costs shall be apportioned according to the District's reimbursement rate to calculate the maximum Total Facilities Grant.

(i.) The District hereby agrees, that upon three or more years of the Assisted Facility being constructed and occupied, the District shall participate in the Authority's Post Occupancy Evaluation program. The District hereby further agrees that it shall collaborate and coordinate with MSBA staff and provide school-specific data and/or documentation in order to complete the Post Occupancy Evaluation in a timely manner and in a form satisfactory to the Authority, including but not limited to, surveys, online data collection forms, and questionnaires. Further, the District agrees to participate in a site visit conducted by the Authority at the Assisted Facility in accordance with MSBA's guidelines.

5. REPRESENTATIONS AND WARRANTIES

The District and the undersigned, for themselves and for the District, hereby warrant and represent that each of the following statements is true, correct and complete:

5.1 The District is validly organized and existing under and by virtue of the laws of the Commonwealth, has full power and authority to own its properties and carry on its business

Executive Copy

as now conducted, and has full power and authority to execute, deliver and perform its obligations under this Project Scope and Budget Agreement.

5.2 The District is duly authorized and has taken all necessary steps to authorize the execution and delivery of this Project Scope and Budget Agreement and to perform and consummate all transactions contemplated by this Project Scope and Budget Agreement. The undersigned have been duly authorized in accordance with law to execute and deliver this Project Scope and Budget Agreement on behalf of the District. This Project Scope and Budget Agreement does not and will not, to any material extent, conflict with, or result in violation of any applicable provision of law, by-law, ordinance or rule, or any order, rule, regulation of any court or other agency of government.

5.3 The District has all requisite legal power and authority to own and operate the school that is the subject of this Project Scope and Budget Agreement.

5.4 No information furnished by or on behalf of the District to the Authority in this Project Scope and Budget Agreement, including all Exhibits attached hereto, the Initial Compliance Certification, or any other document, certificate or written statement furnished to the Authority in connection with the Statement of Interest or Proposed Project contains any untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements contained in this Agreement or therein not misleading in light of the circumstances in which the same were made.

5.5 This Project Scope and Budget Agreement constitutes a valid and binding obligation of the District, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization or other laws heretofore or hereafter enacted and general equity principles.

5.6 No litigation before or by any court, public board or body is pending or threatened against the Authority seeking to restrain or enjoin the execution and delivery of this Project Scope and Budget Agreement Study, or contesting or affecting the validity of this Scope and Budget Agreement or the power of the District to pay its share of the Proposed Project.

5.7 The District has implemented policies and procedures to prevent and eliminate fraud, waste and abuse of public funds in connection with the Proposed Project.

5.8 The District has submitted all audit materials requested by the Authority in connection with any project for which the District has received or anticipates receiving funding from the Authority.

5.9 All meetings of all public bodies in the District that relate in any way to the Project, including, but not limited to, the meetings of the District's school building committee, have been conducted, and shall be conducted, in compliance with the provisions of G.L. c. 30A, §§ 18 – 25, 940 CMR 29.00 *et seq.*, and all other applicable law.

Execution Copy

5.10 The District shall work with its local counsel to ensure that any contracts related to the Project, to which the District is a party, meet the applicable requirements of M.G.L. c. 149, § 44A (2)(g), and contain workforce participation goals for minorities and women, and include the processes and procedures to ensure compliance with the workforce participation goals, including reporting and enforcement provisions.

The District shall work with its local counsel to ensure that any contracts related to the Project, to which the District is a party, meet the applicable requirements of M.G.L. c 7C, §6 and M.G.L. c. 7, §61, and contain Annual Program Goals for Minority Business Enterprise ("MBE") and Women Business Enterprise ("WBE") Participation, and include the processes and procedures to ensure compliance with the Minority and Women Business Goals, including reporting and enforcement provisions.

6. TERM

6.1 The Parties hereby agree that this Project Scope and Budget Agreement shall be valid for a period of time not to exceed 120 calendar days after _____, unless agreed to in writing by the Authority that a different termination date is necessary. In the event that the Board votes to not approve this Project Scope and Budget Agreement, this Agreement shall terminate effective as of such vote.

7. OTHER TERMS

7.1 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

7.2 Venue. Any civil action brought against the Authority by the District, or any person or entity claiming by, through or under it, that arises out of the provisions of this Agreement, shall only be brought in the Superior Court for Suffolk County, Massachusetts. The District, for itself and for any person or entity claiming by, through or under it, hereby waives any defenses that it may have as to the venue to which it has agreed herein, including, but not limited to, any claim that this venue is improper or that the forum is inconvenient. The District for itself and for any person or entity claiming by, through or under it, hereby waives all rights, if any, to a jury trial in any such civil action that may arise out of the provisions of this Agreement.

7.3 Indemnification. To the fullest extent permitted by law, the District shall indemnify and hold harmless the Authority and its officers and employees from and against all claims or actions, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation, whatsoever which may be incurred or for which liability may be asserted against the Authority arising out of any activities undertaken by, for, or on behalf of the District in its implementation of this Project Scope and Budget Agreement. Such obligation shall not be construed to negate or abridge any other obligation of indemnification running to the Authority which would otherwise exist.

Execution Copy

7.4 Members, Employees Not Liable. No member or employee of the Authority shall be charged personally or held contractually liable by or to the District under any term or provision of this Project Scope and Budget Agreement or because of any breach thereof or because of its execution or attempted execution.

7.5 Assignability. The District shall not assign any interest, in whole or in part, in this Project Scope and Budget Agreement and shall not transfer any interest in the same, whether by assignment or novation, without the prior written approval of the Authority.

7.6 Amendments. This Project Scope and Budget Agreement may be amended only through a written amendment signed by duly authorized representatives of the District and the Authority.

7.7 Notices. Any notices required or permitted to be given by either of the Parties hereunder shall be given in writing and shall be delivered to the addressee (a) in-hand (b) by certified mail, postage prepaid, return receipt requested; (c) by facsimile; or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

As to the Authority:

Massachusetts School Building Authority
10 Post Office Square, Suite S400
Boston, MA 02109
Attention: Director of Capital Planning
Facsimile: (617) 720-5260

As to the District:

District
Address Line 1
Address Line 2
Attention:
Facsimile:

7.8 Severability. If any provisions of this Project Scope and Budget Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement, and this Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

7.9 Counterparts. This Project Scope and Budget Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. Each party agrees that it will execute

Execution Copy

any and all documents or other instruments and take such other actions as may be necessary to give effect to the terms of this Agreement.

7.10 No Waiver. No waiver by either party of any term or conditions of this Project Scope and Budget Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase, or other provision of this Agreement.

7.11 Integration. This Project Scope and Budget Agreement merges and supersedes all prior negotiations, representations, and agreements between the parties hereto relating to this Agreement and constitutes the entire agreement between parties hereto with respect to the Proposed Project.

Execution Copy

8. INSURANCE

8.1 Insurance. The District shall obtain and maintain all insurance required by law and such other insurance in such types and in such amounts as the Authority may require from time to time.

8.1.1 During the course of the Project, the District shall purchase and maintain, or shall cause the Contractor or Construction Manager to purchase and maintain, at their own expense, coverage against loss or damage to the Project in an amount equivalent to the Total Project Budget at the sole expense of the District, Contractor or Construction Manager, as the case may be. Such coverage shall be written on an "all risks" basis or equivalent form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and theft, vandalism, malicious mischief, terrorism, collapse, earthquake, flood (if the Project is not in an "A" or "V" flood zone), windstorm, falsework, testing and startup, and debris removal including demolition occasioned by enforcement of any applicable legal requirements. The limits for earthquake and flood shall be the lesser of the Total Project Budget or $10,000,000. The policy shall include transportation and coverage for delivered and/or stored materials designated to be incorporated into the Project. The policy shall include the Authority as a loss payee as its interests may appear. Coverage shall be maintained until final acceptance of the Project by the District and final payment has been made. The District (or Contractor or Construction Manager, if coverage is purchased by Contractor or Construction Manager) is responsible for the payment of any and all deductibles, self-insured retentions or any portion thereof under the policy.

8.1.2 Following completion of the Project, the District shall, at its sole expense, purchase and maintain coverage against loss or damage to the Assisted Facility in an amount equivalent to the estimated full replacement cost of the Assisted

Facility. Such coverage shall be written on an "all risks" basis or equivalent form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and theft, vandalism, malicious mischief, terrorism, collapse, earthquake, flood (if the Project is not in an "A" or "V" flood zone), windstorm, falsework, mechanical and electrical breakdown, and boiler and machinery accidents, and debris removal including demolition occasioned by enforcement of any applicable legal requirements. The limits for earthquake and flood shall be the lesser of the estimated full replacement cost of the Assisted Facility or $10,000,000. The policy shall include the Authority as a loss payee as its interests may appear. The District is responsible for the payment of any and all deductibles, self-insured retentions or any portion thereof under the policy.

8.1.3 The District shall include the Authority as an additional insured in any commercial general liability policy held by the District for liability arising out of the Project.

8.1.4 The Authority shall not be responsible for the payment of deductibles, self-insured retentions, or any portion thereof.

8.1.5 Upon request by the Authority, the District shall obtain and provide to the Authority originals of certificates of insurance evidencing the insurance coverage required by this section of this Project Scope and budget Agreement.

8.2 The District shall require by contractual obligation, and shall also ensure by the exercise of due diligence, that each of any Owner's Project Manager, Designer, Contractor or Construction Manager at Risk, or Vendor hired by the District in connection with the Project obtain and maintain all insurance coverage required by law and such other insurance coverage in such types and amounts as the Authority may require from time to time, including the insurance coverage required by this Project Scope and Budget Agreement, a Project Funding Agreement and by any standard contracts that are prescribed by the Authority and executed by the District, including, but not limited to, the Authority's standard contract for Owner's Project Manager services and standard contract for Designer services. The insurance required by this Section shall be provided at the sole expense of the Owner's Project Manager, Designer, Contractor or Construction Manager, and Vendors, as the case may be, and shall be in full force and effect for the full term of any contract between the District and said Owner's Project Manager, Designer, Contractor or Construction Manager at Risk, and Vendors or for such longer period as the Authority may require, including any such longer period that may be required by this Project Scope and Budget Agreement, a Project Funding Agreement or the standard contracts prescribed by the Authority and executed by the District.

8.3 The District shall include in the contract between the Owner and the Contractor or Construction Manager at Risk, as the case may be, the standard language contained in Exhibit G regarding minimum insurance requirements for Contractors or Construction Managers at Risk. The District may impose additional insurance requirements for either construction delivery method provided that any such additional requirements shall not be inconsistent with the requirements imposed by the standard language set forth herein and further provided that the District shall give the Authority a written notice that clearly describes any such additional

Executive Copy

requirements. It shall be the sole responsibility of the District to determine whether additional insurance requirements are desirable or necessary and should be included in the contract between the Owner and the Contractor or Construction Manager at Risk.

8.4 The District shall obtain originals of certificates of insurance evidencing the insurance coverage that may be required by the Authority from time to time, including the insurance coverage required by this Project Scope and Budget Agreement, a Project Funding Agreement, any standard contracts that are prescribed by the Authority and executed by the District, including, but not limited to, the Authority's standard contract for Owner's Project Manager services and standard contract for Designer services, and any other contract between the District and the Owner's Project Manager, Designer, Contractor or Construction Manager, or Vendors, simultaneously with the execution of said contracts or, in the event that said contracts have been executed prior to the date of this Project Scope and Budget Agreement, as soon as possible thereafter. Upon request of the Authority, the District shall submit such certificates of insurance to the Authority, showing each type of insurance, insurance company, policy number, amount of insurance, deductibles/self-insured retentions, and policy effective and expiration dates. The District shall require each of the Owner's Project Manager, Designer, Contractor or Construction Manager, and Vendors to submit updated insurance certificates to the District prior to the expiration of any of the insurance policies or coverage referenced in this Section so that the District shall at all times possess certificates indicating current coverage.

8.5 The failure of the District to ensure that each of the Owner's Project Manager, Designer, Contractor or Construction Manager, and Vendors obtain and maintain the insurance required by the Authority, this Project Scope and Budget Agreement, the Project Funding Agreement, any standard contract prescribed by the Authority and executed by the District or any other contract between the District and the Owner's Project Manager, Designer, Contractor or Construction Manager, or Vendors, or to provide the insurance certificates required by this Project Scope and Budget Agreement shall constitute a material breach of this Project Scope and Budget Agreement and shall be just cause for termination of this Project Scope and Budget Agreement.

8.6 The District shall, and shall require, as the case may be, its insurers and each of the Owner's Project Manager, Designer, Contractor or Construction Manager, Vendors and their insurers to, give written notice to the Authority at least thirty days prior to the effective date of any termination, cancellation, or material modification of any insurance required by this Project Scope and Budget Agreement, a Project Funding Agreement, any standard contracts that are prescribed by the Authority and executed by the District, including, but not limited to, the Authority's standard contract for Owner's Project Manager services and standard contract for Designer services, and any other contract between the District and the Owner's Project Manager, Designer, Contractor or Construction Manager, or Vendors.

8.7 With respect to all policies of insurance required of the Owner's Project Manager, Designer, Contractor or Construction Manager, and Vendors by this Project Scope and Budget Agreement, any standard contracts that are prescribed by the Authority and executed by the District, including, but not limited to, the Authority's standard contract for Owner's Project Manager and standard design contract, and any other contract between the District and the Owner's Project Manager, Designer, Contractor or Construction Manager, and Vendors, the

Execution Copy

District shall ensure that neither the District nor the Authority shall be responsible for the payment of deductibles, self-insured retentions or any portion thereof.

8.8 Insufficient insurance shall not release the Owner's Project Manager, Designer, Contractor or Construction Manager, or Vendors from any liability for breach of their obligations under an agreement between the District and any of them.

8.9 All insurance policies required by this Project Scope and Budget Agreement, a Project Funding Agreement, any standard contract prescribed by the Authority and executed by the District and any other contract between the District and the Owner's Project Manager, Designer, Contractor or Construction Manager, or Vendors shall be issued by companies lawfully authorized to write that type of insurance under the laws of the Commonwealth of Massachusetts with a financial strength rating of "A-" or better as assigned by A.M. Best Company, or an equivalent rating assigned by a similar rating agency acceptable to the District and the Authority.

8.10 The District shall take all reasonable steps designed to ensure that the Owner's Project Manager, Contractor or Construction Manager, Designer, and Vendors each agree that they and their Subcontractors shall do no act, nor suffer any act to be done, which will vacate, void or impair the coverage of any insurance policies required under this Project Scope and Budget Agreement, a Project Funding Agreement, any standard contract prescribed by the Authority and executed by the District or any other contract between the District and the Owner's Project Manager, Designer, Contractor or Construction Manager, or Vendors.

8.11 The District shall, upon request by the Authority, produce copies of all policies of insurance maintained by the District, its Contractor or Construction Manager, Owner's Project Manager, Designer and Vendors related to the Project, to the Authority.

9. OWNERSHIP OF DOCUMENTS

9.1 The District acknowledges and agrees that, unless otherwise provided by law or by the provisions of Section 9.2 of this Agreement, all information, data, reports, studies, designs, drawings, plans, sketches, specifications, materials, computer programs, documents, models, inventions, equipment, and any other documentation, product or tangible materials to the extent authored or prepared, in whole or in part, by the Designer for this Project (collectively, the "Materials"), other than the Designer's administrative communications, records, and files relating to this Project, shall be the property of, and shall vest in, both the District and the Authority, severally and not jointly, as "works made for hire" or otherwise, provided that the District complies with its payment obligations under its Contract with the Designer for the Project. Except as otherwise provided in Section 9.2, both the District and the Authority, severally and not jointly, will own the exclusive rights, worldwide and royalty-free, to and in all Materials prepared and produced by the Designer pursuant to its Contract with the District for the Project, including, but not limited to, United States and International patents, copyrights, trade secrets, know-how and any other intellectual property rights, and both the District and the Authority, severally and not jointly, shall have the exclusive, unlimited and unrestricted right, worldwide and royalty-free, to publish, reproduce, distribute, transmit and publicly display all Materials prepared by the Designer, which shall include, but not be

Execution Copy

limited to, the Authority's exercise of the aforesaid right in furtherance of the Programs described in Section 9.2. The District further acknowledges and agrees that the Designer shall have a non-exclusive license to publish and publicly display all Materials prepared by the Designer in its normal marketing and related professional and academic activities and that the Designer shall have a non-exclusive license to use the typical or standard details and all other replicable elements of the Materials for this Project on other future projects. At the completion or termination of the Designer's services required pursuant to the Contract between the District and the Designer for the Project, the District shall ensure that the Designer promptly turns over to the Authority copies of all original Materials but only to the extent that such Materials have not already been provided to the Authority.

9.2 Notwithstanding any other language to the contrary in this Agreement or in any Contract between the District and the Designer for the Project, the District acknowledges and agrees that the Designer shall have a non-exclusive license to publish, reproduce, distribute, transmit, and publicly display all Materials prepared by the Designer for the purpose of participating in the Authority's so-called Model School Program, as it may be amended from time to time, or any other program implemented by the Authority to develop, acquire, modify, use, re-use, and reproduce prototypical designs and model school designs, and details and elements thereof (collectively "Programs"), including, but not limited to, submitting proposals and applications to the Authority and public school districts in the Commonwealth of Massachusetts for the qualification and selection of the Designer and the School design, or elements and details thereof, in such Programs and using, modifying, and reproducing the Materials for the purpose of designing, constructing, reconstructing, renovating and repairing public school facilities pursuant to such Programs, as approved by the Authority. The District further agrees to provide the Designer, the Authority, and representatives of other public school districts with reasonable cooperation and reasonable access to the completed School facility at mutually agreeable times for purposes of said Programs.

IN WITNESS WHEREOF, the Parties have executed this Project Scope and Budget Agreement on this _____ day _____, in the year 20___.

MASSACHUSETTS SCHOOL BUILDING AUTHORITY

_____
Mary L. Pichetti
Executive Director

DISTRICT

Executive Copy

_____

Name:
Title:

Execution Copy