District:
School Name:
Project ID Number:

PROJECT FUNDING AGREEMENT

This PROJECT FUNDING AGREEMENT, (the "Project Funding Agreement"), dated as of _____, 20___ (the "Effective Date") is entered into by and between the Massachusetts School Building Authority, an independent public authority of the Commonwealth of Massachusetts (the "Authority"), and the _____together with its successors and assigns (the "District" or "Owner") (Authority and District or Owner collectively referred to herein as the "Parties").

RECITALS

WHEREAS, the provisions of General Laws Chapter 70B, as amended ("Chapter 70B"), Chapters 208 and 210 of the Acts of 2004, and 963 CMR 2.00 *et seq*. authorize the Authority to provide a Total Facilities Grant (as defined in Section 1 below) to Eligible Applicants for approved school building construction, renovation, and repair projects; and

WHEREAS, the District has applied for and desires to receive a Total Facilities Grant from the Authority pursuant to the provisions of Chapter 70B, Chapters 208 and 210 of the Acts of 2004, and 963 CMR 2.00 *et seq*. for a Project (as defined in Section 1 below) consisting of the _____
as it is more particularly described elsewhere in this Agreement; and

WHEREAS, the Authority has determined that the District's Project is eligible for the receipt of a Total Facilities Grant, and the District has agreed to receive a Total Facilities Grant, pursuant to a schedule determined by the Authority and subject to all of the terms and conditions of this Project Funding Agreement; and

WHEREAS, the Project is in the best interests of the Commonwealth and the District with respect to its site, type of construction, sufficiency of accommodations, open space preservation, urban development, urban sprawl, and energy efficiency; and

WHEREAS, the District has confirmed that the Project is necessary to meet educational standards of the curriculum frameworks established by the board of education pursuant to M.G.L. c. 69, § 1E for anticipated enrollment levels; and

WHEREAS, the Project has a value over its useful life commensurate with the lifecycle cost of building, operating, and maintaining the school facility; and

WHEREAS, the Project is not at a school that has been the site of an approved school project pursuant to Chapter 70B or Chapter 645 of the Acts of 1948, as amended, within the 10 years prior to the Project Application date, or the Project is unrelated to such previously approved project in the same school; and

WHEREAS, the Project is within the capacity of the Authority to finance within revenues projected to be available to the Authority; and

WHEREAS, the District has confirmed that the commissioner of education has certified that adequate provisions have been made in the Project for children with disabilities, as defined in M.G.L. c. 71B, § 1; and

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

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; and

WHEREAS, the Board of the Authority has voted to authorize the Executive Director to enter into a Project Funding Agreement with the District for the Project; and

WHEREAS, the District has taken all necessary votes authorizing the Project and has authorized and appropriated the Total Project Budget, in formats prescribed by or otherwise acceptable to the Authority;

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

The Authority agrees to provide a Total Facilities Grant to the District, subject to all of the following terms and conditions:

SECTION 1
DEFINITIONS

Capitalized terms that are not defined in this Section 1 shall have the meanings ascribed to them in Chapter 70B or 963 CMR 2.00 *et seq*. For purposes of this Project Funding 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 this Project Funding Agreement.

"Construction Contract Documents" means all agreements, contracts, and other documents, including, but not limited to, the Owner-Contractor or Owner-CM at Risk Contracts and attachments thereto, Advertisements, Instructions to Bidders, Bidding Documents, Contract Forms, Conditions of the Contracts, Specifications, Drawings, Schedule of Values in a format acceptable to the Authority, all addenda issued prior to execution of the Contracts, and other documents listed in the Owner-Contractor or Owner-CM at Risk contracts and any amendments or modifications issued after execution of said contracts, executed by and between the District and the Contractors or any other parties that set forth the terms, conditions, requirements, and specifications for the design and construction of the Project. For purposes of this Project Funding Agreement, the Construction Contract Documents shall also at all times include a current construction schedule, a current Total Project Budget, and a current cash flow projection.

"CM at Risk" 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,

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§ 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" means 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.

"Designer" means 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 through 58 and has been procured and contracted by the District to perform professional design services.

"Educational Program" means a numerical and verbal description of a specific educational program for a specified number of students over a specified period of time, together with spaces needed to support the program, complete to the degree that a Designer may use it as the basic document from which to create the design of the Assisted Facility. A copy of the Educational Program for the Project is attached hereto as **Exhibit "H**" and is incorporated by reference herein.

"Effective Date" means the date stated in the first paragraph of this Project Funding Agreement which shall be the date on which this Project Funding Agreement shall take effect.

"Excusable Delay" means a delay of the Project that either (a) is solely because of a natural event, such as flood, storms, or lightning, that is not preventable by any human agency, or (b) is reasonably determined by the Authority to be excusable.

"Final Request and Certificate for Reimbursement" means the certificate in the form prescribed by the Authority, submitted by the District to the Authority upon final completion of the Project, that is (1) signed by the Owner's Project Manager stating that, to the best of the Owner's Project Manager's knowledge and belief, the Project has been completed and constructed in accordance with all Construction Contract Documents; (2) signed by the Designer stating that, to the best of the Designer's knowledge and belief, the Project has been completed and constructed in accordance with the Construction Contract Documents and all applicable building and safety codes in effect at the time of construction, and that the Project was constructed in accordance with the applicable MSBA sustainability requirements; and (3) signed by a duly authorized representative of the District stating, to the best of his/her knowledge and belief, that all of the terms and conditions of this Project Funding Agreement, all other agreements between the District and the Authority and all applicable regulations and guidelines of the Authority have been satisfied.

"Furnishings and Equipment Schedule" means, where applicable, the complete listing of furniture, fixtures, and equipment, as attached hereto as **Exhibit "F"**.

"Guaranteed Maximum Price" or "GMP" means the agreed total dollar amount for the Construction Manager at Risk services, including the cost of the work, the general conditions, the GMP contingency, and the fee charged by the Construction Manager at Risk firm.

"Monthly" means once each calendar month.

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"Notice to Proceed" means the written communication issued by the District to the Contractor or CM at Risk authorizing him to proceed with the Owner-Contractor or Owner-CM at Risk contract and establishing the date for commencement of the contract time.

"Owner's Project Manager" means the individual, corporation, partnership, sole proprietorship, joint stock company, joint venture, or other entity under contract with, designated by, 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 set forth in M.G.L. c. 149, § 44A ½, 963 CMR 2.00 *et seq*., and all applicable policies and guidelines of the Authority.

"Project" refers to_____, as it is more particularly described elsewhere in this Agreement, which is a (1) Capital Construction Project, (2) Major Reconstruction Project, or (3) School Project, each as defined in Chapter 70B, §2.

"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 Project on a monthly basis, which is attached hereto as **Exhibit "D"**.

"Project Permits" means all permits, approvals, consents, and licenses issued or granted by governmental authorities, necessary or appropriate to the construction, completion, and occupancy of the Project.

"Project Schedule" means the schedule for the Project, including a detailed estimated timeline as described in 963 CMR 2.09(11), which is attached hereto as **Exhibit "C"**.

"Project Scope" means the scope of the Proposed Project that has been mutually agreed to by the Authority and the District and as is attached hereto as **Exhibit "B"**.

"Project Scope and Budget Agreement" means the agreement described in 963 CMR 2.00, *et seq.* that has been executed by the Parties and is incorporated by reference herein.

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

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

"Schematic Drawings and Plans" means, where applicable to the Project, preliminary floor plans identifying programmatic and other spaces, elevations, site plans, plot plans, topographical plans, plans showing the location of the Project in relationship to other schools in the district, engineering studies, and any other plans deemed necessary by the Authority.

"Subcontractor" means a person or entity that has a direct contract with the Contractor or CM at Risk to perform a portion of the work on the Project.

"Total Facilities Grant" means the Authority's final, approved, total financial contribution to an Approved Project, which is calculated by the Authority pursuant to the provisions of Chapter 70B,

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Chapter 208 of the Acts of 2004, and 963 CMR 2.00 *et seq*., and paid to the District pursuant to a schedule established by the Authority and subject to the terms and conditions of this Project Funding Agreement.

"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.

SECTION 2
THE PROJECT AND THE TOTAL FACILITIES GRANT

2.1 As of the Effective Date 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 Funding 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 2.1, shall under no circumstances exceed the lesser of (i) _____% of the final approved, total eligible Project costs, as determined by the Authority, ("Reimbursement Rate") or (ii) $_____ ("Estimated Total Facilities Grant"). Notwithstanding the foregoing, the Authority may determine, in its sole discretion, and subject to the limitations set forth in Section 2.3 of this Agreement, that expenditures from the owner's contingency and construction contingency line items of the Total Project Budget, so-

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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 and construction contingency expenditures up to a Maximum Total Facilities Grant of $_____. In no event shall the final, 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 Maximum Total Facilities Grant amounts set forth in this Section 2.1, 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 of the aforesaid amounts, 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 above-stated Total Facilities Grant or 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 "I"**, includes incentive reimbursement points pursuant to G.L. c. 70B, § 10(a)(C). Any incentive reimbursement points for green/energy efficiency that may be included in this Agreement 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 set forth above and the Total Facilities Grant shall be subject to a decrease, as provided in Section 2.4 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.

2.2 In the event that the Authority determines that the Project is not in accordance or compliance with the Project Scope, the Project Schedule, the Total Project Budget, the Furnishings and Equipment Schedule, the Construction Contract Documents, the Schematic Drawings and Plans, all of the covenants in Section 3 of this Project Funding Agreement, all other terms and conditions of this Project Funding Agreement, the provisions of Chapter 70B, Chapters 208 and 210 of the Acts of 2004, 963 CMR 2.00 *et seq*., and any other applicable rule, regulation, policy, guideline, approval, or directive of the Authority, or is delayed (other than an Excusable Delay), then the Authority may temporarily and/or permanently withhold payments to the District for the Project, provided that the Authority shall not unreasonably withhold any such payments. In the event that the Authority either temporarily or permanently withholds payment for the Project, the District hereby agrees and acknowledges that the Authority shall have no liability for any such withholding of payment or any loss that may occur as a result of any such withholding of payment.

2.3 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 Project is lower than the corresponding amount set forth in the Total Project Budget, the Authority shall reduce the Total Facilities Grant amount set forth in Section 2.1 of this Agreement 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 Project exceeds the corresponding amount set forth in the Total Project Budget, the Authority shall not make any adjustments to its 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 the Total Project Budget, 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 expenditures of owner's and/or construction contingency funds for

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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.

2.4 The Reimbursement Rate for the Project is calculated as set forth in the reimbursement rate summary, attached hereto as **Exhibit "I"**, 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 and the Total Facilities Grant accordingly. Any such decrease in the Reimbursement Rate, and corresponding decrease in the Total Facilities Grant, shall be applied retroactively to all payments made to the District by the Authority under the terms of this Agreement and to all requests for reimbursement of eligible Project costs made by the District to the Authority under the terms of this Agreement. If the Authority determines that, as a result of a decrease in the Reimbursement Rate, or a corresponding decrease in the 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 this Agreement 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.

2.5 The Basis of 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 Total Facilities Grant set forth in Section 2.1 of this Agreement is calculated by applying the Reimbursement Rate set forth in Exhibit I 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 2.1 and Exhibit I to this Agreement. Because the Feasibility Study Budget included within the Total Project Budget 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 a Feasibility Study under a Feasibility Study Agreement between the Authority and the District, if any, 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.

SECTION 3
COVENANTS

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The District covenants and agrees that as long as this Project Funding Agreement is in effect, the District shall and shall cause its employees, agents, and representatives to perform and comply with the following covenants:

3.1 The District acknowledges and agrees that the Authority's grant program, established pursuant to Chapter 70B, Chapters 208 and 210 of the Acts of 2004, 963 CMR 2.00 *et seq.*, and any other applicable rule, regulation, policy or guideline of the Authority, is a non-entitlement, discretionary program based on need and the District shall not be entitled to any funds from the Authority except as provided in this Project Funding Agreement.

3.2 The District shall and shall cause its employees to comply with all provisions of this Project Funding Agreement; all other agreements related to the Project that have been referenced herein or otherwise approved in writing by the Authority; and all provisions of law that are applicable to the Project and this Project Funding Agreement and the District shall take all action necessary to fulfill its obligations under this Project Funding Agreement and under all other agreements related to the Project that have been referenced herein or otherwise approved by the Authority.

3.3 The District hereby agrees that it shall submit all Project information, including but not limited to, Total Project Budget information, plans, specifications, Project Schedules, and Project progress reports, and any additional information that may be requested by the Authority, to the Authority in a timely manner in a form satisfactory to the Authority.

3.4 The District hereby agrees that it shall use its best efforts and resources to diligently satisfy and complete each of the terms and conditions of this Project Funding Agreement as promptly as possible.

3.5 The District hereby acknowledges and agrees that <u>all</u> costs related to the Project, including the costs identified in the Total Project Budget and costs of the items appearing in the Project Scope, 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 this Agreement and the Authority's regulations, policies, and guidelines. There may be Project costs, in addition to the items specifically identified as ineligible in the Total Project Budget, the Project Scope, the Furnishings and Equipment Schedule, and/or other parts of this Agreement that are ineligible for reimbursement according to such regulations, policies, and guidelines. The District hereby further acknowledges and agrees that certain costs incurred by the District in connection with the Project shall not be eligible for reimbursement by the Authority, pursuant to 963 CMR 2.07, 2.08, 2.09, 2.10, 2.11, 2.17 and other rules, regulations, policies, and guidelines of the Authority, including, but not limited to, the following:

(a.) <u>Financing and Interest Costs</u>. The District hereby acknowledges and agrees that any financing costs incurred by the District, including, but not limited to, interest, principal, costs of issuance and any other cost related to short or long term bonds, notes or other certificates of indebtedness, refunding notes or bonds, temporary loans, or any other form of indebtedness issued by the District in relation to an Approved Project and all costs associated with credit rating services, legal services related to the issuance of any indebtedness and financial consulting services shall not be eligible for reimbursement by the Authority.

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(b.) Legal Fees and Costs. The District hereby acknowledges and agrees that the cost of legal services, including, but not limited to, bond counsel fees, attorney's fees, arbitration or mediation fees, filing fees, and any other legal fees, costs, or expenses incurred by the District in connection with the Project shall not be eligible for reimbursement by the Authority.

(c.) Site Costs. The District hereby acknowledges and agrees that the Authority shall not reimburse the District for any costs associated with site work that exceed eight percent (8%) of the approved building costs of the Project, as determined by the Authority, or are otherwise ineligible for reimbursement pursuant to the Authority's regulations, policies, or guidelines, including, without limitation, the Authority's Site Cost Allowance Guidance.

(d.) Furniture, Fixtures, and Equipment Costs; Technology Costs. The District hereby acknowledges and agrees that the Authority shall only reimburse the District for costs associated with Furniture, Fixtures, and Equipment that are: (a) set forth on Exhibit F; (b) eligible for reimbursement pursuant to the Authority's regulations, policies, and guidelines; (c) do not exceed a total of $1,200 per student, according to the enrollment agreed to in writing by the Authority and the District; and (d) within the Total Facilities Grant amount set forth in Section 2 of this Agreement. The District hereby further acknowledges and agrees that the Authority shall only reimburse the District for costs associated with technology that are: (a) set forth in this Agreement; (b) eligible for reimbursement pursuant to the Authority's regulations, policies, and guidelines; (c) do not exceed a total of $1,200 per student, according to the enrollment agreed to by the Authority; and (d) within the Total Facilities Grant amount set forth in Section 2 of this Agreement.

(e.) All other costs identified in 963 CMR 2.17(5).

All project costs and Project Scope items are subject to review and audit by the Authority, and whether a project cost is eligible for reimbursement shall be determined by the Authority, in its sole discretion, during the Authority's audit of the Project.

3.6 The District hereby acknowledges and agrees that the Authority's Total Facilities Grant is subject to the District's adherence to and maintenance of the Project Scope, Project Schedule, Total Project Budget, and, where applicable, the Furnishings and Equipment Schedule, and the District shall not make any changes, additions, or reductions to the Project Scope, Project Schedule, Total Project Budget, or the Furnishings and Equipment Schedule 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 amount of the Total Facilities Grant set forth in Section 2.1 of this Project Funding Agreement.

3.7 The District hereby acknowledges and agrees that the Authority shall not provide any funding for the Project in excess of the amount of the Total Facilities Grant set forth in Section 2 of this Agreement.

3.8 The District hereby acknowledges and agrees that the Authority shall not be required or obligated to make any payment of the Total Facilities Grant for eligible Project costs while an Event of Default, as defined in Section 22, shall have occurred.

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3.9 The District hereby acknowledges and agrees that it shall provide the Authority with an updated Total Project Budget on a Monthly basis that shall include, but not necessarily be limited to, the following: (a) the projected total Project costs, (b) actual expenditures to date, (c) estimated remaining expenditures for the Project, (d) a detailed explanation of all variances from Total Project Budgets previously submitted to the Authority, (e) all sources and amounts of funding, and (f) an updated Project Schedule.

3.10 The District hereby agrees that, in order to demonstrate that adequate funding for the Project is available, it shall provide the Authority in a format prescribed by or otherwise acceptable to the Authority, with (a) an updated Capital Budget Statement; (b) an updated Project Cash Flow projection on a Monthly basis; and (c) an updated Sources and Use Form that sets forth the sources of all of the funding the District will apply to the project, equal to the Total Project Budget. The District hereby further agrees that, upon the request of the Authority, it shall provide the Authority with copies of its financial statements and other details relating to the financial condition of the District.

3.11 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 source, 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.

3.12 The District shall use the Authority's Contract for Project Management Services, Contract for Designer Services, and any other standard contracts, contract provisions, guidelines, procurement documents, requests for services, and forms prescribed by, or otherwise acceptable to, the Authority to procure and hire any Owner's Project Manager, Designer, Contractor,, CM at Risk, professionals, or Consultants in connection with the Project.

3.13 During the course of the Project, the District shall investigate and review, and shall require the Owner's Project Manager, if required for the Project, and the Designer to investigate and review the progress and quality and construction of the Project. The District shall undertake all reasonable efforts designed to ensure that the Contractor or CM at Risk, Subcontractors, and all Vendors expeditiously and diligently construct, equip, and complete the Project in a good and workmanlike manner.

3.14 The District hereby acknowledges and agrees that it shall keep all records related to the Project including, but not limited to, those records described in 963 CMR 2.17(4), for as long as the Assisted Facility is in service as a public school or remains under the ownership or control of the District or for such period of time as is prescribed by applicable law relating to the retention of public records, whichever is longer. The District shall and shall cause its employees, agents, representatives, and its Owner's Project Manager, Designer, Contractor or CM at Risk, and Vendors to keep adequate records of the Project and shall make all Project records and the Project site available to the Authority, representatives of the Authority, and the Authority's Commissioning Consultant.

3.15 The District shall neither change nor permit a change of the Designer or any of its key personnel or sub-consultants without the prior written approval of the Authority in accordance with the provisions of 963 CMR 2.07(3). If there is any change or proposed change in the Designer or any of its key

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personnel or subconsultants, the District shall give a written notice to the Authority that shall include a statement of reasons for the change or proposed change and an explanation of the impact of the change or proposed change on the Project. The District shall not contract with a new Designer without first obtaining the Authority's written approval of the new Designer. The District shall comply with all applicable provisions of law in the procurement of a new Designer.

3.16 The District shall not change the Contractor or CM at Risk without first giving prior written notice to the Authority of the District's intent to make such a change in accordance with the provisions of 963 CMR 2.07(3). As part of its written notice to the Authority, the District shall provide a statement of reasons for the proposed change and an explanation of the impact of the change on the Project. The District shall comply with all applicable provisions of law in selecting or otherwise allowing a new Contractor to take over the Project and the District shall provide written notice to the Authority identifying the new Contractor or CM at Risk and describing the process by which the new Contractor or CM at Risk was selected for or otherwise took over the Project.

3.17 By no later than ten (10) days after the Effective Date, the District shall certify to the Authority in writing that it has delivered this Project Funding Agreement to any Designer, Owner's Project Manager, and Contractor or CM at Risk hired, or otherwise assigned to the Project, by the District and shall provide the Authority with copies of the transmittal letters and any documents evidencing such delivery. In the event that the Owner's Project Manager, Designer, Contractor or CM at Risk is hired or assigned by the District after the Effective Date, the District shall deliver this Project Funding Agreement to said Owner's Project Manager, Designer, Contractor or CM at Risk within ten (10) days after the effective date of hire or assignment.

3.18 With respect to all actions taken in relation to the Project, the District and all of its officers, agents and employees shall observe and obey, and shall include language in all of its contracts with the Owner's Project Manager, Designer, Contractor or CM at Risk, and all Vendors requiring them to observe and obey, all federal, state and local laws, regulations, ordinances, codes, statutes, orders and directives and any other applicable provisions of law.

3.19 The District shall require the Contractor or CM at Risk to indemnify the Authority and comply with the indemnification requirements set forth in Section 16 of this Project Funding Agreement. Within sixty (60) days after the Effective Date, the District shall provide the Authority with written documentation evidencing such indemnification of the Authority, unless otherwise agreed in writing by the Authority. In the event that the Contractor or CM at Risk is hired or assigned by the District after the Effective Date, the District shall provide such written documentation evidencing such indemnification within ten (10) days after the effective date of hire or assignment. In the event that the District does not obtain indemnification of the Authority from the Contractor or CM at Risk within these deadlines, the Authority may terminate this Project Funding Agreement.

3.20 The District shall furnish to the Authority such further affidavits, certificates, opinions of counsel, surveys and other documents and instruments as may be required by the Authority to ensure that the terms of this Project Funding Agreement are being observed and performed in all respects, and that the Project is progressing satisfactorily as planned in strict compliance with all applicable federal, state and local laws, regulations, ordinances, codes, statutes, orders and directives and any other applicable provisions of law.

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3.21 During the course of the Project, the District shall submit to the Authority a list of all proposed changes (in the form of a Potential Change Order log, so-called) and all actual changes, amendments, addenda to the Construction Contract Documents, the Owner-Designer contract and the Owner-OPM contract. The District shall submit all executed change orders, extra work orders, or modifications to the Project to the Authority for the Authority to consider whether the costs associated with such change orders, extra work orders, or modifications are eligible for reimbursement by the Authority pursuant to this Project Funding Agreement. The District hereby acknowledges and agrees that the Authority's review of the proposed change orders, change orders, and amendments shall be limited to whether the change order or amendment may be eligible for reimbursement pursuant to this Agreement and the Authority's regulations, policies, and guidelines. The District must independently determine whether the proposed change order or amendment is reasonable and necessary for the Project. Nothing stated herein shall relieve the District of its obligation to comply with all applicable law related to the processing of change orders and amendments by the District.

3.22 The District shall undertake all reasonable efforts to ensure that the Contractor or CM at Risk and Subcontractors obtain all Project Permits and shall certify to the Authority in writing that the Contractor or CM at Risk and Subcontractors have obtained such Project Permits within fifteen (15) days after the Project Permits have been obtained. With respect to any of the Project Permits that are required by law to be recorded or filed with any government office, the same shall be duly recorded and filed in accordance with all applicable requirements. The Authority shall have the right to request copies of Project Permits at any time, and the District shall make available any Project Permits requested by the Authority.

3.23 Prior to receiving final payment from the Authority, the District shall have obtained all required inspections and approvals of the Project that are required by law or otherwise required by the Authority.

3.24 The District hereby acknowledges and agrees that the Authority shall engage an independent party, not affiliated or associated with the Owner's Project Manager, Designer, Contractor or CM at Risk, to provide commissioning services with the intent of achieving, verifying and documenting the performance of building systems in accordance with the design intent and the functional and operational needs of the District (hereinafter "Commissioning Consultant"). The District agrees that it shall fully cooperate with and accommodate the commissioning efforts undertaken by the Authority and the Commissioning Consultant and shall require the Owner's Project Manager, Designer, and the Contractor or CM at Risk to provide the same level of cooperation and accommodation. The District further agrees to allow adequate time within its Project Schedule to allow the Authority's Commissioning Consultant to perform its work, and the Authority shall not be responsible for any delays that may result from the Commissioning Consultant's work.

3.25 Within ninety (90) days after the District approves final payment to the Contractor or CM at Risk for the Project, or provides such other appropriate documentation, as reasonably determined by the Authority, indicating that the construction of the Project is one hundred percent (100%) complete, the District shall submit to the Authority a Final Request and Certificate for Reimbursement and an accounting of the total final Project costs in a form prescribed by or otherwise acceptable to the Authority.

3.26 The District hereby agrees that, upon completion of the Project, the Assisted Facility shall have an anticipated useful life of at least 50 years as a public school or that the Project will materially extend

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the useful life of the School and preserve an asset that otherwise is capable of supporting the required Educational Program.

3.27 The District hereby acknowledges and agrees that neither the District nor any of its employees, officials, or agents shall submit any false or intentionally misleading information or documentation to the Authority in connection with this Project Funding Agreement, and further acknowledges and agrees that the submission of any such information or documentation shall be a material breach of this Project Funding Agreement and shall be cause for the Authority to revoke any and all payments otherwise due to the District, to recover any previous payments made to the District, and/or make the District ineligible for any further 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.

3.28 The District hereby acknowledges and agrees that the Authority shall bear no responsibility, cost or liability for the results of any study, environmental assessment, geotechnical site testing, including but not limited to, site remediation, clean-up, or other site remediation services.

3.29 The District hereby acknowledges and agrees that the requirements set forth in the Agreement are intended solely for the benefit and protection of the Authority as the grantor of Project funding. Nothing herein shall be construed as advice to, nor create a duty to provide advice to, the District regarding legal or contractual requirements or best practices for the Project. It is solely the obligation of the District to determine and comply with all legal requirements applicable to the Project and to determine and enforce any necessary contractual requirements and obligations of its Designer, Owner's Project Manager, and Contractor or CM at Risk.

3.30 The District shall not issue the Notice to Proceed prior to the Effective Date unless otherwise agreed to in writing by the Authority.

3.31 The District shall use its best efforts to monitor the performance of the Owner's Project Manager, Designer, Contractor or CM at Risk, and Vendors and shall use its best efforts to enforce the provisions of the District's contracts with each of them.

3.32 The District shall not combine, consolidate, or conjoin in any way the procurement, pre-qualification or selection of an Owner's Project Manager, Designer, Contractor, CM at Risk at Risk, Subcontractor, consultant or vendor for the Project with the procurement, pre-qualification or selection of an Owner's Project Manager, Designer, Contractor, CM at Risk at Risk, Subcontractor, consultant or vendor for any other construction, repair or renovation project without the express prior written approval of a duly authorized representative of the Authority. Any costs incurred by the District that relate to, or arise out of, the use of a combined, consolidated or conjoined procurement, pre-qualification or selection process as proscribed above, including, but not limited to, the preparation of bid documents, requests for services, and requests for qualifications, without the express prior written approval of a duly authorized representative of the Authority shall not be eligible for reimbursement.

3.33 Specifications for Construction Contract Documents shall comply with, among other things, the provisions of G.L. c. 30, § 39M(b). If the District intends to include specifications that are written for less than full competition for one or more items of material furnished under the Construction Contract Documents (so-called "proprietary specifications") as described in G.L. c. 30, § 39M(b), the

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District shall provide to the Designer for inclusion with the Designer's Construction Documents submittals to the Authority the supporting documentation required by G.L. c. 30, § 39M(b). Upon request by the Authority, the District shall submit to the Authority, all documentation required by G.L. c. 30, § 39M(b) and any additional documentation or certifications that the Authority may require. If the District fails to comply with the provisions of G.L. c. 30, § 39M(b) or this paragraph, the Authority may deem ineligible some or all of the costs related to such proprietary specifications.

3.34 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.

SECTION 4
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:

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

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

4.3 The District has all requisite legal power and authority to own, or to control in accordance with the provisions of 963 CMR 2.09(5)(a), and to operate the Assisted Facility and Project Site for the useful life of the Assisted Facility.

4.4 The District holds fee simple title, or, in the alternative, a lease in accordance with the provisions of 963 CMR 2.09(5)(a), to the Assisted Facility and the Project Site and any easements and rights-of-way, necessary to ensure the undisturbed use and possession of the Assisted Facility and Project Site.

4.5 No information furnished by or on behalf of the District to the Authority in this Project Funding Agreement, including all Exhibits attached hereto, the Project Scope and Budget Agreement, the

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Feasibility Study Agreement, the Initial Compliance Certification, or any other document, certificate or written statement furnished to the Authority in connection with the Statement of Interest or Project contains any untrue statement of a material fact or omits any material fact necessary to make the statements contained in this Agreement or in the aforementioned documents not misleading in light of the circumstances in which the same were made.

4.6 The District has duly obtained all necessary votes, resolutions, appropriations, and local approvals for the Project, in accordance with formats prescribed by or otherwise acceptable to the Authority, and has taken all actions necessary or required by law to enable it to enter into this Project Funding Agreement and to fund and perform its obligations hereunder in accordance with the Authority's policies and standards. This Project Funding 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.

4.7 The District has read and fully understands and shall remain in compliance with Chapter 70B; Chapter 208 and 210 of the Acts of 2004; 963 CMR 2.00 *et seq.,* and all other applicable rules, regulations, policies, guidelines, approvals, directives, and procedures of the Authority.

4.9 The District has read and fully understands the provisions of 963 CMR 2.09 and warrants and represents that the Project has been designed and constructed in accordance with the requirements and standards set forth in 963 CMR 2.09.

4.10 The District has read and fully understands the provisions of 963 CMR 2.17 and understands that certain costs and expenses incurred by the District in connection with the Project shall not be eligible for reimbursement by the Authority, including, but not limited to, those items listed in 963 CMR 2.17 and/or identified in this Agreement.

4.11 The District has read and fully understands the provisions of 963 CMR 2.17(4) and has a record keeping system in place to file, track, and retain all records related to the Project for as long as the Assisted Facility is in service as a public school or remains under the ownership of the District or for such period of time as is prescribed by applicable law relating to the retention of public records, whichever is longer.

4.12 The Project has successfully undergone review and obtained all necessary approvals, or shall have successfully undergone review and obtained all necessary approvals prior to the solicitation of construction bids, by any departments or agencies of the Commonwealth required by law to review such projects, including, but not limited to, the Massachusetts Historical Commission, the Massachusetts Commission Against Discrimination, the Secretary of Environmental Affairs, and the Architectural Access Board in accordance with all applicable laws and regulations and the District has provided, or shall have provided prior to the solicitation of construction bids, any written documentation evidencing such reviews and/or approvals to the Authority.

4.13 No litigation before or by any court, public board or body is pending against either the District or the Authority seeking to restrain or enjoin the execution and delivery of this Project Funding Agreement or the construction or operation of the Project, or contesting or affecting the validity of this Project Funding Agreement or the power of the District to pay its share of the Project.

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4.14 The District has read and fully understands the provisions of the Massachusetts Conflict of Interest law, M.G.L. c. 268A, and has implemented policies and procedures to ensure that all District employees, agents, consultants, and representatives and the Owner's Project Manager, Designer, Contractor, and Vendors working on or for the Project are in compliance with M.G.L. c. 268A to the extent that it is applicable.

4.15 The District meets all of the applicable requirements of M.G.L. c. 7C, §44A through 58, inclusive; c. 70B; c. 149; chapter 193 of the Acts of 2004; 963 CMR 2.00 *et seq.*; and all other applicable provisions of federal, state, and local law, and has implemented policies and procedures to ensure that all District employees, agents, consultants, and representatives and the Owner's Project Manager, Designer, Contractor, and Vendors working on or for the Project are in compliance with the applicable requirements of M.G.L. c. 7C, § 44A through 58, inclusive; c. 70B; c. 149; chapter 193 of the Acts of 2004; 963 CMR 2.00 *et seq.*; and all other applicable provisions of federal, state, and local law.

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

4.17 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.

4.18 The District has submitted to the Authority a completed electronic payments form, as prescribed by the Authority and attached hereto as in accordance with the instructions stated on the form.

4.19 In each fiscal year since fiscal year 1999, the District has spent at least 50% of the sum of the District's calculated foundation budget amounts for the purposes of foundation utility and ordinary maintenance expenses and extraordinary maintenance allotment as defined in M.G.L. c. 70 for those purposes.

4.20 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.

4.21 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.

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SECTION 5
DISBURSEMENT OF TOTAL FACILITIES GRANT

Subject to the terms and conditions of this Project Funding Agreement, the Authority shall disburse Total Facilities Grant funds to the District in accordance with and subject to the following:

5.1 (a.) Using the Authority's Pro-Pay system, the District shall submit requests for reimbursement to the Authority on a Monthly basis in a format and manner prescribed by the Authority. Each Monthly request for reimbursement shall be approved locally by a duly authorized representative of the District, shall be in a form prescribed by or otherwise acceptable to the Authority, and shall include, in reasonable detail: (1) the amount of reimbursement requested, (2) the nature of the materials, property, or services received, (3) the total value of the work performed and materials furnished by each of the Designer, Contractor, Owner's Project Manager, and each Vendor to date, (4) the value of the work completed during the reimbursement period, and (5) the percentage of completion to date for each line item of work.

(b.) Each request for reimbursement submitted by the District shall be accompanied by (1) the invoices for each of the amounts requisitioned, (2) proof of payment by the District, and (3) any other supporting documentation and information substantiating the District's request for reimbursement, as the Authority may request, in a form satisfactory to the Authority.

(c.) Each request for reimbursement shall include a written certification signed by a duly authorized representative of the District stating that: (1) such request for reimbursement is solely for costs incurred by the District in connection with the Project, (2) the obligations itemized in the request for reimbursement have not been the basis for a prior request for reimbursement submitted by the District that has been paid or rejected by the Authority, unless otherwise directed by the Authority, (3) the request for reimbursement is for work actually and properly performed or for materials or property properly identified in the request for reimbursement as not incorporated in the work but delivered and suitably stored at the Project Site, (4) the request for reimbursement properly identifies materials or property approved for payment by the District as stored off the Project Site, with all costs of storage, insurance, perpetual inventory, monthly inspection and any maintenance requirement borne by the Contractor, and that the District has received the necessary proof of insurance and titles to the materials or property prior to payment to the Contractor, (5) the District has disclosed any rebates, monetary settlements, grants, monetary donations, surety bond payments, insurance proceeds, or any other funding from a third party, other than the Authority, that it has received or will receive in connection with the Project that is the subject of the request for reimbursement, (6) the request for reimbursement is for costs that already have been duly paid by the District, and (7) the request for reimbursement is within the Total Project Budget approved by the Authority.

(d.) After receipt from the District of a timely and properly submitted request for reimbursement, the Authority shall make a reasonable effort to reimburse the District for the Authority's share of eligible Project costs, subject to the terms and conditions of this Project Funding Agreement, within 15 days of receiving such request for reimbursement. The District hereby acknowledges and agrees that the amount of eligible Project costs reimbursed by the Authority may be subject to change depending on the results of an audit conducted by the Authority pursuant to Sections 5 and 6 of this Project Funding Agreement.

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5.2 The Authority may review and perform a preliminary audit on each request for reimbursement submitted pursuant to this Section 5 to ensure that only eligible, approved costs of the Project are reimbursed by the Authority. In the event that the Authority determines that an item contained in a request for reimbursement submitted by the District is not eligible for reimbursement by the Authority, the Authority shall adjust a pending or a subsequent reimbursement to the District to account for the ineligible costs. The District hereby acknowledges and agrees that each audit conducted pursuant to this Section 5 is preliminary, and the Authority may further adjust and alter the results of a preliminary audit after conducting subsequent audits or the final project cost audit of the Project pursuant to Section 6 of this Project Funding Agreement.

5.3 Notwithstanding any other provisions of this Project Funding Agreement to the contrary, in no event shall disbursements of the Total Facilities Grant by the Authority exceed, in the aggregate, ninety-five percent (95%) of the Total Facilities Grant described in Section 2 of this Project Funding Agreement, unless the District has filed a Final Request and Certificate for Reimbursement and the Authority has completed a final project cost audit of the Project pursuant to Section 6 of this Project Funding Agreement.

SECTION 6
FINAL PROJECT COST AUDIT

6.1 Upon the filing of a Final Request and Certificate for Reimbursement with the Authority or at a time determined by the Authority, the Authority shall conduct a final, close-out project cost audit of the Project, including a review of all requests for reimbursement and other documentation submitted to the Authority during the course of the Project, any other documents or materials that the Authority may request, and an inspection of the Project, to determine the final Total Facilities Grant. The District hereby agrees and acknowledges that the Contractor's, Owner's Project Manager's and Designer's records shall be subject to audit by the Authority and such records shall include, but not be limited to, to the extent applicable, accounting records, written policies and procedures, Subcontractor files (including proposals of successful and unsuccessful bidders, bid tabulations, etc.), original estimates, estimating work sheets, correspondence, change order files (including documentation covering negotiated settlements), backcharge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, and any other Contractor records which may have a bearing on matters of interest to the Authority in connection with the Contractor's work for the District. All of the foregoing shall be open to inspection and subject to audit and/or reproduction by the Authority and/or its agent and/or its authorized representative to the extent necessary to adequately permit evaluation and verification of (a) Contractor compliance with all requirements of the Construction Contract Documents, and (b) compliance with provisions for pricing change orders, invoices or claims submitted by the Contractor or any of his payees.

6.2 Other specific records subject to audit by the Authority shall include all information, materials and data of every kind and character such as documents, subscriptions, recordings, computerized information, agreements, purchase orders, leases, contracts, commitments, arrangements, correspondence, electronic mail, invoices, notes, daily diaries, photographs, videos, meeting minutes, field reports, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information that may in the Authority's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any District documents, Designer documents, Owner's Project Manager documents, Vendor documents or Construction Contract Documents. Such records subject to audit shall also include those records necessary to

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evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with the Project. In those situations where said records have been generated from computerized data (whether mainframe, mini-computer, PC based or other computer systems), the District agrees to provide the Authority with extracts of data files in computer readable format on data disks or suitable alternative computer data exchange formats.

6.3 Upon satisfactory completion of the final project cost audit, as reasonably determined by the Authority, the Authority shall send an audit report and acceptance form and release to the District and, subject to the execution of the acceptance form and release by the District and final approval by the Authority's Board of Directors, make a final payment of the Total Facilities Grant to the District, less all adjustments for ineligible Project costs and any other adjustments that the Authority reasonably determines as necessary.

6.4 Notwithstanding any provisions in this Project Funding Agreement to the contrary, the ninetieth (90^{th}) day after the District approves final payment to the Contractor for the Project or the ninetieth (90^{th}) day after the District provides sufficient documentation, as reasonably determined by the Authority, indicating that the construction of the Project is approximately one-hundred percent (100%) complete or such other time, as the Authority may determine in its sole discretion, shall be the final cut-off date for incurring Project costs that may be eligible for reimbursement by the Authority.

SECTION 7
OWNER'S PROJECT MANAGER

7.1 The District shall neither change nor permit a change of the Owner's Project Manager or any of its key personnel or subconsultants without the prior written approval of the Authority. If there is any change or proposed change in the Owner's Project Manager or any of its key personnel or subconsultants, the District shall give a written notice to the Authority that shall include a statement of reasons for the change or proposed change and an explanation of the impact of the change or proposed change on the Project. The District shall not contract with or otherwise assign a new Owner's Project Manager without first obtaining the Authority's written approval of the new Owner's Project Manager. The District shall comply with all applicable provisions of law in the procurement or assignment of a new Owner's Project Manager.

7.2 The District shall make all reasonable efforts to ensure that the Owner's Project Manager complies with all provisions of any contract between the District and the Owner's Project Manager, and the Authority's regulations, guidelines and policies, and shall use its best efforts to enforce its rights thereunder. If the Owner's Project Manager is an existing employee of the District, the District shall exercise such supervision, control and direction over its employee-Owner's Project Manager as is necessary to enforce and perform its obligations under any agreement with the Authority; the Authority's regulations, policies and guidelines; any certification filed with the Authority, and any terms and conditions imposed by the Authority. The District shall also ensure that any consultant who is directly hired by the District to perform any portion of the project management services for the Project shall comply with the provisions of any contract between the District and said consultant.

7.3 If the Authority determines (1) that the Owner's Project Manager is not performing its obligations in accordance with the provisions of the Owner-Owner's Project Manager contract, Chapter 70B, Chapters 208 and 210 of the Acts of 2004, 963 CMR 2.00 *et seq.* and any policies, approvals, directives, and guidelines of the Authority, or (2) that the District, knowing or having reason

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to know that the Owner's Project Manager is not performing its obligations in accordance with the provisions of the Owner-Owner's Project Manager contract, Chapter 70B, Chapters 208 and 210 of the Acts of 2004, 963 CMR 2.00 *et seq*., and any policies, approvals, directives, and guidelines of the Authority, has failed to use its best efforts to enforce its rights under the Owner-Owner's Project Manager Contract, or (3) if the District fails to perform its obligations under any provisions of this Project Funding Agreement that relate to services of the Owner's Project Manager, the Authority reserves the right to withhold payments to the District, to recoup payments already made to the District, and/or to set off against payments due to the District, any otherwise eligible costs, as determined by the Authority, that relate to reimbursement to the District for Owner's Project Manager services

7.4 The District hereby agrees that the Authority shall have free access to, and open communication with, any Owner's Project Manager hired by and/or assigned to the Project by the District and that the Authority shall have full and complete access to all information and documentation relating to the Project to the same extent that the District has such access. The District agrees that it shall require any such Owner's Project Manager to fully cooperate with the Authority in all matters related to the Project; to promptly communicate, transmit, and/or make available for inspection and copying any and all information and documentation requested by the Authority; to fully, accurately and promptly complete all forms and writings requested by the Authority; and to give complete, accurate, and prompt responses to any and all questions, inquiries and requests for information posed by the Authority. The District agrees that it shall not in any way, directly or indirectly, limit, obstruct, censor, hinder or otherwise interfere with the free flow of communication and information between the Owner's Project Manager and the Authority in all matters related to the Project and as provided herein; that it shall not suffer the same to occur by the act or omission of any other person or entity; and that it shall not retaliate against the Owner's Project Manager for communicating information to the Authority as provided herein. The District agrees to execute, deliver and/or communicate to the Owner's Project Manager any and all authorizations, approvals, waivers, agreements, directives, and actions that are necessary to fulfill its obligations under this paragraph. The District further agrees that the Authority shall bear no liability whatsoever arising out of the Authority's knowledge or receipt of information communicated to the Authority by the Owner's Project Manager and that the District shall remain responsible for the management and completion of the Project.

SECTION 8
DUTY TO BUILD, MAINTAIN AND OPERATE

8.1 The District hereby acknowledges and agrees that, in the event that the District does not complete the Project or otherwise fails to operate and maintain the Assisted Facility as a public school in substantial compliance with the Educational Program filed with the Authority as part of its Application and in accordance with the provisions of this Project Funding Agreement, Chapter 70B, Chapter 208 and 210 of the Acts of 2004, 963 CMR 2.00 *et seq*. and any rules, regulations, policies, and guidelines of the Authority, the District shall reimburse the Authority the full amount of any and all funds received from the Authority in connection with the Project.

8.2 The District shall maintain the Assisted Facility as a public school in substantial compliance with the Educational Program and in accordance with the provisions of this Project Funding Agreement, Chapter 70B, and 963 CMR 2.00 *et seq*., Chapter 208 and 210 of the Acts of 2004, 963 CMR 2.00 *et seq*. and any rules, regulations, policies, and guidelines of the Authority, unless otherwise agreed to in writing by the Authority. In the event that the District knows or has reason to know that the Assisted Facility is no longer operated and maintained as a public school in substantial compliance

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with the Educational Program and in accordance with the provisions of this Project Funding Agreement, Chapter 70B, and 963 CMR 2.00 *et seq*., Chapter 208 and 210 of the Acts of 2004, 963 CMR 2.00 *et seq*. and any rules, regulations, policies, and guidelines of the Authority, the District shall give written notice thereof to the Authority.

8.3 The District shall maintain the Assisted Facility in a good, safe and habitable condition in all respects and in full compliance with all applicable laws, by-laws, ordinances, codes, covenants and rules and regulations set forth by any government authority with jurisdiction over matters concerning the condition and the use of the Assisted Facility.

SECTION 9
INSURANCE

9.1 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.

9.1.1 During the course of the Project, the District shall purchase and maintain, or shall cause the Contractor or CM at Risk 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 CM at Risk, 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 CM at Risk, if coverage is purchased by Contractor or CM at Risk) is responsible for the payment of any and all deductibles, self-insured retentions or any portion thereof under the policy.

9.1.2 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.

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9.1.3 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.

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

9.1.5 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 the Project Funding Agreement.

9.2 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 CM 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 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 CM at Risk, 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 CM 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 Funding Agreement or the standard contracts prescribed by the Authority and executed by the District.

9.3 The District shall include in the contract between the Owner and the Contractor or CM at Risk at Risk, as the case may be, the standard language contained in **Exhibit "G"** regarding minimum insurance requirements for Contractors or CMs 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 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 CM at Risk at Risk.

9.4 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 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 CM at Risk, 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 Funding 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 CM at Risk, and Vendors to submit

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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.

9.5 The failure of the District to ensure that each of the Owner's Project Manager, Designer, Contractor or CM at Risk, and Vendors obtain and maintain the insurance required by the Authority, this 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 CM at Risk, or Vendors, or to provide the insurance certificates required by this Project Funding Agreement shall constitute a material breach of this Project Funding Agreement and shall be just cause for termination of this Project Funding Agreement.

9.6 The District shall, and shall require, as the case may be, its insurers and each of the Owner's Project Manager, Designer, Contractor or CM at Risk, 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 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 CM at Risk, or Vendors.

9.7 With respect to all policies of insurance required of the Owner's Project Manager, Designer, Contractor or CM at Risk, and Vendors by this 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 and standard design contract, and any other contract between the District and the Owner's Project Manager, Designer, Contractor or CM at Risk, and Vendors, the 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.

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

9.9 All insurance policies required by this 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 CM at Risk, 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.

9.10 The District shall take all reasonable steps designed to ensure that the Owner's Project Manager, Contractor or CM at Risk, 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 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 CM at Risk, or Vendors.

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

SECTION 10
COMPLIANCE WITH CONSTRUCTION CONTRACT DOCUMENTS, PROJECT PERMITS AND OTHER APPLICABLE LAW

10.1 The District shall be solely responsible to the Authority for the implementation and completion of the Project in accordance with the Construction Contract Documents and Project Permits, and for the economical and efficient operation and administration of the Project. In addition, notwithstanding any right of approval, review, or inspection held by the Authority in connection with this Project Funding Agreement, the District shall be fully and solely responsible for taking all reasonable actions designed to ensure that the Project complies with all applicable building codes, laws, rules and regulations.

10.2 The District shall be responsible for enforcing the provisions of the Construction Contract Documents and shall use its best efforts to ensure that the Contractor or CM at Risk performs all of its contractual obligations thereunder in a satisfactory manner.

SECTION 11
DEFECTS

11.1 The District shall use its best efforts to require the Contractor or the CM at Risk, at the Contractor's or CM at Risk's own cost and expense, to repair any defect in materials or workmanship in the Project or any portion of the Project that may develop during the applicable warranty period and the District shall, to the extent permitted by law, indemnify, defend and hold the Authority harmless from and against any loss, cost, liability or expense paid or incurred by the Authority (including all attorney's fees and other costs incurred by the Authority in the defense of any such action) with respect to any claim asserted against the Authority by any party with respect to any such defect, actual or alleged.

SECTION 12
ACCESS

12.1 The District shall permit the Authority to have unrestricted access to the Project Site and the Assisted Facility at all reasonable times and shall allow the Authority to examine, inspect and copy all agreements, Construction Contract Documents, books, records, communications, and all other documents, materials and information related to the Project, for the purposes of, without limitation, determining compliance with this Project Funding Agreement, compliance with all other agreements related to the Project, and for assessing the progress of the Project.

12.2 The District shall promptly make available to the Authority any other documents or materials related to the Project, as the Authority may request from time to time.

SECTION 13
PRESENCE ON THE PREMISES OF THE ASSISTED FACILITY

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13.1 The District shall require each of the Owner's Project Manager, Designer, Contractor or CM at Risk and Vendors, as the case may be, to agree that that all persons whose duties bring them upon the Project Site shall comply with the reasonable directions of the authorized officers and/or representatives of the District and the Owner's Project Manager.

13.2 In the event of a material accident of any kind related to the Project, the District shall immediately notify the Authority in writing. For purposes of this section, material accident shall mean an accident resulting in death, serious injury or a serious breach in the physical plant.

SECTION 14
RESTRICTION ON SALE, LEASE, OR REMOVAL FROM SERVICE

14.1 As a condition of the Authority providing a Total Facilities Grant to the District, the District agrees to maintain and operate the Assisted Facility as a public school facility consistent with its Educational Program and in accordance with the provisions of this Project Funding Agreement, Chapter 70B, Chapter 208 and 210 of the Acts of 2004, 963 CMR 2.00 *et seq*., and any rules, regulations, policies and guidelines of the Authority. In the event that the District wishes to sell, rent, lease, license, mortgage, donate, transfer control of, declare as surplus or otherwise dispose of an Assisted Facility, or any portion of an Assisted Facility, or convey or terminate any interest therein, other than renting, licensing, leasing or otherwise allowing for a temporary or periodic community use of the Assisted Facility that does not interfere with or result in changes to the Educational Program, the District shall provide the Authority with a written notice of its intent to sell, rent, lease, license, mortgage, donate, transfer control of, declare as surplus, or otherwise dispose of the Assisted Facility, or any portion of an Assisted Facility, or convey or terminate any interest therein, at least sixty (60) days prior to the effective date of any such proposed action, in accordance with the notice provisions of Section 17 of this Project Funding Agreement. The notice of intent to take any of the aforementioned actions shall include the current appraised value of the Assisted Facility and the maximum resale price on the basis of highest and best use of the facility. If the Authority disagrees with the current appraised value of the Assisted Facility, the Authority may obtain a second appraisal at its own expense, and the current appraised value shall be equal to the greater of the two appraisal amounts on the basis of highest and best use of the facility.

14.2 The provisions of Chapter 70B, § 15(a)-(c) shall apply to any sale, rental, lease or removal from service of the Assisted Facility, except for a rental or lease that is for a temporary or periodic community use. In the event that the District sells, rents, or leases the Assisted Facility, other than renting or leasing the Facility for a temporary or periodic community use, the Authority shall receive no less than its share, in proportion to its investment in the total Project cost, of the fair market value of the Assisted Facility, as determined by an appraisal conducted pursuant to Section 14.1 above.

SECTION 15
NOTICE OF CLAIMS

15.1 The District shall notify the Authority promptly in writing at the address and in the manner required by Section 17 of this Project Funding Agreement of any material claim or action brought against the District, Designer, Owner's Project Manager, Contractor or CM at Risk, Vendors and/or any and all Sub-Contractors arising out of this Project Funding Agreement or the Project.

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15.2 Neither the District nor any person or entity claiming by through or under it, shall file a civil action arising out of the provisions of this Project Funding Agreement against the Authority without first serving the Authority with a written notice stating the factual basis of its claims, the applicable provisions of the Project Funding Agreement that the claim is based upon, and the remedy that the District is seeking. No civil action arising out of the provisions of this Project Funding Agreement shall be filed by the District against the Authority until the expiration of sixty (60) days after the Authority has received the notice of claim required by this section.

SECTION 16
INDEMNIFICATION

16.1 To the fullest extent permitted by law, the District shall indemnify, defend, and hold harmless the Authority and its officers, agents and employees from and against any and all claims, actions, damages, awards, judgments, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorneys fees and costs of investigation and litigation whatsoever which may be incurred by or for which liability may be asserted against the Authority, its officers, agents or employees arising out of any activities undertaken by, for, or on behalf of the District in the implementation of this Project Funding Agreement or any activities, acts or omissions in relation to the Project, including, but not limited to, the performance of any contract or obligation directly or indirectly related to the Project. This Section shall not be construed to negate or abridge any other obligation of indemnification running to the Authority which would otherwise exist.

16.2 To the fullest extent permitted by law, and unless otherwise agreed to in writing by the Authority, the District shall require the Contractor or CM at Risk, as the case may be, to indemnify, defend, and hold harmless the Authority and its officers and employees as set forth below:

> To the fullest extent permitted by law, the Contractor [CM at Risk] hereby agrees to indemnify, defend and hold harmless the Authority and its officers and employees from and against all claims, 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 by the Authority arising out of or resulting from the performance or non-performance of the work performed by the Contractor [CM at Risk] and subcontractors, provided that such claims, damages, liabilities, injuries, costs, fees, expenses, or losses are alleged to be caused in whole, or in part, by an act or omission of any of the Contractor[or CM at Risk], any subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

SECTION 17
NOTICE

17.1 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:

If to the Authority:

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

If to the District:

DISTRICT NAME
ADDRESS
ADDRESS
Attention: Use only the person's title
Facsimile:

or to such other address or addressee as the District and the Authority may from time to time specify in writing. Any notice shall be effective only upon receipt, which for any notice given by facsimile shall mean notice that has been received by the party to whom it is sent as evidenced by a confirmation slip that bears the time and date of receipt.

SECTION 18
AMENDMENTS

18.1 This Project Funding Agreement may be amended only through a written amendment signed by duly authorized representatives of the District and the Authority.

SECTION 19
ADDITIONAL PROVISIONS

19.1 All certifications, filings, and submissions to the Authority required by this Project Funding Agreement shall contain a statement, signed by a duly authorized representative of the District, that such certification, filing, or submission is true, complete, and accurate, to the best of the District's knowledge.

19.2 No member or employee of the Authority shall be held personally or contractually liable by or to the District under any provision of this Project Funding Agreement, because of any breach of this Project Funding Agreement, or because of its execution or attempted execution.

19.3 The District shall neither assign any interest, in whole or in part, in this Project Funding Agreement, nor transfer any interest in same, whether by assignment or novation, without the prior written approval of the Authority.

19.4 Nothing in this Project Funding Agreement shall be construed as creating a duty or obligation on the part of the Authority to oversee or monitor the performance of the Designer, Contractor or CM at Risk, Owner's Project Manager, or other Project participants. The Authority shall not be responsible for, among other things, the design of the Project, architectural plans, construction means, methods, techniques, sequences or procedures, quality control or construction safety, or compliance with the Construction Contract Documents, Project Permits or any applicable provisions

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of law, which shall be and remain the sole responsibility of the District and its Designer, Contractor or CM at Risk, Owner's Project Manager and Vendors, as the case may be.

SECTION 20
GOVERNING LAW, VENUE, AMENDMENT AND SEVERABILITY

20.1 This Project Funding Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts. In case any provision(s) hereof shall be determined invalid or unenforceable under the applicable law, such provision(s) shall, insofar as possible, be construed or applied in such manner as will permit the enforcement of this Project Funding Agreement; otherwise, this Project Funding Agreement shall be construed as though such provision(s) had never been made a part hereof.

20.2 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 Project Funding Agreement, shall only be brought in a court of competent jurisdiction in 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 civil action against the Authority that may arise out of the provisions of this Project Funding Agreement.

20.3 This Project Funding Agreement and any amendments hereto shall be deemed null and void and of no further force or effect unless it is executed by a duly authorized representative of the District and a duly authorized representative of the Authority. The undersigned, who are signing on behalf of the District, hereby warrant and represent that they possess the full legal authority to execute this Project Funding Agreement on behalf of the District and to bind the District to its terms and conditions. In the event that the Authority determines that the undersigned are not duly authorized to execute this Project Funding Agreement and to bind the District, the Authority may, in its sole discretion, take whatever action it deems necessary to terminate this Project Funding Agreement, to suspend or terminate payments to the District and to recover any funds disbursed to the District. Any rights and remedies available to the Authority under the provisions of this Project Funding Agreement shall be in addition to any other rights and remedies provided by law.

SECTION 21
WAIVERS

21.1 The terms, conditions, covenants, duties and obligations contained in this Project Funding Agreement may be waived only by written agreement executed by duly authorized representatives of the District and the Authority. No waiver by either party of any term, condition, covenant, duty or obligation shall be construed as a waiver of any other term, condition, covenant, duty or obligation nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or a different section, subsection, paragraph, clause, phrase, or other provision of this Project Funding Agreement. Forbearance or indulgence in any form or manner by either Party to this Project Funding Agreement shall not be construed as a waiver, nor in any way limit the remedies available to that party.

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21.2 The Authority's payment(s) to the District under this Project Funding Agreement or its review, approval or acceptance of any actions by the District under this Project Funding Agreement shall not operate as a waiver of any rights or remedies available to the Authority under this Project Funding Agreement or as otherwise provided by law and the District shall remain liable to the Authority for all damages incurred by the Authority arising out of the District's failure to perform in accordance with the terms and conditions of this Project Funding Agreement.

SECTION 22
DEFAULTS AND REMEDIES

22.1 The occurrence of any of the following events shall constitute, and is herein defined to be, an Event of Default under this Project Funding Agreement:

(a.) If the District shall fail to perform or observe any covenant, agreement, term or condition on its part provided in this Project Funding Agreement and such failure shall continue for a period of thirty (30) days after written notice thereof shall be given to the District by the Authority; provided that, if such failure cannot be remedied within such thirty (30) day period, it shall not constitute an Event of Default hereunder if corrective action satisfactory to the Authority, as determined by the Authority, in writing, is instituted by the District within such period and diligently pursued until the failure is remedied;

(b.) If any representation or warranty made by the District in this Project Funding Agreement shall prove to have been incorrect, false, or to be misleading in any material respect;

22.2 If any Event of Default hereunder shall occur and be continuing, the Authority may proceed to protect its rights under this Project Funding Agreement, and may: (a) terminate this Project Funding Agreement, (b) permanently withhold or temporarily suspend payment of the Total Facilities Grant to the District, (c) recover any payments of the Total Facilities Grant previously made to the District, and/or (d) exercise any other right or remedy upon such default as may be granted to the Authority under this Project Funding Agreement or under any other applicable provision of law.

22.3 No delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient.

22.4 The rights and remedies conferred upon or reserved to the Authority under this Project Funding Agreement are not intended to be exclusive and every such right or remedy shall be cumulative and shall be in addition to any other rights or remedies provided by law. The Authority may assert a right to recover damages by any appropriate means, including, but not limited to, set-off, lawsuit, withholding, recoupment, counterclaim, or crossclaim, either during or after performance of this Project Funding Agreement.

SECTION 23
TERMINATION

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23.1 This Project Funding Agreement may be terminated by the Authority if an Event of Default shall have occurred as provided in Section 22. Notice of such termination shall be in writing and shall be effective immediately upon service of the notice in the manner provided in Section 17. Upon five (5) days written notice, this Project Funding Agreement may be terminated by the Authority in the event of any action constituting fraud, malfeasance, or illegal activity committed in connection with the Project by the District or any of the District's employees, or, where the District knew or should have known, by the Architect, Owner's Project Manager, CM at Risk, Contractors or Vendors.

23.2 This Agreement may be terminated by mutual written agreement of the Parties.

SECTION 24
PUBLIC RECOGNITION OF THE AUTHORITY'S PARTICIPATION

24.1 The District shall erect a project identification sign on the construction site during the period of construction of the Project in accordance with the provisions of 963 CMR 2.09(3)(g). If the District erects a permanent plaque or other memorial recognizing the names of Project participants, the District shall include the name of the Massachusetts School Building Authority.

SECTION 25
OWNERSHIP OF DOCUMENTS

25.1 The District acknowledges and agrees that, unless otherwise provided by law or by the provisions of Section 25.2 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 25.2, 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 limited to, the Authority's exercise of the aforesaid right in furtherance of the Programs described in Section 25.2. 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

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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.

25.2 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 Authority and the District have caused this Project Funding Agreement to be executed by their duly authorized representatives this _____day of _____ in the year 20____.

THE MASSACHUSETTS SCHOOL BUILDING AUTHORITY
BY:

_____
Mary L. Pichetti
Executive Director

DISTRICT NAME
BY:

_____

_____

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District:
School Name:
Project ID Number:

Name (Type/Print)

_____
Title/Office (Type/Print)

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