



CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

March 21, 2019

City Council President Linda M. Morad and
Honorable Members of the City Council
133 William Street
New Bedford, MA 02740

Dear Council President Morad and Honorable Members of the City Council:

I am submitting for your approval a LOAN ORDER appropriating \$2,266,968 for Accelerated Repair Projects at the John Avery Parker Elementary School and Trinity Day Academy.

Sincerely,


Jon Mitchell
Mayor



CITY OF NEW BEDFORD

CITY COUNCIL

March 28, 2019

**AN ORDER APPROPRIATING \$2,266,968 FOR ACCELERATED REPAIR PROJECT
AT THE JOHN AVERY PARKER ELEMENTARY SCHOOL AND TRINITY DAY
ACADEMY**

BE IT ORDERED, BY THE CITY COUNCIL OF THE CITY OF NEW BEDFORD AS
FOLLOWS:

That the City appropriate the amount of Two Million Two Hundred Sixty-Six Thousand Nine Hundred Sixty-Eight (\$2,266,968) for the purpose of paying the costs of repairs to John Avery Parker Elementary School, 705 County Street, New Bedford, and Trinity Day Academy, 181 Hillman Street, New Bedford, consisting of the replacement of the roof at the John Avery Parker School and the replacement of the boiler at Trinity Day Academy, including the payment of all costs incidental or related thereto (the "Projects"); which proposed repair projects will materially extend the useful life of the schools and preserve an asset that otherwise is capable of supporting the required educational program, and for a portion of which the City has applied for a grant from the Massachusetts School Building Authority (MSBA), said amount to be expended under the direction of the School Committee; that to meet this appropriation the Treasurer with the approval of the Mayor and the Committee Finance is authorized to borrow such amount under M.G.L. Chapter 44, Chapter 70B, or pursuant to any other enabling authority; that the City acknowledges the MSBA's grant program is a non-entitlement, discretionary program based on need, as determined by the MSBA, and any project costs the City incurs in excess of any grant that may be received from the MSBA shall be the sole responsibility of the City; provided further that any grant that the City of New Bedford may receive from the MSBA for the eligible portion of the project shall not exceed the lesser of (1) eighty percent (80%) of eligible, approved project costs, as determined by the MSBA, or (2) the total maximum grant amount determined by the MSBA; and provided that the amount of borrowing authorized pursuant to this order shall be reduced by any grant amount set forth in the Project Funding Agreement that may be executed between the City and the MSBA; and further that a portion of the amount appropriated and authorized to be borrowed under this order shall be provided by a transfer of \$1,000,000 of the appropriation and borrowing authority for the accelerated repair project at the John Avery Parker Elementary School authorized by the order of the City Council approved by the Mayor on January 20, 2017, and that such order be amended to reduce the appropriation and borrowing authority accordingly.

Further that the Treasurer is authorized to file an application with the Municipal Finance Oversight Board to qualify under Chapter 44A of the General Laws and any or all the bonds and to provide such information and execute such documents as the Municipal Finance Oversight Board may require for these purposes.

Further, that any premium received by the City upon sale of any bonds or notes hereunder, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to pay project costs and the amount authorized to be borrowed hereunder shall be reduced by the amount of any such premium so applied; and the Mayor is authorized to take any other action necessary to carry out this project.



NEW BEDFORD PUBLIC SCHOOLS

PAUL RODRIGUES ADMINISTRATION BUILDING

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NEW BEDFORD, MASSACHUSETTS 02740

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THOMAS ANDERSON
SUPERINTENDENT

KAREN A. TREADUP
DEPUTY SUPERINTENDENT

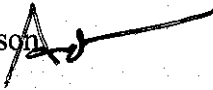
ANDREW O'LEARY
ASSISTANT SUPERINTENDENT
OF FINANCE & OPERATIONS

HEATHER EMSLEY
EXECUTIVE DIRECTOR OF
HUMAN CAPITAL SERVICES

KIMBERLI A. BETTENCOURT
EXECUTIVE DIRECTOR OF
SPECIAL EDUCATION & STUDENT SERVICES

SONIA WALMSLEY
EXECUTIVE DIRECTOR OF
EDUCATIONAL ACCESS & PATHWAYS

MEMORANDUM

To: Mayor Jonathan Mitchell
From: Superintendent Thomas Anderson 
Date: March 12, 2019
Subject: Trinity Day Academy and John Avery Parker Elementary School
Accelerated Repair Projects

The Massachusetts School Building Authority voted on the proposed Accelerated Repair Projects (ARP) for replacement of the boiler at the Trinity Day Academy and the roof at the John Avery Parker Elementary School on February 13, 2019. This round of ARP projects has been included in the 2019-2023 Capital Improvement Program.

The total budgets for these projects are:

Project	Total Cost	Maximum Grant from MSBA	City's Maximum Cost	Expected reimbursement rate
John Avery Parker Roof	\$1,450,861	\$1,100,560	\$350,301	75.85%*
Trinity Day Academy Boiler Replacement	\$816,107	\$649,049	\$167,058	79.52%

- The Parker Roof project is below the 80% reimbursement rate due to Designer Costs above the 20% allowed for construction costs.

In addition, the Elizabeth Brooks ARP project was initially approved on March 22, 2018. The initial bid was over budget by \$709,936. The project was subsequently revised in scope and put out to bid a second time in December 2018. The lowest bid places the project \$360,722 over budget.

I respectfully request the inclusion of a loan order for the proposed ARP projects and an amendment to the Elizabeth Brooks loan order to accommodate the overage. It will be possible to offset the additional cost and to defray the proposed ARP projects by reducing the loan orders for the existing Taylor at Sea-Lab and Parker ARP projects by \$360,722 and \$1,000,000, respectively.

Thank you for your consideration.



Massachusetts School Building Authority

Deborah B. Goldberg
Chairman, State Treasurer

James A. MacDonald
Chief Executive Officer

John K. McCarthy
Executive Director / Deputy CEO

March 8, 2019

Via US mail (with enclosures) and email (with attachments) to:

The Honorable Jonathan F. Mitchell, Mayor
City of New Bedford
New Bedford City Hall
133 William Street
New Bedford, MA 02740

RE: New Bedford Accelerated Repair Program Project Funding Agreement
John Avery Parker Elementary School (MSBA Project No. 201802010115)
Trinity Day Academy (MSBA Project No. 201802010510)

Dear Mayor Mitchell:

Enclosed please find three (3) original Execution Copies of the Project Funding Agreement (the "PFA"), including one complete set of PFA Exhibits, for the Accelerated Repair Program Projects ("Projects") at the John Avery Parker Elementary School and the Trinity Day Academy in the City of New Bedford (the "City"). The City must approve and authorize local funding for the Projects within ninety (90) days after the MSBA's Board of Directors voted to approve the Projects. The City must execute and return three (3) originals of the PFA within thirty (30) days of receiving the PFA for the Projects. One of the originals of the PFA will be returned to the City after it has been signed by the MSBA's Executive Director. Please do not date the Agreement on pages 1 and 32. The PFA will be dated by the MSBA when the MSBA's Executive Director signs the Agreement.

In addition to signing and submitting three (3) originals of the PFA, the City must submit to the MSBA two (2) fully executed originals of the Exhibit A, the Total Project Budget. The City should keep the enclosed set of Exhibits and one executed original of Exhibit "A" for attachment to the fully executed original PFA that will be returned to the City. Also, please review Section 17 of the PFA to make sure that the designated City officer and address are accurate with regard to the receipt of notices that may be sent pursuant to the PFA.

The City must also submit two (2) originals of the Certification of Legal Counsel which is being sent via e-mail as a Word document to enable the City's legal counsel to put the Certification on his or her letterhead. The Legal Counsel Certification requires the City's legal counsel to certify which local public official or governmental body (the "Local Governing Body") has the full legal authority to execute the PFA on behalf of the City and to bind the City to its terms. The City should keep an additional copy of the certification for its records.

The City will need to provide a certified copy of the vote of the Local Governing Body authorizing the City to enter into and be bound by the PFA and authorizing the signatory to execute the document on behalf of the City if required by local charter, by-law, ordinance or other applicable law or policy. This document, if necessary, must bear the City's raised seal.

Finally, please complete and submit an electronic payment form (Exhibit J to the PFA). A copy is also being transmitted as an attachment in Word format so that it can be printed on the City's letterhead.

The required documents that must be submitted to the MSBA within thirty days after local funding is approved and authorized include:

40 Broad Street, Suite 500 • Boston, MA 02109 • Tel: 617-720-4466 • www.MassSchoolBuildings.org

City of New Bedford

ARP Project Funding Agreement, John Avery Parker Elementary School, Trinity Day Academy

Page 2 of 2

- three (3) executed originals of the PFA (please retain the enclosed set of Exhibits for attachment to the fully executed PFA that will be returned to the City);
- two (2) fully executed originals of the Exhibit A, the Total Project Budget (please keep a copy for insertion into the set of Exhibits retained by the City);
- two (2) signed originals of the Certification of Legal Counsel (please keep an additional copy for the City's records);
- a certified copy (bearing the City's raised seal) of the vote authorizing the City to enter into and be bound by the PFA and authorizing the signatory to execute the PFA on behalf of the City, if required by local charter, by-law, ordinance, or other applicable law or policy;
- a completed electronic payment form (Exhibit J to the PFA).

should be mailed to my attention at the following address:

**Massachusetts School Building Authority
40 Broad Street, Suite 500
Boston, MA 02109**

All of this documentation must be completed and returned to the MSBA within the time limits described above. After this documentation has been properly completed and submitted to the MSBA, and the PFA has been fully executed, the City can enter its Total Project Budget into the MSBA's ProPay System. The MSBA will include instructions to enter the project budget with the transmittal of the fully executed PFA. Once the City has entered the budget and the budget has been accepted by the MSBA, then the City can begin submitting requests for reimbursement to the MSBA. The MSBA will not process reimbursement requests until these requirements have been satisfied, the PFA has been fully executed, and the Total Project Budget has been accepted in the MSBA's ProPay System.

If you have any questions, please contact either Kevin Sullivan or me at the MSBA.

Regards,



Brian P. Kelley
Associate General Counsel

Enclosures/Attachments

cc: Legislative Delegation
Linda M. Morad, President, New Bedford City Council
Bruce J. Oliveira, Vice-Chair, New Bedford School Committee
Thomas Anderson, Superintendent, New Bedford Public Schools
Andrew B. O'Leary, Assistant Superintendent of Finance and Operations, New Bedford Public Schools
Jon Lemieux, Owner's Project Manager, The Vertex Companies, Inc.
Steven Habeeb, Designer, Habeeb & Associates Architects, Inc.
File: 10.2 Letters

**EXHIBIT A
PROJECT BUDGET
CITY OF NEW BEDFORD
JOHN AVERY PARKER ELEMENTARY SCHOOL
TRINITY DAY ACADEMY**

PROJECT FUNDING AGREEMENT

Total Project Budget

New Bedford
Trinity Day Academy

2/6/2019

Total Project Budget: All costs associated with the project are subject to 9B3 CMR 2.16(5)	Estimated Budget	Scope Items Excluded from the Basis of Estimated Total Facilities Grant or Otherwise Ineligible	Basis of Estimated Total Facilities Grant ¹	Estimated Maximum Total Facilities Grant ¹
OPM Feasibility Study	\$7,500	\$0	\$7,500	
A&E Feasibility Study	\$30,500	\$0	\$30,500	
Env. & Site	\$0	\$0	\$0	
Other	\$0	\$0	\$0	
Feasibility Study Agreement Subtotal	\$38,000	\$0	\$38,000	\$30,400
Legal Fees	\$0	\$0	\$0	\$0
Design Development	\$0	\$0	\$0	
Construction Contract Documents	\$6,560	\$0	\$6,560	
Bidding	\$4,840	\$0	\$4,840	
Construction Contract Administration	\$71,679	\$0	\$71,679	
Closeout	\$9,780	\$0	\$9,780	
Extra Services	\$0	\$0	\$0	
Reimbursable & Other Services	\$0	\$0	\$0	
Cost Estimates	\$0	\$0	\$0	
Advertising	\$0	\$0	\$0	
Permitting	\$0	\$0	\$0	
Owner's Insurance	\$0	\$0	\$0	
Other Administrative Costs	\$0	\$0	\$0	
Administration Subtotal	\$92,638	\$0	\$92,638	\$74,109
Basic Services				
Design Development	\$0	\$0	\$0	
Construction Contract Documents	\$54,850	\$0	\$54,850	
Bidding	\$7,000	\$0	\$7,000	
Construction Contract Administration	\$20,000	\$0	\$20,000	
Closeout	\$4,850	\$0	\$4,850	
Other Basic Services	\$0	\$0	\$0	
Basic Services Subtotal	\$86,500	\$0	\$86,500	
Construction Testing	\$0	\$0	\$0	
Printing (over minimum)	\$5,000	\$0	\$5,000	
Other Reimbursable Costs	\$0	\$0	\$0	
Hazardous Materials	\$30,000	\$0	\$30,000	
Geotech & Geo-Env.	\$0	\$0	\$0	
Site Survey	\$0	\$0	\$0	
Wetlands	\$0	\$0	\$0	
Traffic Studies	\$0	\$0	\$0	
Architectural/Engineering Subtotal	\$121,500	\$0	\$121,500	\$97,200
Pre-Construction Services	\$0	\$0	\$0	\$0
Land/Building Purchase	\$0	\$0	\$0	
Appraisal Fee	\$0	\$0	\$0	
Recording fees	\$0	\$0	\$0	
Site Acquisition Subtotal	\$0	\$0	\$0	\$0
Construction Budget	\$0	\$0	\$0	
GMP Fee	\$0	\$0	\$0	
GMP Insurance	\$0	\$0	\$0	
GMP Contingency	\$0	\$0	\$0	
Division 1 - General Requirements	\$142,769	\$0	\$142,769	
Division 2 - Existing Conditions	\$0	\$0	\$0	
Division 3 - Concrete	\$0	\$0	\$0	
Division 4 - Masonry	\$0	\$0	\$0	
Division 5 - Metals	\$0	\$0	\$0	
Division 6 - Woods, Plastics and Composites	\$0	\$0	\$0	
Division 7 - Thermal and Moisture Protection	\$0	\$0	\$0	
Division 8 - Openings	\$0	\$0	\$0	
Division 9 - Finishes	\$0	\$0	\$0	
Division 10 - Specialties	\$0	\$0	\$0	
Division 11 - Equipment	\$0	\$0	\$0	
Division 12 - Furnishings	\$0	\$0	\$0	
Division 13 - Special Construction	\$0	\$0	\$0	
Division 14 - Conveying Systems	\$0	\$0	\$0	
Division 21 - Fire Suppression	\$0	\$0	\$0	
Division 22 - Plumbing	\$25,160	\$0	\$25,160	
Division 23 - HVAC	\$311,650	\$0	\$311,650	
Division 25 - Integrated Automation	\$0	\$0	\$0	
Division 26 - Electrical	\$52,480	\$0	\$52,480	
Division 27 - Communications	\$0	\$0	\$0	
Division 28 - Electronic Safety and Security	\$0	\$0	\$0	
Division 31 - Earthwork	\$0	\$0	\$0	
Division 32 - Exterior Improvements	\$0	\$0	\$0	
Division 33 - Utilities	\$0	\$0	\$0	
Construction Budget	\$532,048	\$0	\$532,048	\$425,639
	\$0	\$0	\$0	
	\$0	\$0	\$0	
Alternates Subtotal	\$0	\$0	\$0	\$0
Utility company Fees	\$0	\$0	\$0	
Testing Services	\$0	\$0	\$0	
Swing Space/Modulars	\$0	\$0	\$0	
Other Project Costs (Mailing & Moving)	\$0	\$0	\$0	
Misc. Project Costs Subtotal	\$0	\$0	\$0	\$0

Total Project Budget

**New Bedford
Trinity Day Academy**

2/6/2019

Total Project Budget: All costs associated with the project are subject to 983 CMR 2.18(5)	Estimated Budget	Scope Items Excluded from the Basis of Estimated Total Facilities Grant or Otherwise Ineligible	Basis of Estimated Total Facilities Grant ¹	Estimated Maximum Total Facilities Grant ¹
<i>Furnishings</i>	\$0	\$0	\$0	
<i>Equipment</i>	\$0	\$0	\$0	
<i>Computer Equipment</i>	\$0	\$0	\$0	
FF&E Subtotal	\$0	\$0	\$0	\$0
Soft Costs that exceed 20% of Const'n Cost		\$0	\$0	
Project Budget	\$784,185	\$0	\$784,185	\$827,348

Board Authorization	
Project Budget	\$784,185
Scope Items Excluded or Otherwise Ineligible	\$0
Basis of Estimated Total Facilities Grant ¹	\$784,185
Reimbursement Rate	80.00%
Estimated Maximum Total Facilities Grant ¹	\$827,348

Total Construction Contingency ²	\$26,802
Total Owner's Contingency ²	\$5,320
Potentially Eligible Construction Contingency ²	\$26,802
Potentially Eligible Owner's Contingency ²	\$524
Total Potentially Eligible Contingency ²	\$27,126
Reimbursement Rate	80.00%
Potential Additional Contingency Grant Funds ²	\$21,701
Maximum Total Facilities Grant	\$849,049
Total Project Budget	\$816,107

This document was prepared by the MSBA based on a preliminary review of information and estimates provided by the Owner's Project Manager of New Bedford for the John Avery Parker Elementary School project. Based on this preliminary review, certain budget, cost and scope items have been determined to be ineligible for reimbursement, however, this document does not contain a final, exhaustive list of all budget, cost and scope items which may be ineligible for reimbursement by the MSBA. Nor is it intended to be a final determination of which budget, cost and scope items may be eligible for reimbursement by the MSBA. All project budget, cost and scope items shall be subject to review and audit by the Authority, and the Authority shall determine, in its sole discretion whether any such budget, cost and scope items are eligible for reimbursement. The MSBA may determine that certain additional budget, cost and scope items are ineligible for reimbursement.

1. The estimated maximum facilities grant established for the Project Funding Agreement does not include any potentially eligible contingency funds and is subject to review and audit by the MSBA. At the time of PFA Bid Amendment, the Estimated Maximum Facilities Grant and the Maximum Total Facilities Grant will be adjusted to account for any budget revision requests submitted and approved by the MSBA at the time of establishing the Amendment.

2. Pursuant to Section 3.20 of the Project Funding Agreement and the applicable policies and guidelines of the Authority, any project costs associated with the reallocation or transfer of funds from either the Owner's contingency or the Construction contingency to other budget line items shall be subject to review by the Authority to determine whether any such costs are eligible for reimbursement by the Authority. All costs are subject to review and audit by the MSBA.

By signing this Total Project Budget, I hereby certify that I have read and understand the form and further certify, to the best of my knowledge and belief, that the information supplied by the District in the table above is true, accurate, and complete.

By signing this Total Project Budget, I hereby certify that I have read and understand the form and further certify, to the best of my knowledge and belief, that the information supplied by the District in the table above is true, accurate, and complete.

By: _____
Title: Chair of School Building Committee
Date: _____

By: _____
Title: Chief Executive Officer
Date: _____

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By: _____
Title: Superintendent of Schools
Date: _____

By: _____
Title: Chair of School Committee
Date: _____

Total Project Budget

New Bedford
John Avery Parker Elementary School

2/6/2019

Total Project Budget: All costs associated with the project are subject to 963 CMR 2.16(5)	Estimated Budget	Scope Items Excluded from the Basis of Estimated Total Facilities Grant or Otherwise Ineligible	Basis of Estimated Total Facilities Grant ¹	Estimated Maximum Total Facilities Grant ¹
OPM Feasibility Study	\$7,500	\$0	\$7,500	
A&E Feasibility Study	\$50,000	\$0	\$50,000	
Env. & Site	\$0	\$0	\$0	
Other	\$4,500	\$0	\$4,500	
Feasibility Study Agreement Subtotal	\$62,000	\$0	\$62,000	\$62,000
Legal Fees	\$0	\$0	\$0	\$0
Design Development	\$0	\$0	\$0	
Construction Contract Documents	\$9,040	\$0	\$9,040	
Bidding	\$4,640	\$0	\$4,640	
Construction Contract Administration	\$71,676	\$0	\$71,676	
Closeout	\$13,780	\$0	\$13,780	
Extra Services	\$0	\$0	\$0	
Reimbursable & Other Services	\$0	\$0	\$0	
Cost Estimates	\$0	\$0	\$0	
Advertising	\$0	\$0	\$0	
Permitting	\$0	\$0	\$0	
Owner's Insurance	\$0	\$0	\$0	
Other Administrative Costs	\$0	\$0	\$0	
Administration Subtotal	\$99,116	\$0	\$99,116	\$79,292
Basic Services				
Design Development	\$0	\$0	\$0	
Construction Contract Documents	\$65,710	\$0	\$65,710	
Bidding	\$9,000	\$0	\$9,000	
Construction Contract Administration	\$44,000	\$0	\$44,000	
Closeout	\$5,000	\$0	\$5,000	
Other Basic Services	\$0	\$0	\$0	
Basic Services Subtotal	\$123,710	\$0	\$123,710	
Construction Testing	\$0	\$0	\$0	
Printing (over minimum)	\$5,000	\$0	\$5,000	
Other Reimbursable Costs	\$0	\$0	\$0	
Hazardous Materials	\$30,000	\$0	\$30,000	
Geotech & Geo-Env.	\$0	\$0	\$0	
Site Survey	\$0	\$0	\$0	
Wetlands	\$0	\$0	\$0	
Traffic Studies	\$0	\$0	\$0	
Architectural/Engineering Subtotal	\$158,710	\$0	\$158,710	\$128,888
Pre-Construction Services	\$0	\$0	\$0	\$0
Land/Building Purchase	\$0	\$0	\$0	
Appraisal Fees	\$0	\$0	\$0	
Recording fees	\$0	\$0	\$0	
Site Acquisition Subtotal	\$0	\$0	\$0	\$0
Construction Budget	\$0	\$0	\$0	
GMP Fee	\$0	\$0	\$0	
GMP Insurance	\$0	\$0	\$0	
GMP Contingency	\$0	\$0	\$0	
Division 1 - General Requirements	\$232,583	\$0	\$0	
Division 2 - Existing Conditions	\$90,780	\$0	\$0	
Division 3 - Concrete	\$0	\$0	\$0	
Division 4 - Masonry	\$5,770	\$0	\$0	
Division 5 - Metals	\$78,500	\$0	\$0	
Division 6 - Woods, Plastics and Composites	\$0	\$0	\$0	
Division 7 - Thermal and Moisture Protection	\$551,563	\$0	\$0	
Division 8 - Openings	\$0	\$0	\$0	
Division 9 - Finishes	\$0	\$0	\$0	
Division 10 - Specialties	\$0	\$0	\$0	
Division 11 - Equipment	\$0	\$0	\$0	
Division 12 - Furnishings	\$0	\$0	\$0	
Division 13 - Special Construction	\$0	\$0	\$0	
Division 14 - Conveying Systems	\$0	\$0	\$0	
Division 21 - Fire Suppression	\$0	\$0	\$0	
Division 22 - Plumbing	\$12,320	\$0	\$0	
Division 23 - HVAC	\$91,008	\$0	\$0	
Division 25 - Integrated Automation	\$0	\$0	\$0	
Division 26 - Electrical	\$18,500	\$0	\$0	
Division 27 - Communications	\$0	\$0	\$0	
Division 28 - Electronic Safety and Security	\$0	\$0	\$0	
Division 31 - Earthwork	\$0	\$0	\$0	
Division 32 - Exterior Improvements	\$0	\$0	\$0	
Division 33 - Utilities	\$0	\$0	\$0	
Construction Budget	\$1,067,014	\$0	\$1,067,014	\$853,611
	\$0	\$0	\$0	
	\$0	\$0	\$0	
	\$0	\$0	\$0	
Alternates Subtotal	\$0	\$0	\$0	\$0
Utility company Fees	\$0	\$0	\$0	
Testing Services	\$0	\$0	\$0	
Swing Space/Modulars	\$0	\$0	\$0	
Other Project Costs (Meating & Moving)	\$0	\$0	\$0	
Misc. Project Costs Subtotal	\$0	\$0	\$0	\$0

Total Project Budget

**New Bedford
John Avery Parker Elementary School**

2/6/2019

Total Project Budget: All costs associated with the project are subject to 963 CMR 2.16(6)	Estimated Budget	Scope Items EXCLUDED from the Basis of Estimated Total Facilities Grant or Otherwise Ineligible	Basis of Estimated Total Facilities Grant¹	Estimated Maximum Total Facilities Grant¹
<i>Furnishings</i>	\$0		\$0	\$0
<i>Equipment</i>	\$0		\$0	\$0
<i>Computer Equipment</i>	\$0		\$0	\$0
FF&E Subtotal	\$0		\$0	\$0
Soft Costs that exceed 20% of Const'n Cost		\$64,491	-\$64,491	
Project Budget	\$1,386,840	\$64,491	\$1,322,349	\$1,057,879

Board Authorization	
Project Budget	\$1,386,840
Scope Items Excluded or Otherwise Ineligible	-\$64,491
Basis of Estimated Total Facilities Grant ¹	\$1,322,349
Reimbursement Rate	80.00%
Estimated Maximum Total Facilities Grant ¹	\$1,057,879

Total Construction Contingency ²	\$53,351
Total Owner's Contingency ²	\$10,670
Potentially Eligible Construction Contingency ²	\$53,351
Potentially Eligible Owner's Contingency ²	\$0
Total Potentially Eligible Contingency ²	\$53,351
Reimbursement Rate	80.00%
Potential Additional Contingency Grant Funds ²	\$42,681
Maximum Total Facilities Grant	\$1,100,560
Total Project Budget	\$1,450,881

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1. The estimated maximum facilities grant established for the Project Funding Agreement does not include any potentially eligible contingency funds and is subject to review and audit by the MSBA. At the time of PFA Bid Amendment, the Estimated Maximum Facilities Grant and the Maximum Total Facilities Grant will be adjusted to account for any budget revision requests submitted and approved by the MSBA at the time of establishing the Amendment.

2. Pursuant to Section 3.20 of the Project Funding Agreement and the applicable policies and guidelines of the Authority, any project costs associated with the reallocation or transfer of funds from either the Owner's contingency or the Construction contingency to other budget line items shall be subject to review by the Authority to determine whether any such costs are eligible for reimbursement by the Authority. All costs are subject to review and audit by the MSBA.

By signing this Total Project Budget, I hereby certify that I have read and understand the form and further certify, to the best of my knowledge and belief, that the information supplied by the District in the table above is true, accurate, and complete.

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By: _____
Title: Chair of School Building Committee

By: _____
Title: Chief Executive Officer

Date: _____

Date: _____

By signing this Total Project Budget, I hereby certify that I have read and understand the form and further certify, to the best of my knowledge and belief, that the information supplied by the District in the table above is true, accurate, and complete.

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By: _____
Title: Superintendent of Schools

By: _____
Title: Chair of School Committee

Date: _____

Date: _____

District Name: City of New Bedford
School Name: John Avery Parker ES, Trinity Day Academy
Project ID Number: 201802010115, 201802010510

PROJECT FUNDING AGREEMENT
ACCELERATED REPAIR PROGRAM

This PROJECT FUNDING AGREEMENT, (the "Project Funding Agreement"), dated as of _____, 2019 (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 City of New Bedford 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 a roof replacement project at the John Avery Parker Elementary School located at 705 County St, New Bedford, MA 02740 and a boiler replacement project at the Trinity Day Academy located at 181 Hillman Street, New Bedford, MA 02740, as it is more particularly described elsewhere in this Agreement; and

WHEREAS, the Authority has determined that this Project is eligible for participation in the Authority's Accelerated Repair Program; 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 payment 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 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

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

WHEREAS, the Authority, though a competitive procurement process, has selected a pool of Owner's Project Managers and a pool of Designers for the Accelerated Repair Program and has assigned an Owner's Project Manager and a Designer from those pools to the District's Project in accordance with the assignment process described in the Authority's "Consultant Assignment Procedure: MSBA Accelerated Repair Program," which is incorporated by reference herein; and

WHEREAS, on February 13, 2019, 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 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:

"Accelerated Repair Program" means the Authority's program to provide Total Facilities Grants to school districts for certain Projects involving the repair, replacement, or upgrade of roofs, boilers, and/or window systems and related upgrades in accordance with the terms and conditions of the Accelerated Repair Program, including, but not limited to, the Authority's Sustainability Requirements for the Accelerated Repair Program, which are incorporated by reference herein, and any other eligibility requirements set forth in this Project Funding Agreement or otherwise established by the Authority.

"Assisted Facility" means the school facility or facilities that is/are 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

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attachments thereto, Advertisements, Instructions to Bidders, Bidding Documents, Contract Forms, Conditions of the Contracts, Specifications, Drawings, 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.

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

“Designer” shall mean the individual, corporation, partnership, sole proprietorship, joint stock company, joint venture, or other entity engaged in the practice of architecture, landscape architecture, or engineering that meets the requirements of M.G.L. c. 77C, § 44, and has been procured and assigned by the Authority and contracted by the District in accordance with the procedures described in the Authority’s “Science Lab Initiative and Accelerated Repair Program Owner’s Project Manager and Designer Assignment Procedure,” which are incorporated by reference herein, and all other applicable provisions of law to perform professional design services.

“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, 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 (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.

“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” shall mean the individual, corporation, partnership, sole proprietorship, joint stock company, joint venture, or other entity procured and assigned by the Authority and contracted by the District, in accordance with the procedures of the Authority’s “Science Lab Initiative and Accelerated Repair Program Owner’s Project Manager and Designer Assignment Procedure,” which are incorporated by reference herein, and all other applicable provisions of law 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, and is comprised of the two school projects, which are more particularly described in Exhibit “B” and elsewhere in this Agreement, at each of the following two school facilities:

- A roof replacement project at the John Avery Parker Elementary School project at the located at 705 County St, New Bedford, MA 02740, and
- A boiler replacement project at the Trinity Day Academy located at 181 Hillman Street, New Bedford, MA 02740

which are more particularly described elsewhere in this Agreement, which are (1) Capital Construction Projects, (2) Major Reconstruction Projects, or (3) School Projects, 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 2.10(10), 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 Conference” means the conference described in 963 CMR 2.10(9).

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“Project Site” means the specific locations of the Project at each of the two school facilities described herein and 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, 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. The Total Facilities Grant for this Project consists of two sums of money, one for each of the two school projects described herein, that shall not be co-mingled or considered in the aggregate for purposes of disbursing the Total Facilities Grant.

“Estimated Maximum Total Facilities Grant” shall mean the estimated Total Facilities Grant amount for each of the two school projects described herein, 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 each of the two school projects described herein 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”), which the District may be eligible to receive for each of the two school projects described herein, which amount 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 for each of the two school projects described herein under any circumstances. The actual Total Facilities Grant for each of the two school projects described herein 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.

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“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 each of the two school projects described in this Agreement that comprise the Project as 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”. Each of the two school projects described herein shall have its own individual Total Project budget, as more particularly described in 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) 80% of the final approved, total eligible Project costs, as determined by the Authority, (“Reimbursement Rate”) or (ii) \$627,348.00 for the Trinity Day Academy ; and \$1,057,879.00 for the John Avery Parker Elementary School (“Estimated Maximum Total Facilities Grants”). 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-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 \$649,049.00 for the Trinity Day Academy and \$1,100,560.00 for the John Avery Parker Elementary School. In no event shall the final, Maximum Total Facilities Grant, including any eligible owner’s and construction contingency amounts, exceed the amount specified for each of the two school projects described above. 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 for each of the two school projects described above may equal an amount less than the amount specified for each of the two school projects described above, 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 for each of the two, individual school construction projects or ineligible for payment by the Authority shall be the

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sole responsibility of the District. The Parties hereby agree that costs incurred by the District in connection with the Project prior to the Effective Date may be eligible for reimbursement if the Authority determines in its sole discretion that such costs meet the Authority's eligibility requirements. For purposes of applying the Total Facilities Grant, each of the two school projects described herein shall be considered severally, and not jointly, so that any unused portion of the grant amount specified for one of the school projects cannot be applied to an overage in otherwise eligible costs that exceed the grant amount specified for any of the other school projects.

2.2 In the event that the Authority reasonably determines that the Project is not in accordance or compliance with the Project Scope, the Project Schedule, the Total Project Budget, 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, including, but not limited to, the terms and conditions of the Accelerated Repair Program, including the Authority's "Sustainability Requirements for the Accelerated Repair Program," 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. This provision shall be applied severally, and not jointly, to each of the two, individual school projects that comprise the project so that an adjustment caused by a construction bid price for a particular school project that is lower than the grant amount for that school project, as set forth in Section 2.1 of this Agreement, will be applied to reduce the Total Project Budget and grant amount for that school project only.

2.3 The Parties hereby acknowledge and agree that, in the event that the lowest, responsible bid 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 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 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 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.

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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.

2.5 INTENTIONALLY LEFT BLANK

SECTION 3 COVENANTS

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 all 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 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 and/or the Project Scope 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

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Authority, pursuant to 963 CMR 2.10 & 2.16(5) and any other rules, regulations, policies, and guidelines of the Authority, including, but not limited to, the following:

- (a) Financing and Interest Costs. 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.
- (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) All other costs identified in 963 CMR 2.16(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, and Total Project Budget, and the District shall not make any changes, additions, or reductions to the Project Scope, Project Schedule, or Total Project Budget 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 described 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.

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.

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3.10 The District hereby agrees that, in order to demonstrate that adequate funding for the Project is available, it shall provide the Authority with financial statements, details relating to the financial condition of the District, an updated Project Cash Flow projection on a Monthly basis, in a suitable format acceptable to the Authority, to demonstrate that adequate funding for the Project is available.

3.11 The District hereby agrees that the Project shall meet the Authority's Sustainability Requirements for the Accelerated Repair Program, which are incorporated by reference herein, and the District further agrees that the Project shall produce measurable energy savings and shall incorporate sustainable maintenance practices.

3.12 The District hereby agrees that it shall use its best efforts and resources to secure additional energy conservation resources from other sources, including utility conservation programs, and shall allocate savings from reduced energy consumption to improved routine and capital maintenance practices.

3.13 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 and 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. This provision shall be applied severally, and not jointly, to each of the two, individual school projects that comprise the Project so that all such amounts the District receives from any third party or funding source, other than the Authority, for a particular school project shall be deducted from the Basis of Total Facilities Grant for that school project only.

3.14 The District shall use the Authority's Contract for Project Management Services and, Contract for Designer Services, as they have been revised by the Authority specifically for the Accelerated Repair Program, 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, professionals, or Consultants in connection with the Project.

3.15 During the course of the Project, the District shall investigate and review, and shall require the Owner's Project Manager 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, Subcontractors, and all Vendors expeditiously and diligently construct, equip and complete the Project in a good and workmanlike manner.

3.16 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 2.16(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. The District shall and shall cause its employees, agents, representatives,

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and its Owner's Project Manager, Designer, Contractor, 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.

3.17 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 2.12 and the Authority's requirements for the "Science Lab Initiative and Accelerated Repair Program Owner's Project Manager and Designer Assignment Procedure." If there is any change or proposed change in the Designer 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. If the Authority determines, in its sole discretion, that a change of the Designer is necessary, the Authority shall assign a new Designer from the Authority's pre-selected pool of Designers for the Accelerated Repair Program in accordance with the procedures described in the Authority's "Science Lab Initiative and Accelerated Repair Program Owner's Project Manager and Designer Assignment Procedure." The District shall not contract with any new Designer other than a Designer assigned by the Authority to the Project. The District shall also use the Authority's standard Contract for Designer Services as it has been specifically revised by the Authority for the Accelerated Repair Program.

3.18 The District shall not change the Contractor 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 2.12. 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 and describing the process by which the new Contractor was selected for or otherwise took over the Project.

3.19 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 the Designer, Owner's Project Manager, and Contractor hired, or otherwise assigned to the Project, by the Authority and/or 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, or Contractor is assigned by the Authority or hired by the District after the Effective Date, the District shall deliver this Project Funding Agreement to said Owner's Project Manager, Designer, or Contractor within ten (10) days after the effective date of hire or assignment.

3.20 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, 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.

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3.21 The District shall require the Contractor 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 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 within these deadlines, the Authority may terminate this Project Funding Agreement.

3.22 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.

3.23 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.

3.24 The District shall undertake all reasonable efforts to ensure that the Contractor and Subcontractors obtain all Project Permits and shall certify to the Authority in writing that the Contractor 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.

3.25 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.

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3.26 The District hereby acknowledges and agrees that the Authority may engage an independent party, not affiliated or associated with the Owner's Project Manager, Designer, or Contractor, 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 Contractor 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.

3.27 Within ninety (90) days after the District approves final payment to the Contractor 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.

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

3.29 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.

3.30 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.

3.31 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

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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.

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

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

3.34 The District shall not combine, consolidate, or conjoin in any way the procurement, pre-qualification or selection of a Contractor, Subcontractor, consultant, or vendor for the Project with the procurement, pre-qualification or selection of a Contractor, 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.

3.35 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 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.

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.

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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 2.05(1), 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 2.05(1), 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 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 2.04 and warrants and represents that the Project has been designed and constructed in accordance with the requirements and standards set forth in 963 CMR 2.04.

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4.10 The District has read and fully understands the provisions of 963 CMR 2.16 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 2.16.

4.11 The District has read and fully understands the provisions of 963 CMR 2.16(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.

4.12 The Project has successfully undergone review, or shall have successfully undergone review 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 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.

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, § 44; c. 30 (sections 39F, 39J, 39K, 39N, 39O, 39P and 39R); 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, § 44; c. 30 (sections 39F, 39J, 39K, 39N, 39O, 39P and 39R); 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.

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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 **Exhibit "J"**, 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.

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; provided, however, that the District shall not make any requests for reimbursement that total less than \$50,000. If the total value of a request for reimbursement is less than \$50,000, the District shall hold that request until such time as it can meet the \$50,000 threshold. Each 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

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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 not received and is not expecting to receive any rebates, monetary settlements, grants, monetary donations, surety bond payments, insurance proceeds, or any other funding from a third party, other than the Authority, 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.

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. For purposes of this section, the phrase "ninety-five per cent (95%) of the Total Facilities Grant described in Section 2 of this Project Funding Agreement" shall mean 95% of each grant amount for each of the two school projects listed in Section 2 of this Agreement so that disbursements of the Total Facilities Grant

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by the Authority for any one of the two school projects listed in section 2 shall not exceed 95% of the grant amount for that particular school project.

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 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,

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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 (90th) day after the District approves final payment to the Contractor for the Project or the ninetieth (90th) 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 sub-consultants without the prior written approval of the Authority in accordance with 963 CMR 2.11 and the Authority's requirements for the "Science Lab Initiative and Accelerated Repair Program Owner's Project Manager and Designer Assignment Procedure." 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 the proposed change and an explanation of the impact of the change or the proposed change on the Project. If the Authority determines, in its sole discretion, that a change of the Owner's Project Manager is necessary, the Authority shall assign a new Owner's Project Manager from the Authority's pre-selected pool of Owner's Project Managers for the Accelerated Repair Program in accordance with the procedures described in "Science Lab Initiative and Accelerated Repair Program Owner's Project Manager and Designer Assignment Procedure." The District shall not contract with any new Owner's Project Manager other than an Owner's Project Manager assigned by the Authority to the Project. The District shall also use the Authority's standard Contract for Project Management Services as it has been specifically revised by the Authority for the Accelerated Repair Program.

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 shall use its best efforts to enforce its rights thereunder.

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 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,

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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 assigned to the Project by the Authority and contracted 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 District's 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, 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 District's educational program and in accordance with the provisions of this Project Funding Agreement, Chapter 70B, 963 CMR 2.00 *et seq.*, Chapter 208 and 210 of the Acts of 2004, and any rules, regulations, policies, and guidelines of the Authority, unless

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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 with the District's educational program and in accordance with the provisions of this Project Funding Agreement, Chapter 70B, 963 CMR 2.00 *et seq.*, Chapter 208 and 210 of the Acts of 2004, 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 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, 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, if coverage is purchased by Contractor) 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.

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 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 Project Management Services and standard contract for Designer Services, as they have been specifically revised for the Accelerated Repair Program. The insurance required by this Section shall be provided at the sole expense of the Owner's Project Manager, Designer, Contractor, 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, 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, as the case may be, the standard language contained in Exhibit G regarding minimum insurance requirements for Contractors. 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.

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

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prescribed by the Authority and executed by the District, including, but not limited to, the Authority's standard contract for Project Management Services and standard contract for Designer Services as they have been specifically revised for the Accelerated Repair Program, and any other contract between the District and the Owner's Project Manager, Designer, Contractor, 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, and Vendors to submit updated insurance certificates to the District prior to the expiration of any of the insurance policies or coverage referenced in this Section so that the District shall at all times possess certificates indicating current coverage.

9.5 The failure of the District to ensure that each of the Owner's Project Manager, Designer, Contractor, 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 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, 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 Project Management Services and standard contract for Designer Services, as they have been specifically revised for the Accelerated Repair Program, and any other contract between the District and the Owner's Project Manager, Designer, Contractor, or Vendors.

9.7 With respect to all policies of insurance required of the Owner's Project Manager, Designer, Contractor, 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 Project Management Services and standard contract for Designer Services, as they have been specifically revised for the Accelerated Repair Program, and any other contract between the District and the Owner's Project Manager, Designer, Contractor, 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 Vendors from any liability for breach of their obligations under an agreement between the District and any of them.

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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 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, 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 Vendors.

9.11 The District shall, upon request by the Authority, produce copies of all policies of insurance maintained by the District, its Contractor, 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 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, at the Contractor'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.

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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

13.1 The District shall require each of the Owner's Project Manager, Designer, Contractor and Vendors, as the case may be, to agree 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

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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, Vendors and/or any and all Sub-Contractors arising out of this Project Funding Agreement or the Project.

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.

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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, 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 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 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, 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 electronic mail; 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:

Massachusetts School Building Authority
40 Broad Street, Suite 500
Boston, MA 02109
Attention: Director of Capital Planning
Facsimile: (617) 720-8460

If to the District:

The Honorable Jonathan F. Mitchell, Mayor
City of New Bedford
New Bedford City Hall
133 William Street
New Bedford, MA 02740

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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, 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 of law, which shall be and remain the sole responsibility of the District and its Designer, Contractor, 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.

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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 the Superior Court for Suffolk County, Massachusetts. The District, for itself and for any person or entity claiming by through or under it, hereby waives any defenses that it may have as to the venue to which it has agreed herein, including, but not limited to, any claim that this venue is improper or that the forum is inconvenient. The District for itself and for any person or entity claiming by through or under it, hereby waives all rights, if any, to a jury trial in any 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.

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) may 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, suit, withholding, recoupment, or counterclaim either during or after performance of this Project Funding Agreement.

SECTION 23 TERMINATION

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

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employees, or, where the District knew or should have known, by the Architect, Owner's Project Manager, 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 2.04(1)(g).

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 2019.

THE MASSACHUSETTS SCHOOL BUILDING AUTHORITY
BY:

John K. McCarthy
Executive Director

City of New Bedford
BY:

Name (Type/Print)

Title/Office (Type/Print)