

BOARD OF HIGHER EDUCATION
REQUEST FOR COMMITTEE AND BOARD ACTION

COMMITTEE: Fiscal Affairs and Administrative Policy **NO.:** FAAP 14-19

COMMITTEE DATE: October 22, 2013

BOARD DATE: October 29, 2013

APPROVAL OF DELEGATION OF AUTHORITY TO THE COMMISSIONER

MOVED: DELEGATION OF AUTHORITY TO THE COMMISSIONER TO APPROVE THE CONTRACT FOR FINANCIAL ASSISTANCE, MANAGEMENT AND SERVICES BETWEEN THE MASSACHUSETTS STATE COLLEGE BUILDING AUTHORITY AND THE COMMONWEALTH, FOR THE COMMUNITY COLLEGES

The Amended and Restated Contract for Financial Assistance, Management and Services between the Massachusetts State College Building Authority and the Commonwealth (Community Colleges), acting by and through the Board of Higher Education, is hereby approved in substantially the form presented to this meeting, and the Commissioner of Higher Education is hereby authorized to execute and deliver the same, with such changes, omissions, insertions and revisions as he may determine to be advisable, his execution thereof being conclusive as to such determination, and all other documents and instruments necessary or convenient in connection therewith and the transactions contemplated thereby.

Authority: Massachusetts General Laws Chapter 15A, Section 6

Contact: Sean P. Nelson, Deputy Commissioner for Administration and Finance
Fiscal and Administrative Policy

CONTRACT FOR FINANCIAL ASSISTANCE, MANAGEMENT AND SERVICES
(COMMUNITY COLLEGES)

THIS CONTRACT FOR FINANCIAL ASSISTANCE, MANAGEMENT AND SERVICES dated as of _____, 2013 by and between The Commonwealth of Massachusetts (the “Commonwealth”), acting by and through the Board of Higher Education (the “Board”) established under Chapter 15A of the General Laws of the Commonwealth, and the Massachusetts State College Building Authority (the “Authority”), a body politic and corporate and public instrumentality of the Commonwealth established under Chapter 703 of the Acts of 1963 of the Commonwealth (as amended, the “Act”).

W I T N E S S E T H:

WHEREAS, pursuant to the Act, the Board is authorized, in the name and on behalf of the Commonwealth to make available to the Authority the services of officers and employees of the public institutions of higher education in the community college segment established by Section 5 of Chapter 15A of the Massachusetts General Laws (the “Colleges”) and office space and facilities in the Colleges for (i) billing and collecting rents, fees, rates and other charges for the use and occupancy of Projects (as defined below) by the Colleges, their students and staff and their dependents, student and other organizations and entities, (ii) renting and leasing rooms and other accommodations in the buildings and structures of the Authority, (iii) cleaning, heating, daily operation of and repairs to and maintenance of such buildings and structures and other property of the Authority and (iv) keeping all books of account for the Authority;

WHEREAS, pursuant to the Act, the Board is further authorized, in the name and on behalf of the Commonwealth to transfer or pledge that it will periodically transfer to the Authority, to provide for the payment of indebtedness incurred by the Authority, certain Trust Funds (defined below) and Appropriations (defined below);

WHEREAS, pursuant to the Act, the Board is further authorized to do any and all things authorized by law and necessary or convenient to aid and cooperate with the Authority in carrying out the purposes of the Authority and exercising its powers under the Act and in complying with the provisions of any trust agreement into which the Authority may enter; and

WHEREAS, this Contract is intended to provide for the payment of bonds of the Authority issued to finance Projects (as hereinafter defined) at the various Colleges and for the provision of services to the Authority for the operation, maintenance and repair of the Projects (as so defined) at the various Colleges;

NOW, THEREFORE, in consideration of the premises and of the mutual agreements herein contained, the Authority and the Commonwealth, acting by and through the Board, hereby agree as follows:

Section 1. Definitions.

Except as otherwise expressly provided herein, terms used in this Contract shall be used as defined in the trust agreement securing bonds of the Authority that have been issued to finance or refinance Projects (as hereinafter defined) at the various Colleges (the “Trust Agreement”).

Section 2. Issuance of Bonds; Projects.

The Authority shall use its best efforts to issue Bonds from time to time to achieve its corporate purposes in undertaking Projects on the campuses of the various Colleges and financing and refinancing Project Costs and related expenses. The term "Project" as used herein shall have the meaning given such term in the Act. The Authority shall not initiate any Project except upon written request made by authority of the Board and upon written approval from the Secretary of the Executive Office for Administration and Finance of the Commonwealth and the Commissioner of the Department of Higher Education of the Commonwealth (the "Commissioner"). Projects shall be identified on Schedule A attached hereto, which schedule shall be amended as additional Projects are financed. Projects that are Residence Halls are referred to herein as "Residence Hall Projects." The Authority shall not issue notes or Bonds for the purpose of refunding Bonds theretofore issued and then outstanding under the Act except with the prior written approval of the Board of such refunding issue, which approval need not be of the interest rate, the maturity or any of the other terms thereof.

Section 3. Proposed Campus Operating Budgets.

On or before each September 15, the Authority shall notify each College on which a Residence Hall Project is located of the Authority's projected costs related to Residence Hall Projects at such College for the ensuing Fiscal Year. On or before each November 1, each College shall submit to the Authority the proposed operating budget for the ensuing Fiscal Year for such College with respect to the Residence Hall Projects on its campus. Each such submission shall include actual or projected occupancy data for the four most recently completed Fiscal Years, the current Fiscal Year and the ensuing Fiscal Year. Each such submission shall include projected receipts (including recommended fees, rates, rents and charges) and disbursements in such detail as the Authority may reasonably request. If such proposed budget includes a requested increase in Authority fees, rates, rents and charges, such submission shall specify how such increase is proposed to be allocated to projected costs.

Section 4. Authority's Annual Operating Budget.

On or before each February 1, the Authority shall submit to the Board its operating budget for the ensuing Fiscal Year, detailing (i) the projected costs of operating, maintaining and repairing the Projects, (ii) the Authority's projected debt service costs, (iii) the Authority's projected operating and administrative costs, (iv) any projected required deposits to reserves, including without limitation the Section 10 Reserve Fund, (v) any projected payments to the Commonwealth pursuant to Section 20 of the Act and (vi) any additional reserves it may propose to create or augment consistent with the Trust Agreement. Any proposed expenditures pursuant to clause (vi) as aforesaid shall require the approval of the Board. Said budget shall specify the costs that are to be paid directly by the Authority and those that are to be paid by the applicable College and shall specify the dates on which amounts are payable by the College to the Authority or to the Trustee. Said budget shall also detail the fees, rents, rates and other charges proposed for the use of the Projects, which shall, insofar as consistent with the requirements of the Trust Agreement and the Act, be fixed so as to maintain a reasonable uniformity in charges for like rooms or other accommodations at a College, whether or not contained in a Project.

The fees, rents, rates and other charges for the use of the Projects shall be fixed so as to be sufficient, in the aggregate, together with other available moneys, to cover all of the costs and transfers to reserves as aforesaid allocable to the Projects. Notwithstanding the foregoing, in the case of a Project that is not a Residence Hall Project, said fees, rents, rates and other charges shall be fixed so as to be sufficient, in the aggregate, to cover all of the costs and transfers to reserves as aforesaid, provided that,

in the case of costs described in clause (i) above, said fees, rents, rates and other charges need only be sufficient, subject to the provisions of Section 15, to cover costs that are borne directly by the Authority.

Any fixing, revision or adjustment of fees, rents, rates or other charges by the Authority shall require the approval of the Board, provided that if the Board does not act to approve the Authority's proposed fees, rents, rates or other charges by March 31, the Authority may proceed to fix or adjust such fees, rents, rates and other charges without the approval of the Board, and provided, further, that the Board may, on or before March 1, propose alternative fees, rents, rates and other charges which shall thereupon be adopted by the Authority if aggregate revenues will be produced thereby sufficient to meet the expenses described in clauses (i) through (vi), above. Prior to the first day of each Fiscal Year, the Authority shall send to each College a copy of its annual operating budget for such Fiscal Year.

Section 5. Project Trust Funds.

All moneys received by a College as payment of fees, rents, rates or other charges for the use and occupancy of a Project of the Authority shall be held in trust for the Authority by such College separate from all other moneys held by such College. Each College shall establish and maintain on its books a trust fund for the Projects at said College. The moneys in such trust fund shall be expended by the College in accordance with the Authority's annual operating budget and shall be remitted by the College to the Authority or to the trustee under the Trust Agreement (the "Trustee") at such times and in such amounts as may be directed in writing by the Authority in accordance with the Authority's annual operating budget.

Section 6. Operating Reserves.

Except to the extent that the provisions of this section may be waived by the Authority in accordance with Section 22 hereof, for each Project, as provided in this section, the applicable College shall maintain, within the trust fund held by such College under Section 5, a minimum balance as an operating reserve. Pursuant to the Authority's annual operating budget, and at such time or times in each Fiscal Year as may be specified in such budget, commencing with the second full Fiscal Year after completion of a Project, the applicable College shall add to the balance in such trust fund held as an operating reserve the amount, if any, necessary to cause such reserve amount to equal the following percentages of the operating expenses for the Project for the Fiscal Year prior to the year in which the deposit is to be made: (i) in the second full Fiscal Year after completion of the Project, 1%, (ii) in the third year, 2%, (iii) in the fourth year, 3%, (iv) in the fifth year, 4%, and (v) in the sixth year and thereafter, 5%. Moneys held in such operating reserve may be expended by the College for the payment of extraordinary and unexpected operating, maintenance and repair costs or to meet budgetary shortfalls with respect to the applicable Project resulting from an unexpected decline in use of the Project, damage to or destruction of a portion of the Project or any other unexpected occurrence with respect to the Project. Moneys withdrawn from such operating reserve must be replenished by the College by the end of the next Fiscal Year after such withdrawal, in addition to the annual deposits described above.

Section 7. Capital Improvement Reserve Accounts.

The Authority shall maintain, within the Capital Improvement Reserve Fund, a separate Project Capital Improvement Reserve Account for each College at which a Project is located, to be used to make Capital Improvements to the Projects at such College. Except to the extent that the provisions of this section may be waived by the Authority in accordance with Section 22 hereof, pursuant to the Authority's annual operating budget, and at such time or times in each Fiscal Year as may be specified in such budget, commencing with the second full Fiscal Year after completion of a Project, the applicable

College shall pay over to the Trustee, for deposit in the applicable Project Capital Improvement Reserve Account, the greater of (i) the amount specified in the Authority's annual operating budget as being required by the Trust Agreement to be so deposited or (ii) an amount equal to the following percentages of the fees, rents, rates and other charges collected with respect to such Project during the prior Fiscal Year: (i) in the second Fiscal Year after completion of the Project, and in each of the next seven Fiscal Years, 2.5%, (ii) in each of the next five Fiscal Years, 5%, and (iii) in each Fiscal Year thereafter, 7.5%.

Section 8. Operation, Maintenance and Repair of Projects; Board Responsibilities.

Each College shall operate and maintain the Projects located on its campus and keep them in good order and repair, including, without limitation, billing and collecting fees, rents, rates and other charges in accordance with the Authority's annual operating budget, procuring all necessary equipment, materials and supplies and making repairs and capital improvements that are necessary to maintain the Project for its expected useful life and that are within the capacity of the College to undertake. The College may use its own employees or contract with third parties to provide such services, as such College deems appropriate, provided that any such contract with a third party shall be submitted to the Authority for prior review and written approval as to compliance with Revenue Procedure 97-13 of the Internal Revenue Service (management contract guidelines for bond-financed property) or successor provisions of comparable import. Notwithstanding the foregoing, the Authority may, in its sole discretion, elect to contract directly with a third party for the provision of any or all such services with respect to a particular Project, except in the case of a Project with respect to which the Authority has neither legal title nor a leasehold interest (a "Commonwealth-owned Project"). The Authority shall have no obligation to operate or maintain any Commonwealth-owned Project. The Board or the College, as appropriate, shall make and revise rules and regulations concerning the conduct of persons while on or in the Authority's Projects and the bringing into or onto, keeping in or on and removal from the Projects of property of others than the Authority and shall enforce such rules and regulations and establish and impose penalties for violation of the same.

The Board shall make available to the Authority the services of officers and employees of and facilities in the Colleges for the performance of, and shall perform, such services for the Authority as may be necessary or desirable to keep the books of account of the Authority with respect to the Projects. Each College shall submit to the Authority a copy of its annual financial statements for each Fiscal Year as soon as practicable after the issuance thereof. Each such financial statement shall be prepared in accordance with generally accepted accounting principles, shall be audited by an independent certified public accountant or accounting firm and shall contain such detail as to Projects as the Authority shall reasonably request. Each College shall also provide the Authority such other information as the Authority may from time to time reasonably request. The Board shall provide to the Authority such information as the Authority may from time to time reasonably request about the Board, the system of public higher education in the Commonwealth, the Colleges and the Projects, including without limitation all information appropriate to enable the Authority to comply with the provisions of Rule 15c2-12 of the federal Securities and Exchange Commission (continuing disclosure requirements applicable to municipal securities).

Section 9. Pledge of Trust Funds.

The Board, in the name and on behalf of the Commonwealth, hereby pledges to the making of payments required by Section 12 any non-appropriated funds or revenue legally available to a College, including, without limitation, tuition, fees and other charges (collectively, "Trust Funds"), provided, however, that the aggregate amount of Trust Funds of each College so pledged shall be limited to 25% of the Authority's average annual aggregate debt service costs allocable to such College's Projects, said

amount, as determined conclusively by the Authority, identified in Schedule A attached hereto (the aggregate amount of Trust Funds of a particular College so pledged being called the “Pledged Trust Funds” of such College).

Each College shall cause its Trust Funds to contain on each December 1 and June 1 an amount available for transfer to make payments as provided in Section 12 equal to the amount of the College’s Pledged Trust Funds, less the amount of any Pledged Trust Funds previously transferred to make payments as provided in Section 12, and shall certify in writing to the Authority that it has complied with the foregoing requirement. If all of a College’s Pledged Trust Funds have been expended to make payments as provided in Section 12, the foregoing provisions shall not be applicable to such College.

Section 10. Pledge of Appropriations.

The Board, in the name and on behalf of the Commonwealth, hereby pledges to the making of payments required by Section 12 all funds made available for expenditure by or on behalf of any College under an appropriation made by the General Court of the Commonwealth or otherwise available for expenditure by the Board (collectively, the “Pledged Appropriations” and, together with the Pledged Trust Funds, the “Pledged Funds”).

Section 11. Pledged Funds.

The Pledged Funds are and will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto prior to the pledge created hereby, and the Board shall take all actions necessary to protect and effectuate such pledge, provided, however, that nothing in this section shall be deemed to limit the right of the Board or any College, to the extent permitted by law, to create a pledge, lien or other charge on any or all such Pledged Funds junior and subordinate to the pledge created hereby and provided, further, that the Board or a College may, to the extent permitted by law, create a pledge, lien or other charge on any or all such Pledged Funds in respect of a particular College of equal rank with the pledge created hereby if, and only if, the Board or the College, as the case may be, shall have certified in writing to the Authority that the total revenues available for expenditure by such College during each of the three most recently completed Fiscal Years (including the Pledged Funds, but excluding any Project Revenues, in respect of such College) were not less than 200% of the maximum annual debt service requirements on all outstanding debt obligations allocable to such College and the debt obligations then being issued. In computing principal and interest requirements for the purposes of this section on debt obligations as to which interest is deferred and compounded rather than being paid currently during any period of calculation, such calculation shall be made as if interest thereon accrued and was deemed paid at a rate determined on the date of such calculation by a nationally known investment banking firm selected by the Board or College, as the case may be, to be the rate which, if earnings at such rate were compounded on the initial public sale price in the manner required by the terms of such debt obligations through the maturity date or earlier date on which such compounding is scheduled to cease, would produce the amount of such debt obligations scheduled to mature on such maturity date or the accreted value of such debt obligations scheduled to exist on such earlier date, as the case may be.

Section 12. Payments from Pledged Funds.

The Board shall make payments from Pledged Funds if and to the extent that Project Revenues related to a particular College and other moneys received by the Authority or otherwise available pursuant to the Trust Agreement in connection with the Projects of such College are insufficient to pay debt service on the Bonds allocable to such Projects and the Authority’s expenses in connection with such Bonds or such Projects. Upon receipt from the Authority or the Trustee of notice of any such insufficiency relating to a

particular College, the Board shall, as promptly as practicable, pay to the Trustee, or cause such College to pay to the Trustee, from the Pledged Funds of such College the amount of such insufficiency, provided that any such payment shall be made, first, from Pledged Trust Funds, until exhausted, and, second, from Pledged Appropriations.

The Pledged Trust Funds of one College may not be used to make payments under this section on behalf of any other College. However, if the Pledged Trust Funds of the applicable College have been exhausted and the Pledged Appropriations of such College are insufficient to cover the insufficiency, the Board shall pay to the Trustee, or cause the Trustee to be paid, the amount of the remaining insufficiency from the Pledged Appropriations of all of the Colleges, ratably, according to the percentage of outstanding Bonds then allocable to each particular College.

In order to comply with the provisions of this section or to effectuate the pledge described in Sections 10 and 11, the Board shall take all actions necessary or desirable to effectuate transfers from funds made available for expenditure on behalf of a College pursuant to an appropriation or other spending authorization in the Commonwealth's annual operating budget, including supplemental and deficiency budgets. Such actions shall include, without limitation, submitting or causing to be submitted to the Comptroller of the Commonwealth such directions or instructions as may be required or requested by the Comptroller to effectuate such transfers. The Board shall, if and to the extent necessary to effectuate transfers required under this Contract, reallocate or cause to be reallocated appropriations or other spending authorizations as aforesaid for a College between allocation subaccounts established for such College or from allocation accounts of such College to the allocation account of the Board. The Board shall submit or cause to be submitted to the Comptroller such requests for expenditure or payment vouchers as may be required or requested by the Comptroller to place on the warrant submitted by the Comptroller to the Governor's Council of the Commonwealth for payment to the Trustee such amounts obtained from appropriations to or for a College at such times as may be required for compliance with the provisions hereof. Without limiting the generality of the foregoing, as soon as practicable after determining that appropriations will be required to be transferred to the Trustee, the Board shall so notify the Comptroller. Such notice shall include (i) any relevant payment due dates, (ii) the amount of the payment to be funded by appropriations, (iii) the identity of the Trustee and appropriate payment instructions for payment thereto and (iv) the identity of the College or Colleges whose appropriations are to be expended and, if more than one, the amount of appropriations allocable to each. The Authority agrees to give notice to the Secretary of the Executive Office for Administration and Finance of the Commonwealth whenever it gives notice to the Board of an insufficiency as aforesaid, or whenever it has become aware that the Trustee has given such notice to the Board.

The Authority shall keep an accurate account of the sufficiency of available funds to pay debt service on its outstanding indebtedness, including without limitation Pledged Funds, and shall twice each year, in the months of September and January, make a report thereof to the Board and to the Comptroller. If the report described in the preceding sentence is not received by the Comptroller during the month of September or January, as the case may be, the Comptroller shall prevent any amounts from being expended from the appropriation account of any College until such time as the Comptroller has determined whether there is an insufficiency of available funds to pay debt service. If such report indicates that there is an insufficiency of funds available to pay debt service, or if, in the absence of a report, the Comptroller ascertains that there is such an insufficiency, the Comptroller shall, within five days, but not later than the last business day of February (in the case of a May 1 debt service payment) or October 10 (in the case of a November 1 debt service payment), transfer amounts, without further allotment, from the appropriation account of one or more Colleges, as appropriate, to cure such insufficiency in accordance with the provisions of this section.

Section 13. Cooperation of Colleges.

The Board shall cause each College to cooperate with the Authority to effectuate the provisions hereof. Such cooperation shall include, without limitation, the execution and submission to the Comptroller of any requests for expenditure or payment vouchers and any transfers among allocation subaccounts by the College necessary or desirable to effectuate transfers for payments due hereunder from appropriation allocation accounts or subaccounts or nonappropriated funds held by the State Comptroller for such College.

Neither the Board nor any College shall take any action, including without limitation entering into a management contract with respect to, or otherwise permitting private use of, a facility financed by the Authority, that would jeopardize the exclusion from gross income for federal income tax purposes of the interest on the Bonds; the Board and each College shall be entitled to rely on the opinion of bond counsel to the Authority that a given action would not have such effect. Each College shall notify the Authority in advance of any proposed change in use at a facility financed by the Authority that would involve private use.

In the event the Act or other applicable laws are subsequently changed to eliminate the role of the Board as agent of the Commonwealth hereunder, the Colleges shall execute such amendments to the provisions of this Contract as may be necessary to effectuate the covenants and agreements of the Commonwealth hereunder, including without limitation the pledge of Trust Funds and Appropriations. In the event legislation shall be proposed to alter in any material way the nature of the relationship among the Authority, the Board and the Colleges or the ability of the Authority to obtain access to the revenues and funds contemplated by this Contract to provide for payment of the Bonds, the Board and the Colleges agree to use their best efforts to influence such legislation so as to maintain the financial security of the Authority and the security for the Bonds, and, upon enactment of any such legislation, the Board and the Colleges agree, to the fullest extent permitted by law, to execute such amendments to the provisions of this Contract and to execute such other agreements and take such other actions as may be necessary to achieve the purposes of this Contract and to maintain the financial security of the Authority and the security for the Bonds.

Section 14. Default by Board or College.

Upon the failure of the Board to make any payment required under the provisions of Section 12, or by the Board or any College to observe any other covenant or requirement imposed by this Contract, the Board or the College, as the case may be, shall be deemed in default hereunder. Thereupon, the Authority or the Trustee may institute legal proceedings to enforce such covenant or requirement or to enforce the pledge and lien granted under the provisions of Sections 10 and 11 and may take such other actions or exercise such other remedies as may be available at law or in equity to enforce the provisions of this Contract.

Without limiting the generality of the foregoing, the Authority may undertake direct responsibility for the operation of one or more Projects, including without limitation Commonwealth-owned Projects, or take such other action as may be necessary or desirable to generate Project Revenues in accordance with the requirements of this Contract. No action by the Authority hereunder, and no default or breach by the Board or any College, shall in any way affect the obligations of the Board or any College hereunder. Whenever a breach of this Contract, whether substantial or otherwise, and whether before or after notice of the breach has been given to the Board or any College, has been corrected, the obligations and rights hereunder shall be reinstated and performance of this Contract shall continue as if such breach had never occurred.

Section 15. Insurance.

The Authority shall purchase and maintain in effect with respect to each of its Projects policies of insurance and fidelity bonds against such risks and losses and in such amounts as it shall deem to be reasonable. In addition, the Authority agrees to purchase and maintain in effect with respect to each Commonwealth-owned Project, upon the written request of the Commissioner of the Division of Capital Asset Management and Maintenance of the Commonwealth, such insurance policies as may be available to it and to name the Commonwealth as an additional insured on any policy related solely to one or more Commonwealth-owned Projects, provided that the Commonwealth shall be obligated to make payments under Section 12 of this Contract irrespective of the existence of any such insurance. Subject to any contrary requirements in the Trust Agreement, the Authority shall use the proceeds of any use and occupancy insurance to replace revenues lost by reason of interruption of the use of the applicable Project and shall apply insurance proceeds received in respect of damage or destruction to a Project to the replacement, restoration or reconstruction of such Project.

Section 16. Annual Report.

As required by Section 6 of the Act, the Authority shall keep an accurate account of all its activities and of all its receipts and expenditures and shall annually in the month of January make a report thereof to the Board, to the Governor of the Commonwealth and to the Auditor of the Commonwealth, such reports to be in a form prescribed by the Board, with the written approval of said Auditor. Unless otherwise directed by the Board, the Authority may use its audited annual financial statements for the preceding Fiscal Year to comply with the provisions of this section.

Section 17. Notices and Demands.

Any notice or demand permitted or required under this Contract to be given or served by any of the parties hereto to or upon another party hereto shall be in writing and shall be signed in the name of the party giving or serving the same. Such notice or demand shall be mailed by registered mail (postage and registry charges prepaid) or served on the Commissioner or on the Executive Director of the Authority, as the case may be. Notice shall be deemed to have been received at the time of actual service or three days after the date of the mailing by registered mail properly addressed. The principal office of the Commissioner shall be deemed to be Room 1401, One Ashburton Place, Boston, Massachusetts 02108 or such other place as the Board may designate by written notice to the Authority. The principal office of the Authority shall be deemed to be 253 Summer Street, Boston, Massachusetts 02210 or such other place as the Authority may designate by written notice to the Board.

Section 18. Liability.

No member, officer or employee of the Board or any College shall be individually liable on any obligation assumed by the Commonwealth or the Board hereunder. No member, officer or employee of the Authority shall be individually liable on any obligation assumed by the Authority hereunder, and neither the carrying out of a Project nor the ownership of a Project by the Authority shall impose any liability on any such member, officer or employee.

With respect to a Commonwealth-owned Project, the Authority shall not be liable for latent defects in construction not performed by the Authority or its contractors or agents or for any action or inaction of any party not acting as an agent, employee or contractor of the Authority.

Section 19. Action by Authorized Officers.

The Board, the Authority or any College may, to the extent authorized by law, act hereunder or authorize an officer or officers to act in their name hereunder, and the action of any duly authorized officer or committee of the Board, the Authority or any College shall be deemed to be the action of the Board, the Authority or such College, as the case may be.

Section 20. Term.

This Contract shall continue in full force and effect until all amounts payable to the Authority with respect to the Bonds and the Projects shall have been paid in full. Upon such payment this Contract shall cease and determine without further liability on the part of either party hereto to the other.

Section 21. Non-Assignability.

This Contract is not assignable except that if by act of the General Court the powers, functions, duties and property of the Board or the Authority are transferred to another political subdivision, agency, board, commission, department, authority or institution of the Commonwealth, the rights and obligations of this Contract shall be deemed to have been assigned thereby to such transferee, and provided further that the Authority's rights to receive moneys hereunder and to enforce the provisions of this Contract may be assigned to the Trustee.

Section 22. Amendments and Addenda.

This Contract may be amended only by the execution of an Amendment in writing by the Board and the Authority or their successors. It is anticipated that certain of the provisions of this Contract may be waived or modified with respect to particular Projects by the execution of a written Addendum to this Contract by the Board and the Authority, to be attached hereto.

Section 23. Credit of the Commonwealth.

The faith and credit of the Commonwealth are not and shall not be pledged to the payments required under the provisions of Section 12 or in respect of any other obligation assumed by the Commonwealth hereunder. The financial assistance provided pursuant to Section 12 shall be provided solely from the sources identified therein. No provision of this Contract shall create or be deemed to create any obligation by the Commonwealth to appropriate funds for any purposes under this Contract.

Section 24. Counterparts.

This Contract may be executed and delivered in any number of counterparts, each of which shall be deemed to be an original, but such counterparts together shall constitute one and the same instrument.

Section 25. Partial Invalidity.

If any term, covenant or condition of this Contract shall be invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and each term, covenant and condition of this Contract shall be valid and shall be enforced to the extent permitted by law.

Section 26. Governing Law.

This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

Section 27. No Waiver.

No failure or delay on the part of either of the parties hereto in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other right or remedy.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their duly authorized officers as of the date first above written.

MASSACHUSETTS STATE COLLEGE BUILDING AUTHORITY

Edward H. Adelman
Executive Director

THE COMMONWEALTH OF MASSACHUSETTS,
acting by and through the Board of Higher Education

Richard M. Freeland
Commissioner of the Department of Higher Education

The provisions of Section 12 are hereby acknowledged:

Martin J. Benison
Comptroller of the Commonwealth

Schedule A

PROJECTS

College

Pledged
Trust Funds

Authority-owned Projects

Pledged
Trust Funds

Commonwealth-owned Projects

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