

**BOARD OF HIGHER EDUCATION**

**REQUEST FOR COMMITTEE AND BOARD ACTION**

**COMMITTEE:** Fiscal Affairs and Administrative Policy      **NO.:** FAAP 10-02

**COMMITTEE DATE:** November 3, 2009

**BOARD DATE:** November 10, 2009

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**APPROVAL OF DELEGATION OF AUTHORITY TO THE COMMISSIONER TO AMEND MSCBA CONTRACT**

**MOVED:** Delegation of Authority to the Commissioner to amend the contract for Financial Assistance, Management and Services Between the Massachusetts State College Building Authority and the Commonwealth

The Amended and Restated Contract for Financial Assistance, Management and Services between the Massachusetts State College Building Authority and the Commonwealth, 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: Edward Terceiro, Acting Associate Commissioner for Fiscal and Administrative Policy

AMENDED AND RESTATED  
CONTRACT FOR FINANCIAL ASSISTANCE, MANAGEMENT AND SERVICES

THIS AMENDED AND RESTATED CONTRACT FOR FINANCIAL ASSISTANCE, MANAGEMENT AND SERVICES dated as of February 1, 2003 is entered into as of \_\_\_\_\_, 2009 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").

WITNESSETH:

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 State Colleges and office space and facilities in the State Colleges for (i) billing and collecting rents, fees, rates and other charges for the use and occupancy of property of the Authority by the State 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;

WHEREAS, the Authority and the Commonwealth, acting by and through the Board, entered into a Contract for Financial Assistance, Management and Services, 1994 Projects, Existing Projects and Refunding, dated as of October 1, 1994, as amended as of August 1, 1999 (the "1994 Contract"), to provide, *inter alia*, for the payment of the Authority's Project and Refunding Revenue Bonds, Series 1994-A (the "Prior Bonds") and the Authority's Project Revenue Bonds, Senior Series 1999-A;

WHEREAS, the Authority and the Commonwealth, acting by and through the Board, entered into a Contract for Financial Assistance, Management and Services, Bridgewater State College Dining Hall, dated as of August 1, 1999 (the "1999 Bridgewater Contract") to provide, *inter alia*, for the payment, in part, of the Authority's Project Revenue Bonds, Series 1999-1;

WHEREAS, the Authority and the Commonwealth, acting by and through the Board, entered into a Contract for Financial Assistance, Management and Services, Massachusetts College of Art Residence Hall, dated as of August 1, 1999 (the "MassArt Residence Hall Contract") to provide, *inter alia*, for the payment, in part, of the Authority's Project Revenue Bonds, Series 1999-1;

WHEREAS, the Authority and the Commonwealth, acting by and through the Board, entered into a Contract for Financial Assistance, Management and Services, Massachusetts College of Art Dining

Hall, dated as of August 1, 1999 (the “MassArt Dining Hall Contract”) to provide, *inter alia*, for the payment, in part, of the Authority’s Project Revenue Bonds, Series 1999-1;

WHEREAS, the Authority and the Commonwealth, acting by and through the Board, entered into a Contract for Financial Assistance, Management and Services, Framingham State College Parking Lot, dated as of August 1, 1999 (the “Framingham Contract”) to provide, *inter alia*, for the payment, in part, of the Authority’s Project Revenue Bonds, Series 1999-1;

WHEREAS, the Authority and the Commonwealth, acting by and through the Board, entered into a Contract for Financial Assistance, Management and Services, Bridgewater State College Residence Hall, dated as of May 1, 2000 (the “2000 Bridgewater Contract” and, together with the 1994 Contract, the 1999 Bridgewater Contract, the MassArt Residence Hall Contract, the MassArt Dining Hall Contract and the Framingham Contract, the “Prior Contracts”) to provide, *inter alia*, for the payment of the Authority’s Project Revenue Bonds, Series 2000-1;

WHEREAS, the Authority restructured its credit in 2003 in a transaction involving the defeasance of all of the above-described bonds of the Authority except for the Prior Bonds and the modification of the 1994 trust agreement securing the Prior Bonds to provide for the payment of the Prior Bonds and new bonds of the Authority being issued in connection with such transaction and in the future (the 1994 trust agreement as so amended, and as it may be further amended and supplemented, being referred to herein as the “Trust Agreement”);

WHEREAS, in connection with such restructuring transaction, the Authority and the Commonwealth, acting by and through the Board, entered into this new Contract providing for the payment of the Prior Bonds and new bonds of the Authority being issued in connection with such transaction and in the future and for the provision of services to the Authority for the operation, maintenance and repair of the Authority’s property at the various State Colleges, which new contract terminated and superseded all of the Prior Contracts;

WHEREAS, this Contract was amended in 2004 and 2005 and updated and restated in 2006, 2008 and 2009; and

WHEREAS, the parties hereto now desire to amend this Contract to enable fees, rents, rates and charges for the use of all Projects to be set on a system-wide basis;

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.

Section 2. Issuance of Bonds; System Projects and Campus 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 State 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 financed by the Prior Bonds, identified on Schedule A attached hereto, are referred to herein as "System Projects." All other Projects, including those previously financed and those to be financed in the future, are referred to herein as "Campus Projects." Campus Projects are identified on Schedule B attached hereto, which schedule shall be amended as additional Projects are financed. 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 State College on which a Campus Project is located of the Authority's projected costs related to Campus Projects at such State College for the ensuing Fiscal Year. On or before each November 1, each State College shall submit to the Authority the proposed operating budget for the ensuing Fiscal Year for such State College with respect to the System Projects on its campus and with respect to each Campus Project 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 State College and shall specify the dates on which amounts are payable by the State 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 State 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 Campus Project that is not residential, 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 State College a copy of its annual operating budget for such Fiscal Year.

Section 5. System Project Trust Funds and Campus Project Trust Funds.

All moneys received by a State 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 State College separate from all other moneys held by such State College. Each State College shall establish and maintain on its books a trust fund for the Projects at said State College. The moneys in such trust fund shall be expended by the State College in accordance with the Authority's annual operating budget with respect to the Projects at such State College and shall be remitted by the State College to the Authority or to the Trustee under the Trust Agreement 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.

For each Campus Project, as provided in this section, the applicable State College shall maintain, within the trust fund held by such State 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 Campus Project, the applicable State 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 State 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 State 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 System Projects Capital Improvement Reserve Account to be used to make Capital Improvements to System Projects. 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, the Board shall pay over, or cause the State Colleges to pay over, to the Trustee, for deposit in the System Projects Capital Improvement Reserve Account, from amounts collected as fees, rents, rates and other charges of the Authority, 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 7.5% of the total fees, rents, rates and other charges collected with respect to the System Projects during such Fiscal Year. The Authority shall maintain within the Capital Improvement Reserve Fund a separate Campus Project Capital Improvement Reserve Account for each State College at which a Campus Project is located, to be used to make Capital Improvements to the Campus Projects at such State College. 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 Campus Project, the applicable State College shall pay over to the Trustee, for deposit in the applicable Campus 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 Campus 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.

Each State 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 State College to undertake. The State College may use its own employees or contract with third parties to provide such services, as such State 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 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 State 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 State 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 State 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 State 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 State 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.

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 State College, including, without limitation, tuition, fees and other charges (collectively, "Trust Funds"), provided, however, that the aggregate amount of Trust Funds of each State College so pledged shall be limited to 25% of the Authority's average annual aggregate debt service costs allocable to such State College's Projects (excluding debt service costs related to Guaranteed Bonds), said amount, as determined conclusively by the Authority, identified in Schedule C attached hereto with respect to System Projects and in Schedule B attached hereto with respect to Campus Projects (the aggregate amount of Trust Funds of a particular State College so pledged being called the "Pledged Trust Funds" of such State College), and provided, further, that the pledge of Trust Funds on account of System Projects on the campus of Fitchburg State College shall be limited as provided in said Schedule C. Each State 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 State College's Pledged Trust Funds, less the amount of any Pledged Trust Funds previously transferred to make payments as provided in Section 12 (or, in the case of Westfield State College and the Massachusetts Maritime Academy, to make payments to Bank of America, N.A. pursuant to the prior liens on Pledged Trust Funds identified on said Schedule C), and shall certify in writing to the Authority that it has complied with the foregoing requirement. If all of a State College's Pledged Trust Funds have been expended to make payments as provided in Section 12 or to make payments to Bank of America, N.A. as aforesaid, the foregoing provisions shall not be applicable to such State 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 a State 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.

Except as otherwise indicated on Schedule C, 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 by the Prior Contracts, 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 State 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 State 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 State College of equal rank with the pledge created hereby if, and only if, the Board or the State College, as the case may be, shall have certified in writing to the Authority that the total revenues available for expenditure by such State College during each of the three most recently completed Fiscal Years (including the Pledged Funds, but excluding any Project Revenues, in respect of such State College) were not less than 200% of the maximum annual debt service requirements on all outstanding debt obligations allocable to such State 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 State 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 State College and other moneys received by the Authority or otherwise available pursuant to the Trust Agreement in connection with the Projects of such State College are insufficient to pay debt service on the Bonds (other than Guaranteed 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 State College, the Board shall, as promptly as practicable, pay to the Trustee, or cause such State College to pay to the Trustee, from the Pledged Funds of such State College the amount of such insufficiency, provided that the Pledged Funds of one State College may not be used to make payments under this section on behalf of any other State College and provided, further, that any such payment shall be made, first, from Pledged Trust Funds, until exhausted, and, second, from Pledged Appropriations. In the case of Westfield State College and the Massachusetts Maritime Academy, the Pledged Trust Funds shall be deemed to be exhausted if and to the extent that they have been paid to Bank of America, N.A. pursuant to the prior liens described on Schedule C or are otherwise unavailable to the Authority or the Trustee pursuant to the Intercreditor Agreements among Bank of America, N.A., the Authority and the Commonwealth, acting by and through the Board, and certain other parties, as such Intercreditor Agreements may be amended from time to time. 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 an applicable State 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 State College between allocation subaccounts established for such State College or from allocation accounts of such State 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 State 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 State College whose appropriations are to be expended. 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 semiannually 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 State 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 April 10 (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 any applicable State College to cure such insufficiency.

Section 13. Termination of Prior Contracts.

The parties hereto agree that upon execution and delivery of this Contract, the Prior Contracts shall terminate and the parties shall be released from all duties, obligations and liabilities thereunder except insofar as any such duties, obligations and liabilities shall have been incorporated into this Contract.

Section 14. Cooperation of State Colleges.

The Board shall cause each State 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 State 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 State College. Neither the Board nor any State 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 State 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 State 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 State 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 State 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 State 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 State 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 15. Default by Board or State College.

Upon the failure of the Board to make any payment required under the provisions of Section 12, or by the Board or any State College to observe any other covenant or requirement imposed by this Contract, the Board or the State 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 State College, shall in any way affect the obligations of the Board or any State 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 State 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 16. 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. Subject to the foregoing, the Authority agrees to purchase and maintain in effect with respect to each Commonwealth-owned Project 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. 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 17. 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 18. 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 136 Lincoln Street, Boston, Massachusetts 02111 or such other place as the Authority may designate by written notice to the Board.

Section 19. Liability.

No member, officer or employee of the Board or any State 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 20. Action by Authorized Officers.

The Board, the Authority or any State 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 State College shall be deemed to be the action of the Board, the Authority or such State College, as the case may be.

Section 21.     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 22.     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 23.     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 Campus Projects by the execution of a written Addendum to this Contract by the Board and the Authority. Such Addenda shall be numbered sequentially and attached hereto. The first four Addenda shall incorporate provisions in the 1999 Bridgewater Contract, the Framingham Contract, the 2000 Bridgewater Contract and the MassArt Dining Hall Contract that differ from the general provisions of this Contract.

Section 24.     Credit of the Commonwealth; Commonwealth Guaranty.

The Commonwealth Guaranty shall remain in full force and effect, in accordance with its terms as executed on each of the Prior Bonds, until all of the Prior Bonds have been paid, and the full faith and credit of the Commonwealth are pledged for the performance of the Commonwealth Guaranty. The Commonwealth agrees to guarantee to the Owners of all Guaranteed Bonds and to the Trustee, as trustee for such Owners, the payment of the principal of and interest on all of the Guaranteed Bonds as the same become due and payable, and in case the Authority shall default in making any such payment as and when the same shall be due and payable, the Commonwealth hereby agrees to make such payment as the same becomes due and payable and hereby pledges its full faith and credit for the performance of this guaranty, provided that the total amount of bonds and notes issued by the Authority and guaranteed by the Commonwealth under the Act shall not exceed the amount from time to time authorized by the Act to be so guaranteed, exclusive of such bonds and notes as the Act may permit to be excluded from such amount. Such guaranty shall be executed on each of the Guaranteed Bonds other than the Prior Bonds in the following form:

GUARANTY

For consideration paid, The Commonwealth of Massachusetts, acting pursuant to the power conferred upon it by Chapter 703 of the Acts of 1963, as amended, and by every other enactment thereunto it enabling, hereby unconditionally guarantees to the registered owner of this bond and to the trustee under the trust agreement referred to therein, as trustee for such registered owner, the punctual payment, in all respects in accordance with the provisions of said bond and said trust agreement, of the principal thereof and the interest thereon as the same shall respectively become due and payable and, in the case of the failure of the Massachusetts State College Building Authority to make any such payment of either principal or interest as the same shall become due and payable, The Commonwealth of Massachusetts hereby agrees itself to make such payment punctually and hereby pledges its full faith and credit for the performance of this guaranty.

IN WITNESS WHEREOF, THE COMMONWEALTH OF MASSACHUSETTS has caused this guaranty to be signed in its name and on its behalf by an officer of the Board of Higher Education, thereunto duly authorized, as of the date of said bond.

THE COMMONWEALTH OF MASSACHUSETTS

By \_\_\_\_\_ [facsimile signature] \_\_\_\_\_  
Authorized Officer  
Board of Higher Education

However, 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 other than performance of the Commonwealth Guaranty on the Prior Bonds and the Guaranteed Bonds issued in 2004 to refund the Prior Bonds scheduled to mature on May 1, 2016.

Section 25. 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 26. 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 27. Governing Law.

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

Section 28.     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

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Edward H. Adelman  
Executive Director

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

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Richard M. Freeland  
Commissioner of the Department of Higher Education

[The provisions of Section 12 are hereby acknowledged.](#)

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[Martin J. Benison](#)  
[Comptroller of the Commonwealth](#)

## SYSTEM PROJECTS

<u>State College</u>	<u>Project</u>
Bridgewater State College	Woodward Pope Scott Great Hill Apartments Shea/Durgin Miles DiNardo
Fitchburg State College	Herlihy Aubuchon Russell Apartments Mara Village
Framingham State College	Horace Mann Pierce O'Connor Larned Linsley Corinne Foster
Massachusetts College of Art and Design	Smith Hall
Massachusetts College of Liberal Arts	Hoosac Berkshire Flagg Townhouses
Massachusetts Maritime Academy	Companies 1-6
Salem State College	Peabody Bowditch Bates Complex
Westfield State College	Scanlon Dickinson Davis Lammers Courtney Hall Apartments
Worcester State College	Chandler Village Dowden Hall

CAMPUS PROJECTS

[Commonwealth-owned Projects are in *bold italics*]

<u>College</u>	<u>Pledged Trust Funds</u>	<u>Project</u>
Bridgewater State College	\$171,673	East Campus Commons
	\$388,992	East Hall
	\$651,177	Crimson Hall
	\$24,254	<b>2006A Parking Facility</b>
	\$690,192	2008A expansion of Pope and Scott Halls
Fitchburg State College	\$61,108	<b>Holmes Dining Hall</b>
	\$75,868	<b>Elliot Athletic Fields</b>
	\$37,014	2008A Cedar Street Residence Hall
	\$334,778	2008A expansion of Mara Village
Framingham State College	\$62,891	Union Avenue Parking Lot
	\$37,509	<b>Athletic Fields/Larned Hall Parking Lot</b>
	\$192,632	<b>McCarthy College Center</b>
	\$13,641	2009A land acquisition for new residence
	\$114,401	2009A Parking Facility
Massachusetts College of Art and Design	\$473,230	The Artists' Residence
	\$34,397	<b>Kennedy Building Dining Hall</b>
	\$212,460	<b>2009A Kennedy Center renovations</b>
Massachusetts College of Liberal Arts	\$3,675	<b>2006A tennis courts</b>
Massachusetts Maritime Academy	\$308,466*	2006A expansion of Companies 1-6
Salem State College	\$729,954	Central Campus Student Village
	\$40,311	<b>Central Campus Parking Lot</b>
	\$61,556	<b>O'Keefe Athletic Facility</b>
	\$68,702	<b>2006A Athletic Facilities<sup>#</sup></b>
	\$991,289	2009A Residence Hall
Westfield State College	\$532,401*	2004A Residence Hall
Worcester State College	\$534,640	Wasylean Hall
	\$172,542	2006A Parking Facility
	\$383,671	2009A Expansion of Wasylean Hall

<sup>#</sup> Land is owned by Salem State College Assistance Corporation and licensed to the Authority.

\* Subordinate to the lien granted to Bank of America, N.A. in connection with the loan obtained from the Massachusetts Health and Educational Facilities Authority financed by said Authority's Variable Rate Demand Revenue Bonds, Capital Asset Program Issue, Series M-2 (Pool 2).

PLEDGED TRUST FUNDS FOR SYSTEM PROJECTS

<u>State College</u>	<u>Pledged Trust Funds</u>
Bridgewater State College	\$722,159
Fitchburg State College	\$515,282*
Framingham State College	\$845,070
Massachusetts College of Art and Design	\$32,306
Massachusetts College of Liberal Arts	\$267,000
Massachusetts Maritime Academy	\$368,789**
Salem State College	\$288,137
Westfield State College	\$537,831**
Worcester State College	\$260,092

\* Not including moneys attributable to the fee that was authorized to be charged to students pursuant to a vote of the Fitchburg State College board of trustees on June 27, 1996 to finance a physical education facility.

\*\* Subordinate to the lien granted to Bank of America, N.A. in connection with the loan obtained from the Massachusetts Health and Educational Facilities Authority financed by said Authority's Variable Rate Demand Revenue Bonds, Capital Asset Program Issue, Series M-2 (Pool 2).

ADDENDUM NO. 1

BRIDGEWATER STATE COLLEGE

EAST CAMPUS COMMONS

The State College shall provide for the Authority's costs pursuant to Section 4 by charging as a portion of its Dorm-Dining Fee (or as part of any subsequent fee substantially equivalent to the Dorm-Dining Fee), or by charging to all students residing in the residence halls at the State College as a separate fee, the amount sufficient to cover such costs. Such portion of the Dorm-Dining Fee shall be identified separately on the books of the State College for the purposes of this Contract but need not be identified separately in the bills pursuant to which the Dorm-Dining Fee is billed. Said portion of the Dorm-Dining Fee or said separate fee as aforesaid shall be held in the trust fund of the State College pursuant to Section 5.

ADDENDUM NO. 2

FRAMINGHAM STATE COLLEGE

UNION AVENUE PARKING LOT

The State College shall provide for the Authority's costs pursuant to Section 4 by charging as a portion of its parking fee billed by the State College for the use of said parking lot an amount sufficient to cover such costs. Such portion of said parking fee shall be identified separately on the books of the State College for the purposes of this Contract but need not be identified separately in the bills pursuant to which the parking fee is billed. Said portion of the parking fee shall be held in the trust fund of the State College pursuant to Section 5.

The provisions of Section 6 and Section 7 are waived.

ADDENDUM NO. 3

BRIDGEWATER STATE COLLEGE

EAST HALL

Fees, rents, rates and charges established for East Hall shall include (i) the amounts charged for living quarters in East Hall to students who reside there and other amounts charged to such students as a condition of residing there, (ii) excess fees, rents, rates and other charges received on account of System Projects at the State College and (iii) all other revenues and income on account of East Hall, including without limitation commissions or other moneys received from vendors or other enterprises operating therein and income from summer occupancy thereof. If the State College, pursuant to Section 3, or the Authority, pursuant to Section 4, projects that the revenues described in clause (iii) will be less than \$610,000 and if, as a result, there is a budgetary shortfall in excess of the amount of revenues described in clause (ii), then the Authority's annual operating budget pursuant to Section 4 may include as fees, rents, rates and charges established for East Hall such amount payable by the State College from any funds of the State College permitted to be applied to the purpose as may be necessary to make up the shortfall, provided that such amount shall not exceed the difference between \$610,000 and the amount of projected revenues described in clause (iii).

ADDENDUM NO. 4

MASSACHUSETTS COLLEGE OF ART AND DESIGN

KENNEDY BUILDING DINING HALL

The College shall provide for the Authority's costs pursuant to Section 4 by charging as a portion of its dining fee (or as part of any subsequent fee substantially equivalent to the dining fee) the amount sufficient to cover such costs. Such portion of the dining fee shall be identified separately on the books of the State College for the purposes of this Contract but need not be identified separately in the bills pursuant to which the dining fee is billed. Said portion of the dining fee shall be held in the trust fund of the State College pursuant to Section 5.

The provisions of Section 6 and Section 7 are waived.

ADDENDUM NO. 5

FRAMINGHAM STATE COLLEGE

ATHLETIC FIELDS/LARNED HALL PARKING LOT

The State College shall provide for the Authority's costs pursuant to Section 4 by charging as a portion of its parking fee billed by the State College for the use of said parking lot and/or charging as a portion of any fee billed by the State College for the use of said athletic fields amounts sufficient to cover such costs and/or using any funds of the State College permitted to be applied to the purpose. Any such portion of said parking fee and/or said athletic fee shall be identified separately on the books of the State College for the purposes of this Contract but need not be identified separately in the bills pursuant to which the parking fee and/or the athletic fee is billed. Said portion of the parking fee and/or portion of the athletic fee and/or other funds shall be held in the trust fund of the State College pursuant to Section 5.

The provisions of Section 6 and Section 7 are waived.

ADDENDUM NO. 6

SALEM STATE COLLEGE

CENTRAL CAMPUS PARKING LOT

The State College shall provide for the Authority's costs pursuant to Section 4 by charging as a portion of its parking fee billed by the State College for the use of said parking lot an amount sufficient to cover such costs. Such portion of said parking fee shall be identified separately on the books of the State College for the purposes of this Contract but need not be identified separately in the bills pursuant to which the parking fee is billed. Said portion of the parking fee shall be held in the trust fund of the State College pursuant to Section 5.

The provisions of Section 6 and Section 7 are waived.

ADDENDUM NO. 7

FITCHBURG STATE COLLEGE

HOLMES DINING HALL

The State College shall provide for the Authority's costs pursuant to Section 4 by charging a dining fee (or a portion of a larger dining fee) sufficient to cover such costs. Such fee (or portion of a larger fee) shall be identified separately on the books of the State College for the purposes of this Contract but need not be identified separately in the bills pursuant to which the fee is billed. Said fee (or portion of a larger fee) shall be held in the trust fund of the State College pursuant to Section 5.

The provisions of Section 6 and Section 7 are waived.

ADDENDUM NO. 8

FITCHBURG STATE COLLEGE

ELLIOT ATHLETIC FIELDS

The State College shall provide for the Authority's costs pursuant to Section 4 by charging a student athletic fee (or portion of a larger fee) sufficient to cover such costs. Such fee (or portion of a larger fee) shall be identified separately on the books of the State College for the purposes of this Contract but need not be identified separately in the bills pursuant to which the fee is billed. Said fee (or portion of a larger fee) shall be held in the trust fund of the State College pursuant to Section 5.

The provisions of Section 6 and Section 7 are waived.

ADDENDUM NO. 9

FRAMINGHAM STATE COLLEGE

MCCARTHY COLLEGE CENTER

The State College shall provide for the Authority's costs pursuant to Section 4 by charging a dining fee (or portion of a larger fee) and a College Center fee (or portion of a larger fee) in an amount sufficient in the aggregate to cover such costs. Such fees (or portions of larger fees) shall be identified separately on the books of the State College for the purposes of this Contract but need not be identified separately in the bills pursuant to which the fees are billed. Said fees (or portions of larger fees) shall be held in the trust fund of the State College pursuant to Section 5.

The provisions of Section 6 and Section 7 are waived.

ADDENDUM NO. 10

SALEM STATE COLLEGE

O'KEEFE ATHLETIC FACILITY

The State College shall provide for the Authority's costs pursuant to Section 4 by charging a student athletic fee (or portion of a larger fee) sufficient to cover such costs. Such fee (or portion of a larger fee) shall be identified separately on the books of the State College for the purposes of this Contract but need not be identified separately in the bills pursuant to which the fee is billed. Said fee (or portion of a larger fee) shall be held in the trust fund of the State College pursuant to Section 5.

The provisions of Section 6 and Section 7 are waived.

ADDENDUM NO. 11

BRIDGEWATER STATE COLLEGE

2006A PARKING FACILITY

The State College shall provide for the Authority's costs pursuant to Section 4 by charging as a portion of its parking fee billed by the State College for the use of said parking lot an amount sufficient to cover such costs. Such portion of said parking fee shall be identified separately on the books of the State College for the purposes of this Contract but need not be identified separately in the bills pursuant to which the parking fee is billed. Said portion of the parking fee shall be held in the trust fund of the State College pursuant to Section 5.

The provisions of Section 6 and Section 7 are waived.

ADDENDUM NO. 12

MASSACHUSETTS COLLEGE OF LIBERAL ARTS

2006A TENNIS COURTS

The College shall provide for the Authority's costs pursuant to Section 4 by charging a student fee (or portion of a larger fee) sufficient to cover such costs. Such fee (or portion of a larger fee) shall be identified separately on the books of the State College for the purposes of this Contract but need not be identified separately in the bills pursuant to which the fee is billed. Said fee (or portion of a larger fee) shall be held in the trust fund of the College pursuant to Section 5.

The provisions of Section 6 and Section 7 are waived.

ADDENDUM NO. 13

SALEM STATE COLLEGE

2006A ATHLETIC FACILITIES

The State College shall provide for the Authority's costs pursuant to Section 4 by charging a student athletic fee (or portion of a larger fee) sufficient to cover such costs. Such fee (or portion of a larger fee) shall be identified separately on the books of the State College for the purposes of this Contract but need not be identified separately in the bills pursuant to which the fee is billed. Said fee (or portion of a larger fee) shall be held in the trust fund of the State College pursuant to Section 5.

The provisions of Section 6 and Section 7 are waived.

ADDENDUM NO. 14

FRAMINGHAM STATE COLLEGE

2009A PARKING FACILITY

The State College shall provide for the Authority's costs pursuant to Section 4 by assessing a parking fee for the use of said parking facility and, to the extent the amount raised by said fee is insufficient to cover such costs, by applying amounts in the General Purpose Trust Fund - General Reserve property acquisition account of the State College to the payment of such costs. Amounts received on account of said parking fee shall be held in the trust fund of the State College pursuant to Section 5.

The provisions of Section 6 and Section 7 are waived.

ADDENDUM NO. 15

MASSACHUSETTS COLLEGE OF ART AND DESIGN

2009A KENNEDY CENTER RENOVATIONS

The College shall provide for the Authority's costs pursuant to Section 4 from (i) any funds of the College permitted to be applied to the purpose, up to an annual amount of \$755,000 (with \$265,000 expected to be collected from the Massachusetts College of Pharmacy and Health Sciences), and (ii) dining fees sufficient, together with the amount described in clause (i), to cover such costs.

The provisions of Section 6 and Section 7 are waived.

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