

PROJECT MINUTES

Project:	Peebles Elementary School Feasibility Study	Project No.:	15041
Prepared by:	Joel Seeley	Meeting Date:	12/1/2016
Re:	School Building Committee Meeting	Meeting No:	30
Location:	Bourne Veteran's Memorial Community Center	Time:	6:30pm
Distribution:	School Building Committee Members, Attendees (MF)		

Attendees:

PRESENT	NAME	AFFILIATION	VOTING MEMBER
✓	James L. Potter	Chairman, School Building Committee	Voting Member
✓	Peter J. Meier	Board of Selectmen	Voting Member
	Christopher Hyldburg	Chairman, School Committee	Voting Member
✓	Natasha Scarpato	Member, School Committee	Voting Member
✓	Donna Buckley	Member at Large	Voting Member
	Richard A. Lavoie	Finance Committee	Voting Member
✓	William Meier	Building Trade Expert	Voting Member
		Member at Large	Voting Member
✓	Frederick H. Howe	Board of Health, Vice-Chairman School Building Committee	Voting Member
	Steven M. Lamarche	Superintendent of Schools, BPS	Voting Member
	Edward S. Donoghue	Director of Business Services, BPS	Non-Voting Member
	Thomas M. Guerino	Town Administrator	Non-Voting Member
		Local Official Responsible for Building Maintenance	Non-Voting Member
✓	Elizabeth A. Carpenito	Principal, BES	Non-Voting Member
✓	Kathy Anderson	Elementary/Special Education Secretary	Non-Voting Member
	Janey Norton	Principal, PES	
	Kent Kovacs	FAI, Architect	
	Betsy Farrell Garcia	FAI, Architect	
	Michael Cimorelli	FAI, Architect	
✓	Joel Seeley	SMMA, OPM	

Item #	Action	Discussion
30.1	Record	Call to Order, 6:30 PM, meeting opened.
30.2	Record	A motion was made by F. Howe and seconded by P. Meier to approve the 11/14/2016 School Building Committee meeting minutes. No discussion, motion passed unanimous by those attending.
30.3	J. Seeley	J. Seeley distributed and reviewed the MSBA Project Scope and Budget Agreement documents, attached, issued to the Town for signature. J. Seeley will follow-up to obtain the required signatures and return to MSBA for full execution.
30.4	Record	J. Seeley distributed and reviewed the DESE Approval Letter, attached.
		COMMUNITY OUTREACH
30.5	Committee	Committee members discussed recent community outreach activities by each and upcoming activities in preparation for the vote. The following events will further inform the public on the project, Committee members to attend: <ul style="list-style-type: none"> • Existing Peebles tours on December 3rd • Santa’s Workshop on December 3rd
30.6	Record	Old or New Business: <ol style="list-style-type: none"> 1. N. Scarpato asked if the tennis courts would be off-line during the construction period? <i>J. Seeley indicated yes the courts would be offline during the construction period.</i> <i>J. Potter indicated that they may possibly be reconstructed prior to construction commencement at the site or possibly constructed elsewhere thru CPA funding, this will need further research and discussion.</i>
30.7	Record	Next SBC Meeting: December 8, 2016 at 6:30 pm at the Bourne Veteran’s Memorial Community Center.
30.8	Record	A Motion was made by P. Meier and seconded by F. Howe to adjourn the meeting. No discussion, voted unanimously.

Attachments: Agenda, Updated Roadshow Schedule, MSBA PS&B Agreement, DESE Approval Letter

The information herein reflects the understanding reached. Please contact the author if you have any questions or are not in agreement with these Project Minutes

PROJECT MEETING SIGN-IN SHEET

Project: Peebles Elementary School Feasibility Study Project No.: 15041
 Prepared by: Joel Seeley Meeting Date: 12/01/2016
 Re: School Building Committee Meeting Meeting No: 30
 Location: Bourne High School Library Media Center Time: 6:30pm

Distribution: Attendees, (MF)

SIGNATURE	ATTENDEES	EMAIL	AFFILIATION
<i>James L. Potter</i>	James L. Potter	onsetjp@juno.com	Chairman, School Building Committee
<i>Peter J. Meier</i>	Peter J. Meier	pmeier@townofbourne.com	Bourne Board of Selectmen
	Christopher Hyldborg	chrish@alpha-1.com	Chairman, Bourne School Committee
<i>Natasha Scarpato</i>	Natasha Scarpato	scarpato4@comcast.net	Bourne School Committee
<i>Donna Buckley</i>	Donna Buckley	d.j.buckley23@gmail.com	Member-At-Large
	Richard A. Lavoie	RichL.Lavoie@gmail.com	Member, Bourne Finance Committee
<i>William Meier</i>	William Meier	Dusty22752@aol.com	Building Trade Expert
			Member-At-Large
<i>Richard H. Howe</i>	Frederick H. Howe	rickhowe9@gmail.com	Member-At-Large, Board of Health
	Steven M. Lamarche	slamarche@bourneps.org	Superintendent of Schools, BPS
	Edward S. Donoghue	EDonoghue@bourneps.org	Director of Business Services, BPS, MCPPO
	Thomas M. Guerino	tguerino@townofbourne.com	Town Administrator
			Director of Facilities, Town of Bourne
<i>Elizabeth A. Carpenito</i>	Elizabeth A. Carpenito	ecarpenito@bourneps.org	Principal, BES
<i>Kathy Anderson</i>	Kathy Anderson	kanderson@bourneps.org	Elementary/Special Education Secretary
	Janey Norton	jnorton@bourneps.org	Principal, PES
	Kent Kovacs	kkovacs@flansburgh.com	Flansburgh Architects
	Betsy Farrell Garcia	bgarcia@flansburgh.com	Flansburgh Architects
	Joel Seeley	jseeley@smma.com	SMMA

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AGENDA

Project:	Peebles Elementary School Feasibility Study	Project No.:	15041
Re:	School Building Committee Meeting	Meeting Date:	12/1/2016
Meeting Location:	Bourne High School Library Media Center	Meeting Time:	6:30 PM
Prepared by:	Joel Seeley	Meeting No.:	31
Distribution:	Committee Members (MF)		

1. Call to Order
2. Approval of Minutes
3. Approval of Invoices and Commitments
4. Community Outreach
5. Old or New Business
6. Public Comments
7. Next Meeting: TBD
8. Adjourn

Venue	Location	Date	Time	SBC Champion	SBC Attendees	Venue Contact	Presentation	Notes
Selectmen	Community Center	Tuesday, August 23, 2016	7:00PM	Jim Potter			Yes	Complete
Capital Outlay	Community Center	Wednesday, September 14, 2016	8:30AM	Jim Potter			Yes	Complete
Finance Committee	Community Center	Monday, September 19, 2016	7:00PM	Rich Lavoie	RH,		Yes	Complete
School Committee	BHS Media Center	Wednesday, October 5, 2016	6:30PM	Steve Lamarche	RH,		Yes	Complete
School Committee	Peebles School	Wednesday, November 9, 2016	6:30 PM	Steve Lamarche			No	Complete
Peebles ES Open House	Peebles ES	Thursday, August 25, 2016	4:00 PM	Janey Norton		Janey Norton	No, handouts only	Complete
Bournedale ES Open House	Bournedale ES	Thursday, August 25, 2016	4:00 PM	Liz Carpenito		Liz Carpenito	No, handouts only	Complete
Middle School Back to School Night	Middle School	Thursday, September 8, 2016	5:30 PM	Kathy Anderson	NS, KA	Melissa Ryan	No, handouts only	Complete
BATV Interview	BATV	Thursday, September 15, 2016	2:00 PM	Joel Seeley	SL, CH, NS	Jenn McGrail		Complete
Peebles ES Back to School Night	Peebles ES	Thursday, September 15, 2016	5:30 PM	Janey Norton	KA,	Janey Norton	No, handouts only	Complete
Community Forum No. 9	Peebles ES	Tuesday, September 20, 2016	6:00PM	Jim Potter	RH,	Janey Norton	Yes	Complete
Bournedale ES Back to School Night	Bournedale ES	Thursday, September 22, 2016	5:30 PM	Liz Carpenito	KA,	Liz Carpenito	No, handouts only	Complete
High School Teachers Conference	High School	Thursday, October 6, 2016	4:00 PM	Steve Lamarche	KA,	Amy Cetner	No, handouts only	Complete
Bourne PTA	Peebles ES	Tuesday, September 20, 2016	6:00PM	Steve Lamarche			Yes	Complete
Rotary Club of Bourne/Sandwich	Upper Cape Cod Technical School	Thursday, September 8, 2016	7:40 AM	Chris Hylburg	CH, PM, SL	Bob Dutch	Yes	Complete
Pocasset Village Association	Pocasset Community Center	Saturday, September 10, 2016	9:30AM	Liz Carpenito	RH,		Yes	Complete
Cataumet Civic Association				Liz Carpenito	RH,			No annual meeting, invited to Community Tour
Sagamore Highlands Association				Liz Carpenito	RH,			No annual meeting, invited to Community Tour
Council on Aging	Community Center	Thursday, October 6, 2016	2:00 PM	Peter Meier	RH?		Yes	Complete
Peebles Community Tour	Peebles ES	Saturday, September 24, 2016	1:00 PM	Janey Norton		Janey Norton	No	Complete
Republican Town Committee	Community Center	Monday, October 3, 2016	?	Jim Potter			Yes	Complete
Community Center	Community Center	Wednesday, September 28, 2016	10:00 AM	Steve Lamarche			No	Complete
Peebles Community Tour	Peebles ES	Saturday, October 15, 2016	1:00 PM	Janey Norton			No	Complete
Town Meeting	BHS	Monday, October 17, 2016	7:00 PM	Jim Potter			Yes	Complete
Bourne Public Library	Bourne Public Library	Tuesday, November 29, 2016	10:00 AM	J.Norton/S.Lamarche	LC, KA, JN, SL	Patrick Marshall	?	Complete
Men's Breakfast	Community Center	?	?	Peter Meier	?	?	?	Need to confirm date/time
High School Play	High School	Thursday, November 10, 2016	6:45 PM	Kathy Anderson	KA, ED	KA	No	Complete
High School Play	High School	Friday, November 11, 2016	6:45 PM	Kathy Anderson	KA	KA	No	Complete
High School Play	High School	Saturday, November 12, 2016	1:15 PM	Kathy Anderson	SL	SL	No	Complete
High School Play	High School	Saturday, November 12, 2016	6:45 PM	Kathy Anderson	?	?	No	Complete
High School Play	High School	Sunday, November 13, 2016	1:15 PM	Kathy Anderson	CH	?	No	Complete
Santa's Secret Workshop and Holiday Fair	Middle School	Saturday, December 3, 2016	10:00 AM	Liz Carpenito	LC	?	No	Table - 10AM-3PM - Bourne MS - Lobby location requested
Peebles Community Tour	Peebles ES	Saturday, November 19, 2016	1:00 PM	Janey Norton	DB, JN	Janey Norton	No	Complete
Peebles Community Tour	Peebles ES	Saturday, December 3, 2016	1:00 PM	Janey Norton	DB, JN	Janey Norton	No	
BourneTV Taping	BATV	Monday, November 14, 2016	?	Steve Lamarche	PM, CH	Jen McGrail	No	Complete
Council on Aging	Community Center	Thursday, November 17, 2016	1:00 PM	Kathy Anderson	JP, PM, KA	Felicita Monteiro	Yes	Complete
Bourne Women's Club		Wednesday, November 2, 2016	12:45 PM	Kathy Anderson	KA, JN, LC			Complete
Aptucxet Garden Club of Bourne	?	?	?	Liz Carpenito	?	?	?	Invited to Peebles tours
Selectmen's Meeting	Community Center	Tuesday, November 29, 2016	?	Jim Potter	?	?	No	Complete
Council on Aging Wednesday Soup & Sandwich	Community Center	Wednesday, November 30, 2016	11:30 AM	Kathy Anderson	KA, LC	Felicita Monteiro	?	Complete
Ballot Vote		Tuesday, December 6, 2016						

Massachusetts School Building Authority

Deborah B. Goldberg
Chairman, State Treasurer

Maureen G. Valente
Chief Executive Officer

John K. McCarthy
Executive Director / Deputy CEO

November 15, 2016

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

Mr. Thomas Guerino, Town Administrator
Town of Bourne
24 Perry Avenue
Buzzards Bay, MA 02532-3441

RE: Bourne Project Scope and Budget Agreement
James F. Peebles Elementary School (MSBA Project No. 201400360010)

Dear Mr. Guerino:

Enclosed please find the Project Scope and Budget Agreement (the "PSBA") and one complete set of PSBA Exhibits for the James F. Peebles Elementary School Project in the Town of Bourne (the "Town"). The City must return three (3) executed originals of the PSBA to the MSBA. The Town must also return to the MSBA: two (2) fully executed originals of Exhibit A, Total Project Budget; and two (2) fully executed originals of Exhibit H, Reimbursement Rate Certification. One original of the PSBA will be returned to the Town after it has been signed by the Massachusetts School Building Authority's Executive Director. Please ensure that the signed originals of each of the aforementioned documents are delivered to the MSBA as quickly as possible. The Town should keep the enclosed set of Exhibits for attachment to the fully executed PSBA that will be returned to the Town by the MSBA. The Town should also insert one additional executed copy of the following into its set of Exhibits: Exhibit A, Total Project Budget, and Exhibit H, Reimbursement Rate Certification.

The Town must also submit two (2) original copies of the Certification of Legal Counsel, which is being sent via e-mail as a Word document to enable the Town's legal counsel to put the certification on his/her letterhead. Among other things, the Certification of Legal Counsel requires the Town's legal counsel to certify which local public official or governmental body (the "Local Governing Body") has the full legal authority to execute the PSBA on behalf of the Town and to bind the Town to its terms. The Town should keep a separate copy of the certification for the Town's records. In addition, the Town will need to provide a certified copy of the vote of the Local Governing Body authorizing the Town to enter into and be bound by the PSBA, where required by local charter, by-law, ordinance or other applicable law or policy.

Please see Section 7.7 of the PSBA regarding Notice and make sure that the title, address and facsimile number are correct. Also, please do not date the PSBA on the first and last pages. The PSBA will be dated by the MSBA when the MSBA's Executive Director signs the Agreement.

The required documents, which include:

- three (3) signed originals of the PSBA;

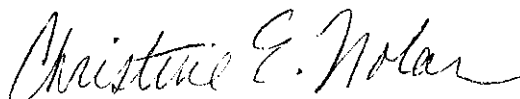
- two (2) signed originals of Exhibit A, Total Project Budget;
- two (2) signed originals of Exhibit H, Reimbursement Rate Certification;
- two (2) signed originals of the Certification of Legal Counsel (please keep a separate copy for the Town's records); and
- a certified copy of the vote of the Local Governing Body authorizing the Town to enter into and be bound by the PSBA, only where required by local charter, by-law, ordinance, or other applicable law or policy,

should be mailed to my attention at the address below.

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

If you have any questions, please contact either Christina Forde or me at the MSBA.

Very truly yours,



Christine E. Nolan
Deputy General Counsel

Enclosures/Attachments

cc: Legislative Delegation
Donald J. Pickard, Chair, Bourne Board of Selectmen
Anne-Marie Siroonian, Chair, Bourne School Committee
Steven Lamarche, Superintendent, Bourne Public Schools
Edward Donoghue, Director of Business Services, Bourne Public Schools
James Potter, Chair, Bourne School Building Committee
Joel Seeley, Owner's Project Manager, Symmes Maini & Mckee Associates
Kent Kovacs, Designer, Flansburgh Associates
File: 10.2 Letters (Region 6)

PROJECT SCOPE AND BUDGET AGREEMENT

This PROJECT SCOPE AND BUDGET AGREEMENT, (the “Project Scope and Budget Agreement”), dated as of _____, 2016 (the “Effective Date”) is between the Massachusetts School Building Authority, a public instrumentality of the Commonwealth of Massachusetts (the “Authority”), and the Town of Bourne, Massachusetts, together with its successors and assigns (the “District” or “Owner”) (Authority and District collectively referred to as the “Parties”).

RECITALS

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

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

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

WHEREAS, on November 9, 2016, the Board of Directors of the Authority voted to authorize the Authority’s Executive Director to enter a Project Scope and Budget Agreement with the District upon the terms and conditions stated herein and further authorized the Executive Director do all acts and things and execute and deliver any and all documents and agreements in connection with such project scope and budget conference;

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

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

WHEREAS, the District has submitted a signed Initial Compliance Certification, as described in 963 CMR 2.02 & 2.03, in the form prescribed by the Authority, and it has been accepted by the Authority;

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

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

WHEREAS, the District has procured a Designer for the Project in accordance with the provisions of M.G.L. c. 7, s. 38A ½ through 38O, M.G.L. c. 7C, s. 44 through 58, 963 CMR 2.10(8), 963 CMR 2.12 and any other applicable laws and regulations and said Designer has been approved by the Authority's Designer Selection Panel;

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

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

1. DEFINITIONS

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

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

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

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

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

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

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

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

“Monthly” means once each calendar month.

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

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

“Project Schedule” means the schedule for the Proposed Project, including a detailed estimated timeline as described in 963 CMR 2.10(10), which schedule shall be updated from time to time and approved by the Authority and attached hereto as Exhibit C.

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

“Project Scope and Budget Conference” means the conference described in 963 CMR 2.10(9).

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

“Proposed Project” refers to the proposal for the replacement of the existing James F. Peebles Elementary School with a new District-wide, grades 3-5 elementary school on the existing site that meets the requirements of Chapter 70B and 963 CMR 2.00 *et seq.*

“School” means the James F. Peebles Elementary School located at 70 Trowbridge Road, Buzzards Bay, Massachusetts.

“Statement of Interest” means the Statement of Interest, as defined in 963 CMR 2.09 and all applicable policies and guidelines of the Authority, submitted by the District for the James F. Peebles Elementary School;

“Total Facilities Grant” means the Authority’s final, approved, total financial contribution to an Approved School Project, which is calculated pursuant to Chapter 70B and chapter 208 of the

Acts of 2004, and paid to the District pursuant to a payment schedule developed by the Authority.

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

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

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

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

2. THE PROJECT

2.1 Total Project Budget. The Parties hereby agree that the Total Project Budget shall be as set forth in Exhibit A as attached hereto. In the event that the Authority approves a Total Facilities Grant for the Proposed Project, the Total Facilities Grant would be based on the Total Project Budget set forth in Exhibit A as of the Effective Date and contingent upon the District maintaining this Total Project Budget. The Total Project Budget shall not be altered, modified, or changed without the prior written approval of the Authority. Any increases to the Total Project Budget as set forth in Exhibit A as of the Effective Date, shall not result in any changes to the amount of the Total Facilities Grant set forth in Section 3 of this Project Scope and Budget Agreement. The District hereby acknowledges and agrees that all costs related to the Proposed Project, including without limitation all site costs, shall be subject to review and audit by the Authority, and the

Authority shall determine, in its sole discretion, whether such costs are eligible for reimbursement pursuant to the Authority's regulations and policies.

- 2.1.1 Construction Bids. The Parties hereby acknowledge and agree that, in the event that the lowest, responsible bid or the Guaranteed Maximum Price accepted by the District for the construction of the Proposed Project is lower than the corresponding amount set forth in Exhibit A, the Authority shall reduce the Estimated Maximum Total Facilities Grant and the Maximum Total Facilities Grant amount set forth in Section 3.1 of this Agreement and in Exhibit A accordingly. The Parties hereby further acknowledge and agree that, in the event that the lowest, responsible bid or Guaranteed Maximum Price accepted by the District for the construction of the Proposed Project exceeds the corresponding amount set forth in Exhibit A, the Authority shall not make any adjustments to its Estimated Maximum Total Facilities Grant or Maximum Total Facilities Grant on account of the bid, and the increased costs shall be the sole responsibility of the District. The Parties hereby further acknowledge and agree that, in the event that the lowest, responsible bid or Guaranteed Maximum Price accepted by the District for construction of the Project exceeds the corresponding amount set forth in Exhibit A, the District may use a reasonable amount of the owner's and/or construction contingency to fund the cost of any such budget overrun, provided, however, that the expenditures of owner's and/or construction contingency funds for the purpose of funding such budget overruns shall not be eligible for reimbursement by the Authority and shall be the sole responsibility of the District.
- 2.2 Project Scope. The Parties hereby agree that the Project Scope shall be as set forth in Exhibit B, which is attached hereto. Any Total Facilities Grant approved by the Authority for the Project shall be contingent upon the District maintaining the Project Scope set forth in Exhibit B, and the Authority may revoke, suspend, withhold, and/or recoup any Total Facilities Grant payments if the Authority determines that the Scope has not been adhered to. The Project Scope shall not be altered, modified, enlarged, or reduced without the written mutual agreement of the Parties. The District hereby acknowledges and agrees that all of the items appearing in the Project Scope set forth in Exhibit B shall be subject to review and audit by the Authority, and the Authority shall determine, in its sole discretion, whether the cost of such Project Scope items are eligible for reimbursement pursuant to the Authority's regulations and policies.
- 2.3 Project Schedule. The Parties hereby agree that the projected Project Schedule for the Proposed Project shall be as set forth in Exhibit C as attached hereto, as may be updated from time to time. The District shall provide an updated Project Schedule to the Authority at least once every calendar month and more frequently if requested by the Authority. When submitting a revised or updated Project Schedule to the Authority, the District shall also submit a detailed explanation for any changes in the Project Schedule from the previous Project Schedule submitted to the Authority.

- 2.4 Project Cash Flow. The Parties hereby agree that the projected Project Cash Flow for the Proposed Project shall be as set forth in Exhibit D as attached hereto, as may be updated from time to time. The District shall provide an updated Project Cash Flow to the Authority at least once every calendar month and more frequently if requested by the Authority. When submitting a revised or updated Project Cash Flow to the Authority, the District shall also submit a detailed explanation for any changes in the Project Cash Flow from the previous Project Cash Flow submitted to the Authority.
- 2.5 Project Site. The Parties hereby agree that the site of the Proposed Project shall be as described in Exhibit E attached hereto. The site of the Proposed Project shall not be altered, modified, enlarged or reduced without the prior written approval of the Authority.
- 2.6 Furnishings and Equipment. The Parties hereby agree that a listing of all furniture, fixtures and equipment that will be purchased, leased, acquired, or received by the District in connection with the Proposed Project is set forth on Exhibit F attached hereto, which shall be updated from time to time. Costs associated with the furnishings and equipment listed on Exhibit F may not be eligible for reimbursement by the Authority. All such costs shall be subject to review and audit by the Authority, and the Authority shall determine, in its sole discretion, whether such costs are eligible for reimbursement pursuant to the Authority's regulations and policies. All costs associated with furniture, fixtures and equipment that are not specifically delineated in Exhibit F shall not be eligible for reimbursement by the Authority unless mutually agreed to in writing by the Parties.

3. TOTAL FACILITIES GRANT

3.1 The Parties hereby agreed that, subject to the execution of a Project Funding Agreement for the Proposed Project and subject to the satisfaction of or compliance with, as reasonably determined by the Authority, (a) all of the terms and conditions of this Project Scope and Budget Agreement, (b) the applicable provisions of Chapter 70B, Chapters 208 and 210 of the Acts of 2004, and 963 CMR 2.00 *et seq.*, and (c) any other rule, regulation, policy, guideline, approval, or directive of the Authority, the Authority hereby approves the following Estimated Maximum Total Facilities Grant for the Project: an amount that, except as specifically provided in this Section 3.1, shall not exceed the lesser of (i) forty-eight and sixty-three hundredths percent (48.63%) of the final approved, total eligible Project costs, as determined by the Authority, ("Reimbursement Rate") or (ii) an estimated Total Facilities Grant of \$14,686,949 ("Estimated Maximum Total Facilities Grant"). Notwithstanding the foregoing, the Authority may determine, in its sole discretion, and subject to the limitations set forth in Section 2.1 of this Agreement, that expenditures from the owner's contingency and construction contingency line items of the Total Project Budget, so-called, are eligible for reimbursement, and in the event of any such determination, the Authority may adjust the above-stated Estimated Maximum Total Facilities Grant amount to account for the eligible, approved owner's contingency and construction contingency expenditures up to a final, maximum Total Facilities Grant of \$15,150,082 ("Maximum Total Facilities Grant"). In no event shall the Maximum Total Facilities Grant, including any eligible owner's and construction contingency amounts, exceed \$15,150,082. The Parties hereby acknowledge and agree that the Estimated Maximum Total

Facilities Grant and the Maximum Total Facilities Grant amounts set forth in this Section 3.1 and Exhibit A, are maximum amounts of funding that the District may receive from the Authority for the Project, and that the final amount of the Total Facilities Grant may equal an amount less than either the Estimated Maximum Total Facilities Grant or the Maximum Total Facilities Grant set forth herein, as determined by an audit conducted by the Authority. Any costs and expenditures that are determined by the Authority to be either in excess of the Total Facilities Grant or otherwise ineligible for payment by the Authority shall be the sole responsibility of the District. The Reimbursement Rate set forth above, and as more fully described in the reimbursement rate summary, attached hereto as **Exhibit "H"**, includes a total of three and thirty-one hundredths (3.31) incentive reimbursement points which include one and thirty-one hundredths (1.31) points for Maintenance and two (2.00) points for Energy Efficiency/Green Schools pursuant to G.L. c. 70B, § 10(a)(C). The incentive reimbursement points for Energy Efficiency/Green Schools have been provisionally assigned and are subject to a final determination by the Authority as to the District's eligibility to receive such incentive reimbursement points. The Reimbursement Rate, Estimated Maximum Total Facilities Grant, and Maximum Total Facilities Grant set forth above and in Exhibit A shall be subject to a decrease, as provided in Section 3.2 of this Agreement, if the Authority determines, in its sole discretion, that the District is ineligible to receive any portion of the incentive reimbursement points that have been provisionally assigned, as described herein, or such other incentive reimbursement points that may be assigned by the Authority

3.2 The Reimbursement Rate for the Proposed Project is calculated as set forth in the reimbursement rate summary, attached hereto as **Exhibit "H"**, and shall be subject to the provisions of M.G.L. c. 70B, 963 CMR 2.00 *et seq.*, and the policies and guidelines of the Authority. Any incentive reimbursement points that may be included in the calculation of the Reimbursement Rate, as it may be amended from time to time by the written agreement of the Authority, must be earned, as determined by the Authority in its sole discretion, and shall be subject to audit by the Authority. If the Authority determines, in its sole discretion, that the District is ineligible to receive any portion of the incentive reimbursement points that may be included in the calculation of the Reimbursement Rate, as it may be amended from time to time by the written agreement of the Authority, the Authority may, in its sole discretion, decrease the Reimbursement Rate, the Estimated Maximum Total Facilities Grant and the Maximum Total Facilities Grant accordingly. Any such decrease in the Reimbursement Rate, and the corresponding decreases in the Estimated Maximum Total Facilities Grant and the Maximum Total Facilities Grant, shall be applied retroactively to all payments made to the District by the Authority under the terms of the Project Funding Agreement between the Parties, if any, and to all requests for reimbursement of eligible Project costs made by the District to the Authority under the terms of said Project Funding Agreement, if any. If the Authority determines that, as a result of a decrease in the Reimbursement Rate, or a corresponding decrease in the Estimated Maximum Total Facilities Grant and the Maximum Total Facilities Grant, it has made overpayments to the District, the Authority may recover the amount of such overpayments from the District by whatever remedies are available to it under a Project Funding Agreement, if any, or under applicable law, including, but not limited to, set off against any future payments owed to the District for reimbursement of eligible Project costs, as determined by the Authority. Upon written demand by the Authority, the District shall promptly return to the Authority the amount of any such overpayments unless otherwise agreed to in writing by the Authority.

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

4. COVENANTS

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

4.1 Of the Authority.

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

4.2 Of the District.

- (a.) The District shall by no later than 120 days after November 9, 2016 obtain all necessary votes, resolutions, appropriations, and voter approvals, in accordance with the format prescribed by the Authority, for the Proposed Project. The District shall immediately notify the Authority of the date by which the District shall have received all necessary votes, resolutions, appropriations, and local approvals for the Proposed Project.

- (b.) By no later than the twelfth of each calendar month, the District shall provide the Authority with a progress report, prepared by the Owner's Project Manager, that summarizes all Proposed Project activity during the preceding calendar month, in a format approved by the Authority.
- (c.) The District shall promptly provide the Authority with any additional information, documents, plans, specifications, budgets, timelines, schedules, or other materials that may be requested by the Authority.
- (d.) The District hereby acknowledges and agrees that the Authority shall not provide any amounts in excess of the amount determined under Section 3.1 of this Agreement and the final Total Facilities Grant may be an amount less than the amount stated in Section 3.1.
- (e.) The District hereby acknowledges and agrees that the District's Educational Program for the James F. Peebles Elementary School is subject to further review by the Commissioner of Education, pursuant to M.G.L. c. 70B.
- (f.) The District hereby acknowledges and agrees that all costs related to the Proposed Project, including the costs identified in the Total Project Budget set forth in Exhibit A and costs of the items appearing in the Project Scope set forth in Exhibit B, shall be subject to review and audit by the Authority, and the Authority shall determine, in its sole discretion, whether such costs are eligible for reimbursement pursuant to the Authority's regulations and policies.
- (g.) The District hereby acknowledges and agrees that it shall not submit any false or intentionally misleading information or documentation to the Authority in connection with this Project Scope and Budget Agreement, and further acknowledges and agrees that the submission of any such information or documentation may cause the Authority to revoke any and all payments otherwise due to the District and/or recover any previous payments made to the District, and the District may be ineligible for any funding from the Authority. The District hereby further agrees that it shall have a continuing obligation to update and notify the Authority in writing when it knows or has any reason to know that any information or documentation submitted to the Authority contains false, misleading or incorrect information.
- (h.) The District hereby acknowledges and agrees that, in the event that it receives, has received, or is eligible to receive any insurance proceeds, damages, awards, payments, rebates, grants, or donations from any third party or funding sources, other than the Authority, for or in connection with the Project, all such amounts shall be disclosed to the Authority in

writing and shall be deducted from the total amount of eligible project costs (also known as Basis of Total Facilities Grant), as determined by the Authority, and the remaining amount of eligible costs shall be apportioned according to the District's reimbursement rate to calculate the maximum Total Facilities Grant.

5. REPRESENTATIONS AND WARRANTIES

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

5.1 The District is validly organized and existing under and by virtue of the laws of the Commonwealth, has full power and authority to own its properties and carry on its business as now conducted, and has full power and authority to execute, deliver and perform its obligations under this Project Scope and Budget Agreement.

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

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

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

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

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

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

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

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

6. TERM

6.1 The Parties hereby agree that this Project Scope and Budget Agreement shall be valid for a period of time not to exceed 120 calendar days after November 9, 2016, unless agreed to in writing by the Authority that a different termination date is necessary. In the event that the Board votes to not approve this Project Scope and Budget Agreement, this Agreement shall terminate effective as of such vote.

7. OTHER TERMS

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

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

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

7.4 Members, Employees Not Liable. No member or employee of the Authority shall be charged personally or held contractually liable by or to the District under any term or provision

of this Project Scope and Budget Agreement or because of any breach thereof or because of its execution or attempted execution.

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

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

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

As to the Authority:

Massachusetts School Building Authority
40 Broad Street, Suite 500
Boston, MA 02109
Attention: Director of Capital Planning
Facsimile: (617) 720-5260

As to the District:

Town of Bourne
24 Perry Avenue
Buzzards Bay, MA 02532-3441
Attention: Town Administrator
Facsimile: (508) 759-0620

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

7.9 Counterparts. This Project Scope and Budget Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. Each party agrees that it will execute any and all documents or other instruments, and take such other actions as may be necessary to give effect to the terms of this Agreement.

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

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

8. INSURANCE

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

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

8.1.2 Following completion of the Project, the District shall, at its sole expense, purchase and maintain coverage against loss or damage to the Assisted Facility in an amount equivalent to the estimated full replacement cost of the Assisted Facility. Such coverage shall be written on an "all risks" basis or equivalent form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and theft, vandalism, malicious mischief, terrorism, collapse, earthquake, flood (if the Project is not in an "A" or "V" flood zone), windstorm, falsework, mechanical and electrical breakdown, and boiler and machinery accidents, and debris removal including demolition occasioned by enforcement of any applicable legal requirements. The limits for earthquake and flood shall be the lesser of the estimated full replacement cost of the Assisted Facility or \$10,000,000. The policy shall include

the Authority as a loss payee as its interests may appear. The District is responsible for the payment of any and all deductibles, self-insured retentions or any portion thereof under the policy.

- 8.1.3 The District shall include the Authority as an additional insured in any commercial general liability policy held by the District for liability arising out of the Project.
- 8.1.4 The Authority shall not be responsible for the payment of deductibles, self-insured retentions, or any portion thereof.
- 8.1.5 Upon request by the Authority, the District shall obtain and provide to the Authority originals of certificates of insurance evidencing the insurance coverage required by this section of this Project Scope and budget Agreement.

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

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

8.4 The District shall obtain originals of certificates of insurance evidencing the insurance coverage that may be required by the Authority from time to time, including the insurance coverage required by this Project Scope and Budget Agreement, a Project Funding Agreement, any standard contracts that are prescribed by the Authority and executed by the District, including, but not limited to, the Authority's standard contract for Owner's Project Manager services and standard contract for Designer services, and any other contract between the District and the Owner's Project Manager, Designer, Contractor or Construction Manager, or Vendors, simultaneously with the execution of said contracts or, in the event that said contracts have been executed prior to the date of this Project

Scope and Budget Agreement, as soon as possible thereafter. Upon request of the Authority, the District shall submit such certificates of insurance to the Authority, showing each type of insurance, insurance company, policy number, amount of insurance, deductibles/self-insured retentions, and policy effective and expiration dates. The District shall require each of the Owner's Project Manager, Designer, Contractor or Construction Manager, and Vendors to submit updated insurance certificates to the District prior to the expiration of any of the insurance policies or coverage referenced in this Section so that the District shall at all times possess certificates indicating current coverage.

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

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

8.7 With respect to all policies of insurance required of the Owner's Project Manager, Designer, Contractor or Construction Manager, and Vendors by this Project Scope and Budget Agreement, any standard contracts that are prescribed by the Authority and executed by the District, including, but not limited to, the Authority's standard contract for Owner's Project Manager and standard design contract, and any other contract between the District and the Owner's Project Manager, Designer, Contractor or Construction Manager, and Vendors, the District shall ensure that neither the District nor the Authority shall be responsible for the payment of deductibles, self-insured retentions or any portion thereof.

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

8.9 All insurance policies required by this Project Scope and Budget Agreement, a Project Funding Agreement, any standard contract prescribed by the Authority and executed by the District and any other contract between the District and the Owner's Project Manager, Designer, Contractor or Construction Manager, or Vendors shall be issued by companies lawfully authorized to write that type of insurance under the laws of the Commonwealth of Massachusetts with a financial strength

rating of “A-“ or better as assigned by A.M. Best Company, or an equivalent rating assigned by a similar rating agency acceptable to the District and the Authority.

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

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

9. OWNERSHIP OF DOCUMENTS

9.1 The District acknowledges and agrees that, unless otherwise provided by law or by the provisions of Section 9.2 of this Agreement, all information, data, reports, studies, designs, drawings, plans, sketches, specifications, materials, computer programs, documents, models, inventions, equipment, and any other documentation, product or tangible materials to the extent authored or prepared, in whole or in part, by the Designer for this Project (collectively, the “Materials”), other than the Designer’s administrative communications, records, and files relating to this Project, shall be the property of, and shall vest in, both the District and the Authority, severally and not jointly, as “works made for hire” or otherwise, provided that the District complies with its payment obligations under its Contract with the Designer for the Project. Except as otherwise provided in Section 9.2, both the District and the Authority, severally and not jointly, will own the exclusive rights, worldwide and royalty-free, to and in all Materials prepared and produced by the Designer pursuant to its Contract with the District for the Project, including, but not limited to, United States and International patents, copyrights, trade secrets, know-how and any other intellectual property rights, and both the District and the Authority, severally and not jointly, shall have the exclusive, unlimited and unrestricted right, worldwide and royalty-free, to publish, reproduce, distribute, transmit and publicly display all Materials prepared by the Designer, which shall include, but not be limited to, the Authority’s exercise of the aforesaid right in furtherance of the Programs described in Section 9.2. The District further acknowledges and agrees that the Designer shall have a non-exclusive license to publish and publicly display all Materials prepared by the Designer in its normal marketing and related professional and academic activities and that the Designer shall have a non-exclusive license to use the typical or standard details and all other replicable elements of the Materials for this Project on other future projects. At the completion or termination of the Designer's services required pursuant to the Contract between the District and the Designer for the Project, the District shall ensure that the Designer promptly turns over to the Authority copies of all original Materials but only to the extent that such Materials have not already been provided to the Authority.

9.2 Notwithstanding any other language to the contrary in this Agreement or in any Contract between the District and the Designer for the Project, the District acknowledges and agrees that the

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

IN WITNESS WHEREOF, the Parties have executed this Project Scope and Budget Agreement on this _____ day of _____, in the year 2016.

MASSACHUSETTS SCHOOL BUILDING AUTHORITY

John K. McCarthy
Executive Director

TOWN OF BOURNE

Name:
Title:

[Letterhead of Legal Counsel]
Certification of Legal Counsel for the
Town of Bourne

I, _____, duly appointed legal counsel for the Town hereby certify that:

1. The Town is validly organized and existing under and by virtue of the laws of the Commonwealth, has full power and authority to own its properties and carry on its business as now conducted, and has full power and authority to execute, deliver and perform its obligations under the Project Scope and Budget Agreement, including any amendments thereto, between the Town and the Massachusetts School Building Authority (“MSBA”) for the Proposed Project at the **James F. Peebles Elementary School** (the “Project Scope and Budget Agreement”) and all other related documents.

2. The Town has duly obtained all necessary votes, resolutions, authorizations, orders and approvals, in accordance with any formats that may be prescribed by the MSBA, and has taken all actions necessary or required by law to authorize the execution and delivery of the Project Scope and Budget Agreement and any amendments thereto, and to perform the obligations of the Town under the Project Scope and Budget Agreement thereto.

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

4. The following elected or appointed governmental officer(s) and/or governmental body has the full legal authority under the laws of the Commonwealth of Massachusetts and all applicable local charters, ordinances, by-laws, and policies to execute and deliver the Project Scope and Budget Agreement, including any amendments thereto, on behalf of the Town and to bind Town to its terms and conditions:

[Please list Name(s), Title(s), and Contact Information for the governmental officer or governmental body that is duly authorized to execute the Project Scope and Budget Agreement on behalf of the District. If the vote of a multi-member governmental body is required to authorize an individual governmental officer or other governmental body to execute the Project Scope and Budget Agreement on its behalf, please note such requirements here and submit a certified copy of said vote to the MSBA.]

5.. The following elected or appointed governmental officer(s) and/or governmental body has the full legal authority under the laws of the Commonwealth of Massachusetts and all applicable local charters, ordinances, by-laws, and policies to make final, binding decisions on behalf of the Town with respect to the Proposed Project described in the Project Scope and Budget Agreement..

[Please list Name, Title, and Contact Information for the governmental officer or governmental body who is authorized to make final, binding decisions on behalf of the District with respect to the Proposed Project. If the vote of a multi-member governmental body is required to authorize an individual governmental officer or other governmental body to make binding decisions with respect to the Proposed Project, please note such requirements here and submit a certified copy of said vote to the MSBA.]

I hereby further certify that, to the best of my knowledge and belief, the above-listed certifications are true, complete and accurate.

IN WITNESS WHEREOF, signed this _____ day of _____, _____

Name (Print or Type)

Office/Title (Print or Type)

MSBA Project Scope and Budget Reimbursement Rate Certification
Calendar Year 2016

Bourne

James F. Peebles Elementary School - 201400360010

<u>MSBA Reimbursement Rate Calculation</u>	
Base Points	31.00
Income Factor	6.95
Property Wealth Factor	7.37
Poverty Factor	-
<i>Subtotal: Reimbursement Rate Before Incentives</i>	<i>45.32</i>
<u>Incentive Points</u>	
Maintenance (0-2)	1.31
CM @ Risk (0-1)	-
Newly Formed Regional District (0-6)	-
Major Reconstruction or Reno/Reuse (0-5)	-
Overlay Zoning 40R & 40S (0-1)	-
Overlay Zoning 100 units or 50% of units for 1, 2 or 3 family structures (0-0.5)	-
Energy Efficiency - "Green Schools" (0 or 2) *	2.00
Model Schools (5)	-
Total Incentive Points	3.31
MSBA Reimbursement Rate	48.63

* The MSBA has provisionally included two (2) incentive points for energy efficiency, subject to the District meeting certain sustainability requirements for the project. If the District does not meet the requirements for energy efficiency, the District will not qualify for these incentive points, and the MSBA will adjust the reimbursement rate accordingly.

Certification

By signing this Project Scope and Budget Reimbursement Rate sheet, I hereby certify that I have read, understand, and accept the reimbursement rate and the incentive points set forth above, and I hereby acknowledge and agree on behalf of the Eligible Applicant that the above-stated reimbursement rate is the rate that will be used to calculate the maximum Total Facilities Grant for the proposed project, pursuant to Section 3 of the Project Scope and Budget Agreement.

Local Chief Executive Officer

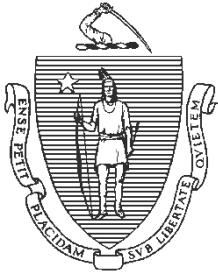
School Committee Chair

Date

Date

Superintendent of Schools

Date



Massachusetts Department of Elementary and Secondary Education

75 Pleasant Street, Malden, Massachusetts 02148-4906

Telephone: (781) 338-3000
TTY: N.E.T. Relay 1-800-439-2370

Mitchell D. Chester, Ed.D.
Commissioner

November 15, 2016

Mary Pichetti
Director of Capital Planning
Massachusetts School Building Authority
40 Broad Street, Suite 500
Boston, MA 02109

Dear Ms. Pichetti:

We have reviewed the space summary and accompanying documentation submitted by the Town of Bourne for the new Peebles Elementary School. We have done so in accordance with M.G.L. chapter 70B, section 6(6), which instructs us to certify "...that adequate provisions have been made in the school project for children with disabilities, as defined in section 1 of chapter 71B...".

We are satisfied that the plans will provide the community with an opportunity to serve its special education students well. The Massachusetts Department of Elementary and Secondary Education therefore certifies that this school project has been planned to adequately provide appropriate space to serve the programs and school populations referenced in M.G.L. chapter 70B, section 6(6) noted above.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Deninger".

Matthew J. Deninger
ESE designee on the MSBA Board of Directors

Cc: Jeff Wulfson, Deputy Commissioner, ESE
Vani Rastogi-Kelly, Director, Public School Monitoring
Tim Gallagher, Supervisor, Public School Monitoring
Sarah Blache-Schwartz, Senior Project Coordinator, MSBA
Katie DeCristofaro, Capital Program Manager, MSBA
Christina Forde, Project Coordinator, MSBA