



CLASSROOM FACILITIES ASSISTANCE PROGRAM

PROJECT AGREEMENT

This Project Agreement ("Agreement") is made and entered into by and between the *Ohio School Facilities Commission* ("Commission") and the Board of Education of the *Eaton Community School District School District, Preble County*, ("School District Board"), pursuant to Section 3318.08 of the Ohio Revised Code ("ORC").

WHEREAS, the Commission, created pursuant to Section 3318.30, ORC, is a body corporate and politic, an agency of state government and an instrumentality of the State of Ohio ("State"), performing essential government functions of the State; and

WHEREAS, the School District Board is acting as an agency of state government, performing essential functions of government pursuant to Chapter 3318, ORC; and

WHEREAS, the School District Board and the Commission have approved a Master Facilities Plan describing the classroom facilities needs of the entire student population of the district, and the total budget for the Project; and

WHEREAS, the School District Board hereby concurs with, and approves the use of, the findings outlined in the final "Facilities Assessment Report" dated *February 6, 2002*, including any revisions and/or updates that have been incorporated into the final Master Facilities Plan approved by the School District Board as of *June 2, 2008*. The School District Board and Commission understand that the use of the Facilities Assessment Report is for the purpose of developing an estimated project budget and scope and that the potential for undocumented conditions that could increase the final cost of the project exists; and

WHEREAS, the School District Board hereby concurs with and approves the use of the Enrollment Report dated *January 31, 2009*. The School District Board and the Commission acknowledge that actual enrollment status will be reviewed annually.

WHEREAS, the School District Board acknowledges in accordance with O.R.C. 3318.03 (C) that for renovation projects, the project fund may not be used for expenditures in excess of one hundred percent of the estimated cost of acquiring a new facility.

WHEREAS, the School District Board and the Commission acknowledge that time is of the essence to the Project Agreement and all obligations hereunder; and

WHEREAS, the County Board of Elections has certified the results of the School District Board's election held on *May 4, 2010*;

NOW, THEREFORE, in consideration of the mutual promises herein contained, the School District Board and the Commission agree to cooperate in the design, construction and closeout described herein and as follows.

I. SCOPE OF THE PROJECT

- A. The parties agree the Master Facilities Plan (the "Project" for purposes of this Agreement) shall be described as follows:

Build one new elementary school to house grades 3 thru 5 and one new middle school to house grades 6 thru 8; abandon Bruce Elementary School and Eaton Middle School (no action required at Hollingsworth East Elementary School, Dixon-Israel Middle School and Eaton High School as these facilities were completed under ELPP).

- B. The Commission and the School District Board agree that the Project shall, where applicable, comply with the Ohio School Design Manual ("Design Manual") and Commission policies, unless a variance is approved by the Commission.

- C. The total budget for the Project is *Fifty Six Million Three Hundred Eighty One Thousand Three Hundred Ten Dollars (\$56,381,310)*. The State's share of the total Project budget shall be *Twenty Four Million Two Hundred Forty Three Thousand Nine Hundred Sixty Three Dollars (\$24,243,963)*. The School District Board's local share of the total Project budget shall be *Thirty Two Million One Hundred Thirty Seven Thousand Three Hundred Forty Seven Dollars (\$32,137,347)*, and funded as set forth in Article III of this Agreement.
- D. **Locally Funded Initiatives ("LFI"):** The School District Board's Project Agreement LFI is *Zero Dollars (\$-0-)* for which the School District Board is responsible in its entirety. The LFI listed in this section constitutes a "required locally funded definition" for debt purposes per ORC 133 (I). Other LFI's not specifically referenced in this Agreement may be addressed through the process described in Section VII of this Agreement.
- E. **Allowances.** Any allowance provided in the total budget indicated in Paragraph C above is set forth below. The State share of any unused portion of an allowance shall be withheld by, or returned to, the Commission upon completion of the Project.
 - 1. **Optional Demolition Allowance.** No additional allowance has been provided for Optional Demolition.
 - 2. **Swing Space Allowance.** No additional allowance has been provided for Swing Space.
 - 3. **Site Access Safety Improvements Allowance:** An allowance is provided in the budget for site access safety improvements. The amount of this allowance is *Six Hundred Thousand Dollars (\$600,000)*.
 - 4. **Other Allowance.** No additional allowance has been provided.
- F. **School District Board Due Diligence for Proposed Sites.** Prior to commencement of the design of a facility, the School District Board shall provide a description of the site selected for a facility for the Commission's review in accordance with Section 3318.08, ORC and Commission policies. In the event of an unforeseen condition requiring environmental remediation of the site, the School District Board shall be solely responsible for the costs.
- G. **LEED.** The district acknowledges the incorporation of the LEED for schools Silver Certification Standard into the relevant school construction. The budget for new construction includes funds for LEED.

II. OWNERSHIP OF THE PROJECT

- A. Ownership of the Project during the period of design and construction, through execution by the School District Board and the Commission of a Certificate of Completion of the Project Agreement, shall be shared between the Commission and the School District Board according to their respective contributions.
- B. Upon completion of the construction of the Project, the Commission's direct interest and participation in the Project is concluded. The Commission's interest is considered transferred to the School District Board. The School District Board shall assume sole responsibility for property ownership and facilities management, including the responsibility for enforcement of warranties and guarantees associated with the Project.
- C. The School District Board shall not use any of the Classroom Facilities constructed pursuant to this Agreement for any purpose other than for an educational purpose.

III. SCHOOL DISTRICT BOARD SHARE OF BASIC PROJECT COST

- A. The Commission will require, as a condition precedent to execution of this Agreement and release of state funds, a certification by the School District Treasurer that the local share amounts listed in Section III (A)(2), (3) and (4) (a) or (b) below are fully deposited in the Project Construction Fund. The Commission reserves the right to audit the Fund or any expenditure related to the Fund or the Project.
 - 1. **CFAP Bonds or Notes with Language per ORC 3318**
 - a. The School District Board agrees to sell bonds or notes in an amount not less than *Zero Dollars (\$-0-)* in an amount established pursuant to Section 3318.05(A), ORC. Such bonds shall be issued in accordance with Sections 3318.05, 3318.06 (or 3318.062), ORC and R.C. 3318.08(A), and these sections shall govern any additional sale of bonds or notes sold by the School District Board for the Project. All such bonds and notes shall be issued in accordance with the provisions of Chapter 133, ORC, and such bonds or notes may be renewed as provided in Section 133.22, ORC.
 - b. The proceeds of any such bonds or notes, except any premium, accrued interest and interest included in the amount of the bonds or notes, shall be used first to retire any bond anticipation notes issued by the School District Board for the Project.
 - c. Within 30 days after the sale of bonds or notes issued pursuant to Article III (A)(1)(a), the School District Board shall deposit into the Project Construction Fund *Zero Dollars (\$-0-)* from the proceeds of the sale of bonds or notes, as specified above.

2. Property Tax/Income Tax Levy

The School District Board agrees to deposit into the Project Construction Fund immediately upon execution of this Agreement the sum of *Zero Dollars (\$-0-)* from the proceeds of bonds leveraged by a property tax levy or income tax levy, or a combination of both as authorized by Section 3318.052, ORC.

3. Local Donated Contributions

- a. *Federal Grant Moneys:* The School District Board agrees to deposit into the Project Construction Fund immediately upon execution of this Agreement the sum of *Zero Dollars (\$-0-)* in federal grant moneys received by the School District Board which can be applied to the Project cost.
- b. *Moneys Donated or Granted; Letters of Credit; Cash on Hand; Non 3318 Bond:* The School District Board agrees to deposit into the Project Construction Fund immediately upon execution of this Agreement the sum of *Four Million Two Hundred Thirteen Thousand Two Hundred Twelve Dollars (\$4,213,212)* in local donated contributions as authorized by Section 3318.084, (A)(1), ORC. For purposes of this paragraph, a "local donated contribution" is any resource described in Division (C)(1) or (C)(2) of Section 3318.084, ORC but does not include direct spending by a third party source, as defined in Division (C)(3) of Section 3318.084, ORC.
- c. *Local Contribution Spent Directly By A Third Party Source.* Any moneys spent directly by a source other than the School District Board or the State for work that is part of the Master Facilities Plan may be counted as a local donated contribution pursuant to Section 3318.084 (C)(3), ORC. In such cases, the School District Board, the Commission, and the entity providing the local donated contribution must enter into a separate agreement in compliance with Section 3318.084 (C)(3), ORC to identify the classroom facilities to be constructed or renovated and the maximum amount of credit to be allowed for those expenditures. In any case where the School District Board's local share is effectively reduced by a local contribution spent by a third party source, the parties agree to amend this Agreement to reflect any reduction in the amount of the local share amount in the Project Construction Fund.

4. Credit

- a. The School District Board has completed a project under the Expedited Local Partnership Program and has signed a certificate of completion with the Commission for the project in the sum of *Twenty Seven Million Nine Hundred Twenty Four Thousand One Hundred Thirty Five Dollars (\$27,924,135)*. Pursuant to Section 3318.36(E)(1), ORC, this amount shall be deducted from the local share of the new basic project cost in Section I.C. above. If the ELPP credit amount is less than the amount in Section I.C., the School District Board shall provide the difference through one or more of the methods described in III.A.1 to III.A.3 above. If the ELPP credit amount is greater than the amount in Section I.C., the Commission may grant to the School District Board the difference.
- b. The School District Board has made expenditures on a project under the Expedited Local Partnership Program under Section 3318.36(D)(1) but has not yet signed a certificate of completion. It is estimated that the amount of the ELPP project, when completed, will be *Zero Dollars (\$-0-)*. Within 30 days of the signing of the certificate of completion by the School District Board and the Commission, the School District Board will, if the actual amount is higher than the estimated amount, transfer the difference out of the project construction fund, or, if the estimated amount is higher than the actual amount, deposit the difference into the project construction fund.
- c. The School District Board has made expenditures outside of the Project Construction Fund which will not result in a certificate of completion under ELPP, but which are recognized by the Commission as a local share contribution to the project, in the amount of *Zero Dollars (\$-0-)*.
- d. Within twelve (12) months after execution of the Project Agreement or within 3 months of the Expedited Local Partnership Program - Closeout Credit Report, the School District Board shall complete a final report of the amount of the credit for approval by the Commission. The School District Board shall increase or decrease its local share deposited in the Project Construction Fund to reflect any changes made by the Commission to the amount shown above.

IV. MAINTENANCE OF COMPLETED FACILITIES

A. *Maintenance Fund.*

1. The School District Board shall levy an additional tax of a minimum of one-half mill for each dollar of valuation for the maintenance of the Project, pursuant to, and in accordance with the requirements of Sections 3318.05 (B), 3318.06 (A)(2)(a) and (A)(3), and 3318.17 ORC
2. In the alternative, the School District Board may elect, pursuant to Sections 3318.05 (C), and 3318.06 (A)(2)(b), ORC, to satisfy its local maintenance requirement by earmarking from the proceeds of an existing permanent improvement tax levied under Section 5705.21, ORC an amount equivalent to the amount of the additional tax described in Section IV (A)(1) above (*Exhibit A – Resolution Authorizing the School District Board to Earmark Dollars to the Maintenance Fund (Fund 034) attached*).
3. In the alternative, the School District Board may elect to satisfy its local maintenance requirement by applying the proceeds of a property tax or the proceeds of an income tax, or a combination thereof, pursuant to Section 3318.052, ORC.
4. In the alternative, the School District Board may, pursuant to Section 3318.061, ORC, extend a previously approved tax of one-half mill for each dollar of valuation levied as a condition of participating in a previous state school building assistance program by a number of years so that one-half mill will be collected for at least twenty-three years from the completion of this Agreement.
5. Pursuant to Section 3318.084, ORC, the School District Board may apply any local donated contribution as an offset of all or part of a district's obligation to levy the tax described in Section IV (A)(1) above. The School District Board shall deposit in the maintenance fund any local donated contribution to serve as an offset of all or a portion of the amount that the Commission, in consultation with the Department of Taxation, determines is likely to be generated by a tax of one-half mill for each dollar of valuation over a period of twenty-three years. In the event that School District Board chooses this option, the Commission, at the end of the twenty-three year period, shall recalculate the amount that would have been generated by the tax described in Section 3318.05 of the Revised Code if it had been levied at one-half mill. If the actual amount generated over that period is less than the amount that would have been raised by a one-half mill tax, the district shall pay into the maintenance fund the difference, pursuant to Section 3318.084 (B) of the Revised Code.
6. Pursuant to Sections 3318.08(E) and 3318.084(D)(2), ORC, the Commission may approve a stipulation by the School District Board that the Treasurer will have deposited the full amount of the maintenance fund requirement from local donated contributions by the anticipated completion date of the Project according to a schedule for deposit of such money approved by the Commission.
7. Pursuant to Section 3318.051, ORC the School District Board may transfer district funds from existing sources into the Maintenance Fund. The School District Board must submit a letter and board resolution and must obtain from the Commission a Letter of Approval for this option. The School District Board is required to deposit at least one-half mill for each dollar of valuation annually into the fund for a period of twenty-three years and comply with provisions of Section 3318.051 including submission of annual certification of transfers to the Commission and Auditor of State. If this option is selected, the letter shall be attached to this Agreement as an Appendix.
8. The option elected by the School District Board is #1 as more fully described above. *If option #2, #3, #5, #6, and/or #7 are elected, the School District Board shall list the exact dollar amounts and year of deposit which shall be attached to this Agreement as an Appendix.*
9. In the event that the School District Board elects to satisfy the maintenance fund requirement through Option #2, #3, #4, #5, #6 or #7 the Commission will require, as a condition precedent to execution of this Agreement, certification from the School District Treasurer of the amounts deposited in the maintenance fund, or the earmarked annual revenue collection that will be deposited in the maintenance fund.

- B. ***Maintenance Plan.*** The School District Board shall submit to the Commission for approval a plan for the preventative maintenance of each completed facility according to procedures specified by the Commission. The School District Board acknowledges that: 1) allowable uses for the maintenance fund shall be the maintenance and repair of the completed facilities, including preventative maintenance, periodic repairs, and the replacement of facility components; 2) that routine janitorial and utility costs, equipment supplies and personnel associated with the day-to-day housekeeping and site upkeep per normal and customary standards are not allowable expenditures under the parameters of the maintenance fund; and 3) that the actual use of the maintenance fund, according to the terms of the approved Maintenance Plan, is subject to audit.

- C. **Utility Reporting.** The School District shall report to the Commission the utility consumption data of each of its facilities for a period of not less than 3 years following occupancy.
- D. **Use of Half Mill Maintenance Levy Proceeds for Improvements.** Section 3318.053, ORC permits a School District Board to use proceeds from the one-half mill maintenance tax described in Sections 3318.05 (B) and (C), ORC for infrastructure improvements on and leading to the project sites that are not included in the total project budget. The School District Board may only use these proceeds during the three-year period following the execution of this Agreement. If the School District Board intends to use the proceeds of one-half mill tax in this manner, it shall include that fact as part of the purpose of the levy in the ballot language proposing it.

V. STATE SHARE OF PROJECT COST

- A. The Commission shall cause the moneys for the State's share of the Project cost, or the applicable portion thereof, to be transferred to the Project Construction Fund from moneys appropriated by the General Assembly and encumbered for such purpose, from time to time, as may be necessary to pay obligations incurred pursuant to the terms of this Agreement. Such deposit will be pursuant to complete and accurate quarterly draw requests, executed by the School District Treasurer and approved by the Commission. Breach or material non-compliance of this Agreement on the part of the School District Board, after opportunity to cure, may obviate any Commission obligations with respect to the deposit of funds.
- B. All monies appropriated by the General Assembly and encumbered to pay the State's share of the Project cost shall be spent on the construction of the Project prior to the expenditure of any funds provided by the School District Board for its share of the Project cost, unless the School District Board certifies to the Commission that expenditure by the School District Board is necessary to maintain the tax exempt status of notes or bonds issued by the School District Board to pay for its share of the Project cost or to comply with applicable temporary investment periods or spending exception to rebate as provided for under Federal Law in regard to those notes or bonds, in which case, the School District Board may commit to spend, or spend such necessary portion of funds it provides. The Commission acknowledges the School District Treasurer's representation of intended local share spending on the quarterly draw request to constitute a certification of necessity.
- C. The amount of state appropriations to be encumbered for the Project in each fiscal biennium shall be determined by the Commission based on the Project's estimated construction schedule for that biennium. In each fiscal biennium subsequent to the first biennium in which state appropriations are encumbered for the Project, the Project has priority for state funds over Projects for which initial State funding is sought.

VI. THE PROJECT CONSTRUCTION FUND

- A. The School District Board acknowledges that proper management of the Project Construction Fund ("Fund") is an essential requirement of the Project. The School District Board shall identify and describe any fund or account, other than the Project Construction Fund, that is related to the Project. The School District Board shall establish escrow accounts required by law for retainage on trade contracts.
- B. All investment earnings of the Fund shall be credited to the Fund. The School District Board shall maintain a separate account of the investment earnings attributable to the respective contributions to the Fund by the School District Board and the Commission. The School District Board shall report accurate interest earnings to the Commission on the quarterly draw request.
- C. The School District Board shall disburse moneys from the Fund, including investment earnings credited to the Fund, upon approval by the Commission, which shall be evidenced by the consent of the Construction Manager. All vouchers must be approved by the School District Board or designee, and by the Construction Manager as the Commission's designee, prior to any payment by the School District Board. The School District Board Treasurer shall work with the Construction Manager to review and reconcile the Treasurer's log with records maintained by the Construction Manager on a quarterly basis.
- D. Transactions involving the Fund shall be restricted to: 1) payments for professional design and administration services, 2) payments to contractors who have performed work on the Project, 3) purchases related to the Project, and 4) any transactions authorized necessary or appropriate for establishing and administering investment accounts. Limited expenditures made by a School District Board for the Project prior to execution of a Project Agreement may be approved for reimbursement, subject to all approvals required for other transactions involving the Fund. No Fund moneys or interest thereon shall be spent for any items inconsistent with the provisions of the Design Manual and Commission policies, unless a variance is approved by the Commission.
- E. The School District Board shall not transfer or pursue any other transaction to remove moneys from the Fund to any other fund or account except as permitted by this Agreement or with the written approval of the Commission.

- F. The School District Board may, in accordance with Section 3318.12 (B)(2), and by a duly adopted resolution, choose to use all or part of the investment earnings of the School District's project construction fund that are attributable to the School District's contribution to the fund to pay the cost of classroom facilities or portions or components of classroom facilities that are not included in the School District's basic project cost but that are related to the School District's project. However, if the School District Board chooses to use any or all of the investment earnings in this manner, and, subsequently, the cost of the project exceeds the amount in the project construction fund, the School District Board shall restore to the project construction fund the full amount of the investment earnings used under division (B)(2) before any additional state moneys shall be released for the project.
- G. The School District Board shall provide a full accounting of the Fund, upon request of the Commission. The School District Board shall provide the Commission a copy of any audit report received from the Auditor of State immediately upon receipt. The report may be provided in hard copy or by electronic medium. The Commission reserves the right to audit the Fund, or any expenditure related to the Fund or the Project.
- H. The contingency reserve portion of the construction budget shall be used only to pay costs resulting from unforeseen job conditions, to comply with rulings regarding building and other codes, to pay costs related to design clarifications or corrections to contract documents, and to pay the cost of settlements and judgments related to the Project, unless otherwise approved by the Commission.
- I. If any moneys remain in the Fund after the Project has been completed, they shall be disbursed as follows:
 1. At the discretion of the School District Board, any investment earnings remaining in the project construction fund that are attributable to the School District Board's contribution to the Fund shall be: retained in the project construction fund for future projects; transferred to the District's Maintenance Fund and used solely for maintaining the classroom facilities included in the project; or transferred to the School District's permanent improvement fund.
 2. Any investment earnings remaining in the project construction fund that are attributable to the state's contribution to fund shall be returned to the Commission for expenditure pursuant to Section 3318.01 to 3318.20 or sections 3318.40 to 3318.45 of ORC.
 3. Any other surplus remaining in the project construction fund after the project has been completed shall be returned to the Commission and the School District Board in proportion to their respective contributions to the fund, upon execution of the certificate of completion.
- J. Pursuant to Section 3318.083 and 3318.12, ORC, if the Fund, including all investment earnings credited to the Fund, and any interest earned through completion of the Project, becomes depleted by payments of proper Project costs, the School District Board and the Commission shall complete the Project, with each contributing additional moneys in proportion to their respective original contributions to the Fund, provided there are appropriated moneys available to the School District Board and the Commission and the Controlling Board approves the use of those moneys for completion of the Project. The procedures provided in Commission Rule 3318-4-02 shall be implemented to modify the scope of work or total budget for the Project, pursuant to Rule 3318-05-04. The Commission will not share proportionally in the cost of any renovation project that exceeds the total amount of cost that would have been budgeted for new construction. Any interest earnings transferred from the School District's project construction fund as authorized in division (B)(2) of Section 3318.12 ORC shall be restored to the project construction fund, in the full amount of the investment earnings used. In addition, no additional State contribution to the Fund shall be made unless the School District Board's pro-rata share of the increase is deposited into the Fund.
- K. The procedures provided in Commission Rule 3318-4-02 shall be implemented to modify the scope of work or total budget for the Project in situations where the student enrollment declines to such an extent that additional classroom facilities are not necessary to house the total student population at the time the Project is complete. The School District Board and the Commission agree that time is of the essence with respect to any changes in the Master Facilities Plan and that all decisions regarding changes shall be expedited. The School District Board's actual enrollment status will be monitored annually and enrollment report updates may be requested by the Commission which may result in revisions to the Master Facility Plan.
- L. If a School District Board receives any monies, credits, grants or other type of reimbursement of any kind as a result of an expenditure from the project account, such monies, credits, grants or other type of reimbursement of any kind shall be credited to the project fund account, without regard to the proportional contributions of the parties.

VII. LOCALLY FUNDED INITIATIVES ("LFI"):

- A. The School District Board may elect to add to the scope of any Project and separate fund a scope of work, a LFI, which involves improvements to all or part of the Project funded through the Commission. The School District Board may request the Commission to approve the incorporation of the design and construction of the LFI into the overall Project.
- B. Whenever a LFI will be purchased through contracts that are subject to the Commission's approval, a Memorandum of Understanding (MOU) will be executed by the School District and the Commission, setting forth specific terms and conditions. A separate MOU should be executed for each building.
- C. If the School District Board elects to utilize the Architect and Construction Manager selected for the Commission funded Project, the fees for services shall not be less than the co-funded project fee percentages in comparison to the construction budgets unless approved by the Commission.
- D. The School District Board will assume all of the financial responsibility for the LFI and establish a Local Initiative Fund or special cost center in a fund other than Fund 010 to account for the local resources supporting the LFI. The School District Board will deposit the required money prior to certification of availability of funds.
- E. The Commission may designate a material, system or design feature as a LFI when the estimated cost of a project at the completion of a design phase exceeds the approved budget for the project, in situations where an alternative Design Manual compliant material, system or design feature would reduce the amount of the budget overrun.

VIII. CONTRACT ADMINISTRATION

- A. The School District Board shall select a qualified professional design firm, ("Architect"), to prepare plans, specifications and estimates of cost for bidding the work necessary for the Project. The School District Board shall comply with requirements of Section 153.65 to 153.71, ORC, in selecting and contracting with the Architect. The Commission shall provide the form of Agreement for the Architect and the Commission shall approve the Agreement, pursuant to Section 3318.091, ORC. Contracts awarded to firms with principles which exceed the contribution limits applicable to the contract authority as set for in all ethics and campaign contribution laws will not be approved by the Commission.
- B. The Commission shall select a Construction Manager in accordance with Section 9.33 et. seq., ORC, and enter into an Agreement negotiated by the Commission for construction management services. In that Agreement, the Commission and the Construction Manager shall each acknowledge that the School District Board is an intended third party beneficiary of the Agreement, so as to permit the School District Board to obtain full performance of the Construction Manager's obligations under the Agreement.
- C. The Standard Conditions of Contract provided by the Commission and in effect at the time of the applicable bid advertisement for the Project shall apply to the Project. The Standard Conditions may only be amended by Special Conditions approved by the Commission. As a special condition of contract, the School District may adopt, in part or in whole, and as may be periodically amended, the responsible bidder criteria adopted by the Commission as Resolution #07-98. The School District Board, with the approval of the Commission, shall competitively bid, execute and administer contracts for construction on the Project and all other contracts as necessary, in compliance with applicable federal, state and local statutes, ordinances, codes and regulations. Contracts awarded to firms with principles which exceed the contribution limits applicable to the contract authority as set for in all ethics and campaign contribution laws will not be approved by the Commission.
- D. The Commission and the School District Board shall each designate a representative authorized to act on their behalf with respect to decisions required by this Agreement and required during the course of the Project. Pursuant to Section 3318-2-04, of the Ohio Administrative Code, the Commission may authorize the Executive Director or the Executive Director's designee to take actions necessary for the performance of this Agreement. The School District Board acknowledges the potential that special meetings may be required for timely execution of decisions and agrees to schedule special meetings as necessary.
- E. The Commission has pre-qualified firms to provide Partnering, Maintenance Planning and Commissioning services. The cost of basic services provided by one of the pre-qualified firms shall be an eligible project cost.
- F. The "Encouraging Diversity, Growth, and Equity" (EDGE) business development program created pursuant to Ohio Revised Code Section 123.152 and amplified under the rules promulgated there under in the Ohio Administrative Code is applicable to the project.

IX. GENERAL PROVISIONS

- A. **Insurance.** The School District Board shall insure the Project for building risk as soon as the School District Board has an insurable interest therein in such amounts and against such risks as the Commission and the School District Board shall agree and shall maintain that insurance during construction. The cost of such insurance shall be payable from the Fund. The School District Board shall insure the Project for Builders Risk and Professional Liability as soon as the School District Board has an insurable interest therein in such amounts and against such risks as the Commission and the School District Board shall agree and the School District Board shall maintain such insurance throughout construction. With the approval of the Commission, the School District Board may purchase other insurance policies for benefit of the Project. The cost of the builders' risk and professional liability insurance and other such insurance policies approved by the Commission shall be payable from the Fund.
- B. **Termination.** This Agreement shall be terminated, and the moneys that were encumbered at the time of the Project's conditional approval by the Commission shall be released for other purposes, if the proceeds of the sale of the bonds or notes of the School District Board, or other lawful alternative funding sources are not paid into the Fund, or if bids for initial contracts for the construction of the Project have not been taken within 24 months after the execution of this Agreement, or such later date as may be approved by the Commission. Additionally, this Agreement may be terminated for convenience by either party upon sixty days notice. Upon such notice, the State share of the project construction fund shall be returned to the Commission within thirty days of all termination costs being paid out of the project construction fund.
- C. **Capitalized Terms.** Capitalized terms in this Agreement shall have the same meaning as those defined in Chapter 3318, ORC, unless otherwise defined herein or unless another meaning is indicated by the context.
- D. **Entire Agreement.** This Agreement is the entire and integrated Agreement between the Commission and the School District Board and supersedes all prior negotiations, representations or agreements, either written or oral.
- E. **Multiple Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.
- F. **Conditions to Validity.** None of the rights, duties and obligations contained in this Agreement shall be binding on any party hereto until all legal requirements have been complied with, including without limitation that the Director of Budget and Management of the State first certifies that there is a balance in the appropriation not already obligated to pay existing obligations, as required by Section 126.07, ORC, all necessary funds are available from the applicable state agencies or instrumentalities and, when required, the expenditure of such funds is approved by the Controlling Board of the State of Ohio or other applicable approving body.
- G. **Compliance with Section 3313.41, ORC.** Continued release of project funds by the Commission shall be conditioned upon the School District Board's compliance with provisions of Section 3313.41, ORC including the section that relates to the School District Board's plans to dispose of any facilities suitable for use as classroom space by sale. Moreover, the School District Board shall comply with Section 3313.41, ORC with regard to any demolition of a facility included in the Project unless excepted under Section 3318.08 (V) ORC. The School District Board shall notify the department of education and the Ohio community school association when the board plans to dispose of facilities by sale under Section 3313.41, ORC.
- H. **Successors and Assigns.** The Commission and the School District Board, each bind themselves, their successors, assigns and legal representatives, to the other party to this Agreement and to the successors, assigns and legal representatives of the other party with respect to all terms of this Agreement.
- I. **Law of Ohio.** This Agreement shall be governed by the law of the State of Ohio to the exclusion of the law of any other jurisdiction and the State of Ohio shall have jurisdiction over any action hereunder or related to the Project to the exclusion of any other forum.
- J. **Legal Representation.** The School District Board and the Commission understand that each party will bear its own legal costs incurred in the administration of the project and such costs will not be considered an expenditure out of the project construction fund, except as otherwise may be agreed to by the parties.
- K. **Severability.** If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein. Such invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.
- L. **Amendment.** This Agreement may be amended only by an amendment executed by both the Commission and the School District Board.