

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, January 24, 2007

ASSEMBLY BILL (AB) 127 AMENDMENTS TO
PROGRAM REGULATIONS

PURPOSE OF REPORT

To request:

1. Adoption of the proposed emergency regulations to implement and administer the Career Technical Education Facilities Program.
2. Authorization to file the proposed emergency regulations with the Office of Administrative Law (OAL).

DESCRIPTION

AB 127, Chapter 35, Statutes of 2006 (Perata/Nunez) was chaptered on May 20, 2006, establishing the Kindergarten-University Public Education Facilities Bond Act of 2006 (Proposition 1D). Proposition 1D provides \$10.416 billion in bonds for educational facilities, of which \$7.329 billion is earmarked for kindergarten through twelfth grade projects, which were approved on the November 2006 ballot. The law, of which nearly all the provisions were effective upon the passage of Proposition 1D, makes modifications to certain School Facility Program (SFP) features, adds several new grant programs, and provides funding for existing and new grant programs. Attachment A represents the major changes and amendments to the SFP regulations for the new Career Technical Education Facilities Program. This program is established for the purpose of constructing new facilities or reconfiguring existing ones to provide facilities for students to learn the skills and knowledge necessary for today's high-demand technical careers. For the Board's information, Attachment B contains the California Department of Education (CDE) Application Guidelines and Application Scoring Guide. Applicants will be required to submit an application detailing their career technical education plan and project for the review and approval of the CDE.

STAFF COMMENTS

By utilizing the State Allocation Board Implementation Committee meetings as a forum to gather input from interested parties, the Office of Public School Construction (OPSC) has developed proposed regulations contained in Attachment A to implement the Career Technical Education Facilities Program. Upon adoption by the Board, the OPSC will submit these regulations as emergency regulations to the OAL.

AB 127 also provides new grant programs for Overcrowding Relief Grants and Seismic Mitigation. It is anticipated that regulations for these programs will be presented at a future SAB meeting.

RECOMMENDATIONS

1. Adopt the proposed amendments to the regulations as shown on Attachment A and begin the regulatory process.
2. Authorize the OPSC to file the emergency regulations shown on Attachment A with the OAL.

This Item was approved by the State Allocation Board on January 24, 2007.

ATTACHMENT A

Section 1859.2. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the Act:

...

"Approved Application for Career Technical Education Facilities Project Funding" means an applicant has submitted an *Application for Career Technical Education Facilities Funding, Form SAB 50-10*, including all required supporting documents as identified in the General Information Section of that Form, to the OPSC and the OPSC has accepted the application for processing.

...

"Career Technical Education Facilities Project" means a project approved by the Board pursuant to Education Code Section 17078.72.

...

~~"Comprehensive High School" means a high school that serves grades 7-12 or 9-12 that offers a variety of curricula, including common courses that emphasize academic achievement and traditional subjects that all students are required to take.~~

...

"Form SAB 50-10" means the *Application for Career Technical Education Facilities Funding*, which is incorporated by reference.

...

~~"Large New Construction Project" means a funding application request for at least 200 New Construction Grants which will be used to construct a new Comprehensive High School or an addition to a Comprehensive High School.~~

~~"Large Modernization Project" means a funding application request for Modernization Grant(s) that exceed 50 percent of the current CBEDS enrollment of a Comprehensive High School that will be modernized.~~

...

"Reconfigure" for the purposes of the Career Technical Education Facilities Program means remodeling an existing school building within its current confines and/or the expansion of the square footage of the existing building.

...

"Service Region" means one of the eleven service regions of the California County Superintendents Educational Services Association.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17009.5, 17017.6, 17017.7, 17021, 17047, 17050, 17051, 17070.15, 17070.51(a), 17070.71, 17070.77, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.75, 17071.76, 17072.10, 17072.12, 17072.18, 17072.33, 17073.25, 17074.10, 17074.30, 17074.32, 17075.10, 17075.15, 17077.40, 17077.42, 17077.45, 17078.52, 17078.56, 17078.72(k), 17280, and 56026, Education Code; Section 53311, Government Code; and Section 1771.5, Labor Code.

Section 1859.51. Adjustments to the New Construction Baseline Eligibility.

The baseline eligibility for new construction determined on the Form SAB 50-03, will be adjusted as follows:

- (a) Reduced by the number of pupils provided grants in a new construction SFP project and by the number of pupils that received a Preliminary Apportionment pursuant to Section 1859.140 or a Preliminary Charter School Apportionment pursuant to Section 1859.160.
- (b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in a new construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.
- (c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(a)(2)(A), in a modernization SFP project.
- (d) Adjusted as a result of the audit findings made pursuant to Sections 1859.90 and 1859.105.
- (e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years for all districts except decreases as provided in (j) below.
- (f) Adjusted as a result of errors or omissions by the district or by the OPSC.
- (g) Adjusted as a result of amendments to these Regulations that affect the eligibility.
- (h) Increased by the number of pupils eligible for grants pursuant to Section 1859.82 (a).
- (i) Reduced by the number of pupils housed, based on loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in any Classroom Provided after the baseline eligibility was determined by the Board with the exception of those pupils housed or to be housed in a classroom:
 - (1) That is a trailer and transportable/towed on its own wheels and axles.
 - (2) Of less than 700 interior square feet.
 - (3) Excluded pursuant to Education Code Section 17071.30.
 - (4) Where the contract for the lease, lease-purchase, purchase, or construction of the classroom was made prior to January 1, 2000.
 - (5) That is included in a SFP project where the district has funded a portion of the project beyond its required district contribution and the pupil capacity of the classroom does not exceed 150 percent of the number of pupils receiving a new construction grant (rounded up) for the SFP project.
 - (6) That was acquired with joint-use funds specifically available for that purpose.
 - (7) That was acquired with career technical education funds specifically available pursuant to Education Code 17078.72.
- (j) For Small School Districts, decreased:
 - (1) By any reduction in projected enrollment that follows a three-year period after the district's eligibility was approved by the Board.
 - (2) By any increase in the number of pupils included in the latest operational grant report made by the CDE pursuant to Education Code Section 42268 beginning three years after the district's most current eligibility was approved by the Board. The reduction in eligibility shall be determined by the number of pupils included in the latest operational grant report that exceed the number of pupils included in the operational grant report in effect when the district's most current eligibility was approved by the Board or adjusted by a subsequent operational grant report after that date.
- (k) Adjusted for any change in classroom inventory as a result of a reorganization election.
- (l) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.
- (m) As directed by the Board due to a finding of a Material Inaccuracy pursuant to Regulation Section 1859.104.1.
- (n) Increased by the number of pupils that received a Preliminary Apportionment that was rescinded pursuant to Section 1859.148 or a Preliminary Charter School Apportionment that was rescinded pursuant to Section 1859.166.
- (o) Adjusted for operational grant changes as determined/provided by the California Department of Education.

- (p) For a HSAA district with Preliminary Apportionments within the 2002 Critically Overcrowded School Facilities Account as follows:
- (1) Decreased by the number of pupils that received a Preliminary Apportionment, distributed proportionately among HSAA's in which the pupils used to justify the conversion of the Preliminary Apportionment were enrolled but did not reside.
 - (2) In the subsequent enrollment reporting year after verification of Occupancy of a project, increased by the number of pupils equal to the reduction due to Section 1859.51(p)(1), for the project which was occupied.
 - (3) Increased by the number of pupils equal to the reduction due to Section 1859.51(p)(1), for a Preliminary Apportionment rescinded pursuant to the provisions of Section 1859.148.
- (q) Adjusted by the difference between the Alternative Enrollment Projection for the current enrollment reporting year and the projected enrollment determined pursuant to Section 1859.42 for the current enrollment reporting year, or by the eligibility remaining from this calculation that can no longer be utilized if the funds made available pursuant to Education Code Section 17071.75(a)(1)(A) have been exhausted.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17052, 17070.51, 17071.25, 17071.75, 17071.76, 17072.20 ~~and~~, 17077.40, and 17078.72 Education Code.

Section 1859.81. Financial Hardship.

Except for Joint-Use Projects and Career Technical Educational Facilities Projects, a district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

(a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including, but not limited to, developer fees, funds generated from capital facility certificates of participation, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to the initial request for financial hardship status shall be deemed available as a matching contribution.

After the initial request for financial hardship status is granted, no further encumbrances will be approved by the OPSC and all prospective revenue made available to the district's capital facility accounts shall be deemed available as matching contribution on the subsequent financial hardship review, with the exception of:

- (1) Approved interim housing expenditures.
- (2) Funding to pay for previously recognized multi-year encumbrances approved at the initial financial hardship approval.
- (3) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the Federal Renovation Program when the amount expended out of that fund does not exceed the maximum Federal Renovation Grant amount.
- (4) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the School Facilities Needs Assessment Grant Program or Emergency Repair Program when the amount expended out of that fund does not exceed the maximum grant amount apportioned.

(5) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the Career Technical Education Facilities Program when the amount expended out of that fund does not exceed the applicant's share of the maximum grant amount apportioned.

(5)(6) All other capital facility funding for a period of three years when no subsequent financial hardship request is made during this period. The three-year period begins with the date of the most recent financial hardship new construction or modernization adjusted grant funding apportionment.

...

Note: Authority cited: Sections 17070.35, 17075.15, 17078.72 and 17592.73, Education Code.

Reference: Sections 17075.10 and 17075.15, Education Code.

Article 16. Career Technical Education Facilities Program

Section 1859.190. General.

An applicant seeking Career Technical Education Facilities Project funding pursuant to the provisions of Education Code Section 17072.78, shall complete and file Form SAB 50-10.

An applicant may submit multiple Career Technical Education Facilities applications for different career technical education projects located at a single school site, as approved by the CDE.

Modernization of facilities under Article 16 shall not affect the Modernization Eligibility of the facility pursuant to Section 1859.60.

Note: Authority cited: Sections 17070.35 and 17078.72(k), Education Code.

Reference: Section 17078.72, Education Code.

Section 1859.191. Career Technical Education Facilities Project Application Submittal.

- (a) The Board shall accept Approved Applications for Career Technical Education Facilities Project Funding and make apportionments as follows:
- (1) All applications received in a six month cycle will be processed and prioritized for career technical education funding in the manner described in Section 1859.194.
 - (2) The funding cycles are established as follows:
 - (A) Approved Applications for Career Technical Education Facilities Project Funding for the first funding cycle must be submitted to the OPSC by October 31, 2007. The CDE Career Technical Education Facilities Program application must be submitted to the CDE no later than August 3, 2007.
 - (B) Approved Applications for Career Technical Education Facilities Project Funding for the second funding cycle must be submitted to the OPSC by April 30, 2008. The CDE Career Technical Education Facilities Program application must be submitted to the CDE no later than February 1, 2008.
 - (C) At the discretion of the Board, subsequent funding cycles may continue every six months thereafter until the Career Technical Education Facilities Program funds are exhausted or other funds become available.
 - (3) The Career Technical Education Facilities funds will be apportioned at the next available Board meeting after the end of each application cycle.

Note: Authority cited: Sections 17070.35 and 17078.72(k), Education Code.

Reference: Section 17078.72, Education Code.

Section 1859.192. Career Technical Education Facilities Program Eligibility.

An applicant requesting funding for a Career Technical Education Facilities Project may submit Form SAB 50-10 to the OPSC if all the following criteria are met:

(a) For a new construction project, the applicant:

(1) Is a local educational agency operating a comprehensive high school pursuant to Education Code Sections 51224, 51225.3 and 51228.

(2) Has an active career technical advisory committee pursuant to Education Code Section 8070.

(b) For a modernization project, the applicant :

(1) Is a local educational agency operating a comprehensive high school pursuant to Education Code Sections 51224, 51225.3 and 51228; or,

(2) Is a joint powers authority operating career technical education programs as of May 20, 2006.

(3) Has an active career technical advisory committee pursuant to Education Code Section 8070.

(c) The applicant's Career Technical Education Facilities Program application has been reviewed by the CDE and meets all of the following criteria:

(1) Contains all mandatory elements required by the CDE;

(2) Received a score of at least 105 points.

An applicant need not demonstrate New Construction Eligibility or Modernization Eligibility in order to participate in the Career Technical Education Facilities Program.

Note: Authority cited: Sections 17070.35 and 17078.72(k), Education Code.

Reference: Section 17078.72, Education Code.

Section 1859.193. Career Technical Education Facilities Grant Determination.

A Career Technical Education Facilities Project may construct a new facility or modernize or Reconfigure an existing school building. The application for Career Technical Education Facility funding may accompany an application for new construction funding pursuant to Section 1859.70 or may be submitted independently.

The applicant must identify square footage of the Career Technical Education Facility being constructed, modernized, reconfigured or equipped, on the funding application. Equipment purchased under the Career Technical Education Facilities Program must have an average useful life expectancy of at least ten years pursuant to Education Code 17078.72(a). An application for a Career Technical Education Facilities Project may consist entirely of equipment.

(a) For new construction of a Career Technical Education Facilities Project included in a qualifying New Construction Grant, the Career Technical Education Facilities grant amount shall be the lesser of either (1) or (2):

(1) The sum of the costs uniquely related to facilities required to provide Career Technical Education as determined below:

(A) 50 percent of the cost of construction of the Career Technical Education Facilities Project, as determined by the project architect, subject to OPSC review and approval.

(B) 50 percent of the cost to equip the Career Technical Education Facilities Project with necessary equipment.

(C) Minus an allowance for New Construction Grants provided for Career Technical Education classrooms, determined by:

1. Multiplying 960 square feet by the number of classrooms in the Career Technical Education Facilities Project that were included in the New Construction project.

2. Multiplying the amount determined in (a)(1)(C)1 by 50 percent of the Current Replacement Cost for non-Toilet Facilities.

(2) \$3 million per Career Technical Education Facilities Project.

Site development work is not allowed as part of a Career Technical Education Facilities Project included in a New Construction Grant. Site development work necessary pursuant to Section 1859.76, may be requested by the district under the qualifying SFP New Construction.

(b) For stand alone New Construction of a Career Technical Education Facilities Project, the grant amount shall be the lesser of either (1) or (2):

(1) The sum of the costs uniquely related to facilities required to provide Career Technical Education as determined below:

(A) 50 percent of the cost of construction of the Career Technical Education Facilities Project, as determined by the project architect, subject to OPSC review and approval.

(B) 50 percent of the cost to equip the Career Technical Education Facilities Project with necessary equipment.

(C) 50 percent of site development work that meets the following criteria:

1. It is necessary and applicable to the Career Technical Education Facilities Project.

2. It meets the requirements for site development costs as outlined in Section 1859.76.

(2) \$3 million per Career Technical Education Facilities Project.

If the district is requesting funding for site development work applicable to the Career Technical Education Facilities Project, the district must submit a detailed cost estimate and appropriate DSA approved plans with the Form SAB 50-10. The cost estimate must include appropriate justification documents that indicate the work is necessary to complete the Career Technical Education Facilities Project and conform to the requirements in Section 1859.76.

Utility service(s) cost shall be prorated, if necessary, for any excess capacity not needed to service the Career Technical Education Facilities Project.

(c) For Modernization of a Career Technical Education Facilities Project, the grant amount shall be the lesser of either (1) or (2):

(1) The sum of the costs uniquely related to facilities required to provide Career Technical Education Facilities Project as determined below:

(A) 50 percent of the cost to modernize or Reconfigure the Career Technical Education Facilities, as determined by the project architect, subject to OPSC review and approval.

(B) 50 percent of the cost to equip the Career Technical Education Facilities with necessary equipment.

(2) \$1.5 million per Career Technical Education Facilities Project.

Reconfiguring an existing school building must not displace a minimum essential facility. In any case involving the replacement of a minimum essential facility due to the reconfiguration of an existing building, the replacement must be part of the plans submitted in support of the Career Technical Education Facilities Application, must occur concurrently, and cannot be part of a SFP Application for new construction.

(d) If an applicant meets the eligibility criteria in Section 1859.192, but does not have the necessary approvals from the DSA and/or the CDE at the time of apportionment, the Board may apportion funds for the Career Technical Education Facilities Project and reserve them for a period of up to twelve months. The grant amount to be reserved for the project will be the maximum funding as determined above in (a), (b), or (c).

Note: Authority cited: Sections 17070.35 and 17078.72(k), Education Code.

Reference: Section 17078.72, Education Code.

Section 1859.193.1 Qualifying SFP Project.

For purposes of meeting the requirements in Sections 1859.193(a) or (c), the district may combine a Career Technical Education Facilities Project with any of the following applications in (a) or (b):

- (a) A new construction or modernization funding application that is submitted at the same time as the Career Technical Education Facilities Project application.
- (b) An Approved Application for new construction or modernization funding that has been approved, but has not received a full apportionment (i.e., currently on the workload list) or has been fully funded, if the following criteria are met:
 - (1) For new construction:
 - (A) The plans and specifications for the Career Technical Education Facilities Project were included in the original DSA approved plans and specifications for the Approved Application for new construction funding.
 - (B) The classrooms constructed for the Career Technical Education Facilities Project were not occupied prior to May 20, 2006.
 - (2) For modernization:
 - (A) The plans and specifications for the Career Technical Education Facilities Project were included in the original DSA approved plans and specifications for the Approved Application for modernization funding.
 - (B) The classrooms constructed for the Career Technical Education Facilities Project were not occupied prior to May 20, 2006.
- (c) If the Career Technical Education Facilities Project application is submitted separately, there is no requirement that the Approved Application for new construction or modernization be withdrawn.

Note: Authority cited: Sections 17070.35 and 17078.72(k), Education Code.

Reference: Section 17078.72, Education Code.

Section 1859.194 Career Technical Education Facilities Program Matching Share Requirement.

Any funding provided by these regulations shall require an applicant matching share contribution on a dollar-for-dollar basis. The applicant matching share may come from any source including, but not limited to, private industry groups, school districts, county offices of education, and joint powers authorities.

If the applicant's available matching share does not equal the grant amount or the matching share is not immediately available, a loan may be made to the applicant. The amount of the loan shall be determined by compliance with (a) below. If the need for a loan is substantiated, it shall be paid over time through loan payments authorized by the Board.

- (a) Require the applicant declare any local funds available for applicant contribution from any of the following sources:
 - (1) Developer Fees
 - (2) Certificates of Participation
 - (3) Local General Obligation Bonds, Mello-Roos Bonds and School Facility Improvement District Bonds
 - (4) Contribution from private industry groups or joint powers authority identified in CDE application
 - (5) Any other Capital Facility funding

Upon apportionment, the OPSC will prepare a loan agreement on behalf of the Board for the applicant.

- (b) The loan agreement shall stipulate the following:

- (1) The loan term shall be set at ten years with a one-time extension of five years if the applicant is in jeopardy of becoming financially insolvent and becoming subject to the requirements of Assembly Bill (AB) 1200, Chapter 1213, Statutes of 1991 (Eastin).
- (2) The loan agreement shall include interest on the unpaid principal balance at the same rate as that charged by the Pooled Money Investment Board. The interest rate will be set on the date that the project funding apportionment is approved by the Board.
- (3) Interest starts accruing on the fund release date.
- (4) The first payment is due no later than two years from the fund release date.
- (5) Should the district default on the loan payments, the OPSC will initiate collection procedures from the School Fund Apportionment pursuant to Education Code Section 17076.10 (c).

Note: Authority cited: Sections 17070.35 and 17078.72(k), Education Code.

Reference: Section 17078.72, Education Code.

Section 1859.195. Career Technical Education Facilities Project Apportionment.

The Board shall apportion Career Technical Education Facilities Funds in the following manner:

- (a) The Board may apportion up to a maximum of \$350 million for applications received in the first Career Technical Education Facilities funding cycle ending October 31, 2007.
 - (1) The amount of \$250 million shall be distributed proportionally to the Service Regions based on the high school enrollment within each Service Region. The proportional distribution of funds shall be determined by the current year enrollment as required by the CDE and as updated annually.
 - (2) If funding requested on qualifying applications exceeds the funds allotted to one or more Service Region, the amount of \$100 million shall be available for apportionment to the highest ranked projects regardless of Service Region.
- (b) The Board may apportion up to the sum of \$150 million plus any funds not apportioned in the first cycle for applications received in the second Career Technical Education Facilities funding cycle ending April 30, 2008.
 - (1) The amount of \$150 million plus any funds remaining from (a)(2) shall be distributed proportionally to each of the Service Regions based on the high school enrollment within each Service Region.
 - (2) Any unused funds distributed under (a)(1) shall be added to the amount determined for each Service Region in (b)(1).
 - (3) The cumulative apportionments in each Service Region may not exceed the amount determined in (1) and (2) except as described in Section 1859.196(b).
- (c) The Board may apportion any or all remaining available Career Technical Education Facilities funds in subsequent cycles, as deemed necessary and practical by the Board.

Note: Authority cited: Sections 17070.35 and 17078.72(k), Education Code.

Reference: Section 17078.72, Education Code.

Section 1859.196. Career Technical Education Facilities Program Funding Order.

- (a) In the first funding cycle, the Board shall fund eligible Career Technical Education Facilities Projects as follows:
 - (1) Approved Applications for Career Technical Education Facilities Project Funding shall be sorted by Service Region.

- (2) Within each Service Region, approved applications will be ranked from highest to lowest according to the numerical score for the applicant's Career Technical Education Facilities Program application as determined by the CDE.
- (3) The locale of each project shall be identified as Urban, Suburban or Rural.
- (4) The Board shall apportion funds within each Service Region to the highest ranked project in each locale. One of each locale must be accounted for before a locale is repeated. If there are no projects in a particular locale, that locale is considered accounted for.
- (5) The process will continue until the applications or funds are exhausted within each Service Region as prorated pursuant to Section 1859.195.
- (6) In the event two or more applications within a Service Region have the same career technical education plan score and are in the same locale, the applicant with the most total points in all weighted areas of the CDE-approved Career Technical Education Facilities Program application will be funded first.
- (b) In the second funding cycle, the Board shall fund eligible Career Technical Education Facilities Projects as described in (a) until the applications or funds are exhausted within each Service Region or until the conditions in (1) and (2) are met:
 - (1) All applications within one or more Service Regions are funded and there are funds remaining in those Service Regions.
 - (2) Qualifying applications in one or more Service Regions are not funded because the requests exceed the funds allotted to the Service Region(s) in Section 1859.195(b).

If (b)(1) and (2) are met in the second funding cycle, the remaining available career technical education facilities funds shall be pooled and apportioned to the highest ranked project in each locale regardless of Service Region. One of each locale must be accounted for before a locale is repeated.

- (c) For the third and any subsequent cycles, the Board shall apportion funds regardless of Service Region.
 - (1) Funds shall be apportioned to the highest ranked project in each locale. One of each locale must be accounted for before a locale is repeated. If there are no projects in a particular locale, that locale is considered accounted for.
 - (2) The process will continue until the applications or funds are exhausted, whichever comes first.
 - (3) In the event two or more applications have the same career technical education plan score and are in the same locale, the applicant with the most total points in all weighted areas of the CDE-approved Career Technical Education Facilities Program application will be funded first.

If a Career Technical Education Facilities Project cannot be fully apportioned because insufficient funding is available, the applicant may either accept the available funding as the full and final apportionment for the project or refuse funding entirely. If funding is refused, the Board shall consider funding the next project eligible for an apportionment based on the above funding priority mechanism. If an applicant refuses funding, the application shall automatically carry over to the subsequent cycle or the applicant may request that the application be returned.

For any Career Technical Education Facilities Project not apportioned under the funding mechanism described above, the application shall automatically carry over to the subsequent cycle or the applicant may request that the application be returned. A Career Technical Education Facilities Project returned to the applicant may be resubmitted during a subsequent application acceptance period identified in Section 1859.191, provided the application meets the eligibility criteria in Section 1859.192.

Note: Authority cited: Sections 17070.35 and 17078.72(k), Education Code.

Reference: Section 17078.72, Education Code.

Section 1859.197. Fund Release Process.

The OPSC will release State funds that have been apportioned by the Board pursuant to Sections 1859.195 after submittal by the applicant of the Form SAB 50-05.

- (a) If an apportionment was made for a Career Technical Education Facilities Project, the applicant must submit a Form SAB 50-05 within 18 months of the Apportionment as outlined in Education Code Section 17076.10 or the apportionment shall be rescinded without further Board action.
- (b) If Career Technical Education Facilities funds were reserved for the applicant pursuant to Section 1859.193 (d) of these Regulations, the applicant:
 - (1) Has one year from the date of apportionment to submit the CDE plan approval and DSA-approved plans and specifications, as required, to the OPSC for the Career Technical Education Facilities Project, otherwise the apportionment shall be rescinded without further Board action.
 - (2) Has 18 months from the date the CDE plan approval and DSA-approved plans and specifications, as needed, are submitted to the OPSC to submit a completed Form SAB 50-05 or the apportionment shall be rescinded without further Board action.
- (c) If the applicant requires a loan for the entire matching share requirement pursuant to Section 1859.194(b) of these Regulations:
 - (1) The OPSC will release ten percent of the Career Technical Education Facilities grant to the applicant within 30 calendar days of the apportionment.
 - (2) The applicant has one year from the date of apportionment to submit the CDE plan approval and DSA-approved plans and specifications, as required, to the OPSC for the Career Technical Education Facilities Project, otherwise the apportionment shall be rescinded without further Board action
 - (3) The applicant has 18 months from the date in (c)(2) to submit a completed Form SAB 50-05 or the apportionment shall be rescinded without further Board action.
- (d) The applicant is subject to substantial progress time limit on the apportionment as outlined in Subdivision (b) of Education Code Section 17076.10.

Note: Authority cited: Sections 17070.35 and 17078.72(k), Education Code.

Reference: Section 17078.72, Education Code.

Section 1859.198. Time Limit on Apportionment and Substantial Progress

The district is subject to the time limit on the apportionment as outlined in Education Code Section 17076.10 and substantial progress requirements pursuant to Section 1859.105.

Any Career Technical Education Facilities Project funds returned due to projects being rescinded or reduced to cost incurred shall be made available for apportionment in subsequent funding cycles.

Note: Authority cited: Sections 17070.35 and 17078.72(k), Education Code.

Reference: Section 17078.72, Education Code.

Section 1859.199. Program Accountability

A project shall be deemed complete when either of the following occurs, whichever occurs first:

- (a) The final notice of completion is filed for the project; or,
- (b) Four years have elapsed from the final fund release for the project.

Projects will be subject to a Program Accountability Expenditure Audit pursuant to Section 1859.106. Any repayments due back to the state as a result of these audits will be subject to the repayment provisions identified in Section 1859.106.1.

An applicant district may not retain savings not needed for a Career Technical Education Facilities Project.

Note: Authority cited: Sections 17070.35 and 17078.72(k), Education Code.

Reference: Section 17078.72, Education Code.

**Career Technical Education Facilities Program
(Assembly Bill 127) Article 13, Chapter 35,
Statutes of 2006**

**CALIFORNIA DEPARTMENT OF EDUCATION
APPLICATION GUIDELINES**

Date: _____ (TBA)

DUE DATES:

1st Funding Cycle: No later than 5:00 P.M. Friday, August 3, 2007
2nd Funding Cycle: No later than 5:00 P.M. Friday, February 1, 2008

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Career Technical Education Facilities Program

BACKGROUND AND PURPOSE

The Career Technical Education Facilities Program (CTEFP) was established by Article 13 of the *Kindergarten-University Public Education Facilities Bond Act of 2006*, Assembly Bill (AB) 127, Chapter 35, Statutes of 2006.

Article 13 of AB 127 authorizes the issuance and sale of state general obligation bonds to provide aid to school districts/comprehensive high schools and/or joint powers authorities to reconfigure, construct, or modernize Career Technical Education (CTE) facilities, and/or purchase equipment for CTE programs. This act becomes effective only if approved by the voters at the November 7, 2006 statewide general election.

Purpose of the Grants

Article 13 addresses the needs of CTE facilities, to provide funding to qualifying local educational agencies (LEA) for constructing new facilities, reconfiguring/modernizing existing facilities, or purchasing equipment for the following purposes:

1. To reconfigure/modify a structure of any age that will enhance the CTE educational opportunities for pupils in qualifying educational agencies in order to provide them with the skills and knowledge necessary for high-demand technical careers.
2. Funds may be used for limited new construction necessary to accommodate reconfiguration.
3. New construction of CTE facilities.
4. Funds may be used to purchase equipment with an average useful life expectancy of at least 10 years.

Criteria for Application

The California Department of Education (CDE) in cooperation with the Chancellor's Office of the Community Colleges, the Labor and Workforce Development Agency, and business and industry groups, is responsible for developing grant application criteria and pupil outcome measures to evaluate the program. The criteria shall ensure equity, program relevance to industry needs, and articulation with more advanced coursework at partnering community colleges or private institutions.

Grants will be allocated on a per-square-foot basis for the applicable type of construction proposed or deemed necessary by the State Allocation Board consistent with the approved application for the project. A school district/LEA must contribute an equal amount as the state-awarded grant. This local contribution may be provided by private industry groups, the school district, or a joint powers authority and may be paid over time per a State Board of Allocation-approved payment schedule. The local contribution cannot be waived.

The school district is not required to demonstrate that it has un-housed pupils or that a permanent school building is more than 25 years old in order to receive a grant. However, the application will be subject to all other laws and regulations governing the School Facility Program. Please contact your Project Manager at the Office of Public School Construction (OPSC) at (916) 445-3160 for additional information.

The CDE review process is a two-stage process:

1. The CTE educational program, project or equipment will be reviewed based upon the grant requirements for the CTE educational program.
2. The facilities, space, and equipment requirements of the proposed project will be reviewed by the CDE/SFPD for consistency with Title 5 standards and for the plan supporting the described educational program. Approved grant applications will be forwarded to the OPSC.

To ensure equity and diversity of funding awards, it is the intent of CDE, OPSC, and the State Allocation Board (SAB) that these grants be implemented in multiple areas of the state (i.e. within the eleven California County Superintendent's regions). The California Department of Education/School Facilities Planning Division, OPSC and State Allocation Board retains ultimate discretion in the awarding of these grants to achieve this objective, therefore, geographical location of the projects may be a determining factor in awarding the grants.

DRAFT

Career Technical Education Facilities Program

GRANT APPLICATION SUBMISSION REQUIREMENTS

(Note: A separate application is required for each project, program or site)

Requirements

- **Cover Page (See Form A on page 11)**
- **Table of Contents**
- **Project Abstract (1 page maximum)**
Complete a one-page abstract that includes a heading and brief summary of the Career Technical Education facilities/equipment request. The summary should describe the project's goals and objectives as they relate to enhancing the Career Technical Education opportunities for students.
- **Project Elements 1-7 (Narrative 10 pages maximum)**
The narrative must include clear descriptions of the Elements beginning on page 8. Please label and specify which Element item is being addressed.
- **Educational Specification and Equipment/Space Requirements Sheet (See Form B on page 12)**
- **Budget Justification/Detail Sheet (See Form C on page 13)**
Provide a budget summary specifically addressing how the requested funds will be spent and other financial details.
- **Unique Conditions (1 page maximum)**
If applicable, provide a one page description of any unique conditions affecting this application.
- **Checklist of Required Documents**

Format for the Preparation of the Application

Applications that do not comply with these formatting requirements will not be reviewed or considered for funding.

- Microsoft Word format.
- Single line spacing.
- 12-point Arial font.
- 1" side, top, and bottom margins.
- Page numbers at bottom of each page with applicant agency name.
- Do not attach additional pages or information not requested in the requirements.
- Please indicate which question, element or subject is being addressed.

- Original and all copies stapled in upper left corner.
- Do not use binders or folders.
- Submit your original hard copy application document and three copies.
- Include an electronic copy of your application on either a 3.5" floppy disk or CD. The disk or CD will not be returned to the applicant.

DUE DATES:

The original hard copy application document, three copies, and the electronic floppy disk or CD must be received no later than:

1st Funding Cycle: No later than 5:00 P.M. Friday, August 3, 2007

2nd Funding Cycle: No later than 5:00 P.M. Friday, February 1, 2008

Postmarks will not be accepted.

Submit original, three copies, and electronic floppy disk or CD to:

John Gordon
School Facilities Planning Division
California Department of Education
1430 N Street, Suite 1201
Sacramento, CA 95814-5901

DRAFT

Career Technical Education Facilities Program

APPLICATION REVIEW AND SCORING PROCESS

California Department of Education (CDE), Office of Public School Construction (OPSC) and the State Allocation Board (SAB) are charged with the review and awarding of grants under provisions of AB 127, Article 13. Staff will review project proposals submitted according to application guidelines. Scores will be based on the clarity and strength of descriptions of the application's required items. There are several weighted-score items which are indicated with an asterisk (*) on the following pages. The table below shows the maximum number of points to be assigned to each requirement.

Project Requirements	Maximum Potential Score
Cover Page (Use Form A)	5
Element 1. Career Technical Education Plan	50
Element 2. Projections of Student Enrollment	25
Element 3. Identification of Feeder Schools and Partners	15
Element 4. The Accountability Plan	25
Element 5. Educational Specification and Equipment/Space Requirements Sheet (Use Form B)	10
Element 6. Budget Justification/Detail Sheet (Use Form C)	30
Element 7. Unique Conditions	5*
Overall Feasibility of the Project (For reviewers only, see note below)	5

Total: 170

* Additional points may be awarded to the total score if unique conditions warrant significant consideration in ranking the application.

A project must score at least 105 points in order for the project to be considered for funding. Projects must meet eligibility requirements established by the State Allocation Board in order to receive funding.

Note: Overall Feasibility of the Project

*This is **not** a category to be addressed by the applicant, but rather a rated area on the scoring sheet for the reviewer. The reviewer has an opportunity to consider whether the overall project is realistically capable of achieving the intent of AB 127, Article 13. The reviewer will consider the entire application, in overall context, to make a final, overall appraisal. The intent is to judge the cohesiveness and viability of the project.*

Career Technical Education Facilities Program

PROJECT ELEMENTS OF THE APPLICATION

The following outline is intended to assist applicants to address each element in the grant application. Applicants must concisely describe each item in each element. For example, under Career Technical Education Plan, separately describe A, B, C, etc.

SCORING PROPOSAL FOR PROJECT ELEMENTS

Item	Element 1. Career Technical Education Plan	Points
A.*	Describe the Career Technical Education Plan, including the rationale for the requested CTE modification, reconfiguration, new construction, or equipment. Identify the industry sector being addressed and describe the high-demand labor market for qualified technical employees in this field in the region. (Include a copy of the Plan, with approval date, in the Checklist of Required Documentation.)	20
B.	Identify the membership of the advisory committee required pursuant to Education Code Section 8070 and each member's affiliation and contact information. (Include a roster of members, affiliations, and contact information in the Checklist of Required Documentation.)	5
C.	Describe how the school is committed to ensuring that all students are given the opportunity to participate in CTE programs, activities and experiences.	10
D.	Describe how the CTE program includes the following: Industry-validated certifications, State Board of Education-adopted CTE Standards, a sequence of CTE courses, and career pathways.	15

Note: All of the components in items A-D of Element 1 must be described completely. Failure to do such will disqualify the project from both further review and consideration for funding.

Item	Element 2. Projections of Student Enrollment	Points
A.*	Describe the total annual number of pupils expected to attend the CTE program that will be supported with these funds and the method used to project the student enrollments.	15
B.	Describe the procedures in place that will ensure that the projected student enrollment will be met. Include the specific role of the guidance and counseling component of the school in the recruitment and enrollment process.	10

Item	Element 3. Identification of Feeder Schools and Partners	Points
A.*	Identify the feeder schools, middle schools, high schools, regional occupational centers and programs (ROCPs), students, parents, counselors, community members, business and industry partners related to the sector being addressed, community colleges, and other key stakeholders who participated in the development, articulation, review and approval of the CTE Plan. Describe the geographic proximity of other similar programs to ensure that the project complements CTE offerings in the area. (Include a roster with participants' names and affiliations in the Checklist of Required Documentation.)	15

**Weighted score items are indicated with an asterisk (*)*

Item	Element 4. The Accountability Plan	Points
A.*	Describe the school's accountability plan for enrollments and outcomes. Include the following: (1) the expected number of students who will complete a certificate, i.e. ROCP, industry-based, etc., (2) the number of students expected to enter employment in a related industry, apprenticeship program or military, (3) the number of students expected to successfully transition into postsecondary institutions for more advanced study in the applicable industry or other areas of study, and (4) the process the school will use to gather, analyze, and disseminate the data from 1-3 above to the School Board, parents, community members, business and industry partners, and other key stakeholders.	20
B.	Describe how the school will meet or exceed its obligations pursuant to Education Code Section 51228 (b).	5

Item	Element 5. Educational Specification and Equipment/Space Requirements Sheet (Use Form B)	Points
A.	Applicants are to provide an educational specification that defines the educational goals of the particular CTE program and shows how the requested grant will be used (specify equipment, furniture and facilities construction or modernization) to meet those goals and include a schematic drawing of the proposed space and/or location of the equipment for this project.	10

Item	Element 6. Budget Justification/Detail Sheet (Use Form C)	Points
A.*	Provide the estimated capital cost per pupil and the rationale/method used for calculating this number. Reference the CTE Plan where feasible.	15
B.*	Describe the financial participation of industry partners in the construction and equipping of the facility.	15

Item	Element 7. Unique Conditions	Points
A.	Describe, in one page or less, any unique conditions which may affect this application. Unique conditions may include, but are not limited to, such items as rural or isolated schools or educational agencies, unique partnership arrangements, unique costs and expense issues, unique physical plant conditions or facilities issues, etc.	5

Item	Checklist of Required Documentation	
A.	Cover Page (Form A)	
B.	Educational Specification and Equipment/Space Requirements Sheet (Form B)	
C.	Budget Justification/Detail Sheet including schematic drawings (Form C)	
D.	Career Technical Education Plan (Element 1, Item A.)	
E.	Roster of required advisory committee members, affiliations, and contact information. (Element 1, Item B.)	
F.	Roster of other key stakeholders, participants, partners, etc. who participated in the development, articulation, review and approval of the CTE Plan. (Element 3, Item A.)	

Weighted score items are indicated with an asterisk ()

Career Technical Education Facilities Program

TIMELINES FOR THE REVIEW AND RELEASE OF GRANT FUNDING

Funding Opportunity Announced and Application Guidelines Released _____, 2007

Workshops for Applicants conducted regionally by OPSC & CDE _____, 2007/8

1st Funding Cycle

- CTEFP applications must be received (not postmarked) by CDE no later than the close of business (5:00 pm), Friday, August 3, 2007.
- CDE will review and score the applications between August 6th and September 26th.
- Scoring results will be mailed to school districts by Thursday, September 27, 2007.
- Any appeals to the CTEFP application score must be received by CDE no later than the close of business (5:00 pm), Tuesday, October 16, 2007.
- Appeals will be reviewed and determined by Tuesday, October 20, 2007.
- All CTEFP funding applications are due to the Office of Public School Construction (OPSC) by Wednesday, October 31st.

Successful Applicants Recommended to SAB:

2nd Funding Cycle

- CTEFP applications must be received (not postmarked) by CDE no later than the close of business (5:00 pm), Friday, February 1, 2008.
- CDE will review and score the application between February 5th and March 26th.
- Scoring results will be mailed to school districts by Thursday, March 27, 2008.
- Any appeals to the CTEFP application score must be received by CDE no later than the close of business (5:00 pm), Tuesday, April 15, 2008.
- Appeals will be reviewed and determined by Tuesday, April 29, 2008.
- All CTEFP eligible funding applications are due to OPSC by Wednesday, April 30, 2008.

Successful Applicants Recommended to SAB:

Career Technical Education Facilities Program

FORM A – COVER PAGE

Local Educational Agency

Name of Local Educational Agency (LEA):	CDS Code:
Printed Name and Title of Fiscal Contact:	
Address:	
City:	Zip:
Telephone:	Fax:
E-mail:	Web Site:

CTE Facilities Contact

CTE Project/Equipment Location:	
Printed Name and Title of Facilities Contact:	
Address:	
City:	Zip:
Telephone:	Fax:
E-mail:	Web Site:

Signatures/Approvals/Certifications

Printed Name of Superintendent:
Date CTE Plan Approved by Governing Board:
<p>Certification: District certifies that the Advisory Committee pursuant to Education Code Section 8070 has met and approved the CTE Plan, and the other requirements contained in AB 127, Article 13, Section 17078.72, including Sections (i) (1 thru 7) have been accomplished, and minutes and other supporting documentation is on file at the District Office. Further, the project is on a comprehensive high school site that meets the requirements of Education Codes 51224, 51225.3, and 51228.</p>
Signature of Superintendent and Date:

Career Technical Education Facilities Program

FORM B – EDUCATIONAL SPECIFICATION AND EQUIPMENT/SPACE REQUIREMENTS SHEET

(Use additional sheets as necessary)

County:	Name of Project:
Local Education Agency:	Type of Project: <input type="checkbox"/> New Construction <input type="checkbox"/> Modernization <input type="checkbox"/> Equipment
Name of School:	Student Capacity for Project:
Project Tracking Number:	Proposed Schematic Drawing Attached? <input type="checkbox"/> Yes <input type="checkbox"/> No

Project Summary

Generally describe the scope of the career technical project and its educational goals.

Program and Space Functionality

Describe the program activities for this career tech project/equipment and how the teaching station will support those functions.

Space and Equipment Requirements

List required equipment needed to support the career technical project and the square footage requirements for all its other spaces (teaching station, storage, office, lab, lecture area, etc.). Please attach a schematic drawing of the proposed project.

Functional Relationship to Site

Describe how the new construction or modernized building impacts other areas of the site.

Site Development Considerations

Provide, if any, additional site development needs associated with the career technical project.

Career Technical Education Facilities Program

FORM C – BUDGET JUSTIFICATION/DETAIL SHEET

(One Form per School Site, Per Project)

LEA Name:

Project Name:

Provide sufficient detail to justify the budget. The budget justification page(s) must provide all required information even if the items have already been identified and discussed in another section. For each project or equipment, list the costs associated. Please use additional sheets as necessary.

Project/Equipment Description	Subtotal Each Item
<p style="font-size: 48px; opacity: 0.3; transform: rotate(-30deg);">DRAFT</p> <p data-bbox="570 1696 1052 1732">Total Amount of Funds Requested:</p>	

Total Match Amount:

Source of Match:

Time Payment Required: Y N

Financial Support from Industry Partners:

Other Sources of Funding:

FORM D – INDUSTRY SECTORS AND PATHWAYS
California Department of Education

Agriculture and Natural Resources Industry Sector

- A. Agricultural Business Pathway
- B. Agricultural Mechanics Pathway
- C. Agriscience Pathway
- D. Animal Science Pathway
- E. Forestry and Natural Resources Pathway
- F. Ornamental Horticulture Pathway
- G. Plant and Soil Science Pathway

Arts, Media, and Entertainment Industry Sector

- A. Media and Design Arts Pathway
- B. Performing Arts Pathway
- C. Production and Managerial Arts Pathway

Building Trades and Construction Industry Sector

- A. Cabinetmaking and Wood Products Pathway
- B. Engineering and Heavy Construction Pathway
- C. Mechanical Construction Pathway
- D. Residential and Commercial Construction Pathway

Education, Child Development, and Family Services Industry Sector

- A. Child Development Pathway
- B. Consumer Services Pathway
- C. Education Pathway
- D. Family and Human Services Pathway

Energy and Utilities Industry Sector

- A. Electromechanical Installation and Maintenance Pathway
- B. Energy and Environmental Technology Pathway
- C. Public Utilities Pathway
- D. Residential and Commercial Energy and Utilities Pathway

Engineering and Design Industry Sector

- A. Architectural and Structural Engineering Pathway
- B. Computer Hardware, Electrical, and Networking Engineering Pathway
- C. Engineering Design Pathway
- D. Engineering Technology Pathway
- E. Environmental and Natural Science Engineering Pathway

Fashion and Interior Design Industry Sector

- A. Fashion Design, Manufacturing, and Merchandising Pathway
- B. Interior Design, Furnishings, and Maintenance Pathway

Finance and Business Industry Sector

- A. Accounting Services Pathway
- B. Banking and Related Services Pathway
- C. Business Financial Management Pathway

Health Science and Medical Technology Industry Sector

- A. Biotechnology Research and Development Pathway
- B. Diagnostic Services Pathway
- C. Health Informatics Pathway
- D. Support Services Pathway
- E. Therapeutic Services Pathway

Hospitality, Tourism, and Recreation Industry Sector

- A. Food Science, Dietetics, and Nutrition Pathway
- B. Food Service and Hospitality Pathway
- C. Hospitality, Tourism, and Recreation Pathway

Information Technology Industry Sector

- A. Information Support and Services Pathway
- B. Media Support and Services Pathway
- C. Network Communications Pathway
- D. Programming and Systems Development Pathway

Manufacturing and Product Development Industry Sector

- A. Graphic Arts Technology Pathway
- B. Integrated Graphics Technology Pathway
- C. Machine and Forming Technology Pathway
- D. Welding Technology Pathway

Marketing, Sales, and Service Industry Sector

- A. E-commerce Pathway
- B. Entrepreneurship Pathway
- C. International Trade Pathway
- D. Professional Sales and Marketing Pathway

Public Services Industry Sector

- A. Human Services Pathway
- B. Legal and Government Services Pathway
- C. Protective Services Pathway

Transportation Industry Sector

- A. Vehicle Maintenance, Service, and Repair
- B. Aviation and Aerospace Transportation Services Pathway
- C. Collision Repair and Refinishing Pathway

FORM E

The Eleven Service Regions of California County Superintendents Educational Services Association (CCSESA)



**AB 127, ARTICLE 13
Career Technical Education Facilities Program**

Application Scoring Guide

Application Log Number: _____ Reviewer Number: _____ Date: _____

NOTE TO REVIEWER:

This scoring guide is intended to assist the reviewer to focus on topics highlighted in the Application for Career Technical Education Facilities/Equipment under AB 127, Article 13.

A project must score at least 105 points in order for the project to be considered for funding. Projects must meet eligibility requirements established by the State Allocation Board in order to receive funding.

COVER PAGE – FORM A (5 Points Total)		The Cover page is complete as required	The Cover Page is incomplete
A.	Is the Cover Page part of the application, and does it contain all of the requested information, including all required signatures and certifications? (5 Points)	5 pts.	0 pts.

ELEMENT 1. CAREER TECHNICAL EDUCATION PLAN (50 Points Total)		Circle one:		
<p>Is a complete copy of the CTE Plan, including <u>all</u> of the components described in items A-D of Element 1, attached to the application?</p> <p>Has the CTE Plan been approved by the required partners as specified in AB 127, Article 13, Section 17078.72 (i)(4)? If so, please provide the date: _____</p> <p><i>(Note: If the answer is No to either question, the application shall not be reviewed further and will not be considered for funding.)</i></p>		YES		NO
		YES		NO
		Very good explanation with specific supporting detail	Adequate explanation with general supporting detail	Minimal explanation with minimal supporting detail
A*	Description of the Career Technical Education Plan includes the rationale for the CTE modification, reconfiguration, new construction, or equipment? Is the industry sector identified? Is the high-demand labor market for qualified technical employees in this field and region explained? (20 Points)	20-18 pts.	17-11pts.	10-1 pts.
B.	Is the roster of membership, affiliation and contact information of the advisory committee, required pursuant to Education Code Section 8070, included? (5 Points)	5 pts.	4-3 pts.	2-1 pts.
C.	Is there a description of how the school is committed to ensuring that all students are given the opportunity to participate in CTE programs, activities and experiences? (10 Points)	10-9 pts.	8-6 pts.	5-1 pts.
D.	Is there a description of how the CTE program includes the following: Industry-validated certifications, State Board of Education-adopted CTE Standards, a sequence of CTE courses, and career pathways? (15 Points)	15-13 pts.	12-8 pts.	7-1 pts.

ELEMENT 2. PROJECTIONS OF STUDENT ENROLLMENT (25 Points Total)		Very good explanation with specific supporting detail	Adequate explanation with general supporting detail	Minimal explanation with minimal supporting detail
A*	Is there a description of the total number of pupils expected to attend the CTE program that will be supported with these funds and a clear description of the method used to project the student enrollments? (15 Points)	15-13 pts.	12-8 pts.	7-0 pts.
B.	Is there a description of the procedures in place that will ensure the projected student enrollment will be met? Is there a description of the specific role of the guidance and counseling component of the school in the recruitment and enrollment process? (10 Points)	10-9 pts.	8-6 pts.	5-0 pts.

ELEMENT 3. IDENTIFICATION OF FEEDER SCHOOLS AND PARTNERS (15 Points Total)		Roster is comprehensive including an exemplary number of participating stakeholders	Roster is adequate with a representative group of participating stakeholders	Minimal stakeholder involvement is evident in the roster
A*	Is there a roster with affiliations of the feeder schools, middle schools, high schools, regional occupational centers and programs (ROCPs), students, parents, counselors, community members, business and industry partners related to the sector being addressed, community colleges, and other key stakeholders who participated in the development, articulation, review and approval of the CTE Plan? Is there a description of the geographic proximity of other similar programs to ensure that the project complements CTE offerings in the area? (10 Points)	10-9 pts.	8-6 pts.	5-0 pts.
		Thorough description of similar programs within geographic proximity	Adequate description of similar programs within geographic proximity	Minimal description of similar programs within geographic proximity
	<i>(Second component of Element 3, Item A)</i> Is there a description of the geographic proximity of other similar programs to ensure that the project complements CTE offerings in the area? (5 Points)	5 pts.	4-3 pts.	2-0 pts.

ELEMENT 4. THE ACCOUNTABILITY PLAN (25 Points Total)		Very good explanation with specific supporting detail	Adequate explanation with general supporting detail	Minimal explanation with minimal supporting detail
A*	Is there a description of the school's accountability plan for enrollments and outcomes, including the following: (1) the expected number of students who will complete a certificate, i.e. ROCP, industry-based, etc., (2) the number of students expected to enter employment in a related industry, apprenticeship program or military, (3) the number of students expected to successfully transition into postsecondary institutions for more advanced study in the applicable industry or other areas of study, and (4) the process the school will use to gather, analyze, and disseminate the data from 1-3 above to the School Board, parents, community members, business and industry partners, and other key stakeholders? (20 Points)	20-18 pts.	17-11pts.	10-0 pts.
B.	Is there a description of how the school will meet or exceed its obligations pursuant to Education Code Section 51228(b)? (5 Points)	5 pts.	4-3 pts.	2-0 pts.

ELEMENT 5. EDUCATIONAL SPECIFICATION AND EQUIPMENT/SPACE REQUIREMENTS SHEET - FORM B (10 Points Total)		Very good explanation with specific supporting detail	Adequate explanation with general supporting detail	Minimal explanation with minimal supporting detail
A.	Did the applicant provide an educational specification that defines the educational goals of the particular CTE program and shows how the requested grant will be used (specify equipment, furniture and facilities construction or modernization) to meet those goals and include a schematic drawing of the proposed space and/or location of the equipment for this project? (10 Points)	10-9 pts.	8-6 pts.	5-0 pts.

ELEMENT 6. BUDGET JUSTIFICATION/DETAIL SHEET - FORM C (30 Points Total)		YES Rationale and methodology are provided to calculate cost per pupil	NO Rationale and methodology are not provided to calculate cost per pupil	
A*	Is there a description of the estimated capital cost per pupil and the rationale/method used for calculating this number? Is reference made to the CTE Plan where feasible? (15 Points)	15 pts.		0 pts.
		Very good explanation with specific supporting detail	Adequate explanation with general supporting detail	Minimal explanation with minimal supporting detail
B*	Is there a description of the financial participation of industry partners in the construction and equipping of the facility? (15 Points)	15-13 pts.	12-8 pts.	7-0 pts.

ELEMENT 7. UNIQUE CONDITIONS (5 Additional Points Total. The reviewer may award additional points to the total score if unique conditions exist that warrant significant consideration in ranking the application)		Very good explanation with specific supporting detail	Adequate explanation with general supporting detail	Minimal explanation with minimal supporting detail
A.	Did the applicant provide any information on unique conditions which may affect this application? Unique conditions may include, but are not limited to, such items as rural or isolated schools or educational agencies, unique partnership arrangements, unique costs and expense issues, unique physical plant conditions or facilities issues, etc. (5 Points)	5 pts.	4-3 pts.	2-0 pts.

OVERALL FEASIBILITY OF THE PROJECT (5 Points Total)		Very good explanation with specific supporting detail	Adequate explanation with general supporting detail	Minimal explanation with minimal supporting detail
A.	The reviewer has the opportunity to judge whether the overall project is realistically capable of achieving the intent of AB 127, Article 13. The reviewer will consider the entire application, in overall context, to make a judgment. The intent of this section is to assess the cohesiveness and viability of the total project. (5 Points)	5 pts.	4-3 pts.	2-0 pts.

* Weighted Items

REVIEWER'S OVERALL ASSESSMENT OF APPLICATION

The intent of this section is to provide the reviewer an opportunity to comment on the application in general:

APPLICATION LOG NUMBER:

SCORES FOR THIS APPLICANT:

Item	Score
Cover Page (Form A)	5 pts.
Element 1. Career Technical Education Plan	50 pts.
Element 2. Projections of Student Enrollment	25 pts.
Element 3. Identification of Feeder Schools and Partners	15 pts.
Element 4. The Accountability Plan	25 pts.
Element 5. Educational Specification and Equipment/Space Requirements Sheet (Form B)	10 pts.
Element 6. Budget Justification/Detail Sheet (Form C)	30 pts.
Overall Feasibility of the Project	5 pts
SCORE: <i>(Maximum score for above items is 165)</i>	
Element 7. Unique Conditions <i>(Additional points as determined by the reviewer)</i>	5 pts
TOTAL ADJUSTED SCORE: <i>(Maximum score is 170)</i>	

(Minimum passing threshold score is 105)

APPLICATION FOR FUNDING SCHOOL FACILITY PROGRAM

SAB 50-04 (REV 01/07/06/06)

GENERAL INFORMATION

Once the Board has determined or adjusted the district's eligibility for either new construction or modernization funding, the district may file an application for funding by use of this form. The Board will only provide new construction funding if this form is submitted prior to the date of occupancy of any classrooms included in the construction contract. If the district has a pending reorganization election that will result in the loss of eligibility for the proposed project, the district may not file an application for funding until the Board has adjusted the district's new construction baseline eligibility as required in Section 1859.51. This may be accomplished by completion of Form SAB 50-01, Form SAB 50-02 and Form SAB 50-03.

For purposes of Education Code Section 17073.25, the California Department of Education (CDE) is permitted to file modernization applications on behalf of the California Schools for the Deaf and Blind.

Requests for funding may be made as follows:

1. A separate apportionment for site acquisition for a new construction project for environmental hardship pursuant to Section 1859.75.1. For purposes of this apportionment, the following documents must be submitted with this form (as appropriate):
 - Form SAB 50-01, Form SAB 50-02 and Form SAB 50-03 (if not previously submitted).
 - Contingent site approval letter from the CDE.
 - Preliminary appraisal of property.
 - Approval letter from the Department of Toxic Substances Control.
2. A separate apportionment for site acquisition and/or design costs for a new construction project pursuant to Section 1859.81.1. This apportionment is available only to districts that meet the financial hardship criteria in Section 1859.81. Districts may apply for a separate apportionment for the design and for site acquisition on the same project. For purposes of this apportionment, the following documents must be submitted with this form (as appropriate):
 - Form SAB 50-01, Form SAB 50-02 and Form SAB 50-03 (if not previously submitted).
 - Contingent site approval letter from the CDE (site apportionment only).
 - Preliminary appraisal of property (site apportionment only).
3. A separate apportionment for district-owned site acquisition cost pursuant to Section 1859.81.2. For purposes of this apportionment, the following documents must be submitted with this form (as appropriate);
 - Form SAB 50-01, Form SAB 50-02 and Form SAB 50-03 (if not previously submitted).
 - Site approval letter from the CDE.
 - Appraisal of district-owned site.
 - Cost benefit analysis as prescribed in Section 1859.74.6 or a copy of the Board finding that the non-school function on the district-owned site must be relocated.
4. A separate apportionment for design cost for a modernization project pursuant to Section 1859.81.1. This apportionment is available only to districts that meet the financial hardship criteria in Section 1859.81. For purposes of this apportionment, the Form SAB 50-03 must accompany this form (if not previously submitted).
5. A New Construction Adjusted Grant pursuant to Section 1859.70. If the funding request includes site acquisition, the proposed site must either be owned by the district, in escrow, or the district has filed condemnation proceedings and received an order of possession of the site. For purposes of this apportionment, the following documents must be submitted with this form (as appropriate):

- Form SAB 50-01, Form SAB 50-02 and Form SAB 50-03 (if not previously submitted).
- Site/plan approval letter from the CDE.
- Appraisal of property if requesting site acquisition funds.
- Plans and specifications (P&S) for the project that were approved by the DSA. Submittal of plans may be on CD-ROM or "Zip Drive" readable in AutoCAD 14. The specifications may be provided on a diskette that is IBM compatible.
- Cost estimate of proposed site development, if requesting site development funding.
- If this request is pursuant to Section 1859.77.2 and the district's housing plan is other than those listed in the certification section of this form, a copy of the school board resolution and the approved housing plan.
- If the site apportionment is requested pursuant to Regulation Section 1859.74.5, a cost benefit analysis as prescribed in Regulation Section 1859.74.6 or a copy of the Board finding that the non-school function on the district-owned site must be relocated.
- If this is a request for funding under the Small High School Program, pursuant to Regulation Section 1859.93.2, the district must also provide a CDE Small High School academic reform strategy approval.
- If this request is fully or partially based on eligibility derived from an Alternative Enrollment Projection, a justification of how the project relieves overcrowding, including but not limited to, the elimination of the use of Concept 6 calendars, four track year-round calendars, or bussing in excess of 40 minutes.
- [Written confirmation from the district's career technical advisory committee indicating that the need for vocational and career technical facilities is being adequately met within the district consistent with Education Code Sections 51224, 51225.3\(b\), 51228\(b\), and 52236.1.](#)

Modernization Adjusted Grant pursuant to Section 1859.70. For purposes of this apportionment, the following documents must be submitted with this form (as appropriate):

- Form SAB 50-03 (if not previously submitted).
- P&S for the project that were approved by the DSA.
- DSA approval letter for elevator to meet handicapped compliance, if funding is requested.
- Cost estimate of the proposed site development necessary for the Reconfiguration of an existing high school.
- Plan approval letter from the CDE.
- Districtwide enrollment data on Form SAB 50-01 when requesting project assistance (if not previously submitted).
- If the request includes funding for 50 year old permanent buildings pursuant to Section 1859.78.6, a site diagram identifying all buildings to be modernized in the project. The diagram must specify those buildings that are at least 50 years old.
- [Written confirmation from the district's career technical advisory committee indicating that the need for vocational and career technical facilities is being adequately met within the district consistent with Education Code Sections 51224, 51225.3\(b\), 51228\(b\), and 52236.1.](#)

Prior to acceptance of an application for funding that includes a financial hardship request, the district must have its financial hardship status "pre-approved" by the Office of Public School Construction (OPSC). To apply for a financial hardship "pre-approval", consult the OPSC Web site at www.opsc.dgs.ca.gov.

If the district is requesting New Construction funding after the initial baseline eligibility was approved by the Board and the district's current CBEDS enrollment reporting year

APPLICATION FOR FUNDING SCHOOL FACILITY PROGRAM

SAB 50-04 (REV 01/07/06/06)

is later than the enrollment reporting year used to determine the district's baseline eligibility or adjusted eligibility, the district must complete a new Form SAB 50-01 based on the current year CBEDS enrollment data, and submit it to the OPSC with this form. In addition, if the district's request is fully or partially based on eligibility derived from an Alternative Enrollment Projection, the district must update the Alternative Enrollment Projection to correspond with the CBEDS enrollment data for the current year. A small district with 2,500 or less enrollment as defined in Section 1859.2 will not have its eligibility reduced for a period of three years from the date the district's baseline eligibility was approved by the Board as a result of reduction in projected enrollment.

SPECIFIC INSTRUCTIONS

The district must assign a Project Tracking Number (PTN) to this project. The same PTN is used by the OPSC, the DSA and the CDE for all project applications submitted to those agencies to track a particular project through the entire state application review process. If the district has already assigned a PTN to this project by prior submittal of the P&S to either the DSA or the CDE for approval, use that PTN for this application submittal. If no PTN has been previously assigned for this project, a PTN may be obtained from the OPSC Web site at www.opsc.dgs.ca.gov "PT Number Generator."

1. Type of Application

Check the appropriate box that indicates the type of School Facility Program (SFP) grant the district is requesting for purposes of new construction, modernization, a separate design and/or site apportionment, site apportionment as an environmental hardship or New Construction (Final Apportionment). If the application is for the modernization of school facilities and includes facilities that are eligible for an additional apportionment pursuant to Section 1859.78.8, include a site diagram with this application that specifies the age of each facility eligible for modernization. The diagram should also indicate the date of its original DSA plan approval and the date the facility received its prior modernization apportionment. If known include the project modernization number on the diagram. If the application is for modernization of a California School for the Deaf or Blind, the CDE shall check the box identified as Modernization of California Schools for the Deaf/Blind. If the request is for a separate design apportionment, the CDE shall check the appropriate box. If the eligibility for this project was established as a result of the need for new or replacement facilities pursuant to Section 1859.82 (a) and (b), or rehabilitation pursuant to Section 1859.83 (e), check the appropriate box.

If this request is for an addition to an existing site and advance funding for the evaluation and RA costs, check the appropriate box and refer to Section 1859.74.4.

If this request is to convert a Preliminary Apportionment or a Preliminary Charter School Apportionment to a Final Apportionment, check the New Construction (Final Apportionment or Final Charter School Apportionment) box.

If the district is requesting a separate site and/or design apportionment, complete boxes 2a, 3, 4, the site acquisition data in box 5 (d and e), and boxes 12, 13, 14, 15 and 21 only.

2. Type of Project

- Select the type of project that best represents this application request and enter the total number of pupils assigned to the project for each grade group. Include pupils to be housed in a new or replacement school authorized by

For a list of the documents that must be submitted in order for the OPSC to deem a funding request for new construction or modernization complete and ready for OPSC processing, consult the SFP handbook and other information located on the OPSC Web site at www.opsc.dgs.ca.gov.

For purposes of completing this form for a Final Charter School Apportionment, a charter school shall be treated as a school district.

Section 1859.82 (a). The amount entered cannot exceed the district's baseline eligibility determined on Form SAB 50-03 and will be the basis for the amount of the new construction or modernization grants provided for the project.

If this request is for a Final Apportionment, the pupils assigned to the project must be at least 75 percent, but not more than 100 percent, of the pupils that received the Preliminary Apportionment. Refer to Section 1859.147.

- Check the box if the project is eligible for funding for 50 year or older permanent buildings and report, at the option of the district:
 - The total number of eligible classrooms or the total eligible square footage building area at the site. Refer to Section 1859.78.6(b)(1)(A) or (b)(2)(A).
 - The total number of permanent classrooms or the total permanent square footage building area that is at least 50 years old and not been previously modernized with state funds. Refer to Section 1859.78.6(b)(1)(B) or (b)(2)(B).
 - Enter the greater percentage as calculated under Regulation Section 1859.78.6(b)(1)(C) or Regulation Section 1859.78.6(b)(2)(C).
 - If this project includes eligible 50 year or older pupil grants, enter the appropriate number assigned to the project for each grade group. The number of pupils entered cannot exceed the cumulative number of 50 year or older permanent buildings pupil grants requested for all modernization funding applications for the site as determined by using the percentage factor above.
- If this request includes pupil grants generated by an Alternative Enrollment Projection Method, enter the number of pupils by grade level.
- Indicate if this request is for funding of a 6-8 school and/or an Alternative Education School.
- Check the applicable box if the district is requesting additional pupil grants assigned to the project that exceed the capacity of the project or if the pupils assigned represent eligibility determined at another grade level and check the appropriate box to indicate under which regulation the district is applying. The pupil capacity of the project may be determined by multiplying the classrooms reported in box 3 by 25 for K-6; 27 for 7-8, 9-12 grades; 13 for non-severe and 9 for severe.
- If the request is for replacement facilities pursuant to Section 1859.82 (a) or (b) on the same site, check the facility hardship box.

3. Number of Classrooms

Enter the:

- Number of classrooms as shown on the plans and specifications (P&S). If there was demolition at the site, report the net increase in the number of classrooms showing in the P&S.

- Master plan site size, as recommended by the California Department of Education.
- Recommended site size, as determined by the California Department of Education.
- Existing Useable Acres already owned at that location (if any).
- Proposed Useable Acres that was/will be purchased as part of the application (if any).

4. Financial Hardship Request

Check the box if the district is requesting financial hardship assistance because it is unable to meet its matching share requirement. Refer to Section 1859.81 for eligibility criteria. Districts requesting financial assistance must have received a pre-approval for financial hardship status by the OPSC. Consult the OPSC Web site at www.opsc.dgs.ca.gov for details and necessary documentation needed in order to determine eligibility.

5. New Construction Additional Grant Request

Check the appropriate box(es) if the district requests an augmentation to the new construction grant for "additional" grants for the items listed or for replacement facilities pursuant to Section 1859.82(a) and (b). Refer to Sections 1859.72 through 1859.76 and 1859.82(a) and (b) for eligibility criteria. Enter the:

- Therapy area in square feet as provided in Section 1859.72.
- Multilevel classrooms in the P&S pursuant to Section 1859.73.
- Check the box if the district is requesting project assistance pursuant to Section 1859.73.1. If the district has not submitted a request for new construction baseline eligibility on a district-wide basis, it must submit a current Form SAB 50-01 based on district-wide enrollment data with this form.
- Indicate the site scenario that best represents the project request. If no RA is required, refer to Section 1859.74. If a RA is required on a site that is not leased or an addition to an existing site, refer to Section 1859.74.2. If RAs are required on a leased site or an addition to an existing site, refer to Sections 1859.74.3 or 1859.74.4, respectively. The limitation of 50 percent may be exceeded when unforeseen circumstances exist, the CDE determines that the site is the best available site, and substantiation that the costs are the minimum required to complete the evaluation and RA.
 - Enter 50 percent of the actual cost.
 - Enter 50 percent of the appraised value of the site. If the request is made pursuant to Regulation Section 1859.74.5, enter 50 percent of the appraised value.
 - Enter 50 percent of the allowable relocation cost.
 - Enter two percent of the lesser of the actual cost or appraised value of the site (minimum \$25,000).
 - Enter 50 percent of the Department of Toxic Substances Control (DTSC) fee for review and approval of the phase one environmental site assessment and preliminary endangerment assessment reports. Refer to Sections 1859.74, 1859.74.1, 1859.74.5, 1859.75, 1859.75.1 and 1859.81.1. If the district is submitting a funding request for new construction under the Small High School Program, enter the 60 percent values.

A project that received site acquisition funds under the Lease-Purchase Program (LPP) as a priority two project is not eligible for site acquisition funds under the SFP. A district-owned site acquired with LPP, SFP or Proposition 1A funds is not eligible for funding under Regulation Section 1859.74.5.

- Enter 50 percent of the amount allowable for hazardous materials/waste removal and/or remediation for the site acquired pursuant to Sections 1859.74.2, 1859.74.3, 1859.74.4, 1859.75.1 or 1859.81.1. If an RA is required, check the box.

- Enter 50 percent of eligible service-site development, off-site development including pedestrian safety paths and utilities costs allowed pursuant to Section 1859.76. If the district is submitting a funding request for new construction under the Small High School Program, enter the 60 percent values. Attach cost estimates of the proposed site development work which shall be supported and justified in the P&S. All cost estimates shall reflect 100 percent of the proposed work.

Check the box if the district is requesting an Additional Grant for General Site Development pursuant to Section 1859.76

- If the district is requesting replacement facilities on the same site, enter the square footage requested as provided in Section 1859.82(a) or (b).
- Enter the square feet of eligible replacement area as provided by Section 1859.73.2.
- If the district is requesting an Additional Grant for Energy Efficiency pursuant to Section 1859.71.3, enter the percentage of energy efficiency that exceeds Title 24 requirements as prescribed in Section 1859.71.3(a)(3).
- Check the box(es) if the district requests and the project qualifies for additional funding for fire code requirements authorized in Section 1859.71.2.

6. Modernization Additional Grant Request

- Check the box if the district is requesting project assistance allowance pursuant to Section 1859.78.2. If the district has not submitted a request for new construction baseline eligibility on a district-wide basis, it must submit a current Form SAB 50-01 based on district-wide enrollment data with this form.
- If the district is requesting an Additional Grant for Energy Efficiency pursuant to Section 1859.78.5, enter the percentage of energy efficiency that exceeds Title 24 requirements as prescribed in Section 1859.78.5(a)(3).
- Check the box if the district requests an additional grant for site development utility cost necessary for the modernization of 50 years or older permanent building(s). Enter 60 percent of the eligible costs allowable pursuant to Section 1859.78.7(a).
- Check the box if the district is requesting a Separate Apportionment for Reconfiguration pursuant to Section 1859.78.9. Enter the full value of the Reconfiguration request, not to exceed an aggregate of \$500,000 for all high school entities created.
- Check the box(es) if the district requests and the project qualifies for additional funding for fire code requirements authorized in Section 1859.78.4.

7. Excessive Cost Hardship Request

Check the appropriate box to request an augmentation to the New Construction or Modernization Grants for an excessive cost hardship for the items listed. Refer to Section 1859.83 for eligibility criteria. Requests for excessive cost grants for a new two-stop elevator(s) and for additional stops in a modernization project are allowed only if required by the Division of the State Architect (DSA). Attach copy of the DSA letter that requires that the elevator(s) be included in the project for handicapped access compliance.

If the request is for the excessive cost grant for a new Alternative Education school pursuant to Section 1859.83(c)(2) and the district wishes to request less than the maximum allowance, please submit a letter along with application indicating the desired amount.

If the request is for rehabilitation mitigation, report 80 percent or 60 percent (as appropriate) of health/safety rehabilitation mitigation cost for a modernization project as authorized by Section 1859.83(e).

8. Project Priority Funding Order

Enter the priority order of this project in relation to other new construction applications submitted by the district on the same date. If applications are not received on the same date, the OPSC will assign a higher district priority to the application received first. Check the box(es) if the project meets the criteria outlined in Section 1859.92(c)(3),(4) and (6), as appropriate. This information is needed for purposes of priority points.

9. Prior Approval Under the LPP

If the project the district is requesting SFP grants for received a Phase P, S, or C approval under the LPP, report the application number of that project, regardless if the project actually received funding or was included on an "unfunded" list. Failure to report this information may delay the processing of the application by the OPSC.

10. Prior Apportionment Under the SFP

If the project received a separate apportionment under the SFP for either site and/or design, or site environmental hardship, enter the application number of the project. Failure to report this information may delay the processing of the application by the OPSC.

11. Preliminary Apportionment to a Final Apportionment

If this request is to convert a Preliminary Apportionment to a Final Apportionment, enter the application number of the Preliminary Apportionment. Failure to report this information may delay the processing of the application by the OPSC.

12. Alternative Developer Fee

The district must report certain alternative fees collected pursuant to Government Code Section 65995.7, as of the date of application submittal to the OPSC. Refer to Section 1859.77 for details. Districts are advised that the OPSC may perform an audit of the developer fees collected prior to application approval by the Board.

13. Adjustment to New Construction Baseline Eligibility

Pursuant to Section 1859.51 certain adjustments to the district's new construction baseline eligibility must be made each time a district submits Form SAB 50-04, to the OPSC for SFP new construction or modernization grants. These adjustments are made by the OPSC based on information reported by the district on this form.

- Report all additional classroom(s) provided after the district submitted its request for determination of its new construction baseline eligibility for the grades shown, or indicate N/A if there are none. Refer to Section 1859.51(i).
- If the eligibility for this project was determined on a high school attendance area (HSAA) or Super HSAA pursuant to Section 1859.41, enter the number of pupils by grade level type that were included in the latest report by the CDE pursuant to Education Code Section 42268 that received operational grants in that HSAA or Super HSAA.

14. Pending Reorganization Election

Complete only for new construction projects. Indicate if there is a pending reorganization election that will result in a loss of eligibility for this project. If the answer is "yes", the district must complete Form SAB 50-01, Form SAB 50-02 and Form SAB 50-03, to adjust the district's new construction baseline eligibility as a result of the reorganization and submit them with this form.

15. Joint-Use Facility/Leased Property

Check the box if:

- The facilities to be constructed/modernized as part of this project will be for joint use by other governmental agencies.
- The new construction or modernization grants will be used for facilities located or to be located on leased property.

16. Project Progress Dates

Complete this section for new construction/modernization projects:

- Enter the date the initial construction contract was signed for this project. If a construction contract has not been executed, enter N/A.
- Enter the issue date for the Notice to Proceed for the construction phase of the project, or enter N/A if a Notice to Proceed has not been issued.

17. Labor Compliance Program

Indicate whether the district is subject to a Labor Compliance Program that has been approved by the Department of Industrial Relations pursuant to Labor Code Section 1771.7 by checking the appropriate box.

18. Construction Delivery Method

Check the box that best represents the construction delivery method that the district has or will use for this project, if known.

19. Career Technical Education Funds Request

Indicate if Career Technical Education (CTE) funds will be requested for classroom(s) included in the plans and specifications for this project pursuant to Section 1859.193. If "Yes", enter the number of CTE classroom(s) shown on the P&S.

2019. Architect of Record or Licensed Architect Certification

The architect of record or the licensed architect must complete this section.

2120. Architect of Record or Design Professional Certification

The architect of record or the appropriate design professional must complete this section.

2221. Certification

The district representative must complete this section. For additional information regarding district certifications, refer to the SFP handbook located on the OPSC web site at www.opsc.dgs.ca.gov.

APPLICATION FOR FUNDING
SCHOOL FACILITY PROGRAM

The school district named below applies to the State Allocation Board via the Office of Public School Construction for a grant under the provisions of Chapter 12.5, Part 10, Division 1, commencing with Section 17070.10, et seq., of the Education Code and the Regulations thereto.

Form with fields: SCHOOL DISTRICT, APPLICATION NUMBER, SCHOOL NAME, PROJECT TRACKING NUMBER, COUNTY, DISTRICT REPRESENTATIVE'S E-MAIL ADDRESS, HIGH SCHOOL ATTENDANCE AREA (HSAA) OR SUPER HSAA (IF APPLICABLE)

1. Type of Application—Check Only One

- Checkboxes for: New Construction, New Construction (Final Apportionment), New Construction (Final Charter School Apportionment), New Construction (Small High School Program), Modernization, Modernization of California Schools for Deaf/Blind

Separate Apportionment

- Checkboxes for: Site Only—New Construction, Site Only (District owned)—New Construction, Site Only—Environmental Hardship, Design Only—New Construction, Design Only—Modernization, Design Only—Modernization of California Schools for Deaf/Blind, Facility Hardship, Rehabilitation, Advance Funding for Evaluation and RA

2. Type of Project

- Checkboxes for: Elementary School, Middle School, High School

Total Pupils Assigned:

- Fields for: K-6, 7-8, 9-12, Non-Severe, Severe

b. 50 Years or Older Building Funding (Modernization Only)

Total Eligible Classrooms/Square Footage:
Classroom/Square Footage at Least 50 Years Old:
Ratio of 50 Years Old Classrooms/Square Footage: %
From 2a above, how many are 50 Year or Older Pupil Grants?

- Fields for: K-6, 7-8, 9-12, Non-Severe, Severe

c. Included in 2a above, how many pupils are generated by the Alternative Enrollment Projection? (New Construction Only)

- Fields for: K-6, 7-8, 9-12, Non-Severe, Severe

d. Is this a 6-8 school? Yes No

If you answered yes, how many K-6 pupils reported above are sixth graders?

Is this an Alternative Education School? Yes No

e. Is this a use of grant request pursuant to Section 1859.77.2? Yes No

Is this request pursuant to Section 1859.77.2(c)? Yes No

If yes, enter date of successful bond election:

Is this a use of grant request pursuant to Section 1859.77.3? Yes No

Is this request pursuant to Section 1859.77.3(c)? Yes No

If yes, enter date of successful bond election:

f. Facility Hardship (no pupils assigned)

3. Number of Classrooms:

Master Plan Acreage Site Size (Useable):

Recommended Site Size (Useable):

Existing Acres (Useable):

Proposed Acres (Useable):

4. Financial Hardship Request—Must Have Pre-Approval by OPSC

5. New Construction Additional Grant Request—New Construction Only

a. Therapy: Toilets (sq. ft.)
Other (sq. ft.)

b. Multilevel Construction (CRS):

c. Project Assistance

d. Site Acquisition:

Leased Site

Additional Acreage to Existing Site

Addition to Existing Site

(1) 50 percent Actual Cost: \$

(2) 50 percent Appraised Value: \$

(3) 50 percent Relocation Cost: \$

(4) 2 percent (min. \$25,000): \$

(5) 50 percent DTSC Fee: \$

e. 50 percent hazardous waste removal: \$

Response Action (RA)

f. Site Development

50 percent Service-Site: \$

50 percent Off-Site: \$

50 percent Utilities: \$

General Site

g. Facility Hardship Section 1859.82(a) or (b)

Toilet (sq. ft.):

Other (sq. ft.):

**APPLICATION FOR FUNDING
SCHOOL FACILITY PROGRAM**

- h. Replacement area
 - Toilet (sq. ft.): _____
 - Other (sq. ft.): _____
- i. Energy Efficiency: _____ %
- j. Automatic Fire Detection/Alarm System
- Automatic Sprinkler System

6. Modernization Additional Grant Request—Modernization Only

- a. Project Assistance
- b. Energy Efficiency: _____ %
- c. Site Development—60 percent utilities: \$ _____
- d. Separate Apportionment for Reconfiguration (for Small High School Program only): \$ _____
- e. Automatic Fire Detection/Alarm System
- Automatic Sprinkler System

7. Excessive Cost Hardship Request

New Construction Only

- Geographic Percent Factor: _____ %
- New School Project [Section 1859.83(c)(1)]
- New School Project [Section 1859.83(c)(2)]
- New School Project [Section 1859.83(c)(3)]
- Small Size Project
- Urban/Security/Impacted Site; If a new site, \$ _____ per Useable Acre [Section 1859.83(d)(2)(C)]

Modernization Only

- Rehabilitation/Mitigation [Section 1859.83(e)]: \$ _____ %
- Geographic Percent Factor: _____ %
- Handicapped Access/Fire Code (3 percent)
- Number of 2-Stop Elevators: _____
- Number of Additional Stops: _____
- Small Size Project
- Urban/Security/Impacted site

8. Project Priority Funding Order—New Construction Only

Priority order of this application in relation to other new construction applications submitted by the district at the same time: # _____

Project meets:

- Density requirement pursuant to Section 1859.92(c)(3).
- Stock plans requirement pursuant to Section 1859.92(c)(4).
- Energy efficiency requirement pursuant to Section 1859.92(c)(6).

9. Prior Approval Under the LPP

New Construction: 22/ _____
Modernization: 77/ _____

10. Prior Apportionment Under the SFP

Site/Design—New Construction: 50/ _____
Design—Modernization: 57/ _____

11. Preliminary Apportionment to Final Apportionment

Preliminary Apportionment Application Number: # _____

12. Alternative Developer Fee—New Construction Only

Alternative developer fee collected and reportable pursuant to Regulation Section 1859.77: \$ _____

13. Adjustment to New Construction Baseline Eligibility

- a. Additional Classroom(s) provided:
 - K-6: _____
 - 7-8: _____
 - 9-12: _____
 - Non-Severe: _____
 - Severe: _____
- b. Operational Grant (HSAA) only:
 - K-6: _____
 - 7-8: _____
 - 9-12: _____
 - Non-Severe: _____
 - Severe: _____

14. Pending Reorganization Election—New Construction Only

Yes No

15. Joint-Use Facility/Leased Property

- a. Joint-Use Facility
- b. Leased Property

16. Project Progress Dates

- a. Construction Contract signed on: _____
- b. Notice to Proceed issued on: _____

17. Labor Compliance Program

Will you be required to initiate and enforce a Labor Compliance Program pursuant to Labor Code Section 1771.7 for this project? Yes No

18. Construction Delivery Method

- Design-Bid-Build
- Design-Build
- Developer Built
- Lease Lease-Back
- Energy Performance Contract
- Other: _____

19. Career Technical Education Funds Request

Will CTE Funds be requested for classroom(s) included in the plans and specifications for this project? Yes No
Number of CTE classroom(s): _____

**APPLICATION FOR FUNDING
SCHOOL FACILITY PROGRAM**

2019. Architect of Record or Licensed Architect Certification

I certify as the architect of record for the project or as a licensed architect that:

- The P&S for this project were submitted to the OPSC by electronic medium (i.e., CD-ROM, zip disk or diskette) or as an alternative, if the request is for a modernization Grant, the P&S were submitted in hard copy to the OPSC.
- Any portion of the P&S requiring review and approval by the Division of the State Architect (DSA) were approved by the DSA on _____ (enter DSA approval date).
- Any portion of the P&S not requiring review and approval by the DSA meets the requirements of the California Code of Regulations, Title 24, including any handicapped access and fire code requirements.
- If the request is for a Modernization Grant, the P&S include the demolition of more classrooms than those to be constructed in the project, the difference is _____ classroom(s). (Indicate N/A if there are none.)
- If the request is for a Modernization Grant, the P&S include the construction of more classrooms than those to be demolished in the project, the difference is _____ classroom(s). (Indicate N/A if there are none.)

ARCHITECT OF RECORD OR LICENSED ARCHITECT (PRINT NAME)

SIGNATURE

DATE

2120. Architect of Record or Design Professional Certification

I certify as the architect of record for the project or the appropriate design professional, that:

- If the request is for a New Construction Grant, I have developed a cost estimate of the proposed project which indicates that the estimated construction cost of the work in the P&S including deferred items (if any) relating to the proposed project, is at least 60 percent of the total grant amount provided by the State and the district's matching share, less site acquisition costs. This cost estimate does not include site acquisition, planning, tests, inspection, or furniture and equipment and is available at the district for review by the OPSC.
- If the request is for a Modernization Grant, I have developed a cost estimate of the proposed project which indicates that the estimated construction cost of the work in the P&S, including deferred items and interim housing (if any) relating to the proposed project, is at least 60 percent of the total grant amount provided by the State and the district's matching share. This cost estimate does not include planning, tests, inspection or furniture and equipment and is available at the district for review by the OPSC.

ARCHITECT OF RECORD OR DESIGN PROFESSIONAL (PRINT NAME)

SIGNATURE

DATE

2221. Certification

I certify, as the District Representative, that the information reported on this form, with the exception of items 19 and 20, is true and correct and that:

- I am an authorized representative of the district as authorized by the governing board of the district; and,
- A resolution or other appropriate documentation supporting this application under Chapter 12.5, Part 10, Division 1, commencing with Section 17070.10, et. seq., of the Education Code was adopted by the school district's governing board or the designee of the Superintendent of Public Instruction on, _____; and,
- The district has established a "Restricted Maintenance Account" for exclusive purpose of providing ongoing and major maintenance of school buildings and has developed an ongoing and major maintenance plan that complies with and is implemented under the provisions of Education Code Section 17070.75 and 17070.77 (refer to Sections 1859.100 through 1859.102); and,
- Pursuant to Education Code Section 17070.755, the district has made a priority of the funds in the restricted maintenance account, established pursuant to Education Code Section 17070.75, to ensure that facilities are functional and meet local hygiene standards; and,
- The district has considered the feasibility of the joint use of land and facilities with other governmental agencies in order to minimize school facility costs; and,
- If this funding request is for the modernization of portable classrooms eligible for an additional apportionment pursuant to Education Code Section 17073.15, the district certifies that (check the applicable box below):
 - 1. The state modernization funds will be used to replace the portable classrooms and permanently remove the displaced portables from the classroom use within six months of the filing of the Notice of Completion for the project; or,
 - 2. It has provided documentation to the Office of Public School Construction which indicates that modernizing the portable classrooms eligible for an additional apportionment is better use of public resources than the replacement of these facilities.
- Facilities to be modernized have not been previously modernized with Lease-Purchase Program, Proposition 1A Funds or School Facility Program state funds; and,
- All contracts entered on or after November 4, 1998 for the service of any architect structural engineer or other design professional for any work under the project have been obtained pursuant to a competitive process that is consistent with the requirements of Chapter 10 (commencing with Section 4525) of Division 5, of Title 1, of the Government Code; and,
- If this request is for new construction funding, the district has received approval of the site and the plans from the CDE. Plan approval is not required if request is for separate design apportionment; and,
- If this request is for modernization funding, the district has received approval of the plans for the project from the CDE. Plan approval is not required if request is for separate design apportionment; and,
- The district has or will comply with the Public Contract Code regarding all laws governing the use of force account labor; and,
- This district has or will comply with Education Code Section 17076.11 regarding at least a 3 percent expenditure goal for disabled veteran business enterprises; and,
- The district matching funds required pursuant to Sections 1859.77.1 or 1859.79 has either been expended by the district, deposited in the County School Facility Fund or will be expended by the district prior to the notice of completion for the project; and,

APPLICATION FOR FUNDING SCHOOL FACILITY PROGRAM

- The district has received the necessary approval of the plans and specifications from the Division of the State Architect unless the request is for a separate site and/or design apportionment; and,
- If the district is requesting site acquisition funds as part of this application, the district has complied with Sections 1859.74 through 1859.75.1 as appropriate; and,
- With the exception of an apportionment made pursuant to Section 1859.75.1, the district understands that the lack of substantial progress toward increasing the pupil capacity or renovation of its facilities within 18 months of receipt of any funding shall be cause for the rescission of the unexpended funds (refer to Section 1859.105); and,
- If the apportionment for this project was made pursuant to Section 1859.75.1, the district understands that the lack of substantial progress toward increasing the pupil capacity or renovation of its facilities within 12 months of receipt of any funding shall be cause for the rescission of the unexpended funds (refer to Section 1859.105.1); and,
- The district understands that funds not released within 18 months of apportionment shall be rescinded and the application shall be denied (refer to Section 1859.90); and,
- The statements set forth in this application and supporting documents are true and correct to the best of my knowledge and belief; and,
- All school facilities purchased or newly constructed under the project for use by pupils who are individuals with exceptional needs, as defined in Education Code Section 56026, shall be designed and located on the school site so as to maximize interaction between those individuals with exceptional needs and other pupils as appropriate to the needs of both; and,
- This form is an exact duplicate (verbatim) of the form provided by the OPSC. In the event a conflict should exist, the language in the OPSC form will prevail; and,
- The district understands that some or all of the State funding for the project must be returned to the State as a result of an audit pursuant to Sections 1859.105, 1859.105.1, 1859.106; and,
- The district has complied with the provisions of Sections 1859.76 and 1859.79.2 and that the portion of the project funded by the State does not contain work specifically prohibited in those Sections; and,
- If the SFP grants will be used for the construction or modernization of school facilities on leased land, the district has entered into a lease agreement for the leased property that meets the requirements of Section 1859.22; and,
- If the application contains a "Use of New Construction Grant" request, the district has adopted a school board resolution and housing plan at a public hearing at a regularly scheduled meeting of the governing board on _____ as specified in Sections 1859.77.2, or 1859.77.3, as appropriate. The district's approved housing plan is as indicated (check all that apply):
 - 1. The district will construct or acquire facilities for housing the pupils with funding not otherwise available to the SFP as a district match within five years of project approval by the SAB and the district must identify the source of the funds. [Applicable for Sections 1859.77.2(a) and (b) and 1859.77.3(a) and (b)]
 - 2. The district will utilize higher district loading standards providing the loading standards are within the approved district's teacher contract and do not exceed 33:1 per classroom. [Applicable for Sections 1859.77.2(a) and (b) and 1859.77.3(a) and (b)]
- 3. The pupils requested from a different grade level will be housed in classrooms at an existing school in the district which will have its grade level changed, to the grade level requested, at the completion of the proposed SFP project. [Applicable for Sections 1859.77.2(b) and 1859.77.3(b)]
- If the district requested additional funding for fire code requirements pursuant to Sections 1859.71.2 or 1859.78.4, the district will include the automatic fire detection/alarm system and/or automatic sprinkler system in the project prior to completion of the project; and,
- **If this request is for a Large New Construction Project or a Large Modernization Project,** The district has consulted with the career technical advisory committee established pursuant to Education Code Section 8070 and **it has considered** the need for vocational and career technical facilities **is being to** adequately **met meet its program needs** in accordance with Education Code Sections 51224, 51225.3(b), 51228(b) and 52336.1; and,
- If the district is requesting an Additional Grant for Energy Efficiency pursuant to Sections 1859.71.3 or 1859.78.5, the increased costs for the energy efficiency components in the project exceeds the amount of funding otherwise available to the district; and,
- If this application is submitted after January 1, 2004 for modernization funding, the district has considered the potential for the presence of lead-containing materials in the modernization project and will follow all relevant federal, state, and local standards for the management of any identified lead; and
- The district has or will initiate and enforce a Labor Compliance Program that has been approved by the Department of Industrial Relations, pursuant to Labor Code Section 1771.7, if the project is funded from Propositions 47 or 55 and the Notice to Proceed for the construction phase of the project is issued on or after April 1, 2003; and,
- Beginning with the 2005/2006 fiscal year, the district has complied with Education Code Section 17070.75(e) by establishing a facilities inspection system to ensure that each of its schools is maintained in good repair; and
- If this application is submitted pursuant to Section 1859.93.2, the district certifies that is has an academic reform strategy scored by the CDE, and is available at the district office for OPSC verification; and,
- If this application is submitted pursuant to Section 1859.93.2, the district certifies the enrollment at the Small High School will not exceed 500 pupils for a minimum of two complete school years after the Occupancy of the last Small High School funded, as outlined in Section 1859.104(e)(2); and,
- If this application is submitted pursuant to Section 1859.78.9, the district certifies the enrollment at the resulting Small High Schools will not exceed 500 pupils for a minimum of two complete school years after the Occupancy of the Small High Schools; and,
- If this application is submitted pursuant to Section 1859.78.9 or Section 1859.93.2, the district certifies that is will meet all reporting requirements as specified in Section 1859.104(e)(1) and/or (2).

FUND RELEASE AUTHORIZATION

SCHOOL FACILITY PROGRAM

GENERAL INSTRUCTIONS

(Refer to Title 2, California Code of Regulations, Sections 1859.90 and 1859.91)

After a School Facility Program (SFP) grant has been funded by the Board, the Office of Public School Construction (OPSC) will release the apportioned funds with the exception of design funds, to the appropriate county treasury once the district has completed and submitted this form to the OPSC. Design funds will automatically be released to the district within 30 days of the apportionment, with the exception of Preliminary Apportionments.

- Check the boxes in Part I if the district has current financial hardship status pursuant to Section 1859.81 and is requesting release of Preliminary Apportionment funds for design, engineering, and other preconstruction project costs. Attach to this form the CDE Letter pursuant to Section 1859.149(a)(2).
- Check the boxes in Part II if the Charter School is requesting a release of a Preliminary Charter School Apportionment for design and/or separate site apportionment pursuant to Section 1859.164.2.
- Check the box in Part III, for release of a separate site apportionment provided pursuant to Sections 1859.74.4, 1859.75.1 or 1859.81.1 or for release of Preliminary Apportionment site only acquisition pursuant to 1859.153(b) or (c).
- Check the box(es) in Part IV for release of new construction or modernization funds and enter the appropriate dates:
 - a. Issue date of the Notice to Proceed for the construction phase of the project; and,
 - b. Signature date of the initial construction contract entered into by the district for this project.
- Check the boxes in Part V if the district is requesting a separate release of site acquisition funds as part of a new construction project.
- Check the boxes in Part VI if the district is requesting release of joint-use project funds.
- Check the appropriate box(es) in Part VII that identify the district funding sources that have or will be used for the district's share of the project.
- [Check the appropriate box\(es\) in Part VIII if the district is requesting a release of Career Technical Education Facilities funds.](#)
- Check the appropriate box in Part ~~IX~~ that identifies the construction delivery method that the district utilized for this project.

For the purposes of completing this form to obtain a fund release for a Final Charter School Apportionment, a charter school shall be treated as a school district.

[For the purposes of completing this form to obtain a fund release for a Final Career Technical Education Facilities Apportionment, a joint powers authority shall be treated as a school district.](#)

DRAFT

SCHOOL DISTRICT	APPLICATION NUMBER
SCHOOL NAME	FIVE-DIGIT DISTRICT CODE NUMBER (SEE CALIFORNIA PUBLIC SCHOOL DIRECTORY)
COUNTY	HIGH SCHOOL ATTENDANCE AREA (HSAA) (IF APPLICABLE)

Part I. Preliminary Apportionment—Design Only

- The district certifies it has complied with Section 1859.149(a).
- The district certifies that its applicable matching share has either:
 - been deposited in the County School Facility Fund
 - has already been expended by the district for the project
 - will be expended by the district prior to the Notice of Completion for the project
- The district certifies that it currently has Financial Hardship status under the provisions of Section 1859.81.

Part II. Preliminary Charter School Apportionment

A. Design Only

Pursuant to Section 1859.164.2(a), must be able to check all boxes:

- The Charter School certifies that its applicable matching share has either:
 - been deposited in the County School Facility Fund
 - has already been expended by the Charter School for the project
 - will be expended by the Charter School prior to the Notice of Completion for the project
- The Charter School certifies it has current financial soundness status from the California School Finance Authority.

B. Separate Site Apportionment

Pursuant to Section 1859.164.2(b), must be able to check all boxes:

- Release site acquisition funds. The Charter School certifies the funds are needed to place on deposit in order to secure the site acquisition.
- The Charter School certifies that its applicable matching share has either:
 - been deposited in the County School Facility Fund
 - has already been expended by the Charter School for the project
 - will be expended by the Charter School prior to the Notice of Completion for the project
- The Charter School certifies it has current financial soundness status from the California School Finance Authority.

Part III. Separate Site Apportionment

- RA on additions to existing school sites pursuant to Section 1859.74.4.

Pursuant to Sections 1859.75.1 or 1859.81.1, district must be able to check both boxes:

- Release Site Acquisition Funds. The district certifies the funds are needed to place on deposit in order to secure the site acquisition.
- The district certifies that its applicable matching share has either:
 - been deposited in the County School Facility Fund
 - has already been expended by the district for the project
 - will be expended by the district prior to the Notice of Completion for the project

Part IV. New Construction/Modernization

District/Charter School must be able to check all **both** boxes:

- The district certifies that its applicable matching share has either:
 - been deposited in the County School Facility Fund
 - has already been expended by the district for the project
 - will be expended by the district prior to the Notice of Completion for the project
- The district certifies it has entered into a binding contract(s) for at least 50 percent of the construction included in the plans applicable to the state funded project), and has issued the Notice to Proceed on _____ for that contract signed on _____.
- If the district certified compliance with Education Code Section 17070.955 on its Application for Funding (Form SAB 50-04) and if it was not previously sent with the Form SAB 50-04, then the district must submit written confirmation from the district's career technical advisory committee indicating that the need for vocational and career technical facilities is being adequately met within the district consistent with Education Code Sections 51224, 51225.3(b), 51228(b), and 52236.1.

The amount of State funds released for new construction shall be 100 percent of the total SFP New Construction Adjusted Grant, less any site acquisition funds previously released in Part III.

The amount of State funds released for modernization shall be 100 percent of the SFP Modernization Adjusted Grant.

Part V. New Construction—Site Acquisition Only

District must be able to check both boxes:

- The district certifies it has entered escrow for the site (attach copy of escrow instructions).
- The district certifies that its applicable matching share has either:
 - been deposited in the County School Facility Fund
 - has already been expended by the district for the project
 - will be expended by the district prior to the Notice of Completion for the project

The amount of State funds released shall be equal to the additional grant provided for site acquisition.

Part VI. Joint-Use Projects

- The district certifies that the joint-use partners' financial contribution has either:
 - been received and deposited in the County School Facility Fund
 - has been received and expended by the district
 - will be received and expended by the district prior to the Notice of Completion for the project
- The district certifies it has entered into a binding contract(s) for at least 50 percent of the construction included in the plans applicable to the state funded project.

The amount of State funds released for new construction shall be 100 percent of the Joint-Use Grant.

**FUND RELEASE AUTHORIZATION
SCHOOL FACILITY PROGRAM**

Part VII. Identify District and Joint-Use Partners' Funding Sources

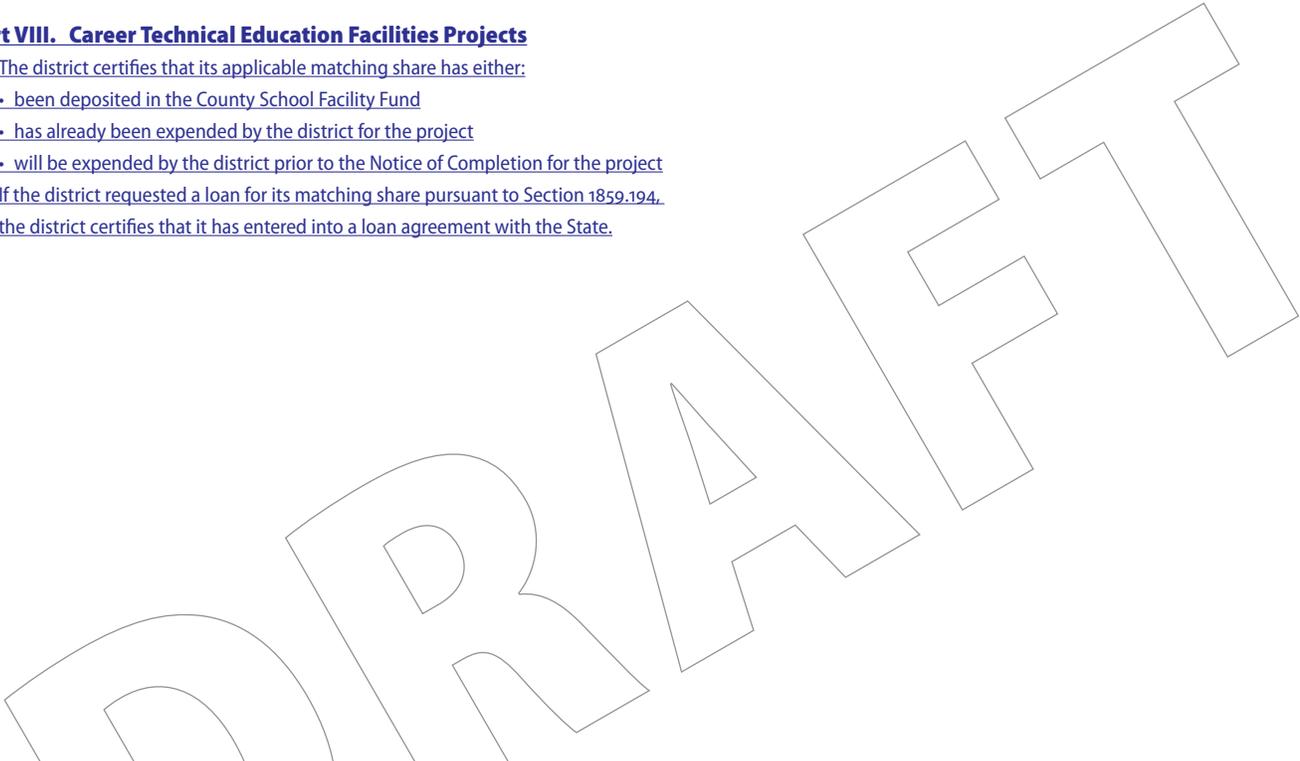
- Available bond funds such as general obligation, or Mello-Roos.
- Available developer fees, proceeds from the sale of surplus property, or federal grants.
- Other funds available (identify)
- Funds already expended by the district for the project.
- Funds already expended by the joint-use partners for the project.
- Future revenue sources to be used for the project (identify)

Part ~~IX~~VIII. Identify District's Construction Delivery Method

- Design-Bid-Build
- Design-Build
- Developer Built
- Lease Lease-Back
- Energy Performance Contract
- Other: _____

Part VIII. Career Technical Education Facilities Projects

- The district certifies that its applicable matching share has either:
 - been deposited in the County School Facility Fund
 - has already been expended by the district for the project
 - will be expended by the district prior to the Notice of Completion for the project
- If the district requested a loan for its matching share pursuant to Section 1859.194, the district certifies that it has entered into a loan agreement with the State.



I certify, as the District Representative, that the information reported on this form is true and correct and that:

- The site where buildings will be modernized must comply with Education Code Sections 17212, 17212.5, and 17213; and,
- The grant amount provided by the State, combined with local matching funds or the Joint-Use Partner's financial contribution, are sufficient to complete the school construction project, unless the request is for a separate site and/or design apportionment; and,
- The district has or will comply with the Public Contract Code regarding all laws governing the use of force account labor; and,
- This project for which the grant amount is provided complies with Education Code Sections 17070.50 and 17072.30; and,
- The district shall certify at the time of a fund release for the project that it complies with Section 1859.90.1.
- This form is an exact duplicate (verbatim) of the form provided by the Office of Public School Construction (OPSC). In the event a conflict should exist, then the language in the OPSC form will prevail; and,
- The district has or will initiate and enforce a Labor Compliance Program that has been approved by the Department of Industrial Relations, pursuant to Labor Code Section 1771.7, if the project is funded from Propositions 47 or 55 and the Notice to Proceed for the construction phase of the project is issued on or after April 1, 2003.

SIGNATURE OF DISTRICT REPRESENTATIVE	DATE
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GENERAL INFORMATION

This form is to be used by a school district/joint powers authority (JPA) to request a Career Technical Education Facilities Program (CTEFP) grant. Requests for funding may be made as follows:

New Construction or Modernization project pursuant to Regulation Section 1859.190. The following documents must be submitted with this form for purposes of this apportionment:

- California Department of Education's (CDE) Career Technical Education (CTE) Plan Approval letter.
- A copy of the submitted CTEFP application that complies with the requirements of Education Code Section 17078.72.

- If applicable, Plan Approval letter from the California Department of Education (CDE).
- If applicable, Plans and Specifications (P&S) for the project that were approved by the Division of the State Architect (DSA). Submittal of plans may be on CD-ROM or "Zip Drive" readable in AutoCAD 14. The specifications may be provided on a diskette that is IBM compatible.
- Cost estimate of proposed site development, if requesting site development funding.
- If requesting a loan, the applicant must attach the completed CTEFP Funding Availability Worksheet.

SPECIFIC INSTRUCTIONS

A Project Tracking Number must be assigned by the applicant for all applications submitted to the OPSC, the DSA, or the CDE. This number may be obtained from the OPSC Web site at www.opsc.dgs.ca.gov or the DSA or the CDE Web sites under "Project Tracking Number Generator."

1. Type of Application

Check the box that indicates the type of CTEFP funding requested. Refer to Section 1859.192 for the eligibility criteria.

2. CTE Industry Sector and Pathway

Enter the name of the Industry Sector and Pathway.

3. Reservation of Funds

Check the box "Yes" if requesting a reservation of funds pursuant to Section 1859.193(d). Otherwise, check the box "No."

4. Loan Request

Check the box "Yes" if requesting a loan pursuant to Section 1859.194. Otherwise, check the box "No."

5. Qualifying SFP Project Application Number

If the request is for a CTEFP Project which will be part of a qualifying SFP project, indicate the SFP application number or the project tracking number of the qualifying SFP project. Enter the number of CTE classrooms specified in the CDE's CTE Application. Refer to Section 1859.193.1.

6. CDE Application Overall Score

Enter the score from the CDE's CTE plan approval letter for this project. Divide the Overall Score by the Maximum Points Possible and multiply by 100 to get the Overall Score Percentage. (The applicant must have received a score of at least 105 points, as determined by the CDE.)

7. CTE Facility Square Footage

Enter the total eligible square footage of the CTE Facility.

8. Eligible Costs

- Enter the construction cost if constructing new or reconfiguring an existing building.
- Enter the equipment cost pursuant to Education Code Section 17078.72(a).
- If the request is for a CTEFP Project which is not a part of a qualifying SFP project, enter 50 percent of the site development costs that meet the requirements of Section 1859.193.

9. Cost Per Square Footage

Enter the cost per square footage by dividing the total eligible costs in Item 8 by the CTE facility square footage noted in Item 7.

10. Project Assistance

Check the box if the district is requesting project assistance pursuant to Section 1859.73.1. This grant is available only to a new construction or modernization CTE project that is not part of a qualifying SFP New Construction or Modernization project.

11. Project Progress Dates

Enter the following project progress dates:

- Date the initial construction contract was signed for this project. If a construction contract has not been executed, enter N/A.
- Issue date of the Notice of Proceed for the construction phase of the project, or enter N/A if a Notice to Proceed has not been issued.

12. Priority Order

Enter the funding priority of this application in relation to other applications for Career Technical Education Facilities Funding submitted on the same date.

The school district/JPA named below applies to the State Allocation Board via the Office of Public School Construction for a grant under the provisions of Article 13, Chapter 12.5, Part 10, Division 1, commencing with Section 17078.70, et seq, of the Education Code and the Regulations thereto.

SCHOOL DISTRICT/JOINT POWERS AUTHORITY		APPLICATION NUMBER
SCHOOL NAME		PROJECT TRACKING NUMBER
COUNTY	E-MAIL ADDRESS	HIGH SCHOOL ATTENDANCE AREA (HSAA) (IF APPLICABLE)

1. Type of Application—Check Only One

- New Construction Project—construct new school buildings and/or equipment
- Modernization Project—reconfigure existing school buildings and/or equipment

2. CTE Industry Sector and Pathway:

3. Reservation of Funds:

- Yes No

4. Loan Request:

- Yes No

5. Qualifying SFP Project Application Number

Application Number: # _____
 Project Tracking Number: # _____
 Number of CTE Classrooms in the CTE Application: _____

6. CDE Application Overall Score:

Maximum Points Possible: _____
 Overall Score Percentage: 165 %

7. CTE Facility Square Footage:

8. Eligible Costs

a. Construction: \$ _____
 b. Equipment: \$ _____
 c. Site Development: \$ _____
 Total (a+b+c): \$ _____

9. Cost Per Square Footage:

\$ _____

10. Project Assistance

- CTE Project Only—not part of a qualifying SFP project

11. Project Progress Dates

a. Construction Contract signed on: _____
 b. Notice to Proceed issued on: _____

12. Priority Order:

13. Certification

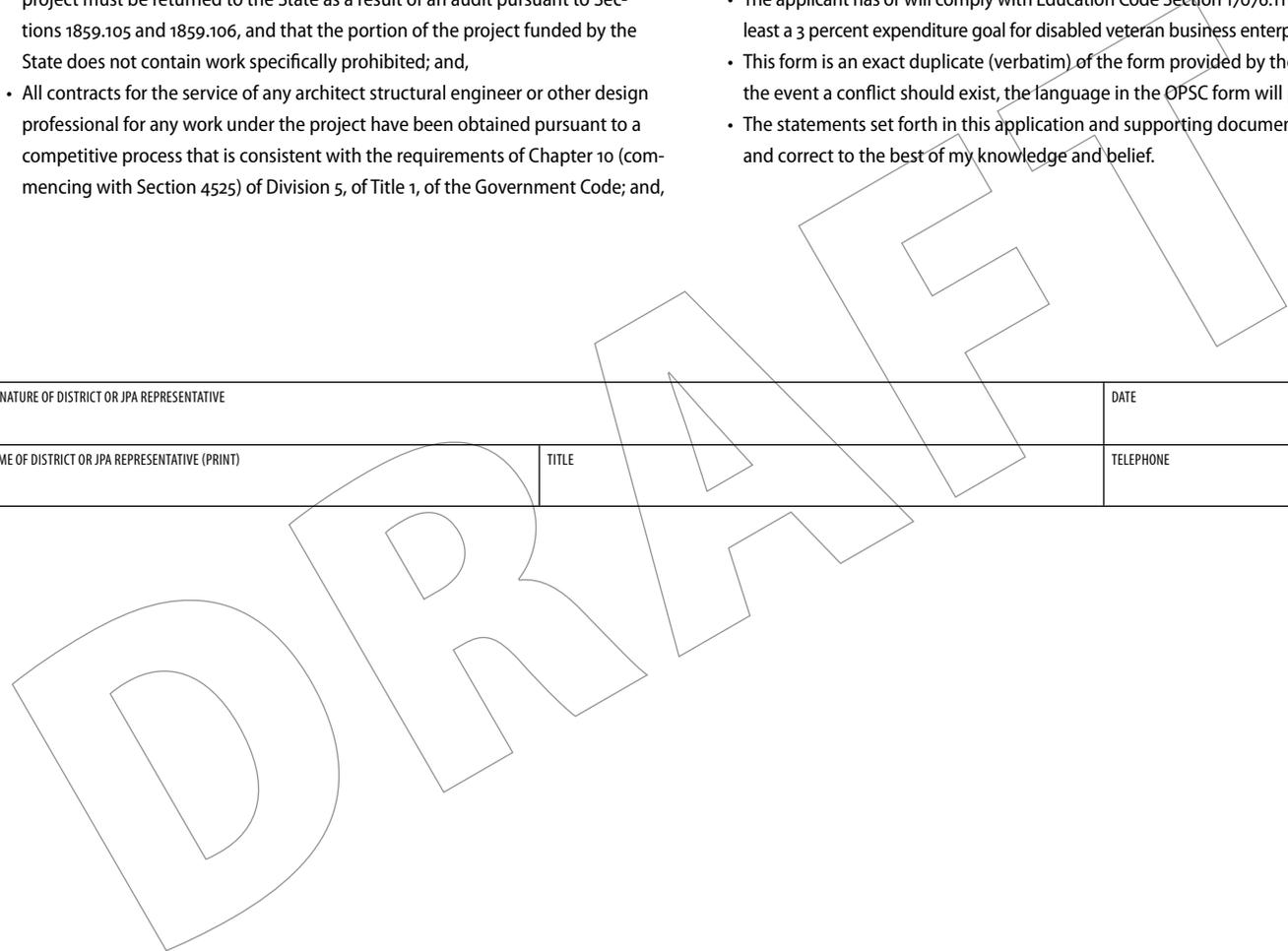
I certify, as the Representative for the School District or JPA, that the information reported on this form is true and correct and that I am the authorized representative of the District or JPA as authorized by the governing board of the district or JPA; and,

- A resolution or other appropriate documentation supporting this application under Article 13, Chapter 12.5, Part 10, Division 1, commencing with Section 17078.70, et. seq., of the Education Code was adopted by the applicant's Governing board on _____; and,
- The district has established a "Restricted Maintenance Account" for the exclusive purpose of providing ongoing and major maintenance of school buildings and has developed an ongoing and major maintenance plan that complies with and is implemented under the provisions of Education Code Sections 17070.75 and 17070.77 (refer to Sections 1859.100 through 1859.102); if the applicant is a joint powers authority that is not required to establish a "Restricted Maintenance Account" under the provisions of Education Code Section 17070.75, the applicant certifies that it can maintain its facilities with a lesser annual deposit (refer to Section 1859.101); and,
- The matching funds required pursuant to Section 1859.194 has either been received and expended by the district, deposited in the County School Facility Fund or will be received and expended by the district prior to the notice of completion for the project; and,
- The participant has or will receive the necessary approval of the plans and specifications from the Division of the State Architect; and,
- The participant has or will receive the necessary approval of the plans and specifications from the CDE; and,
- The participant has complied with the provisions of Section 1859.76 and that the portion of the project funded by the State does not contain work specifically prohibited in that section; and,
- If the SFP grants will be used for a CTEFP project on school facilities on leased land, the participant has entered into a lease agreement for the leased property that meets the requirements of Section 1859.22; and,
- The participant has complied with the CTEFP eligibility criteria as outlined in Section 1859.192; and,
- The participant will comply with all laws pertaining to the construction of its CTE school building; and,
- The participant understands that funds not released within 18 months of apportionment shall be rescinded and the application shall be denied (refer to Section 1859.197); and,

**APPLICATION FOR CAREER TECHNICAL EDUCATION FACILITIES FUNDING
SCHOOL FACILITY PROGRAM**

- The participant understands that by reserving funds, the applicant must submit the necessary approvals and/or Plans and Specifications within one year of apportionment; otherwise the funds will be rescinded without further Board action (refer to Section 1859.197); and,
- The participant understands that the lack of substantial progress within 18 months of receipt of any funding shall be cause for the rescission of the unexpended funds (refer to Section 1859.198); and,
- The participant understands that some or all of the State funding for the project must be returned to the State as a result of an audit pursuant to Sections 1859.105 and 1859.106, and that the portion of the project funded by the State does not contain work specifically prohibited; and,
- All contracts for the service of any architect structural engineer or other design professional for any work under the project have been obtained pursuant to a competitive process that is consistent with the requirements of Chapter 10 (commencing with Section 4525) of Division 5, of Title 1, of the Government Code; and,
- The participant has or will comply with the Public Contract Code regarding all laws governing the use of force account labor; and,
- If this request is for modernization of CTE facilities, contracts for construction and/or equipment were executed on or after May 20, 2006; and,
- If this request is for new construction projects, the CTE classrooms constructed were not occupied prior to May 20, 2006; and,
- If the applicant is requesting a loan for the matching share, a CTEFP Loan Agreement will be executed pursuant to the requirements in Section 1859.194; and,
- The applicant has or will comply with Education Code Section 17076.11 regarding at least a 3 percent expenditure goal for disabled veteran business enterprises; and,
- This form is an exact duplicate (verbatim) of the form provided by the OPSC. In the event a conflict should exist, the language in the OPSC form will prevail; and,
- The statements set forth in this application and supporting documents are true and correct to the best of my knowledge and belief.

SIGNATURE OF DISTRICT OR JPA REPRESENTATIVE		DATE
NAME OF DISTRICT OR JPA REPRESENTATIVE (PRINT)	TITLE	TELEPHONE



REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, January 24, 2007

ASSEMBLY BILL 607 AMENDMENTS TO
EMERGENCY REPAIR PROGRAM REGULATIONS

PURPOSE OF REPORT

To request:

1. Adoption of the proposed emergency regulations to implement and administer statutory amendments to the Emergency Repair Program (ERP).
2. Authorization to file the proposed emergency regulations with the Office of Administrative Law (OAL).

DESCRIPTION

As a continuation of the provisions of the Williams settlement, Assembly Bill (AB) 607, Chapter 704, Statutes of 2006 (Goldberg) adopts various changes to the Education Code related to the ERP in order to expedite funding, and provide greater program flexibility to encourage participation in order to help ensure that all California school children have equal access to clean, safe, and functional school facilities. AB 607 adds a provision that would enable Local Educational Agencies (LEAs) to request grant funding under the ERP for projects that have not commenced or are not completed.

Additionally, AB 607 requires the list of schools that are eligible to participate in the ERP be updated every three years, in accordance with the school's Academic Performance Index (API) ranking. Schools ranked in deciles one to three based on the 2006 API would be considered eligible for funding based on the updated list in the 2007-08 fiscal year.

STAFF COMMENTS

By utilizing the State Allocation Board (SAB) Implementation Committee meetings as a forum to gather input from interested parties, the Office of Public School Construction (OPSC) has developed proposed amendments to the ERP Regulations, contained in the Attachment, to implement the changes detailed above.

Proposed regulation amendments also include changes to the *Application for Reimbursement and Expenditure Report*, Form SAB 61-03, which has been renamed *Grant Request*, Form SAB 61-03, and revised to accommodate either grant or reimbursement funding requests. Additionally, a new form, the *Expenditure Report*, Form SAB 61-04, was created to accommodate the submittal of the expenditure information and certification of project completion subsequent to the funding request. This was necessary because it is expected that the majority of projects will not be completed upon submittal of the initial *Grant Request*, and, therefore, the actual expenditures would have to be reported at a later date. The Form SAB 61-03 and the Form SAB 61-04 are included in the Attachment.

It is important to note that, although neither AB 607 nor the ERP Regulations specifically contemplate portable classroom replacement, this topic was included in Implementation Committee discussions as the OPSC has received requests from LEAs to replace portables with ERP funds. The OPSC will consider requests for portable classroom replacement on a case-by-case basis because in some circumstances it would be more cost effective to replace the portable rather than to repair each system or component in the portable.

STAFF COMMENTS (cont.)

In the discussions at the Implementation Committee meetings, an Implementation Committee member asked whether portables that were not purchased under the State Relocatable Phase-Out Plan could be provided to a district that was attempting to replace its own deteriorated portable under the ERP. Staff explored this possibility; however, at this time, Staff believes it is not a viable option for the Board. In order to provide districts with the means to seek grant funding for critical repairs, the OPSC will submit these regulations as emergency regulations to the OAL following adoption by the Board.

RECOMMENDATIONS

1. Adopt the proposed amendments to the regulations as shown on the Attachment and begin the regulatory process.
2. Authorize the OPSC to file these emergency regulations with the OAL.

BOARD ACTION

In considering this item, the Board approved Staff's recommendations with the exception of Regulation Section 1859.323.2(j). The Board requested that applications with requests for administrative fees not be presented for approval until the issue regarding the fees is brought back to the Board for discussion.

ATTACHMENT
PROPOSED AMENDMENTS TO THE
EMERGENCY REPAIR PROGRAM REGULATIONS
State Allocation Board Meeting, January 24, 2007

...

Amend Regulation Section 1859.302 as follows:

Section 1859.302. Definitions.

For the purposes of these Subgroup 5.7 regulations, the terms set forth below shall have the following meanings, subject to the provisions of the Act:

"Accepted Application(s)" means a Local Educational Agency (LEA) has submitted the application and all documents to the Office of Public School Construction (OPSC) that are required to be submitted with the application as identified in the General Information and Required Documentation section of the Form SAB 61-03, *Grant Request*, (Rev. 01/07), as appropriate, and the OPSC has accepted the application.

"Act" means California Education Code (EC) Sections 17592.70 through 17592.73, inclusive, and 41207.5.

"Apportionment" means an allocation of funds by the Board for eligible School Facilities Needs Assessment Grant Program or Emergency Repair Program expenditures costs.

~~"Accepted Application(s)" means a Local Educational Agency (LEA) has submitted the application and all documents to the Office of Public School Construction (OPSC) that are required to be submitted with the application as identified in the General Information Section of the Form SAB 61-03, *Application For Reimbursement and Expenditure Report*, (New 02/05), as appropriate, and the OPSC has accepted the application.~~

"Board" means the State Allocation Board as established by Section 15490 of the Government Code.

"CBEDS Report" means the enrollment information provided through the California Basic Educational Data System (CBEDS) by the LEA to the California Department of Education (CDE).

"Certification of Eligibility" means the on-line worksheet provided by the OPSC and accessible through the OPSC Website at www.opsc.dgs.ca.gov for the purpose of a one-time determination of whether a school site meets the provisions of Section 1859.311(b).

"Cosmetic Repairs" means repairs that enhance the physical environment of the school and are not directly related to the mitigation of a health and safety hazard.

"Deferred Maintenance Program (DMP)" means the State deferred maintenance funding authorized by EC Sections 17582 through 17588, inclusive.

"Emergency Facilities Needs" means structures or systems that in their present condition pose an immediate threat to the health and safety of pupils and staff while at school.

"Emergency Repair Program (ERP)" means the repair program implemented under the Act, Senate Bill 6, Chapter 899, Statutes of 2004.

~~"Emergency Repair Program ERP Grant" means an Apportionment provided by the State to reimburse the LEA for eligible costs, pursuant to EC Section 17592.72 and Regulation Sections 1859.323, 1859.323.1, and 1859.323.2.~~

~~"Expended" means work has been completed, or services rendered, and a warrant has been issued for payment.~~

"Employee" means an individual that is a classified or certificated temporary, probationary or permanent employee receiving a warrant as payment from the LEA.

"Expended" means work has been completed, or services rendered, and a warrant has been issued for payment.

"Form SAB 61-01" means the *Needs Assessment Report*, Form SAB 61-01 (New 01/05), which is incorporated by reference.

"Form SAB 61-02" means the *Expenditure Report*, Form SAB 61-02 (New 02/05), which is incorporated by reference.

"Form SAB 61-03" means the ~~*Grant Request Application For Reimbursement and Expenditure Report*~~, Form SAB 61-03 ~~(New 02/05 Rev 01/07)~~, which is incorporated by reference.

"Form SAB 61-04" means the *Expenditure Report*, Form SAB 61-04 (New 01/07), which is incorporated by reference.

"Grant" means an apportionment for a request for an Emergency Repair Program project.

"Grant Adjustment" means an increase or a decrease in the Grant after review of the Form SAB 61-04.

"Interim Evaluation Instrument" means the evaluation tool developed pursuant to EC Section 17002(d)(2).

"Like-Kind Material/System" means a building material or system that is substantially identical in function to the existing building material or system to be replaced.

"Local Educational Agency (LEA)" means a school district or county office of education meeting the requirements of Section 14101(18)(A) or (B) of the federal Elementary and Secondary Education Act of 1965.

"LEA Representative" means a member of the LEA staff or other agent authorized to execute and file application(s) with the Board on behalf of the LEA and/or act as liaison between the Board and the LEA.

~~"Local Educational Agency (LEA)" means a school district or county office of education meeting the requirements of Section 14101(18)(A) or (B) of the federal Elementary and Secondary Education Act of 1965.~~

"Needs Assessment" means the review of the facilities conducted pursuant to the Section 1859.315(c), the Form SAB 61-01 and EC Section 17592.70.

"Needs Assessment Grant" means the funding provided pursuant to EC Section 17592.70(c) and Sections 1859.312 and 1859.313.

"Nonessential Repairs" means work that is not directly related to the mitigation of a health and safety hazard including, but not limited to, repairs to correct items not in compliance with Title 24 of the California Code of Regulations that existed prior to and are not an Emergency Facilities Needs.

"Office of Public School Construction (OPSC)" means the State office within the Department of General Services that assists the Board as necessary and administers the School Facilities Needs Assessment Grant Program and the Emergency Repair Program.

"Pupil" means a student enrolled in any grade Kindergarten through grade twelve including individuals with exceptional needs meeting the provisions of EC Section 56026.

"Ready for Apportionment" means a review of an Accepted Application has been completed by the OPSC and it has been determined that it meets all requirements of law for an Apportionment, and the OPSC will recommend approval to the Board.

"Routine Restricted Maintenance Account" means the account into which funds are deposited by LEAs pursuant to EC Section 17070.75.

"School Facilities Emergency Repair Account" means the account established by the OPSC pursuant to EC Section 17592.71(a).

"School Facilities Needs Assessment Grant Program" means the one-time assessment of school facilities implemented under the Act, Senate Bill 6, Chapter 899, Statutes of 2004.

"School Facility Program (SFP)" means the Leroy F. Greene School Facilities ~~ies~~ Act of 1998, commencing with EC Section 17070.10.

"Section" means a section in these Subgroup 5.7 regulations.

"Unfunded List" means an information list of unfunded projects including projects partially funded on a prorated basis pursuant to Section 1859.322 (b)(1).

"Web-Based Needs Assessment" means the on-line Form SAB 61-01 provided by the OPSC and accessible through the OPSC Website at www.opsc.dgs.ca.gov for the one-time purpose of submitting the Needs Assessment data electronically.

"Web-Based Progress Report Survey" means the on-line worksheet provided by the OPSC and accessible through the OPSC Website at www.opsc.dgs.ca.gov for the purpose of submitting a one-time report on the progress made toward completing the Needs Assessment.

~~"Web-Based Needs Assessment" means the on line Form SAB 61-01 provided by the OPSC and accessible through the OPSC Website at www.opsc.dgs.ca.gov for the one time purpose of submitting the Needs Assessment data electronically.~~

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Sections 17592.70, 17592.71, 17592.72 and 17592.73, Education Code.

...

Amend Regulation Section 1859.318 as follows:

Section 1859.318. Supplement, Not Supplant, Needs Assessment Grant Funds.

Needs Assessment Grant funds remaining after the completion of the Needs Assessment must be used for repairs authorized in Section 1859.313(b) and must be used to supplement, not supplant, funds already available for routine, deferred, planned and scheduled maintenance, or emergency repairs of school facilities. In accordance with this requirement, the LEA must comply with all of the following in the 2005/2006 fiscal year:

- (a) Deposit the funding level required pursuant to EC Section 17070.75 in the Routine Restricted Maintenance Account, if participating in the SFP.
- (b) Deposit an amount equal to the State's matching share of the basic grant pursuant to EC Section 17584, if participating in the DMP.
- (c) If either (a) or (b) are not applicable, the district must budget an amount not less than the average maintenance budget for the three previous fiscal years.
- (d) In an effort to ensure that each of its schools is maintained in good repair, the LEA shall expend or encumber by issuing a purchase order or entering into a legal contract or document, or dedicate funds from the sources listed in subsections (a) through (c), above, to correct problems identified in the facilities inspection system required pursuant to EC Section 17070.75(e), which may include items listed in the DMP five-year plan, or the Interim Evaluation Instrument that do not qualify for funding as described in EC Section 17592.72(c)(1). For those projects eligible for ERP funding, the LEA may seek ~~reimbursement~~ funding at any time provided that the LEA has or will meet the above requirements.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Sections 17592.72 and 17592.73, Education Code.

...

Amend Regulation Section 1859.320 as follows:

Section 1859.320. General.

An LEA seeking an ~~Emergency Repair Program~~ ERP Grant for ~~reimbursement~~ funding of costs for repairs or replacement of existing structural components or building systems that pose ~~(d)~~ a health and safety threat to the pupils or staff while at school, as defined by EC Section 17592.72(c)(1), shall submit to the OPSC a completed and file a Form SAB 61-03_ with the OPSC. ~~Each Form SAB 61-03 filed with the OPSC may consist of the repair or replacement of only one building component or system and any work directly related to that repair or replacement.~~

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.72, Education Code.

Amend Regulation Section 1859.321 as follows:

Section 1859.321. Eligible Schools.

Eligible schools are determined as follows:

(a) For fiscal years 2004-05 to 2006-07, inclusive, a ~~An~~ LEA that has a school site meeting all of the following is eligible to submit a Form SAB 61-03:

~~(a1)~~ (a1) The school was identified on the list published by the CDE pursuant to EC Section ~~17592.70(b)~~ 17592.72.

~~(b2)~~ (b2) The school was newly constructed prior to January 1, 2000.

(b) For subsequent fiscal years, an LEA that has a school site that is identified by the CDE pursuant to EC Section 17592.72 is eligible to submit a Form SAB 61-03.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.72, Education Code.

Amend Regulation Section 1859.322 as follows:

Section 1859.322. Emergency Repair Program Project Funding Order.

The Board shall ~~fund ERP applications~~ make apportionments on a monthly basis for Grants in the order of receipt of an Accepted Application and for Grant Adjustments in the order of receipt of a complete Form SAB 61-04, as follows:

- (a) If sufficient funding is available to provide funding to all applications presented that month, all applications will receive an full and final aApportionment of the eligible costs.
- (b) If funding is insufficient in any given month:
 - (1) ~~Apportionments~~ Grants will be provided to each application on a prorated basis with the balance placed on the Unfunded List, unless the proration will result in funding less than 25 percent of the eligible project costs. The proration shall be determined by dividing the total funds available by the total eligible costs of all applications Ready for Apportionment. All Grant Adjustments will be placed on the Unfunded List.
 - (2) If the proration, as determined in (1) above, will be less than 25 percent of the eligible project costs, the Board shall provide Grant funding at 100 percent of the eligible project costs of the Grants based on date order received until funds are no longer available and the remaining Grant applications shall be placed on the Unfunded List. All Grant Adjustments will be placed on the Unfunded List.
 - (3) The Board will continue to accept and process applications for the purpose of developing an Unfunded List based on the order of receipt of the Accepted Applications.

When funds become available, projects on the Unfunded List will be apportioned in the order of date received. From available funds, Grants will be funded first and Grant Adjustments will be funded second. After an Apportionment has been made by the Board, funds will be released automatically by the OPSC, ~~and~~ If local funds have been expended, the Apportionment must be used by the LEA to reimburse the special reserve fund and the original source of funds used to make the LEA expenditures for the ERP project.

Once ~~eight hundred million dollars (\$800,000,000) has been apportioned by the Board~~ all ERP funds have been depleted, any applications that have received a prorated Apportionment, a Grant, or a Grant Adjustment will be deemed a full and final Apportionment, any applications remaining fully unfunded on the Unfunded List will be returned to the LEA, and the Unfunded List shall be dissolved.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Sections 17592.71 and 17592.72, Education Code.

Amend Regulation Section 1859.323 as follows:

Section 1859.323. Eligible Project Costs.

~~Reimbursement~~ Funding will be provided to meet the LEA share of the repair costs of Emergency Facilities Needs as defined in Education Code Section 17592.72(c)(1). To be eligible for funding consideration, the total project cost request on the Form SAB 61-03 must be \$5000 or higher unless the LEA can justify its request for a lesser amount. ~~Reimbursement~~ Funding of eligible projects costs shall be limited to the minimum work required on existing structural components or building systems to mitigate the health and safety hazard.

Replacement of existing structural components or building systems is permissible provided the project is in compliance with provisions of Section 1859.323.1.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.72, Education Code.

Amend Regulation Section 1859.323.1 as follows:

Section 1859.323.1. Replacement Projects

~~Full reimbursement~~ Funding of eligible replacement costs shall be provided only if it is more cost-effective to replace rather than repair a structural component or building system that poses a health or safety threat to pupils or staff

while at school. For purposes of this section, it is more cost-effective to replace a structural component or building system when the estimated cost of an eligible repair is at least 75 percent of the cost of replacement.

If the cost to repair the component or system is less than 75 percent of the current replacement cost and the district elects to replace the component or system, then ~~reimbursement~~ Grant funding shall be equal to the lesser of either:
(a) ~~The cost of repair divided by the estimated cost to replace, multiplied by the actual eligible replacement cost~~
(b) ~~The estimated cost of repair.~~ Projects that use this option are not eligible for an increase to the Grant at the time of Grant Adjustment pursuant to Section 1859.324.1.

If the request is for replacement components or systems, a cost comparison must be prepared ~~and submitted with the Form SAB 61-03 to the OPSC.~~ The cost comparison shall consist of a repair cost estimate and a Like-Kind Material/System replacement cost estimate provided by qualified individual(s) or firm(s).

Replacement of a structural component or building system shall be limited to the use of a Like-Kind Material/System except when the work in the project proposes to use an alternative building material or system which is requested by the LEA ~~and is less costly than a Like-Kind Material/System replacement.~~ The cost comparison must also include the estimated cost of replacement using an alternative building material or system. If replacement with an alternate material/system is more costly than replacement with a Like-Kind Material/System, the LEA will receive funding for the alternate material/system in an amount not to exceed the cost of replacement with a Like-Kind Material/System. If it is determined that the only possible replacement is with the alternate material/system, the LEA will receive funding for the actual cost of replacement with the alternate material/system.

If the request is for replacement components or systems that included structural deficiencies, the cost comparison must also include a report from a licensed design professional identifying the minimum work necessary to obtain Division of the State Architect's approval.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.72, Education Code.

Amend Regulation Section 1859.323.2 as follows:

Section 1859.323.2. Ineligible Expenditures.

An Emergency Repair Program Grant may not be used for any of the following:

- (a) New square footage, components, or building systems that did not previously exist.
- (b) Nonessential Repairs.
- (c) Cosmetic Repairs.
- (d) Land acquisition.
- (e) Furniture and equipment.
- (f) Salaries of LEA employees except when permitted pursuant to Public Contract Code Section 20114.
- (g) Costs covered under warranty or by insurance.
- (h) Costs normally borne by others including, but not limited to, public utility companies.
- (i) Costs to repair or replace facilities with structural damage if the project meets the facility hardship or rehabilitation criteria set forth in School Facility Program Regulation Sections 1859.82 and 1859.83(e).
- (j) Any administrative and application filing fees.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.72, Education Code.

Amend Regulation Section 1859.324 as follows:

Section 1859.324. ~~Reimbursement~~ Funding.

An Emergency Repair Program Grant shall be used to reimburse ~~fund the LEA's~~ for eligible costs, as defined by Sections 1859.323 and 1859.323.1, ~~that meet all of the following provisions as follows:~~

- (a) For schools ranked in deciles one to three, inclusive, based on the 2003 Academic Performance Index that meet requirements defined by Section 1859.321(a) and all of the following provisions:
- (a1) If contracts for services or work were signed for the project, contracts must have been entered into on or after September 29, 2004.
 - (b2) Funds must have been Expended on or after September 29, 2004 and prior to the submittal of the Form SAB 61-03 to the OPSC.
 - (3) Accepted Applications on or before June 30, 2007. If these ERP regulations are not in effect by March 31, 2007, LEAs may submit applications for 90 days following the effective date of the regulations.
- (b) For schools ranked in deciles one to three, inclusive, based on the 2006 Academic Performance Index that meet requirements defined by 1859.321(b) and all of the following provisions:
- (1) If contracts for services or work were signed for the project, contracts must have been entered into on or after July 1, 2005.
 - (2) Funds must have been Expended on or after July 1, 2005.
 - (3) Accepted Applications on or before June 30, 2010.
- (c) For schools ranked in deciles one to three, inclusive, based on the 2009 Academic Performance Index that meet requirements defined by 1859.321(b) and all of the following provisions:
- (1) If contracts for services or work were signed for the project, contracts must have been entered into on or after July 1, 2008.
 - (2) Funds must have been Expended on or after July 1, 2008.
 - (3) Accepted Applications on or before June 30, 2013.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.72, Education Code.

Adopt Regulation Section 1859.324.1 as follows:

Section 1859.324.1. Grant Adjustments

After review of a Form SAB 61-04, projects that require a Grant Adjustment will be presented to the Board for approval based upon one of the following review determinations:

- (a) If the expenditures are less than the Grant, the Grant will be deemed the full and final apportionment for the project and the OPSC shall recommend to the Board that the Apportionment be reduced by the amount of savings realized by the LEA. The savings, which include any interest earned on the Grant funds, either declared by the LEA or determined by the OPSC, must be returned to the State. Upon the approval of the recommendation by the Board, the LEA must submit a warrant for any amount identified as being owed within 60 days of the Board's action. If the LEA fails to make the required payment within 60 days, the OPSC shall notify the Controller and the LEA in writing, and the Controller shall deduct an amount equal to the amount received by the LEA under this subdivision from the LEA's next principal apportionment or apportionments of state funds to the LEA, other than basic aid apportionments required by Section 6 of Article IX of the California Constitution. Any amounts obtained pursuant to this Section shall be deposited into the School Facilities Emergency Repair Account and will be made available for the funding of future ERP Grants and Grant Adjustments.
- (b) If the expenditures are greater than the Grant apportionment, provided the additional expenditures are associated with the project's original scope, the OPSC shall recommend to the Board that the Apportionment be increased. The Grant Adjustment will be deemed as the full and final apportionment for the project.
- (c) If the expenditures are equal to the Grant, no further Board action is necessary. The Grant will be deemed as the full and final apportionment for the project.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Sections 17592.72 and 17592.73, Education Code.

Section 1859.325. School Facility Due Diligence.

To ensure that the LEA is exercising due diligence in the administration of its facility accounts and is using an Emergency Repair Program Apportionment to supplement existing funding for the maintenance of school facilities, the OPSC may conduct a review of the LEA's facility maintenance accounts pursuant to the provisions of Section 1859.328.

In the event that the Board finds that an LEA is failing to exercise due diligence or supplanting has occurred, the Board shall notify the county superintendent of schools in which the LEA is located and may deny future funding under these regulations.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.72, Education Code.

Amend Regulation Section 1859.326 as follows:

Section 1859.326. ~~Emergency Repair Program Application~~ Expenditures and Audit.

The projects shall be subject to audit to ensure that the expenditures incurred by the LEA were made in accordance with the provisions of Sections 1859.323, 1859.323.1, 1859.323.2, 1859.324, 1859.327, and 1859.328 through 1859.325, inclusive.

After a full and final Apportionment has been made pursuant to Regulation Section 1859.324.1, and should the OPSC ~~notifies~~ the LEA of an impending ERP audit of the expenditures reported on the Form SAB 61-034, an audit by the OPSC shall commence within six months. Once the audit has commenced, ~~t~~The OPSC shall complete the audit within six months of the notification unless additional information requested from the LEA has not been received.

Should the OPSC conduct an audit of the expenditures and information provided by the LEA, which may include certifications, for the project and make a finding that some or all of the expenditures were not made in accordance with the provisions of EC Section 17592.72(c) and Regulation Sections 1859.323 through 1859.325 329 inclusive, the OPSC shall recommend to the Board that the Apportionment be adjusted based on the audit findings. Upon adoption of the audit findings by the Board, the LEA must submit a warrant for any amount identified as being owed within ~~3060~~ 3060 days of the Board's action. If this does not occur, the OPSC shall initiate collection procedures as delineated in 1859.324.1(a).

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.72 and 17592.73, Education Code.

Section 1859.327. Duplication of Emergency Repair Program Expenditures.

If the LEA's expenditures for the Emergency Repair Program Grant involve proposed work also included in a SFP or DMP project, the LEA must ensure all of the following:

- (a) No work or expenditures are duplicated.
- (b) After eliminating the work to be funded with the Emergency Repair Program Grant from the SFP or DMP project, the remaining work continues to meet the SFP or DMP requirements.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.72, Education Code.

Amend Regulation Section 1859.328 as follows:

Section 1859.328. Supplement, Not Supplant, Emergency Repair Program Grant Funds.

Emergency Repair Program Grant funds must be used to supplement, not supplant funds already available for routine, deferred, planned and scheduled maintenance, or emergency repairs of school facilities. In accordance with these requirements, the LEA must comply with all of the following at the time the Accepted Application and the Form SAB 61-04 are ~~is~~ submitted to the OPSC:

- (a) Deposit the funding level required for the current fiscal year pursuant to EC Section 17070.75 in the Routine Restricted Maintenance Account, if participating in the SFP.
- (b) If participating in the DMP, the district:
 - (1) For applications submitted prior to January 1, 2006, has deposited an amount equal to the State's matching share of the maximum basic grant, calculated pursuant to EC Section 17584, for the latest available determination; and
 - (2) For applications submitted on or after January 1, 2006, has deposited an amount equal to the maximum basic grant, calculated pursuant to EC Section 17584, for the latest available determination; and
 - (3) Will deposit an amount equal to the maximum basic grant, calculated pursuant to EC Section 17584, for the next scheduled determination.
 - (4) Shall not transfer excess local funds in accordance with EC Section 17583 from the deposits made as specified in (2) and (3), above.
- (c) If either (a) or (b) are not applicable, the district must budget for the current fiscal year an amount not less than the average maintenance budget for the three previous fiscal years.
- (d) In an effort to ensure that each of its schools is maintained in good repair, the LEA shall expend or encumber by issuing a purchase order or entering into a legal contract or document, or dedicate funds from the sources listed in subsections (a) through (c), above, to correct problems identified in the facilities inspection system required pursuant to EC Section 17070.75(e), which may include items listed in the DMP five-year plan, or the Interim Evaluation Instrument that do not qualify for funding as described in EC Section 17592.72(c)(1). For those projects eligible for ERP funding, the LEA may seek ~~reimbursement~~ funding at any time provided that the LEA has or will meet the above requirements.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Sections 17592.72 and 17592.73, Education Code.

Amend Regulation Section 1859.329 as follows:

Section 1859.329. Withdrawal and Amendment of Applications.

In the event an LEA has omitted ~~costs~~ expenditures from the Form SAB 61-03 at the time of submittal and the project has not received an Grant Apportionment from the Board, the LEA may withdraw its application and resubmit a revised Form SAB 61-03. The resubmitted application shall receive a new processing date by the OPSC. If the Board has already provided an Grant apportionment for the project, the LEA may request the additional cost on the Form SAB 61-04. Additional expenditures must be associated with the project's original scope. If the Board has already provided an ~~Apportionment~~ Grant Adjustment for the project, the LEA will not be able to receive additional funding for the project and the Apportionment provided by the Board will be considered full and final.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Sections 17592.72 and 17592.73, Education Code.

Adopt Regulation Section 1859.330 as follows:

Section 1859.330. Time Limit on Grant Apportionment.

The LEAs that receive ERP Grants shall comply with all of the following provisions:

- (a) When the Division of State Architect's review and approval is not required, within 12 months of the Grant apportionment the LEA shall:
 - (1) Complete the emergency repair or replacement; and
 - (2) Submit the Form SAB 61-04 to the OPSC.

(b) When the Division of State Architect's review and approval is required, within 18 months of the Grant apportionment the LEA shall:

- (1) Complete the emergency repair or replacement; and
- (2) Submit the Form SAB 61-04 to the OPSC.

If the LEA does not meet the Time Limit on Grant Apportionment, the Apportionment will be rescinded without further Board action. Within 60 days of the OPSC notification, the LEA must submit to the State a warrant for the amount of the Apportionment and any interest earned on State funds. If this does not occur, the OPSC shall initiate collection procedures as delineated in 1859.324.1(a). Any rescinded funds returned to the State will be made available for the funding of future ERP Grants and Grant Adjustments. The LEA may re-file Form SAB 61-03 to request a Grant for the rescinded projects provided it meets the provisions of Section 1859.324 at the time of re-filing.

Note: Authority Cited: Sections 17592.72 and 17592.73, Education Code.

Reference: Section 17592.72, Education Code.

Local Educational Agencies (LEAs) are encouraged to consider the utilization of “environmentally preferable purchasing” (EPP) for all their projects, including those projects seeking funding under the Emergency Repair Program (ERP). EPP is the procurement or acquisition of goods and services that have a lesser or reduced effect on human health and the environment when compared with competing goods or services that serve the same purpose. It provides an opportunity to improve the overall health and safety conditions at school facilities. Though the ERP is intended to provide funding for the minimal work necessary for the mitigation of health and safety risks, this objective can often be met with the utilization of EPP. More information about EPP products and sources can be found on the Green California Web site at www.green.ca.gov/EPP.

GENERAL INFORMATION AND REQUIRED DOCUMENTATION

The LEA shall use this form to apply for funding of Emergency Facilities Needs repairs under the Emergency Repair Program (ERP) at eligible schools sites as defined by Section 1859.321. An LEA must submit the following documentation with this form for each project requested on this application:

1. **Documentation:** Provide documentation that sufficiently substantiates the health and safety threat, which must include one or more of the following, as appropriate:
 - Signed copy of the Interim Evaluation Instrument (IEI) identifying the project as a health and safety threat
 - Copies of complaints made by parents, students, or staff referencing the problem
 - Inspection report by qualified individual(s) or firm(s)
 - Work orders that identify the health and safety threat
 - Photos showing the condition of the project prior to the repair work being performed
 - Other forms of documentation that substantiate the health and safety threat
2. **Cost Estimate:** All estimates must be as detailed as possible and no lump sum estimates will be accepted. Furthermore, the estimates must have been prepared by qualified individuals or firms. For force account labor projects, LEAs may provide an estimate by submitting a completed Force Account Labor Worksheet, which is available on the OPSC Web site.

The LEA must retain the following documents on file should the OPSC request them at the time of audit (see Part C. Certifications):

1. DSA Approved Plans and Specifications, if required
2. For Replacement Projects (pursuant to Regulation Section 1859.323.1), LEAs must retain a cost comparison on file which must include all of the following:
 - Estimate to Repair the system/component
 - Estimate to Replace the system/component with a Like-Kind Material/System
 - For alternative building material/system replacement projects, the LEA must additionally retain an Estimate to Replace the system/component with an alternative building material/system

All estimates must be as detailed as possible and no lump sum estimates will be accepted. Furthermore, the estimates must have been prepared by qualified individuals or firms but are not required to be prepared by the same person(s).

SPECIFIC INSTRUCTIONS

Part A. Project Information

The LEA must complete one Project Detail box for each Type of Project that will be/has been repaired or replaced.

- **DSA Approval:** If any of the work indicated in any of the Project Detail boxes requires DSA approval, the LEA must check “Yes.” Otherwise the LEA must check “No.”
- **Type of Project:** Choose project type indicating the type of building system or structural component the project is addressing. The LEA may indicate only one building system or structural component per Project Detail box completed. Multiple Project Detail boxes may be completed. Use additional sheets if necessary.
- **Project(s) Cost:** Provide the total eligible cost based on the LEA’s estimate(s) and/or actual cost(s).
- **Statement of Health and Safety Condition:** Provide a concise statement of the condition(s) and how it posed/poses a threat to the health and safety of the students and staff at the school site.
- **Type of Health/Safety Document(s) Attached:** Check the box(es) that identifies the type of health/safety document(s) enclosed with the LEA’s application submittal.

Part B. Total Grant Request

Provide the Total Grant Request based on the combined total of the LEA’s estimate(s) and/or actual cost(s) for all Types of Projects requested on this application. If the Total Grant Request is less than \$5,000.00, the LEA must justify its request in the space provided.

Part C. Certifications

The LEA representative must complete this section.

LOCAL EDUCATIONAL AGENCY (LEA)	APPLICATION NUMBER (OPSC USE ONLY) 61/
SCHOOL NAME	FIVE-DIGIT DISTRICT CODE (SEE CALIFORNIA PUBLIC SCHOOL DIRECTORY)
COUNTY	SEVEN-DIGIT SITE CODE (SEE CALIFORNIA PUBLIC SCHOOL DIRECTORY)

PROJECT TYPES:

- Communication Systems • Electrical • Fire Detection/Alarm and/or Sprinkler System • Flooring Systems • Gas • Hazardous Materials • HVAC • Paving
- Pest/Vermin Infestation • Plumbing • Roofing • Structural Damage • Wall Systems • Windows/Doors/Gates • Other

A. PROJECT DETAIL (Complete one box for each type of project at this site. Use additional sheets if necessary.):

Will any of the work in the project(s) contained in this Grant Request require DSA approval? Yes No

1. Type of Project (choose one from Project Types above): _____
 Project(s) Cost: Estimate Actual (check all that apply) \$ _____
 Statement of Health and Safety Condition: _____
 Type of Health/Safety Document(s) Attached: Photo IEL Complaint Work Order Inspection Report Other _____

2. Type of Project (choose one from Project Types above): _____
 Project(s) Cost: Estimate Actual (check all that apply) \$ _____
 Statement of Health and Safety Condition: _____
 Type of Health/Safety Document(s) Attached: Photo IEL Complaint Work Order Inspection Report Other _____

3. Type of Project (choose one from Project Types above): _____
 Project(s) Cost: Estimate Actual (check all that apply) \$ _____
 Statement of Health and Safety Condition: _____
 Type of Health/Safety Document(s) Attached: Photo IEL Complaint Work Order Inspection Report Other _____

4. Type of Project (choose one from Project Types above): _____
 Project(s) Cost: Estimate Actual (check all that apply) \$ _____
 Statement of Health and Safety Condition: _____
 Type of Health/Safety Document(s) Attached: Photo IEL Complaint Work Order Inspection Report Other _____

B. TOTAL GRANT REQUEST: § _____

If the Total Grant Request is less than \$5,000.00, the LEA must justify this request in the space below.

C. CERTIFICATIONS

I certify, as the LEA Representative, that the information reported on this form is true and correct and that:

- I am designated as an authorized representative by the governing board of the LEA as of _____ ; and,
- The repairs in this project were/are necessary to mitigate conditions that pose(d) a threat to the health and safety of pupils or staff while at school; and,
- The LEA has/will complied/comply with all laws pertaining to the repair of its school facilities;
- The LEA has/will complied/comply with the Public Contract Code; and,
- The LEA has satisfied the supplement, not supplant requirement as defined in Section 1859.328; and,
- The contracts for services or work in this project were not entered into prior to the date specified in Section 1859.324; and,
- The LEA understands that some or all of the funding for the project may be returned to the State as a result of an audit finding pursuant to Regulation Section 1859.326 and 1859.327;
- The LEA will/has comply/complied with Regulation Section 1859.323.2(h) when making repairs to leased facilities; and
- The LEA has on file all cost estimates required for replacement projects as stipulated in the General Information and Required Documentation section on this form and will make these documents available in the event the OPSC requests them for purposes of audit; and,
- The LEA will/has obtain/obtained the Division of State Architect's approval of the plans and specifications, if required, which will be/are on file at the LEA office for OPSC review; and
- The LEA will/has retain/retained on file all appropriate support documentation for this project. For the list of necessary documents please refer to the General Information and Required Documentation section of the Form SAB 61-04.
- This form is an exact duplicate (verbatim) of the form provided by the Office of Public School Construction. In the event a conflict should exist, then the language in the OPSC form will prevail.

I certify under penalty of perjury under the laws of the State of California that the statements in this application and supporting documents are true and correct.

NAME OF LEA REPRESENTATIVE (PRINTED OR TYPED)	TITLE		
SIGNATURE OF LEA REPRESENTATIVE	DATE		
ADDRESS	CITY	STATE	ZIP
TELEPHONE NUMBER	E-MAIL ADDRESS		

**EXPENDITURE REPORT
EMERGENCY REPAIR PROGRAM****GENERAL INFORMATION AND REQUIRED DOCUMENTATION**

A Local Educational Agency (LEA) may use this form to report expenditures under the Emergency Repair Program (ERP) that support the Grant previously received. The LEA must retain the following documents, as appropriate, on file should the OPSC request them at the time of audit:

- Construction Contract(s) and supporting documentation [pursuant to Public Contract Code (PCC) Section 20111(b)]
- Schedule of Values
- DSA Approved Plans and Specifications and any change orders
- Cost comparison pursuant to Regulations Section 1859.323.1
- Purchase Order(s) and/or Purchase Agreement(s)
- Architect Agreement(s) and Schedule of Fees
- Qualification Appraisal documents (pursuant to Government Code 4526)
- Copy of Vendor Invoices
- Copy of Warrant(s) or Payment Voucher(s)
- For Force Account Labor Projects [pursuant to PCC Section 20114(a)], the OPSC Force Account Labor Worksheet or other documentation that contains the following information:
 - *Employee name(s)*
 - *Number of hours each employee spent on project*
 - *Hourly wages*

SPECIFIC INSTRUCTIONS**Part A. Project Detail**

The LEA must complete one Project Detail line for each corresponding Project Detail box that was previously reported on the Form SAB 61-03. LEAs may print additional copies of page 2 as necessary to complete expenditure information.

- **Type of Project:** Choose project type indicating the type of building system or structural component for which the LEA previously requested funding on the Form SAB 61-03. The LEA may indicate only one building system or structural component per line. The numbered lines must correspond with the numbered Project Detail boxes on the Form SAB 61-03.
- **Project(s) Cost:** Provide a breakdown of the total eligible cost based on the LEA's actual cost(s).

Part B. Total Expenditure Amount

Provide the total expenditures based on the combined Total Project Cost(s) as reported in the Project Details box(es).

Part C. Certifications

The LEA representative must complete this section.

DRAFT

LOCAL EDUCATIONAL AGENCY (LEA)	APPLICATION NUMBER 61/
SCHOOL NAME	FIVE-DIGIT DISTRICT CODE (SEE CALIFORNIA PUBLIC SCHOOL DIRECTORY)
COUNTY	SEVEN-DIGIT SITE CODE (SEE CALIFORNIA PUBLIC SCHOOL DIRECTORY)

PROJECT TYPES:

- Communication Systems
- Electrical
- Fire Detection/Alarm and/or Sprinkler System
- Flooring Systems
- Gas
- Hazardous Materials
- HVAC
- Paving
- Pest/Vermin Infestation
- Plumbing
- Roofing
- Structural Damage
- Wall Systems
- Windows/Doors/Gates
- Other

A. PROJECT DETAIL

Complete one Project Detail line for each Type of Project as previously reported on the Form SAB 61-03. LEAs may print additional copies of this page as necessary to complete expenditure information.

TYPE OF PROJECT (INDICATE PROJECT TYPE FROM ABOVE)	DSA NUMBER (IF APPLICABLE)	PLANNING COST	REPAIR/REPLACEMENT COST	TESTING	INSPECTION	TOTAL PROJECT COST
1.		\$	\$	\$	\$	\$
2.		\$	\$	\$	\$	\$
3.		\$	\$	\$	\$	\$
4.		\$	\$	\$	\$	\$
5.		\$	\$	\$	\$	\$
6.		\$	\$	\$	\$	\$
7.		\$	\$	\$	\$	\$
8.		\$	\$	\$	\$	\$
9.		\$	\$	\$	\$	\$
10.		\$	\$	\$	\$	\$
11.		\$	\$	\$	\$	\$
12.		\$	\$	\$	\$	\$
13.		\$	\$	\$	\$	\$
14.		\$	\$	\$	\$	\$
TOTALS		\$	\$	\$	\$	\$

B. TOTAL EXPENDITURE AMOUNT (Combined Project Detail Totals): \$ _____

C. CERTIFICATIONS

I certify, as the LEA Representative, that the information reported on this form is true and correct and that:

- I am designated as an authorized representative by the governing board of the LEA as of _____; and,
- The LEA has on file all appropriate support documentation as stipulated in the General Information and Required Documentation section on this form and will make these documents available in the event the OPSC requests them for purposes of audit; and,
- The repairs in this project were necessary to mitigate conditions that posed a threat to the health and safety of pupils or staff while at school; and,
- The expenditures reported are within the original scope of the work identified in the Grant Request for this project; and,
- The LEA has complied with all laws pertaining to the repair of its school facilities; and,
- The LEA has complied with the Public Contract Code; and,
- The LEA has satisfied the supplement, not supplant requirement as defined in Section 1859.328; and,
- The expenditures for this project did not duplicate expenditures included in a School Facility Program, Deferred Maintenance Program or ERP project; and,
- The construction activities for this project(s) are completed; and,
- The LEA has complied with Regulation Section 1859.323.1 when replacing systems or components and has obtained a cost comparison which is on file at the LEA office for OPSC review; and,
- The LEA has complied with Regulation Section 1859.323.2(h) when making repairs to leased facilities; and
- The contracts for services or work in this project were not entered into prior to the date specified in Section 1859.324; and,
- The LEA understands that expenditures occurring after the submittal of this Expenditure Report are ineligible for reimbursement; and,
- Unless the project is determined to require a Grant Adjustment pursuant to ERP regulations Section 1859.234.1, that the grant amount previously provided by the Board shall be deemed a full and final apportionment, and that all Grant Adjustments are full and final; and,
- The LEA understands that some or all of the funding for the project may be returned to the State as a result of an audit pursuant to Regulation Sections 1859.326 and 1859.327; and,
- The LEA has obtained the Division of State Architect's approval of the plans and specifications, if required, which are on file at the LEA office for OPSC review; and
- This form is an exact duplicate (verbatim) of the form provided by the Office of Public School Construction. In the event a conflict should exist, then the language in the OPSC form will prevail.

I certify under penalty of perjury under the laws of the State of California that the statements in this application and supporting documents are true and correct.

NAME OF LEA REPRESENTATIVE (PRINTED OR TYPED)	TITLE		
SIGNATURE OF LEA REPRESENTATIVE	DATE		
ADDRESS	CITY	STATE	ZIP
TELEPHONE NUMBER	E-MAIL ADDRESS		

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, January 24, 2007

ANNUAL ADJUSTMENT TO SCHOOL FACILITY PROGRAM GRANTS

PURPOSE OF REPORT

To report the annual adjustment in the School Facility Program (SFP) Grants as provided in the Education Code and Title 2 of the California Code of Regulations.

DESCRIPTION

The SFP Regulations require that various grant amounts of the SFP shall be adjusted annually based on the change in the Class B Construction Cost Index each January. At the March 2005 State Allocation Board meeting, the Board adopted for the next two years, use of the Marshall & Swift Eight California Cities Class B Construction Cost Index. The specific regulation sections are noted on the Attachment. The cost index for Class B construction increased 6.62 percent during the period of January 1, 2006 through January 1, 2007. The consent items on this agenda requesting SFP funding reflect the updated adjustments for January 2007.

In addition, Proposition 1D, Chapter 35, Statutes of 2006 (Nunez and Perata), approved by the voters at the November 2006 election, provided for a seven percent increase to the new construction base grant for elementary and middle school pupils and a four percent increase for high school pupils retroactive to July 1, 2006. The figures shown on the Attachment also reflect this calculated increase.

RECOMMENDATION

Approve the increase to the grant amounts as provided on the Attachment for the use of SFP applications approved on or after January 1, 2007.

This Item was approved by the State Allocation Board on January 24, 2007.

ATTACHMENT

ANNUAL ADJUSTMENT TO SCHOOL FACILITY PROGRAM GRANTS
State Allocation Board Meeting, January 24, 2007

Grant Amount Adjustments

		Regulation Section	Current Adjusted Grant Per Pupil Effective 1-1-06	Adjusted Grant Per Pupil Effective 1-1-07
New Construction	Elementary	1859.71	\$7,579 *	\$8,081
	Middle	1859.71	\$8,015 *	\$8,546
	High	1859.71	\$10,198 *	\$10,873
	Special Day Class – Severe	1859.71.1	\$22,572	\$24,066
	Special Day Class – Non-Severe	1859.71.1	\$15,096	\$16,095
	Automatic Fire Detection/Alarm System – Elementary	1859.71.2	\$9	\$10
	Automatic Fire Detection/Alarm System – Middle	1859.71.2	\$13	\$14
	Automatic Fire Detection/Alarm System – High	1859.71.2	\$22	\$23
	Automatic Fire Detection/Alarm System – Special Day Class – Severe	1859.71.2	\$41	\$44
	Automatic Fire Detection/Alarm System – Special Day Class – Non-Severe	1859.71.2	\$28	\$30
	Automatic Sprinkler System – Elementary	1859.71.2	\$135	\$144
	Automatic Sprinkler System – Middle	1859.71.2	\$161	\$172
	Automatic Sprinkler System – High	1859.71.2	\$166	\$177
	Automatic Sprinkler System – Special Day Class – Severe	1859.71.2	\$426	\$454
	Automatic Sprinkler System – Special Day Class – Non-Severe	1859.71.2	\$286	\$305
Modernization	Elementary	1859.78	\$3,059	\$3,262
	Middle	1859.78	\$3,236	\$3,450
	High	1859.78	\$4,236	\$4,516
	Special Day Class - Severe	1859.78.3	\$9,746	\$10,391
	Special Day Class – Non-Severe	1859.78.3	\$6,521	\$6,953
	State Special School – Severe	1859.78	\$16,249	\$17,325
	Automatic Fire Detection/Alarm System – Elementary	1859.78.4	\$98	\$104
	Automatic Fire Detection/Alarm System – Middle	1859.78.4	\$98	\$104
	Automatic Fire Detection/Alarm System – High	1859.78.4	\$98	\$104
	Automatic Fire Detection/Alarm System – Special Day Class – Severe	1859.78.4	\$273	\$291
	Automatic Fire Detection/Alarm System – Special Day Class – Non-Severe	1859.78.4	\$183	\$195
	Over 50 Years Old – Elementary	1859.78.6	\$4,249	\$4,530
	Over 50 Years Old – Middle	1859.78.6	\$4,494	\$4,792
	Over 50 Years Old – High	1859.78.6	\$5,884	\$6,274
	Over 50 Years Old – Special Day Class – Severe	1859.78.6	\$13,543	\$14,440
	Over 50 Years Old – Special Day Class – Non-Severe	1859.78.6	\$9,056	\$9,656
	Over 50 Years Old – State Special School – Severe	1859.78.6	\$22,572	\$24,066

* Grant Increase approved pursuant to Proposition 1D.

ANNUAL ADJUSTMENT TO SCHOOL FACILITY PROGRAM GRANTS

Grant Amount Adjustments

New Construction / Modernization / Joint-Use	Regulation Section	Current Adjusted Grant Per Pupil Effective 1-1-06	Adjusted Grant Per Pupil Effective 1-1-07
Therapy/Multipurpose Room/Other (per square foot)	1859.72 1859.73.2 1859.82 1859.125 1859.125.1	\$130	\$139
Toilet Facilities (per square foot)	1859.72 1859.73.2 1859.82 1859.125 1859.125.1	\$236	\$252
New Construction Only			
Parking Spaces	1859.76	\$10,215	\$10,891
General Site Grant (per acre for additional acreage being acquired)	1859.76	\$13,056	\$13,920
Project Assistance (for school district with less than 2,500 pupils)	1859.73.1	\$4,847	\$5,168
Modernization Only			
Two-stop Elevator	1859.83	\$81,712	\$87,121
Additional Stop	1859.83	\$14,706	\$15,680
Project Assistance (for school district with less than 2,500 pupils)	1859.78.2	\$2,584	\$2,755
Facility Hardship / Rehabilitation			
Current Replacement Cost - Other (per square foot)	1859.2	\$262	\$279
Current Replacement Cost - Toilets (per square foot)	1859.2	\$472	\$503
Interim Housing – Financial Hardship (per classroom)	1859.81	\$26,926	\$28,709
Charter School Facilities Program - Preliminary Apportionment Amounts			
Charter School Elementary	1859.163.1		\$8,120
Charter School Middle	1859.163.1		\$8,597
Charter School High	1859.163.1		\$11,229
Charter School Special Day Class - Severe	1859.163.1		\$25,874
Charter School Special Day Class - Non-Severe	1859.163.1		\$17,304

(Continued on Page Three)

ANNUAL ADJUSTMENT TO SCHOOL FACILITY PROGRAM GRANTS

New School Adjustments (Regulation Section 1859.83)

Class-rooms in Project	Elementary School Previous Grant Effective 1-1-06	Elementary School Adjusted Grant Effective 1-1-07	Middle School Previous Grant Effective 1-1-06	Middle School Adjusted Grant Effective 1-1-07	High School Previous Grant Effective 1-1-06	High School Adjusted Grant Effective 1-1-07	Alternative Education New School Effective 1-1-06	Alternative Education New School Effective 1-1-07
1	\$217,900	\$232,325	\$917,906	\$978,671	\$1,996,509	\$2,128,678	\$592,008	\$631,199
2	\$513,428	\$547,417	\$1,029,578	\$1,097,736	\$2,076,863	\$2,214,351	\$718,253	\$765,801
3	\$770,821	\$821,849	\$1,143,976	\$1,219,707	\$2,567,138	\$2,737,083	\$1,255,596	\$1,338,716
4	\$976,466	\$1,041,108	\$1,269,268	\$1,353,294	\$3,002,937	\$3,201,731	\$1,412,606	\$1,506,121
5	\$1,146,699	\$1,222,610	\$1,400,008	\$1,492,689	\$3,306,636	\$3,525,535	\$1,569,618	\$1,673,527
6	\$1,390,477	\$1,482,527	\$1,532,111	\$1,633,537	\$3,610,334	\$3,849,338	\$1,726,629	\$1,840,932
7	\$1,636,976	\$1,745,344	\$1,664,213	\$1,774,384	\$3,914,032	\$4,173,141	\$1,883,638	\$2,008,335
8	\$1,826,277	\$1,947,177	\$1,808,573	\$1,928,301	\$4,148,275	\$4,422,891	\$2,048,493	\$2,184,103
9	\$1,826,277	\$1,947,177	\$1,961,102	\$2,090,927	\$4,336,213	\$4,623,270	\$2,218,741	\$2,365,622
10	\$2,147,679	\$2,289,855	\$2,114,994	\$2,255,007	\$4,522,792	\$4,822,201	\$2,388,989	\$2,547,140
11	\$2,147,679	\$2,289,855	\$2,268,886	\$2,419,086	\$4,710,729	\$5,022,579	\$3,049,636	\$3,251,522
12	\$2,260,714	\$2,410,373			\$4,882,327	\$5,205,537	\$3,219,883	\$3,433,039
13					\$5,051,198	\$5,385,587	\$3,390,132	\$3,614,559
14					\$5,220,071	\$5,565,640	\$3,560,381	\$3,796,078
15					\$5,390,308	\$5,747,146	\$3,730,628	\$3,977,596
16					\$5,559,177	\$5,927,195	\$3,900,877	\$4,159,115
17					\$5,729,414	\$6,108,701	\$4,071,125	\$4,340,633
18					\$5,898,286	\$6,288,753	\$4,241,373	\$4,522,152
19					\$6,067,159	\$6,468,805	\$4,411,621	\$4,703,670
20					\$6,237,392	\$6,650,307	\$4,581,868	\$4,885,188
21					\$6,406,267	\$6,830,362	\$4,752,240	\$5,066,838
22					\$6,575,139	\$7,010,413	\$4,922,488	\$5,248,357
23							\$5,092,737	\$5,429,876
24							\$5,262,984	\$5,611,394
25							\$5,433,230	\$5,792,910
26							\$5,603,482	\$5,974,433
27							\$5,773,729	\$6,155,950

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, January 24, 2007

CHARTER SCHOOL FACILITIES PROGRAM
AGREEMENTS

PURPOSE OF REPORT

To present a final copy of the required Charter School Agreements for the Charter School Facilities Program (CSFP), and to request that the State Allocation Board (SAB) authorize the Executive Officer to sign the agreements on behalf of the Board.

BACKGROUND

Propositions 47, 55 and 1D established the CSFP within the existing School Facility Program (SFP) providing a total of \$900 million for preliminary apportionments. This program provides qualified applicants with a preliminary apportionment for the construction of new charter schools, additions to existing charter schools or the rehabilitation of existing school district facilities for charter school purposes. Funds are provided for this program by a 50 percent State grant and a 50 percent local matching share requirement. Charter schools and districts may elect to receive their local matching share funds in the form of a lease from the State.

The California School Finance Authority (Authority), with input from Staff and legal counsel, interested school districts, and charter schools, drafted a final version of the following three agreements: the Memorandum of Understanding (MOU), which outlines the roles and responsibilities of all parties involved in the CSFP project; the Funding Agreement, which sets forth the repayment terms of the local matching share amount; and the Use Agreement, which is created and entered into by the school district and charter school. The first two Charter School Agreements must be signed by the State; the Use Agreement is reviewed by the Authority. The required signatories for each agreement are indicated in the chart below:

Document	Signatory		
	State	School District	Charter School
Memorandum of Understanding	X	X	X
Funding Agreement	X		X
Use Agreement		X	X

For purposes of these agreements, the State is both the SAB and the Authority. Per legal counsel opinion, for the protection of all parties, all three agreements must be executed prior to any fund release. In the event that the charter school does not elect to receive the local matching share for the project in the form of a lease from the State, the Funding Agreement will not be required and the MOU will be modified to omit any references to repayment of a lease. Prior to signing, all parties have the option to review the agreements with their legal counsel.

The Charter School Agreement templates that were approved by the Authority on June 29th, 2006 were brought before the SAB in October 2006. However, as the versions originally presented did not include some of the changes to which the State, charter schools and school districts had already agreed, and because there was hesitation on the part of some school districts to sign the agreements, staff was directed to continue working with interested parties on the content.

AUTHORITY

Pursuant to Education Code (EC) Section 17078.54(d), facilities funded by the CSFP have a 50 percent local matching share obligation that may be paid through lease payments.

Pursuant to EC Section 17078.57, the California School Finance Authority, in consultation with the Board shall establish uniform terms and conditions of the lease, including the payment process for the local matching share.

STAFF COMMENTS

The agreements presented as attachments to this item reflect changes brought about by continued discussions with the interested parties and are acceptable to legal counsel for both the Authority and the SAB. A new component that has been added at the request of the Los Angeles Unified School District (LAUSD) is reflected in Attachment A. Attachment A further clarifies areas of the project in which the LAUSD will not be involved, and for which the charter school will hold the ultimate responsibility. The State suggests that these concepts be included as a rider to the Use Agreement. These responsibilities apply only to charters that have applied for State funding on their own behalf. Districts that applied on behalf of a charter school are the applicant, and are responsible for the project. Therefore, the rider will not be included for projects in which the LAUSD is the applicant. The actual Use Agreement is not being presented to the SAB, as that agreement is between the districts and the charter schools and the State is not drafting a template. The concepts to be included in the suggested rider are being presented to the board in acknowledgement of the issues that were of concern to LAUSD that may have otherwise prevented the execution of the Charter School Agreements by the District. It is the understanding of the State that the inclusion of the points outlined in Attachment A resolves the issues that were preventing the LAUSD from going forward. Legal counsel for the Authority and the SAB have reviewed the concepts and as the original agreements did not require LAUSD to assume any of the additional responsibilities outlined, have no objections to the rider being included at the LAUSD's request. Staff has recently learned that LAUSD would prefer that the concepts be incorporated as part of the MOU. As the concepts to be added may not reflect the desires of all school districts, it is our recommendation that they not be included as part of the MOU template.

The attached agreements constitute the foundation of the terms and conditions to which all applicants must adhere. However, minor modifications (such as including the points in Attachment A as part of the MOU for LAUSD) may be made to components of the agreements if a particular project necessitates the change. Should future changes substantially alter the foundation of the agreements, the revisions will be presented to the Board prior to the execution of the documents.

The Office of Public School Construction has received notice from three charter schools that applied on their own behalf that they and their respective school districts are ready to execute the agreements as soon as the documents are available from the State. The execution of the agreements for these schools will allow for the release of advance site acquisition funds or for the final conversion of the application and therefore staff recommends the SAB approve the agreements.

RECOMMENDATIONS

1. Approve the attached Charter School Agreements.
2. Authorize the Executive Officer to sign the Charter School Agreements on behalf of the Board.

BOARD ACTION

In considering this item, the Board approved Staff's recommendations with the provision that the agreements may be modified as discussed in Staff Comments of this report.

Attachment A

Charter School Facilities Program Propositions 47 and 55

Statutory Cite: California Education Code, Part 10, Chapter 12.5, Article 12
Section 17078.52 et seq.

Pursuant to that certain meeting between the State Allocation Board, Charter School Finance Authority (“CSFA”), Office of Public School Construction (“OPSC”), and Los Angeles Unified School District (“LAUSD”) on November 28, 2006, LAUSD was asked to prepare a bullet point list of the general concepts of its role in the Charter School Facilities Program (“CSFP”).

- Section 17078.52 et seq. requires LAUSD to fulfill two (2) duties:
(1) Hold title to the project facility in trust for the State public school system; and
(2) Observe the requirements of Section 17078.62 in the event the original charter school ceases to use the facility.
- CSFA and OPSC are responsible to administer the CSFP and determine eligibility and compliance by charter schools under the program.
- LAUSD will not review or confirm compliance by a charter school to the requirements of the CSFP, including but not limited to the SAB, OPSC, CDE, DSA, DTSC, and CSFA, for grant or local matching share funding.
- LAUSD will not secure or obtain permits, approvals or other entitlements for a project facility being developed and constructed under the CSFP.
- LAUSD will not administer, oversee or confirm compliance with any permits, approvals or other entitlements, any remediation plans for a project facility.
- LAUSD will not administer, oversee, or in any way have any responsibility for the construction or completion of a project facility, including any change orders.
- LAUSD will not have any obligation to provide funding to a charter school for planning, design, construction, operation or maintenance of a project facility.
- LAUSD’s Use Agreement will require a charter school to secure the same permits, approvals and other entitlements, as it did for the initial project facilities under the CSFP, for any future renovations, modifications, expansions, or additions to a project facility or any repair, re-construction or rehabilitation of a project facility (collectively and generally referred to as “Future Work”).
- LAUSD will not review or approve of any plans and specifications for any Future Work.
- LAUSD will not administer, oversee or confirm compliance with any plans, permits, approvals or other entitlements issued for any such Future Work.

MEMORANDUM OF UNDERSTANDING

By and Among:

_____, a California Charter School;

and

_____, a California Public School District;

and

The State of California,
State Allocation Board and California School Finance Authority

ARTICLE I – PURPOSE

- A. This Memorandum of Understanding (“MOU”) is made and entered into as of _____ (“Effective Date”) by and among the State Allocation Board and the California School Finance Authority (individually or collectively referred to as the “State”); the charter school identified above, a California Charter School (“Charter School”); and the California Public School District identified above (“School District”). The provisions of this MOU shall be effective from and after the Effective Date until _____ or until all duties and obligations of the parties are carried out.
- B. The Charter School has applied to the State for financing of its charter school facilities project (“Project”) under the Charter School Facilities Program (“CSFP”) established pursuant to Article 12 of Chapter 12.5 of Part 10 of the California Education Code and the regulations for its implementation provided in Title 4, Cal. Code Regs., Section 10151, et seq., and Title 2 Cal. Code Regs., Section 1859.160, et seq. A copy of the Charter School’s application is attached hereto and incorporated herein by reference as a means of defining the Project.
- C. This MOU is intended to tie together two (2) separate legal agreements: (i) a Funding Agreement by and between the State and the Charter School;

and (ii) a Use Agreement by and between the School District and the Charter School. In accordance with the CSFP, the State is the lender of certain monetary funds to the Charter School to enable the Charter School to acquire real property and/or construct improvements thereon. This loan transaction is set forth in the Funding Agreement of which the School District is not a party to because it is not a lender and does not have obligations under said Funding Agreement. In accordance with Section 17078.57(a)(3)(A) of the California Education Code, the School District must hold title to the Project, acquired with the funds loaned by the State under the CSFP, in trust for the benefit of the state public school system. Pursuant to the CSFP, the School District as the holder in trust of the Project must provide the use of the Project to the Charter School for a charter school educational program and, hence, is the basis for the Use Agreement between the School District and the Charter School.

A copy of the Funding Agreement, attached hereto as Exhibit "A", and the School District's standard Use Agreement, attached hereto as Exhibit "B", are attached hereto and incorporated into this MOU solely for the purpose of setting forth the separate instruments for this transaction and not for the purpose of making the State a party to the Use Agreement and the School District a party to the Funding Agreement. This Memorandum of Understanding, the Funding Agreement and the Use Agreement set forth the entire agreement between the parties regarding the loan of funds and use of the real property pursuant to the CSFP. There are no understandings, agreements, representations, or warranties, express or implied, not specified herein regarding this Memorandum of Understanding, the Funding Agreement and the Use Agreement; provided, that in the event any portion of the Memorandum of Understanding, the Funding Agreement and/or the Use Agreement is held unenforceable by a court of competent jurisdiction, the remainder of the applicable agreement shall remain in full force and effect and shall not nullify the intent of the CSFP.

- D. This MOU is being entered into in accordance with the requirements of the CSFP. To the extent the MOU is inconsistent or in conflict with the provisions of the CSFP and the implementing regulations, the CSFP and implementing regulations shall prevail.

ARTICLE II – FINANCING OF THE CHARTER SCHOOL'S PROJECT

2.1 Fifty Percent Local Matching Share

- A. The Charter School's Application for *[final or preliminary]* apportionment for the Project has been approved by the State. The Charter School's Apportionment ("Apportionment") is contingent upon the Charter School paying its 50% Local Matching Share

obligation, which will be paid to the State by way of payments pursuant to the Funding Agreement.

- B. The Charter School's Application for *[final or preliminary]* apportionment for the Project has been approved by the State in the amount of _____ Dollars (\$_____.00). The State will provide funding for fifty percent (50%) of the approved costs for the Project in the amount of _____ Dollars (\$_____.00), and the Charter School will be responsible for the remaining balance of the approved costs for the Local Matching Share for the Project in the amount of _____ Dollars (\$_____.00).
- C. The Charter School will receive initial funding from the State for the Local Matching Share, less any lump sum payments made by, or on behalf of, the Charter School.

2.2 Conditions for Release of Funding

- A. The following conditions must be satisfied before the State will release funding:
 - (1) The Charter School has complied with all funding release conditions contained in Section 2.2 of the Funding Agreement.
 - (2) The Charter School agrees to utilize its apportionment for purposes consistent with the CSFP, and consistent with the purposes for which it was approved.
 - (3) Each party is duly authorized to enter, deliver, and perform this Memorandum of Understanding, the Funding Agreement, as applicable to the appropriate parties, and the Use Agreement, as applicable to the appropriate parties.

2.3 Charter School Facilities

- A. The Charter School's Project includes the real property and all improvements, repairs, replacements, substitutions, and modifications located or to be constructed on the property as described in its application for funding under CSFP ("Facilities").
- B. The Charter School's Facilities are located at _____ County, California, and is more particularly described on Exhibit "C" of the Funding Agreement, attached hereto.

- C. The Facilities are physically located within the geographical jurisdiction of the School District and the high school attendance area generating eligibility for funding, if applicable.
- D. The Charter School has satisfied itself as to the suitability of the Facilities by its own inquiries and tests. The Charter School shall, by entering into and occupying the Facilities, be deemed to have accepted the Facilities and to have acknowledged that they are in good order, condition and repair.
- E. The State and/or the School District shall not have any obligation for construction work or improvements on or to the Facilities. The Charter School has made a thorough and independent examination of the Facilities and all matters related to its decision to enter into this Agreement. The Charter School is thoroughly familiar with all aspects of the Facilities and is satisfied that they are in an acceptable condition and meet its needs. The Charter School is solely responsible for identifying the real property, evaluating the condition of the title and suitability of the land for the Charter School's intended purpose, and negotiating and closing the acquisition of the real property. In addition, the Charter School is solely responsible for the construction of all improvements, repairs, replacements, substitutions, and modifications located or to be constructed on the real property. Pursuant to the CSFP, the School District is obligated to take title to the Project in trust for the benefit of the state public school system but such obligation does not make the School District a guarantor or warrantor of the Project.

2.4 Payments

- A. The Charter School shall make payments to the State, as provided in the Funding Agreement in satisfaction of the requirements of the CSFP.
- B. This Memorandum of Understanding, the Funding Agreement and the Use Agreement shall not be deemed to constitute a debt or liability or obligation of the State, the School District, or any political subdivision thereof, or a pledge of the faith and credit or taxing power of the State or any political subdivision thereof, but shall be a special obligation payable solely from the payments made by the Charter School. The obligation to make payments does not constitute an indebtedness of the Charter School or the School District, within the meaning of any constitutional or statutory debt limitation or restriction and in all cases shall be made solely from legally available funds.

ARTICLE III – SECURITY PROVISIONS

A. The Charter School will convey to and the School District will accept conveyance of the good, absolute and marketable title to the Project in fee simple, free and clear of any mortgage, deeds of trust, liens (monetary or otherwise), claims, charges or other encumbrances or matters of any nature what so ever other than those included in any other provisions of this Agreement upon satisfaction of all of the following conditions:

(1) The Charter School shall have substantially completed the construction of the Facilities and provided to the School District the original certificate of occupancy or equivalent issued by the California Department of State Architect. The phrase "substantially completed" or "substantial completion" shall mean that standard of construction generally recognized as satisfactory for the occupation and use of the improvement subject to the completion of minimal punch list items.

(2) The Charter School shall provide proof satisfactory to the State and the School District that all liens and encumbrances that may arise from the construction of the Facilities have been released and/or satisfied.

(3) The Charter School shall provide to the State and the School District for its review and acceptance a title report and a copy of each instrument listed in said title report. The title report shall be issued no more than 30 days prior to the date of submittal.

(4) The Charter School shall provide to the State and the School District for its review and acceptance an ALTA survey, which together with (3) above, shall be sufficient for the Charter School, at its sole cost and expense, to provide the School District with a ALTA owner's policy for the benefit of the School District and the State.

(5) The Charter School shall provide to the School District for its review and files the original Final California Department of Education ("CDE") approval or Final CDE approval subject to waivers and/or exemptions to the use of real property as a school facility; provided, that if CDE has provided the Charter School any waivers and/or exemptions the Charter School shall obtain from CDE and provide to the School District a valid assignment of such waivers and/or exemptions. The purpose of the assignment is to insure that the conveyance of fee title from the Charter School to the School District will not result in a situation whereby the Facilities then become non-compliant because of the transfer of fee simple title to the School District due to those requirements and standards that are typically imposed upon the School District.

(6) The Charter School shall provide to the School District for its review and files the original "No Further Action" or "Further Action Letter" from the California Department of Toxic Substance Control ("DTSC"); provided, that

if DTSC has issued a Further Action Letter, the Charter School shall provide to the School District proof satisfactory to the School District that all requirements of the Further Action Letter have been satisfied. Simultaneously with the delivery of the foregoing, the Charter School shall deliver to the State a copy of the documents delivered to the School District.

(7) The Charter School shall provide to the School District for its review and files the final approval issued by DTSC for the final Preliminary Environmental Assessment ("PEA") for the real property, if applicable.

(8) The Charter School shall provide to the School District for its review and files the final approval of any applicable Federal, State, City or County agency necessary for the acquisition and construction of the Project, and the operation of the Facilities for an educational program conducted by the Charter School. As an example, and not as means of limitation, a charter school may require approval from the California Coastal Commission if a project will be located within its jurisdiction.

Simultaneously with the delivery of the documents and instruments required in this Article III.A, the Charter School shall delivery to the State a copy of the same documents and instruments delivered to the School District.

Title to the Facilities shall be conveyed to the School District by a Grant Deed agreed to and accepted by the School District. Title to the Facilities shall be held solely by the School District in whose boundaries the Facilities is to be located, in trust, for the benefit of the state public school system.

- B. Any person or entity providing a substantial contribution that is applied to the costs of the project in excess of the state share and the local matching share may be granted a security interest, as approved and memorialized in a written instrument executed by the State, to be satisfied from the proceeds, if any, realized when the property is ultimately disposed of. If the contribution was made for the explicit purpose of purchasing any asset with a normal life expectancy of less than twenty years, the security interest will be adjusted to reflect the depreciation of the assets. Contributions used solely to assist the applicant in meeting its local matching share shall not be entitled to a security interest. Where a contribution results in total project funding beyond the state and local matching shares, the contributor's security interest shall be limited to the amount in excess of the state share and local matching share.
- C. If a default occurs and all payments have not been made, the security interest of any person or entity providing a substantial contribution to the costs of the project shall be satisfied only after the account is reimbursed for any remaining unpaid local matching share and the School District has

been reimbursed for any costs and expenses incurred, if any, as the result of such default.

D. *<Include specific security terms for any person/entity providing a substantial contribution on this project.>*

E. Simultaneously with the execution of the Grant Deed, the Charter School and the School District shall enter into a Use Agreement, which shall be in a form substantially similar to that attached in Exhibit "B". The Use Agreement shall contain as standardized provisions the following, which must be addressed to the satisfaction of the State:

(1) The acquisition and maintenance of all required licenses or permits. Any costs associated with licenses or permits shall not become an obligation of the State.

(2) The payment of all fees, and public charges of whatever nature accessed against the Facilities, including the payment of all taxes, and costs associated with telephone, water, sewer, gas, heat, electricity, garbage disposal, trash disposal, and all other services and utilities. Such fees and charges shall not become an obligation of the State.

(3) Prohibited uses of the Facilities, and provisions for the maintenance and repair of the Facilities. The State shall not under any circumstance be required to make any improvements or install any equipment on the Facilities, make any repairs, alterations or replacements of any nature to the Facilities, make any expenditures whatsoever in connection with this Agreement or maintain the Facilities in any manner. The State shall not be required to maintain, repair or rebuild all or any part of the Facilities, and the Charter School waives the provisions of Civil Code Sections 1941 and 1942 and any other law that would require the maintenance of the Facilities in a leaseable condition or would provide the Charter School with the right to make repairs and deduct the cost of those repairs from its payments.

(4) The handling of hazardous materials.

(5) Insurance requirements, in addition to those specified in this Agreement, for all risk (special-causes-of-loss) property and fire insurance; commercial general liability insurance; rental value insurance; worker's compensation insurance; flood and earthquake insurance as necessary; and such other types of insurance or endorsements to existing insurance as may be required by the School District.

[NOTE: The above provisions were moved from the Funding Agreement into this MOU in order to bind the School District into addressing these items in the Use Agreement.]

ARTICLE IV – DEFAULT AND REMEDIES

4.1 Events of Default

The occurrence of any of the following shall constitute a “Default” or “Event of Default”:

- (1) Failure by the Charter School to commence to use and occupy the Facilities for the operation of a charter school as required.
- (2) Failure by the Charter School to make any payment when due, and such failure continues for a period of ten (10) calendar days after receiving written notice by the State;
- (3) Failure by the Charter School to maintain insurance on the Facilities or to provide reasonable evidence of insurance as required by the Funding Agreement and the Use Agreement, and where such failure continues for a period of ten (10) calendar days after receiving written notice by the State;
- (4) Failure by the Charter School to provide reasonable evidence of compliance with all requirements whether expressly stated in this Memorandum of Understanding, the Funding Agreement, or the Use Agreement or otherwise imposed by the State under the CSFP or other applicable law, or failure to observe or perform any other applicable covenant, condition or agreement, where such failure continues for thirty (30) calendar days after receiving written notice of the failure. If thirty (30) calendar days is insufficient, and the Charter School has instituted corrective action, the State, in its discretion, may extend this period up to one hundred and eighty (180) calendar days;
- (5) The Charter School shall be or become insolvent, or admit in writing its inability to pay its debts as they mature, or make an assignment for the benefit of creditors; or the Charter School shall apply for or consent to the appointment of any receiver, trustee or similar officer for it or for all or any substantial part of its property; or such receiver, trustee or similar officer shall be appointed without the application or consent of the Charter School, as the case may be, where possession is not restored in sixty (60) calendar days; or the Charter School shall institute (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction; or any such proceeding shall be instituted (by petition, application or otherwise) against the Charter School (unless, in the case of a

petition filed against the Charter School, the same is dismissed in sixty (60) days) or any judgment, writ, warrant of attachment or execution or similar process shall be issued or levied against a substantial part of the Charter School's Facilities; provided, however, in the event that any provision of this paragraph is contrary to any applicable law, it shall be of no force and effect, and not affect the validity of the remaining provisions;

- (6) The determination by the State that any representation or warranty made by the Charter School was untrue in any material respect when made;
- (7) The Charter School's charter is not renewed or is revoked, or the Charter School ceases to use the Facilities for a charter school purpose;
- (8) The Charter School shall abandon the Facilities or breach the Use Agreement; and/or
- (9) If the performance of the payment obligations of the Charter School is guaranteed, the actual or anticipatory failure or inability, for any reason, of the Guarantor to honor the guarantee as required, and the Charter School's failure to provide written alternative assurance or security, which when coupled with the Charter School's then-existing resources, equals or exceeds the combined financial resources that existed at the time this Memorandum of Understanding and the Funding Agreement are executed. The Charter School shall have sixty (60) calendar days following written notice by the State, to provide the written alternative assurance or security.

4.2 Remedies on Default

The parties acknowledge and agree that this Memorandum of Understanding, the Funding Agreement and the Use Agreement represent a unique situation that is not limited by the standard landlord's remedies provided by Sections 1951.2 and 1951.4 of the California Civil Code. The parties agree that if any Event of Default shall have occurred, any one or more of the following respective remedies, which are not exclusive but cumulative, may be pursued:

- A. If an Event of Default occurs and the Charter School continues to occupy and/or possess the Project, the Charter School shall remain liable for the performance of all of the obligations of the Charter School under and subject to the Funding Agreement, as amended, and the Use Agreement, as amended, including, without limitation,

the obligation to make payments to the State when due under the Funding Agreement.

- B. If the Event of Default is solely because the School District has revoked or declined to renew the Charter School's charter, in accordance with Section 17078.62(b)(1) of the Education Code, the Charter School shall:

(1) have that time period specified in Section 17078.62 of the Education Code, as may be amended, to complete the review process contemplated in Section 47607 or 47607.5 of the Education Code, as may be amended; and

(2) so long as the Charter School continues to use and occupy the Facilities, remain liable for the performance of all of the obligations of the Charter School under the Funding Agreement, as may be amended, and the Use Agreement, as may be amended, including, without limitation, the obligation to make payments to the State when due under the Funding Agreement.

- C. If the Event of Default is solely because the School District has revoked or declined to renew the Charter School's charter, the Charter School shall not be liable under the Use Agreement, as may be amended, on the effective date of the last to occur of all of the following:

(1) the Charter School completes the review process provided in Section 47607 or 47607.5 of the Education Code, as may be amended, and the Charter School fails to obtain a renewal of its charter, or the Charter School relinquishes all rights to pursue or complete the review process provided in Section 47607 or 47607.5 of the Education Code, as may be amended, and the Charter School notifies the State and the School District of its election; and

(2) the Charter School vacates the Facilities and relinquishes to the School District all right, title and interest in the occupancy and use of the Facilities.

- D. Upon the occurrence of Subsection C of this Section 4.2, the School District shall permit the Facility to be used in its "as is" and "where is" condition by another charter school:

(1) that the State deems as qualified; and

(2) whose charter petition is approved and is in good standing with the School District; and

(3) that has agreed to a Funding Agreement with the State and a Use Agreement with the School District.

E. In the event a successor charter school cannot be identified as provided in Subsection D of this Section 4.2, the School District may:

(1) in accordance with Section 17078.62(b)(3) of the Education Code, take possession of and use the Facility as a public school facility; provided, that the School District shall be required to make payment to the State in accordance with Section 17078.62(b)(4) or the payments shall be reduced or eliminated if the School District satisfies the conditions set forth in Section 17078.62(b)(4)(A) and (B). In the event the payments do not qualify for reduction or elimination in accordance with Section 17078.62(b)(4)(A) and (B), the State and the School District shall enter into an agreement for the School District's assumption of the payment obligation under the Funding Agreement. Assumption of the payment obligation shall in no way release the Charter School from its payment obligations that accrued prior to the termination of the Funding Agreement or from the Charter School's obligations for any holdover; or

(2) in accordance with Section 17078.62(b)(5) of the Education Code, decline to take possession of the Facilities or if the Facility is no longer needed for public school purposes, the School District shall dispose of the Facilities in accordance with requirements for the disposal of surplus public school sites. The monetary proceeds from the disposal of the Facilities shall be applied in the following priority: (i) reimburse the School District for reasonable costs and expenses incurred by the School District in disposing of the Facilities; (ii) reimburse the State for reasonable costs and expenses incurred by the State in pursuing the collection of the balance of any unpaid Local Matching Share due and owing under the Funding Agreement; (iii) repay any unpaid Local Matching Share in favor of the State; (iv) repay any security interest granted pursuant to Section 17078.57(a)(3)(B); and (v) in the event any proceeds remain, equally prorated between the State and the School District.

F. The State may proceed by appropriate court action to enforce specific performance by the Charter School of its covenants under the Funding Agreement and this Memorandum of Understanding and under the terms of accepting funding under the CSFP, or to recover damages for the breach thereof, including without limitation for the recovery of all past due payments together with interest and

late charges, and all other sums due the State. The Charter School shall pay or repay to the State all costs of such action or court action, including, without limitation, reasonable attorneys' fees and costs. The School District may proceed by appropriate court action to enforce the Memorandum of Understanding and the Use Agreement against the Charter School.

- G. In the event of the Charter School's default and the recovery of the Facilities by the School District, the State shall have the right to recover from the Charter School (i) the amount of all outstanding payments or other obligations (whether direct or indirect owed by the Charter School to the State), if any, which are then due and owing, together with interest and late charges, and (ii) any other amounts due from the Charter School to the State, including indemnity payments, taxes, charges, reimbursement of any advances and other amounts payable by the Charter School to the State.
- H. Notwithstanding anything to the contrary, the State, the Charter School and/or the School District may take whatever action at law or in equity that may appear necessary or desirable to enforce its respective rights with respect to this Memorandum of Understanding, the Funding Agreement, or the Use Agreement or the Facilities, and the party or parties prevailing in the action shall have all of their respective costs of such action or court action, including, without limitation, reasonable attorneys' fees and costs as provided in this Memorandum of Understanding, the Funding Agreement, and/or the Use Agreement or as otherwise permitted by law, paid by the parties against whom the action was brought.
- I. No remedy herein conferred upon or reserved to the parties is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Memorandum of Understanding, the Funding Agreement and the Use Agreement or existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle either party to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as may be required under the Agreements. All remedies herein conferred upon or reserved to the parties shall survive the termination of this Memorandum of Understanding, the Funding Agreement and/or the Use Agreement.

ARTICLE V – MISCELLANEOUS

5.1 Release of Liability

The State and the School District are ~~is~~ hereby released from any and all claims, demands, debts, liabilities, and causes of action of whatever kind or nature, whether known or unknown or suspected or unsuspected which the Charter School or any of the Charter School's employees or agents may have, claim to have, or which may hereafter accrue against the released parties or any of them, arising out of or relating to the Facilities or the Charter School's project, including those in any way connected with ~~Hazardous Materials. This term was not defined~~ any materials or substances defined as hazardous under any applicable statute, ordinance, rule or regulation, presently in, on or under, or now or hereafter emanating from or migrating onto or under the Facilities. In connection with this release, the Charter School hereby waives any and all rights conferred upon it by the provisions of Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

5.2 Non-waiver

No waiver of any provision of this Memorandum of Understanding, the Funding Agreement and/or the Use Agreement shall be implied by any failure to enforce any remedy for the violation of that provision, even if that violation continues or is repeated. Any waiver of any provision contained in this Memorandum of Understanding, the Funding Agreement and/or the Use Agreement must be in writing and executed by the applicable parties and will affect only the provision specified and only for the time and in the manner stated in the writing.

5.3 Indemnity

- A. Memorandum of Understanding. To the fullest extent permitted by law the Charter School shall at the Charter School's sole cost and expense with counsel acceptable to the School District and/or the State as applicable, indemnify, defend and hold the School District and the State harmless from and against any and all losses, costs, liabilities, claims, judgments, liens, damages (including consequential damages), actions, causes of action (whether in tort or contract law or equity or otherwise), charges, assessments, fines, penalties and expenses, including, without limitation,

reasonable attorneys' fees and costs, and reasonable investigation costs (collectively "Claims"), incurred in connection with or arising from: (a) any breach or default by the Charter School in the observance or performance of any of the terms, covenants or conditions of this Memorandum of Understanding on the Charter School's part to be observed or performed; (b) the construction, operation, maintenance, alteration, use or occupancy of the Facilities by the Charter School; (c) the condition of the Facilities, and any occurrence on the Facilities, from any cause whatsoever, and (d) any acts omissions or negligence of the Charter School or the Charter School's employees, agents or contractors in, on or about the Facilities.

- B. Use Agreement. The State is not a party to the Use Agreement and, as a result, to the fullest extent permitted by law the Charter School shall at the Charter School's sole cost and expense with counsel acceptable to the State as applicable, indemnify, defend and hold the State harmless from and against any and all losses, costs, liabilities, claims, judgments, liens, damages (including consequential damages), actions, causes of action (whether in tort or contract law or equity or otherwise), charges, assessments, fines, penalties and expenses, including, without limitation, reasonable attorneys' fees and costs, and reasonable investigation costs (collectively "Claims"), incurred in connection with or arising from any breach or default by the Charter School in the observance or performance of any of the terms, covenants or conditions of the Use Agreement on the Charter School's part to be observed or performed.
- C. Funding Agreement. The School District is not a party to the Funding Agreement and, as a result, to the fullest extent permitted by law the Charter School shall at the Charter School's sole cost and expense with counsel acceptable to the School District as applicable, indemnify, defend and hold the School District harmless from and against any and all losses, costs, liabilities, claims, judgments, liens, damages (including consequential damages), actions, causes of action (whether in tort or contract law or equity or otherwise), charges, assessments, fines, penalties and expenses, including, without limitation, reasonable attorneys' fees and costs, and reasonable investigation costs (collectively "Claims"), incurred in connection with or arising from any breach or default by the Charter School in the observance or performance of any of the terms, covenants or conditions of the Funding Agreement on the Charter School's part to be observed or performed.

- D. The Charter School will at all times protect and defend, at its own cost and expense, the title to the Facilities from and against all claims, liens and legal processes of creditors and keep all the Facilities and the title free and clear of all such claims, liens, and processes except for the liens created or expressly permitted under the Agreements and the CSFP.

5.4 Applicable Law

This Memorandum of Understanding shall be governed by and construed in accordance with the laws of the State of California.

5.5 Amendments

- A. The terms of this Memorandum of Understanding may not be waived, altered, modified, supplemented or amended in any manner except in writing, upon the agreement of all of the parties, or except as otherwise permitted by law.
- B. The terms of this Memorandum of Understanding may be amended, or new agreements executed, as necessary, upon the application of the Charter School and the approval by the State and the School District of a final apportionment.

5.6 Force Majeure

The time for the State, the Charter School or the School District to perform any obligation or assert any right under this Memorandum of Understanding or the CSFP shall be extended on a day for day basis for any Force Majeure event, which shall include but not be limited to: (1) Acts of God or of the public enemy; and (2) Acts of the federal or State government in either its sovereign or contractual capacity.

THE STATE:

STATE ALLOCATION BOARD:

By: _____

Name: _____

Title: _____

CALIFORNIA SCHOOL FINANCE AUTHORITY:

By: _____

Name: _____

Title: _____

THE SCHOOL DISTRICT: _____
(Name of S.D.)

By: _____

Name: _____

Title: _____

THE CHARTER SCHOOL: _____
(Name of Charter School)

By: _____

Name: _____

Title: _____

DRAFT

FUNDING AGREEMENT

Between the State of California,

and

_____, a California Charter School

ARTICLE I – PURPOSE

- A. This Funding Agreement (“Agreement”) is made and entered into as of _____ (“Effective Date”) by and between the State Allocation Board and the California School Finance Authority (individually or collectively referred to as the “State”) and _____, a California Charter School (“Charter School”). The provisions of this Agreement shall be effective from and after the Effective Date until the termination of the Agreement as provided herein.
- B. The Charter School has applied to the State for financing of its charter school facilities project (“Project”) under the Charter School Facilities Program (“CSFP”) established pursuant to Article 12 of Chapter 12.5 of Part 10 of the California Education Code and the regulations for its implementation provided in Title 4, Cal. Code Regs., Section 10151, et seq., and Title 2 Cal. Code Regs., Section 1859.160, et seq.
- C. The Charter School’s Project may involve the purchase of real property or the purchase of real property and construction of all improvements, repairs, replacements, substitutions, and modifications located or to be constructed on the property, or the construction of all improvements, repairs, replacements, substitutions, and modifications located or to be constructed on real property that the Charter School has acquired previously (“Facilities”).
- D. This Agreement is being entered into in accordance with the requirements of the CSFP. To the extent the Agreement is inconsistent with or in conflict to the provisions of the CSFP and the implementing regulations, the CSFP and implementing regulations shall prevail.
- E. The terms of this Agreement may not be waived, altered, modified, supplemented or amended in any manner except in writing, upon the agreement of the parties, or except as otherwise permitted by law. This Agreement may be amended, or a new Agreement executed, as necessary,

upon the application of the Charter School and the approval by the State of a final apportionment.

ARTICLE II – FINANCING OF THE CHARTER SCHOOL’S PROJECT

2.1 Fifty Percent Local Matching Share Obligation

A. Payments

1. The Charter School's Application for **[advance or preliminary]** apportionment for the Project has been approved by the State. The Charter School's Apportionment ("Apportionment") is contingent upon the Charter School paying its 50% Local Matching Share obligation by making payments to the State pursuant to this Agreement.
2. The Charter School will repay the State _____ (\$_____.00) by making annual or semi-annual payment installments, in arrears, as provided for in the Payment Schedule, developed in compliance with section 2.1(D). The amount shall include interest on the unpaid principal balance at the rate paid on monies in the Pooled Money Investment Account described in California Government Code Section 16480 et seq. The interest rate will be set on the date that the funding agreement is executed.
3. Payments will be applied first to accrued but unpaid interest, then to the unpaid principal balance. The early or late date of making a payment will be disregarded for purposes of allocating the payment between interest and the principal balance. For this purpose, the payment will be treated as though made on the due date.
4. Payments may be prepaid in whole or in part at any time before the end of the payment term without penalty.
5. Payments shall be made directly to the State Allocation Board for deposit into the respective 2002 or 2004 Charter School Facilities Account, or as otherwise directed by the State in writing.
6. The Charter School may elect to repay the State using the payment process set forth in Education Code section 17199.4.

B. Late Payments

The failure to make a payment on time will cause the State to incur costs not contemplated by the parties when entering into this Agreement, the exact nature and amount of which would be extremely difficult and impracticable to ascertain. Accordingly, on the fifth day after a payment is due, the Charter

School may be assessed, by way of damages, a late charge in an amount equal to _____ percent (___%) of the past due amount. The parties agree that this late charge represents a fair and reasonable estimate of the costs incurred by the State as the result of a late payment, and the Charter School agrees to immediately pay the late charge. The State's acceptance of late charges will not constitute a waiver of default with respect to the overdue payment, and will not prevent the State from exercising any other rights available under this Agreement. The Charter School will pay a late charge only once on any late payment. The late charges will be deposited into the 2002 or 2004 Charter School Facilities Account.

C. Payment Period

The payment period shall commence upon the later to occur: (1) the Effective Date; or (2) July 1 after one full year of the Project being in open and commences its educational program ("Commencement Date"). The period shall end on _____, (# of years following the commencement date), or when paid in full.

D. Payment Schedule

1. Within thirty (30) days of the start of the Charter School's operations, the parties will execute a letter confirming the Commencement Date, the Expiration Date, the payment terms, and other such terms, including a schedule of payments ("Payment Schedule") which shall be attached to this Agreement and incorporated herein as Exhibit "A".
2. The State shall establish the Payment Schedule in accordance with Education Code section 17078.57 and California Code of Regulations, title 4, Section 10160. The Payment Schedule may be amended, at the State's sole discretion, where the Charter School has demonstrated financial hardship to the State's satisfaction and the State has determined that the Charter School continues to be financially sound. The Payment Schedule shall not be extended beyond 30 years from the date of disbursement of funds.

E. Payments To Be Unconditional

Except as expressly provided for in this Agreement, any present or future law to the contrary notwithstanding, this Agreement shall not terminate, nor shall the Charter School be entitled to any abatement, suspension, deferment, reduction, setoff, counterclaim, or defense with respect to the payments, nor shall the obligations of the Charter School be affected (except as expressly permitted) by reason of:

- (1) any failure of the Facilities or any part thereof to be delivered or installed, any defects, malfunctions, breakdowns or infirmities in the Facilities, any accident or unforeseen circumstances, or any damage to or destruction of the Facilities, or any part thereof;
- (2) any taking of the Facilities, or any part thereof, or interest therein by condemnation or otherwise;
- (3) any prohibition, limitation, restriction or prevention of the Charter School's use, occupancy or enjoyment of the Facilities, or any part thereof, or any interference with such use, occupancy or enjoyment by any person for any reason;
- (4) any title defect, lien or any other matter affecting title to the Facilities;
- (5) any eviction by paramount title or otherwise;
- (6) any default by the Charter School;
- (7) any action for bankruptcy, insolvency, reorganization, liquidation, dissolution or other proceeding relating to or affecting this Agreement or the Charter School;
- (8) the impossibility or illegality of performance by the Charter School;
- (9) any action of any governmental authority or any other person;
- (10) the Charter School's acquisition of ownership of all or part of the Facilities;
- (11) breach of any warranty or representation with respect to the Facilities;
- (12) any defect in the condition, quality, or fitness for use of the Facilities; or
- (13) any other cause or circumstance similar or dissimilar to the foregoing, and whether or not the Charter School has notice or knowledge of any of the foregoing.

F. Acceptance and Application of Payment; Not Accord and Satisfaction

1. No receipt by the State of a lesser payment than the payment required under this Agreement shall be considered to be other than on account of the earliest amount due, and no endorsement or statement on any check or letter accompanying a payment or check shall be considered an accord and satisfaction. The State may accept checks or payments

without prejudice to its right to recover all amounts due and pursue all other remedies provided for in this Agreement.

2. Acceptance of monies from the Charter School after the Charter School has received notice of termination shall in no way reinstate, continue, or extend the term or affect the termination notice. The State may receive and collect any payment due, and payment shall not waive or affect any prior notice, action, or judgment.

2.2 Conditions for Release of Funding

The Charter School must satisfy the following conditions, and such others as may be reasonably required by the State, before the State will release any funding:

1. The Charter School shall have satisfied all of the requirements for such funding under the CSFP, including that it shall have a current, valid charter.
2. The Charter School shall have entered into this Agreement and the State shall have received an original of this Agreement properly executed on behalf of the Charter School, with each of the Exhibits hereto properly completed.
3. The Charter School and the school district ("School District"), in whose geographical jurisdiction the Charter School is located, will enter into an agreement governing the use of the Facilities ("Use Agreement") and which said Use Agreement shall be expressly contingent upon substantial completion of construction of the Facilities and the conveyance from the Charter School to the School District the fee simple title to the Facilities, including the real property. The phrase "substantial completion of construction" shall mean that standard of construction generally recognized by California construction law. The State shall have the right to review and approve the Use Agreement if there will be any modifications to the standard provisions set forth in _____. The State reserves the right to communicate directly with either the Charter School or the School District regarding amendments to the Use Agreement. If the standard form of Use Agreement or any modification to the State Standard Provisions are not approved by the State, the State may elect not to release the advance or final apportionment. The Charter School shall be in full compliance with the terms of the Use Agreement.

4. If the Charter School is required to have a Guarantor for its project, it shall have entered into a guaranty with an acceptable Guarantor and the State shall have received an executed original of the agreement.
5. The State shall have received a certificate of the secretary of the Charter School as to (i) the resolution of the [board of directors, and if required, the shareholders] [managing body and if required the members] [partners] of the Charter School, or authorizing the execution, delivery and performance of this Agreement, (ii) the [bylaws] [operating agreement] [partnership agreement] of the Charter School, (iii) signatures of the officers or agents of the Charter School authorized to execute and deliver this Agreement on behalf of the Charter School and, if applicable, attaching thereto a copy of the Charter School's certificate or articles of incorporation or partnership or limited liability company formation document certified by the Office of the Secretary of State for the State of California.
6. Certificate of good standing issued to the Charter School by the California Secretary of State not more than 10 days prior to the Effective Date of this Agreement, if applicable.
7. Upon acquisition of real property for the Project by the Charter School and prior to conveyance of title to the School District, the Charter School will contemporaneously with said acquisition record a lien or covenant against the title of the real property acceptable to and in favor of the State such that fee title cannot be conveyed free and clear unless the State is paid in full for all money due and owing by the Charter School under the CSFP. The Charter School shall deliver to the State a standard preliminary title report issued by a title company with respect to the Facilities, and legible copies of all documents referred to in the title report. (Exhibit "B"). The Charter School shall comply with the title requirements of section 3.4 of this Agreement, and shall provide to the State, upon request, all documents and materials relating to the Facilities and the title to the Facilities.
8. The Charter School represents that it has a minimum debt service coverage ratio determined by the State to be sufficient, but in no event to be less than 1.0x.
9. The Charter School represents that it is financially sound, and will demonstrate to the satisfaction of the State, its continued financial soundness. If the Chartering Authority revokes or declines to renew the Charter School's charter, this Agreement will be in default and the provisions of Education Code section 17078.62 shall be invoked.

2.3 Guarantor

As a condition to the receipt of funding, the Charter School will provide a guaranty for payments to the State on its Local Matching Share obligation in the form required under the CSFP ("Guaranty") from _____ ("Guarantor").

2.4 Payment During Dispute Period

Notwithstanding any dispute between the Charter School, its chartering authority, the State, or any vendor under any purchase agreement or any other person, the Charter School shall make all payments when due and shall not withhold any payments pending final resolution of a dispute, nor shall the Charter School assert any right of set-off or counterclaim against its obligation to make payments, and the Charter School waives any and all rights now or hereafter available by statute or otherwise to modify or to avoid strict compliance with its obligations under this Agreement.

2.5 Force Majeure

The time for the Charter School or the State to perform any obligation or assert any right under this Agreement or the CSFP shall be extended on a day for day basis for any Force Majeure event, which shall include but not be limited to: (1) Acts of God or of the public enemy; and (2) Acts of the federal or State government in either its sovereign or contractual capacity.

2.6 No Debt or Liability/Obligation of the State

- A. This Agreement shall not be deemed to constitute a debt or liability or obligation of the State or any political subdivision thereof, or a pledge of the faith and credit or taxing power of the State or any political subdivision thereof, but shall be a special obligation payable solely by the Charter School.
- B. The obligation to make payments does not constitute an indebtedness of the Charter School or its chartering authority, within the meaning of any constitutional or statutory debt limitation or restriction and in all cases shall be made solely from legally available funds.
- C. The parties intend that the obligations of the Charter School shall be covenants, agreements and obligations that are separate and independent from any obligations of the State, and shall continue unaffected unless modified or terminated in accordance with an express provision of this Agreement.

ARTICLE III – CHARTER SCHOOL'S FACILITY

3.1 Utilization of Apportionment for Facility

The Charter School agrees to utilize its apportionment for purposes consistent with the CSFP, and as provided in _____, and for the acquisition of real property and the installation, construction, retrofitting and improvement of said real property in order to allow a charter school educational program to be conducted. To the extent that the apportionment is insufficient in any way, the Charter School must pay additional amounts as necessary to complete the acquisition, installation, construction, retrofitting and improvement of the Facilities as provided in _____ and to ensure that all elements of the Facilities, including the property and improvements, are operational. The State shall have no obligation to provide additional funding beyond the apportionment provided for in this Agreement.

3.2 Use of Facilities for Charter School

- A. The Charter School may use and occupy the Facilities during the term of the Agreement solely for the operation of a charter school, as authorized under the California Education Code and subject to the terms of the Use Agreement. The foregoing statement shall not constitute a representation or guaranty that the operation of a charter school may be conducted in the Facilities or is lawful or permissible under any certificates of occupancy issued for the Facilities, or is otherwise permitted by law. Use of the Facilities shall in all respects comply with all legal requirements.
- B. The general terms of the Charter School's use of the Facilities shall be governed by the Use Agreement between the Charter School and the School District.
- C. Prior to commencing operations in the school, the Charter School shall provide the State and the School District with a copy of a valid certificate of occupancy issued by the appropriate governmental agency for the Facilities, if applicable, or the equivalent issued by the California Division of the State Architect.
- D. In the event the Charter School no longer is using the Facilities, the usage and priority provisions of Education Code section 17078.62 shall apply. The Charter School shall reasonably cooperate and assist with any transition that may take place pursuant to the priority provisions.
- E. The State shall not have any obligation for construction work or improvements on or to the Facilities. The Charter School has made a thorough and independent examination of the Facilities and all matters related to its decision to enter into this Agreement. The Charter School is thoroughly familiar with all aspects of the Facilities and is satisfied that they are in an acceptable condition and meet its needs.

- F. The Charter School, its officers, members, partners, agents, employees and contractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religion, creed, national origin, culture, physical disability (including HIV and AIDS), mental disability, medical condition (cancer or genetic characteristics), sexual orientation, political affiliation, position in a labor dispute, age, marital status, and denial of statutorily-required employment-related leave. The Charter School, its officers, members, partners, agents, employees and contractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, title 2, section 7285 et seq.).

3.3 Facility Location and Suitability

- A. The Charter School's Facilities are located at _____ County, California, and is more particularly described on Exhibit "C" attached hereto and incorporated by this reference into this Agreement.
- B. The property is physically located within the geographical jurisdiction of the School District and the high school attendance area generating eligibility for funding, if applicable.
- C. The Charter School has satisfied itself as to the suitability of the Facilities by its own inquiries and tests. The Charter School shall, by entering into and occupying the Facilities, be deemed to have accepted the Facilities and to have acknowledged that they are in good order, condition and repair.

3.4 Title to the Facilities

- A. The Charter School has obtained or will obtain upon release of funds from the State, good, absolute and marketable title to the Facilities in fee simple, free and clear of any mortgage, deeds of trust, liens (monetary or otherwise), claims, charges or other encumbrances or matters of any nature what so ever other than those included in the title report on the terms and conditions of this Agreement. The Charter School agrees to obtain and transfer title in accordance with the requirements of Article III Section A of the Memorandum of Understanding.

- B. Title to the Facilities shall be conveyed to, and vested in the School District in trust for the benefit of the California State public school system.
- C. The Charter School will at all times protect and defend, at its own cost and expense, the title from and against all claims, liens and legal processes of creditors, and keep all the Facilities and the title free and clear of all such claims, liens and processes except for the liens created or expressly permitted by the Security Provisions of this Agreement and the CSFP.
- D. Any sale, contract to sell, option to purchase, conveyance or other transference of the Facilities must first be approved by the State in writing.
- E. The Charter School will execute, acknowledge and record all documents, certificates and agreements, including without limitation any grant deed, bill of sale or assignment as necessary to effectuate a transfer to the School District title to the Facilities, as provided herein, and provide copies of all documents, certificates and agreements to the State as required by this Agreement or as otherwise requested by the State.

3.5 Insurance Requirements

- A. Types of Insurance
 - 1. The Charter School shall, at its sole cost and expense, obtain and maintain at all times during the construction and occupancy of the Facilities, the following types of insurance on the Facilities, naming the State and School District loss payee and additionally insured:
 - (a) All Risk (special-causes-of-loss) property and fire insurance (with extended coverage endorsement including malicious mischief and vandalism and sprinkler).
 - (b) All Risk (special-causes-of-loss) property and fire insurance (with extended coverage endorsement including sprinkler leakage, malicious mischief, vandalism and plate glass).
 - (c) Commercial general liability insurance (broad form) covering claims for bodily injury, personal injury, death and property damage based on or arising out of the ownership, use, occupancy or maintenance of the Facilities and all areas appurtenant thereto.

- (d) Rental value insurance.
 - (e) Worker's compensation insurance
 - (f) Other types of insurance or endorsements to existing insurance as may be reasonably required from time to time by the School District or the State.
- B. The Charter School shall not do anything, or permit anything to be done, in or about the Facilities that would: (i) invalidate or be in conflict with the provisions of or cause any increase in the applicable rates for any fire or other insurance policies covering the Facilities (unless it pays for such increased costs); (ii) result in a refusal by insurance companies of good standing to insure the Facilities in amounts reasonably satisfactory to the School District; (iii) result in injury to any person or property by reason of the Charter School's operations being conducted in the Facilities; or (iv) result in the cancellation of or assertion of any defense by the insurer to any claim under any policy of insurance maintained by or for the benefit of the School District.
- C. The Charter School, at its own expense, shall comply with all rules, orders, regulations or requirements of the American Insurance Association (formerly the National Board of Fire Underwriters) and with any similar body that shall hereafter perform the function of such Association.
- D. All of the insurance policies required shall be issued by corporate insurers licensed or qualified to do business in the State of California and rated A:X or better by A.M. Best Company, and shall be in form acceptable to the School District and the State.
- E. All certificates of insurance shall be delivered to the School District and the State, along with evidence of payment in full of all premiums required. All such certificates shall be in form acceptable to the State and shall require the insurance company to endeavor to give to the State at least thirty (30) days' prior written notice before canceling the policy for any reason. Certificates evidencing all renewal and substitute policies of insurance shall be delivered to the State, along with evidence of the payment in full of all premiums, at least thirty (30) days before termination of the policies being renewed or substituted.
- F. The State and School District shall be entitled to assignment and payment of all claims, causes of action, awards, payments, proceeds and rights to payment arising under or derived in connection with any insurance policy required to be maintained by the Charter School and

any other insurance policies payable because of loss sustained to all or part of the Facilities, together with all interest which may accrue on any of the foregoing.

G. The State and the School District shall immediately be notified in writing if any damage occurs or any injury or loss is sustained to all or part of the Facilities, or any action or proceeding relating to any such damage, injury or loss is commenced. The State and the School District may, but shall not be obligated to, in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on warranty, or for damage, injury or loss to all or part of the Facilities, and may make any compromise or settlement of the action or proceeding, provided that no compromise or settlement of any action or proceeding that materially affects the Charter School shall be entered into or agreed to without the Charter School's prior written consent, which may not unreasonably be withheld.

H. Waiver of Subrogation

1. Notwithstanding anything to the contrary in this Agreement, the Charter School releases the School District and the State and their respective agents, employees, successor, assignees and subtenants from all liability for injury to any person or damage to any property that is caused by or results from a risk (i) which is actually insured against, to the extent of receipt of payment under such policy (unless the failure to receive payment under any such policy results from a failure of the Charter School to comply with or observe the terms and conditions of the insurance policy covering such liability, in which event, such release shall not be so limited), (ii) which is required to be insured against under this Agreement, or (iii) which would normally be covered by the standard form of "all risk-extended coverage" casualty insurance, without regard to the negligence or willful misconduct of the entity so released.

2. The Charter School shall obtain from its insurers under all policies of fire, theft, and other property insurance maintained by it at any time during the term insuring or covering the Facilities, a waiver of all rights of subrogation which the Charter School's insurers might otherwise, if at all, have against the State, and the Charter School shall indemnify the State against any loss or expense, including reasonable attorneys' fees, resulting from its failure to obtain such waiver.

- I. No approval by the School District or the State of any insurer, or the terms or conditions of any policy, or any coverage or amount of insurance, or any deductible amount shall be construed as a representation by the State of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible and the Charter School assumes full risk and responsibility for any inadequacy of insurance coverage or any failure of insurers.
- J. The Charter School is liable for all duties and obligations with respect to its purchase and development of the Facilities, and it shall bear the risk of any loss or claim relating to the Facilities. The State and the School District shall assume no liability or risk of loss.

3.6 Consent for Assignment

- A. The State's and the School District's (in accordance with the California Education Code) written consent shall be required before the Charter School may directly or indirectly, voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of its interest in or rights with respect to the Facilities or permit all or any portion of the Facilities to be occupied by anyone other than itself or sublet all or any portion of the Facilities. No sublease or assignment nor any consent by the State and the School District shall relieve the Charter School of any obligation to be performed under this Agreement or under the CSFP.
- B. The Charter School shall not be permitted to assign any of its rights or liabilities under this Agreement without the written consent of the State. A transfer of control shall be deemed to have occurred if there shall be any of the following: (i) a transfer of the ultimate beneficial ownership of fifty percent (50%) or more of the equity or other ownership interests in the Charter School or of any class of equity interests in the Charter School, including, without limitation, by the issuance of additional shares or other equity interests or other ownership interests in the Charter School, (ii) a transfer of the right to receive fifty percent (50%) or more of any category of distributions made by the Charter School, or (iii) a transfer of the right to direct the management, policies or operations of the Charter School, by contract or otherwise.
- C. In no event shall this Agreement be assigned or assignable by operation of law or by voluntary or involuntary bankruptcy proceedings or otherwise and in no event shall this Agreement or any rights or privileges hereunder be an asset of the Charter School under any bankruptcy, insolvency, reorganization or other debtor relief proceedings.

ARTICLE IV – REPORTING

- A. The Charter School shall:
1. Provide to the State semi-annual unaudited financial statements;
 2. Report to the State any material adverse change in its financial and/or operational condition that could adversely affect its ability to make its payments under this Agreement and the CSFP;
 3. Report to the State if the Charter School's charter has been revoked or has not been renewed within 30 days of notification of such action, including providing a copy of the document provided by the chartering authority notifying the Charter School of such action;
 4. Provide audited financial statements within 120 days of the end of each fiscal year; and
 5. Obtain from the State prior written consent before incurring any additional indebtedness, which consent may only be given if the State has determined that the Charter School will remain financially sound with the additional indebtedness.
 6. Comply with the State's requirements for reporting any civil or criminal matters.

ARTICLE V – DEFAULT AND REMEDIES

5.1 Events of Default

The occurrence of any of the following shall constitute a "Default" or "Event of Default" under this Agreement:

1. Failure by the Charter School to commence to use and occupy the Facilities for the operation of a charter school as required.
2. Failure by the Charter School to make any payment when due, and such failure continues for a period of ten (10) calendar days after receiving written notice by the State;
3. Failure by the Charter School to maintain insurance on the Facilities or to provide reasonable evidence of insurance as required, and where such failure continues for a period of ten (10) calendar days after receiving written notice by the State;
4. Failure by the Charter School to provide reasonable evidence of compliance with all legal requirements whether expressly stated under

this Agreement or otherwise imposed by the State under the CSFP or other applicable law, or failure to observe or perform any other applicable covenant, condition or agreement, where such failure continues for thirty (30) calendar days after receiving written notice by the State. If thirty (30) calendar days is insufficient, and the Charter School has instituted corrective action, the State, in its discretion, may extend this period up to one hundred and eighty (180) calendar days;

5. The Charter School shall be or become insolvent, or admit in writing its inability to pay its debts as they mature, or make an assignment for the benefit of creditors; or the Charter School shall apply for or consent to the appointment of any receiver, trustee or similar officer for it or for all or any substantial part of its property; or such receiver, trustee or similar officer shall be appointed without the application or consent of the Charter School, as the case may be, where possession is not restored in sixty (60) calendar days; or the Charter School shall institute (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction; or any such proceeding shall be instituted (by petition, application or otherwise) against the Charter School (unless, in the case of a petition filed against the Charter School, the same is dismissed in sixty (60) days) or any judgment, writ, warrant of attachment or execution or similar process shall be issued or levied against a substantial part of the Charter School's Facilities; provided, however, in the event that any provision of this paragraph is contrary to any applicable law, it shall be of no force and effect, and not affect the validity of the remaining provisions;
6. The determination by the State that any representation or warranty made by the Charter School was untrue in any material respect when made;
7. The Charter School's charter is not renewed or is revoked, or the Charter School ceases to use the Facilities for a charter school purpose;
8. The Charter School shall abandon the Facilities; and/or
9. If the performance of the payment obligations of the Charter School is guaranteed, the actual or anticipatory failure or inability, for any reason, of the Guarantor to honor the guarantee as required, and the Charter School's failure to provide written alternative assurance or security, which when coupled with the Charter School's then-existing resources, equals or exceeds the combined financial resources that existed at the time this Agreement is executed. The Charter School shall have sixty (60) calendar days following written notice by the State, to provide the written alternative assurance or security.

5.2 Remedies on Default

- A. The parties acknowledge and agree that this Agreement represents a unique situation that is not limited by the landlord's remedies provided by Sections 1951.2 and 1951.4 of the California Civil Code. Whenever any Event of Default shall have occurred, any one or more of the following respective remedies, which are not exclusive but cumulative, may be pursued:
1. If the Event of Default is solely because the School District has revoked or declined to renew the Charter School's charter, the Charter School shall remain liable for the performance of all of the obligations of the Charter School including, without limitation, the obligation to make payments to the State when due, so long as the Charter School continues to use and occupy the Facilities.
 2. On the termination of this Agreement for any reason, any steps the School District takes to comply with Education Code section 17078.62 shall in no way release the Charter School from its payment obligations that accrued prior to the Termination Date or from the Charter School's obligation for any holdover. Assumption of the Agreement shall in no way release the Charter School from its payment obligations that accrued prior to the Termination Date or from the Charter School's obligations for any holdover.
 3. The State may proceed by appropriate court action to enforce specific performance by the Charter School of its covenants under this Agreement and under the terms of accepting funding under the CSFP, or to recover damages for the breach thereof, including without limitation for the recovery of all past due payments together with interest and late charges, and all other sums due the State. The Charter School shall pay or repay to the State all costs of such action or court action, including, without limitation, reasonable attorneys' fees and costs.
- B. In the event of the Charter School's default, the State shall have the right to recover from the Charter School (i) the amount of all unpaid payments or other obligations (whether direct or indirect owed by the Charter School to the State), if any, which are then due and owing, together with interest and late charges, and (ii) any other amounts due from the Charter School to the State, including indemnity payments, taxes, charges, reimbursement of any advances and other amounts payable by the Charter School to the State.

- C. Notwithstanding anything to the contrary, the State may take whatever action at law or in equity that may appear necessary or desirable to enforce its rights with respect to this Agreement or the Facilities, and the Charter School, as applicable, shall pay or repay to the State all costs of such action or court action, including, without limitation, reasonable attorneys' fees and costs as provided in this Agreement or as otherwise permitted by law.
- D. No remedy herein conferred upon or reserved to the parties is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle either party to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as may be required under this Agreement. All remedies herein conferred upon or reserved to the parties shall survive the termination of this Agreement.
- E. No waiver of any provision of this Agreement shall be implied by any failure to enforce any remedy for the violation of that provision, even if that violation continues or is repeated. Any waiver of any provision of this Agreement must be in writing and will affect only the provision specified and only for the time and in the manner stated in the writing.

ARTICLE VI – RELEASE OF LIABILITY AND INDEMNIFICATION

6.1 No Liability

- A. To the fullest extent permitted by law, the Charter School, on its behalf and on behalf of its officers, members, partners, agents, employees, and contractors, waives all claims it may have now or in the future (in law, equity, or otherwise) against the State, officials, directors, officers, attorneys, accountants, financial advisors, staff and employees arising out of, knowingly and voluntarily assumes the risk of, and agrees that the State shall not be liable for any of the following:
 - 1. Injury to or death of any person; or
 - 2. Loss of, injury or damage to, or destruction of any tangible or intangible property, including the resulting loss of use, economic losses, and consequential, incidental, punitive or penal or resulting damage of any kind from any cause.

- B. The State shall not be liable under this clause regardless of whether the liability results from any active or passive act, error, omission, or negligence of any of party; or is based on claims in which liability without fault or strict liability is imposed or sought to be imposed.
- C. The State shall not be liable for any latent, hidden, or patent defect of the Facilities, or any part thereof, or any failure of the Facilities or any part thereof to comply with any legal requirement.

6.2 No Representations/Warranties

The Charter School does not rely on, and the State does not make any express or implied representations or warranties as to any matters including, without limitation, (a) the physical condition of the Facilities, (b) the existence, quality, adequacy or availability of utilities serving the Facilities, (c) the use, habitability, merchantability, fitness or suitability of the Facilities for the intended use, (d) the likelihood of deriving business from the location or the economic feasibility of the business, (e) Hazardous Materials on, in under or around the Facilities, (f) zoning, entitlements or any laws, ordinances or regulations which may apply to the use of the Facilities, or (g) any other matter relating to the Facilities or Project.

6.3 Release of All Claims and Demands

The Charter School releases the State from any and all claims, demands, debts, liabilities, and causes of action of whatever kind or nature, whether known or unknown or suspected or unsuspected which the Charter School or any of its employees or agents may have, claim to have, or which may hereafter accrue against the released parties or any of them, arising out of or relating to or in any way connected with Hazardous Materials presently in, on or under, or now or hereafter emanating from or migrating onto or under the Facilities. In connection with such release, the Charter School hereby waives any and all rights conferred upon it by the provisions of Section 1542 of the California Civil Code, which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

6.4 Indemnification

- A. To the fullest extent permitted by law the Charter School shall at the Charter School's sole cost and expense with counsel acceptable to the State as applicable, indemnify, defend and hold the State harmless from and against any and all losses, costs, liabilities, claims, judgments, liens,

damages (including consequential damages), actions, causes of action (whether in tort or contract law or equity or otherwise), charges, assessments, fines, penalties and expenses, including, without limitation, reasonable attorneys' fees and costs, and reasonable investigation costs (collectively "Claims"), incurred in connection with or arising from: (a) any breach or default by the Charter School in the observance or performance of any of the terms, covenants or conditions of this Agreement on the Charter School's part to be observed or performed; (b) the construction, operation, maintenance, alteration, use or occupancy of the Facilities by the Charter School; (c) the condition of the Facilities, and any occurrence on the Facilities, from any cause whatsoever; (d) any acts omissions or negligence of the Charter School, its employees, agents or contractors in, on or about the Facilities; and (e) any breach in the Charter School's representations or warranties provided under this Agreement.

- B. The indemnification provided in this section shall apply regardless of the active or passive negligence of the State and regardless of whether liability without fault or strict liability is imposed or sought to be imposed; provided, however, that the right of indemnification shall not apply to the extent that a final judgment of a court of competent jurisdiction establishes that a claim was proximately caused by gross negligence or willful misconduct.
- C. In case any action or proceeding be brought, made or initiated against any of the State relating to any matter covered by the Charter School's indemnification obligations, the Charter School, shall at its sole cost and expense, resist or defend such claim, action or proceeding by counsel approved by the State. Notwithstanding the foregoing, the State may retain its own counsel to defend or assist in defending any claim, action or proceeding, and the Charter School shall pay the reasonable fees and disbursements of such counsel. The Charter School's obligations to indemnify the State shall survive the expiration or earlier termination of this Agreement. The State is an intended third-party beneficiary of this article, and shall be entitled to enforce the provisions hereof.
- D. The Charter School's obligation to indemnify the State may not be construed or interpreted as in any way restricting, limiting, or modifying the Charter School's insurance or other obligations under this Agreement and is independent of the Charter School's insurance and other obligations. The Charter School's compliance with the insurance requirements and other obligations under this Agreement shall not in any way restrict, limit or modify the Charter School's indemnification obligations under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Funding Agreement on the dates set forth below adjacent to their respective signatures. The effective date of this Funding Agreement shall be the last date set forth below.

THE STATE:

STATE ALLOCATION BOARD:

Date: _____

By: _____

Name: _____

Title: _____

CALIFORNIA SCHOOL FINANCE AUTHORITY:

Date: _____

By: _____

Name: _____

Title: _____

THE CHARTER SCHOOL:

(Name of Charter School)

Date: _____

By: _____

Name: _____

Title: _____