

*Please note that this is an unofficial version of the Massachusetts School Building Authority's Regulations, 963 CMR 2.00, and is intended for informational purposes only.*

963 CMR 2.00: SCHOOL BUILDING GRANT PROGRAM

Section

- 2.01: Authority, Applicability, Scope and Purpose
- 2.02: Definitions**
- 2.03: General Requirements**
- 2.04: General Site and School Construction Standards
- 2.05: Site Standards
- 2.06: Educational Program Space Standards
- 2.07: Cost Standards
- 2.08: Reconstruction, Renovation, and Repair Projects
- 2.09: Statement of Interest Process
- 2.10: Application and Approval Procedures**
- 2.11: Owner's Project Manager
- 2.12: Designer Services
- 2.13: Design and Review Process
- 2.14: Total Facilities Grant Awards
- 2.15: Payment Requirements and Procedures
- 2.16: Audit Procedures**
- 2.17: Minimum Spending Requirements for Building Maintenance
- 2.18: Grant Percentage Formula
- 2.19: Program Integrity
- 2.20: Waivers
- 2.21: Closing Schools**

2.01: Authority, Applicability, Scope and Purpose

(1) 963 CMR 2.00 is promulgated by the Massachusetts School Building Authority (MSBA) established by M.G.L. c. 70B pursuant to rule-making authority conferred by M.G.L. c. 70B and St. 2004, c. 208 for the implementation of that statute and the school building grant program it establishes, all is consistent with M.G.L. c. 30 and 30A.

(2) The provisions of 963 CMR 2.00 shall apply to all cities, towns, regional school districts, and independent agricultural and technical schools, and all projects for which an Eligible Applicant is seeking and/or receiving funds for a portion of a municipally-owned or regionally-owned school facility from the Authority pursuant to M.G.L. c. 70B.

963 CMR: MASSACHUSETTS SCHOOL BUILDING AUTHORITY

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(3) Except with respect to the express provisions of 963 CMR 2.00 or as otherwise provided by law, including St. 2004, c. 208, all school projects previously awarded school building assistance grants by the Massachusetts Department of Education or grandfathered under the provisions of St. 2004, c. 208, § 45 shall continue to be governed by the provisions of 603 CMR 38.00 and Massachusetts Department of Education policies, guidelines, and practices and any amendments, clarifications, interpretations, policies or guidelines related to said 603 CMR 38.00 developed or implemented by the Authority.

(4) No city, town, regional school district, or independent agricultural and technical school shall have any entitlement to funds under M.G.L. c. 70B or the provisions of 963 CMR 2.00.

(5) 963 CMR 2.00 sets forth the Authority's authority and responsibilities to achieve the effective planning, management and financial sustainability of a program to provide partial funding for the construction, renovation or repair of municipally or regionally owned school facilities and sets forth the requirements which shall be met, the standards which shall be applied, and the procedures which shall be followed in the application for and the awarding of Authority school building funds. The Authority may issue supplemental policies, rules, guidelines, guidance documents and/or administrative procedures to assist in the implementation and administration of M.G.L. c. 70B and 963 CMR 2.00.

(6) Cities, towns, regional school districts, and independent agricultural and technical schools are responsible for the administration and success of a project, and the provision of technical advice, guidance, approvals, or funds, if any, by the Authority shall not in any way be construed, interpreted or deemed to imply that the Authority shall have any responsibility for the administration or success of the project. Although cities, towns, regional school districts, and independent agricultural and technical schools are encouraged to seek the advice and opinion of the Authority on issues that may arise regarding the project, advice provided by the Authority shall not transfer the responsibility for final decisions from cities, towns, regional school districts, and independent agricultural and technical schools to the Authority, nor render the Authority responsible for any such advice.

(7) Total Facilities Grants awarded by the Authority pursuant to M.G.L. c. 70B and 963 CMR 2.00, if any, shall be used in conformance with M.G.L. c. 70B, St. 2004, c. 208, 963 CMR 2.00, the provisions of the Project Funding Agreement and any other documents, contracts, forms, statements, certifications or other documents required by the Authority, to achieve the grant objectives and to ensure that the purposes set forth in M.G.L. c. 70B and 963 CMR 2.00 are fully executed.

(8) The Authority shall not distribute any grant amounts in excess of the limitations established

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in M.G.L. c. 70B, § 7.

## **2.02: Definitions**

As used in 963 CMR 2.00, the following terms shall have the meanings set forth in M.G.L. c. 70B:

Alternatives to Construction  
Total Facilities Grant

For the purposes of 963 CMR 2.00, the following terms shall have the meaning set forth, unless the context clearly requires otherwise:

**Application** means a series of documents, forms, letters, statements, certifications, plans, studies, drawings, and other data and information required by the Authority to be submitted within the deadlines and in the format prescribed by the Authority. The Application may include, but not necessarily be limited to, at the discretion of the Authority, Initial Compliance Certification, Design and Educational Program, Budget Statement for Educational Objectives, Educational Facility Master Plan, Facilities Assessment, Feasibility Study, Project Scope and Budget Agreement, copies of the vote of the Board of the Authority, copies of the certified local approval in the format prescribed by the Authority, an executed Project Funding Agreement, and any other documents, forms, letters, statements, certifications, plans, studies, drawings, data or other information as required by the Authority.

**Approved Project** means a Proposed Project for a municipally- or regionally-owned school facility that has submitted a Statement of Interest to the Authority and has completed all phases of the Application process to the satisfaction of the Authority, in the sole discretion of the Authority, including:

- (a) a vote of the Board of the Authority, as authorized by the Authority's by-laws, for project approval;
- (b) properly certified local vote(s) for the Proposed Project in the format prescribed by the Authority; and
- (c) an executed Project Funding Agreement between the Eligible Applicant and the Authority. **No Proposed Project shall be considered an Approved Project prior to a vote of the Board of the Authority for project approval, as authorized by the Authority's by-laws, receipt by the Authority of a properly certified local vote(s) for the Proposed Project in the format prescribed by the Authority, and the execution of a Project Funding Agreement between the Eligible Applicant and the Authority.** The authorization of an Approved Project may be rescinded by the Authority in accordance with 963 CMR 2.00 and M.G.L. c. 70B.

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Assisted Facility means a school facility that has received or is receiving any portion of a Total Facilities Grant pursuant to M.G.L. c. 70B, St. 1948, c. 645, or St. 2004, chs. 208 and 210.

Audit means an examination by the Authority and/or its designee of Audit Materials as shall be submitted in a form or manner as prescribed by the Authority to determine the eligible, Approved Project cost pursuant to the "MSBA Audit Guidelines," M.G.L. c. 70B and 963 CMR 2.00.

Audit Materials means all papers, invoices, votes, contracts, agreements, change orders, progress reports, purchase orders, on-site observation of construction materials and methods, financing information, bonding schedules and other documents related to an Approved Project and any other documents or information that may be requested or required by the Authority.

Authority means the Massachusetts School Building Authority, established by M.G.L. c. 70B and St. 2004, c. 208, and, where the context requires, the Authority's officers and staff exercising functions and powers.

Board means the Board of Directors of the Massachusetts School Building Authority.

Budget Statement for Educational Objectives means the statement, in a format prescribed by the Authority, that shall include, but not be limited to, the following: as described in the Design and Educational Program, a summary of the Eligible Applicant's curriculum goals for the district and the Proposed Project, school and grade configuration policies, class size policies, teaching philosophy and methods, curriculum delivery goals, a detailed description of program activities in order to determine functional need and ultimately the design of the building, a detailed listing of all sources and uses of operation and capital funds used for the delivery of education by the Eligible Applicant in the current Fiscal Year and for the previous three Fiscal Years, and a three-year projection for the projected sources and uses of funds related to the operating budget and capital budget for the proposed educational program.

Design and Educational Program means a numerical and written description of a specific educational program for a specified number of students over a specified period of time, in a format prescribed by the Authority, together with an itemization of spaces needed to support the educational program, complete to the degree that a designer may use it as the basic document from which to create the design of a school facility. A Design and Educational Program shall include, but not be limited to, the instructional programs, grade configuration, type of facility, the spatial relationships for the functions housed at the facility, the number of students, a list of any specialized classrooms or major support areas, non-instructional support areas, or external activity spaces, gross and net square footage of any affected existing facility, the overall security and security measures taken to safeguard the facility and its occupants, the school administrative

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organization, the hours of operation that include the instructional day, extracurricular activities, and any public access or community use. The Design and Educational Program shall begin with a thorough, in-depth explanation of curriculum goals and instructional activities that occur within the learning environment. The Design and Educational Program shall comply with the applicable law and applicable Massachusetts Department of Education regulations including but not limited to, regulations relative to curriculum, program, student learning time and length of school year. A Design and Educational Program shall include an itemization of each functional space and determination of square footage allocations to determine total building square footage and establish a realistic construction budget, as determined by the Authority.

Eligible Applicant means the chief executive official where prescribed by statute or charter of the city, town, regional school district or independent agricultural and technical school or, where the context requires, the chief executive officer's agent or staff, or a local official as submitted by the city, town, regional school district or independent agricultural and technical school and approved by the Authority.

Enrollment Projection means the enrollment projection developed by the Authority using the Authority's enrollment projection model and shall not include incoming school choice students.

Fiscal Year means the year beginning July 1<sup>st</sup> and ending the following June 30<sup>th</sup>, unless otherwise determined by the Authority.

Green Schools Guidelines means the document developed and updated by the Authority establishing, in collaboration with the Massachusetts Technology Collaborative, the criteria that shall provide the basis for the allocation of Energy Efficiency incentive percentage points described in 963 CMR 2.18.

Initial Compliance Certification means the statement by which the Eligible Applicant certifies to the Authority that the Eligible Applicant has met or will meet the General Requirements of 963 CMR 2.00, that shall include, but not be limited to, the following: that the Eligible Applicant has provided the Authority with all Audit Materials for any Assisted Facility requested by the Authority; that the Eligible Applicant has expended the minimum maintenance expenditure requirements pursuant to M.G.L. c. 70B, § 8; that the Eligible Applicant is current on any payments which it may owe the Authority; that the Proposed Project is not due to the negligence or lack of maintenance of the Eligible Applicant; that the Eligible Applicant shall use all standard forms, standard format for local votes or approvals, standard contract documents, standard contract language established by the Authority; that the Eligible Applicant agrees to the provisions of M.G.L. c. 70B, § 9(a); and, that the Eligible Applicant shall comply and submit to the Authority any other certifications, statements, or forms which the Authority may develop.

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MSBA Audit Guidelines means the document developed and updated by the Authority outlining the Audit policies and procedures of the Authority.

MSBA Educational Program Space Standards and Guidelines means the document developed by the Authority that contains an itemized listing of educational spaces and square footages that comprise a model program for an elementary school, middle school and high school, or other grade configurations developed by the Authority, based upon varying levels of enrollment as determined by the Authority. The gross square footages are inclusive of all spaces to be designed in an Approved Project.

Project Documents means the agreements, contracts, and other documents, including, but not limited to, the owner-contractor agreement, advertisements, instructions to bidders, bidding documents, requests for qualifications, contract forms, conditions of the contract, specifications, drawings, all addenda issued prior to execution of a contract, and other documents listed in any such agreement and modifications issued after execution of a contract, executed by and between an Eligible Applicant, the designer, the contractor, the sub-contractors, or any other parties that set forth the terms, conditions, requirements, and specifications for the design and construction of the Approved Project. The Project Documents shall also at all times include a current construction schedule, a current total project budget, and a current cash flow projection. In the case of Construction Manager at Risk projects, documents shall include, but not be limited to, requests for proposals, proposals, evaluation of said proposals, and the Construction Manager at Risk contract including the guaranteed maximum price amendment.

Project Funding Agreement means the contract, in the format prescribed by the Authority, between the Eligible Applicant and the Authority governing the relationship between the Eligible Applicant and the Authority during the process from design through construction and completion of an Approved Project. The Project Funding Agreement shall include but not be limited to, a description of project scope, the total project budget, the Total Facilities Grant, timeline for design, construction and completion of an Approved Project, requirements for requesting and receiving reimbursement from the Authority, and other certifications and documents as required by the Authority.

Progress Payments means the process by which an Eligible Applicant, for an Approved Project, after executing a Project Funding Agreement, shall on a monthly basis or at such other times as may be required by the Authority, submit to the Authority project invoices, payment warrants, cancelled checks or other documentation as required by the Authority, that detail the project costs that have been incurred by the Eligible Applicant on standard request for reimbursement forms as prescribed by the Authority. The Authority may review properly submitted forms and

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reimburse the Eligible Applicant for the amount approved by the Authority within 15 days, less any adjustments made by the Authority through the Audit process. The Authority reserves the right to adjust any current or subsequent request for reimbursement to account for ineligible costs or other adjustments as determined by the Authority.

Proposed Project means any project for a municipally or regionally owned or leased school facility proposed by an Eligible Applicant, but not yet approved by the Authority, including, but not limited to, construction of a new school facility, addition to an existing school facility, renovation or refurbishment of an existing school facility, repair or replacement of any eligible part of a school facility.

Statement of Interest means the document developed and updated by the Authority, used by an Eligible Applicant to submit to the Authority what the Eligible Applicant believes are the deficiencies in the Eligible Applicant's respective school facilities that meet one or more of the statutory priorities set forth in M.G.L. c. 70B, § 8. A Statement of Interest shall be approved by a vote of the applicable local governing body or bodies as set forth in the Statement of Interest and in a form prescribed by the Authority. Said Statement of Interest shall be accompanied by such additional forms, documents, and information as the Authority shall deem necessary to review the Statement. The submission of a Statement of Interest to the Authority shall not commit the Authority to accept any Application materials, approve an Application, or provide a grant or any other type of funding, or place any other obligation or requirement upon the Authority.

### **2.03: General Requirements**

(1) To achieve the effective planning, management and financial sustainability of a program to partially fund the construction, renovation, addition or repair of municipally or regionally owned school facilities located in cities, towns and regional school districts, the Authority hereby sets forth the minimum requirements which shall be met, the standards which shall be applied, and the procedures which shall be followed in the application for, and awarding of, Authority school building grants. Any project must meet the criteria set forth for projects pursuant to M.G.L. c. 70B including, but not necessarily limited to, M.G.L. c. 70B, §§ 6(a)(1) through (6), (8) and 9(a).

(2) The Eligible Applicant shall certify for any project for which a Total Facilities Grant is sought from the Authority, that the Authority's Initial Compliance Certification requirements have been or will be met, including, but not limited to the following:

(a) The Eligible Applicant shall certify to the Authority that the Authority's interests in partially funding a municipally or regionally owned public school construction project will be safeguarded.

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- (b) Any project for the construction of a new school facility, or for the addition to or renovation of an existing school facility for which an Eligible Applicant is seeking partial funding from the Authority shall have **an anticipated useful life of at least 50 years** as a public school in the Eligible Applicant's school district.
- (c) The Eligible Applicant has submitted all Audit Materials that have been requested by the Authority or are otherwise due to the Authority, has a signed Project Funding Agreement for any other Assisted Facility or Approved Project as requested by the Authority, that the Eligible Applicant is current on any payments which it may owe to the Authority and that the Eligible Applicant has submitted all documentation or information required or requested by the Authority.
- (d) The Eligible Applicant is not submitting a Statement of Interest or an Application that is a result of lack of maintenance or negligence caused by the Eligible Applicant.
- (e) All projects shall be designed to minimize vandalism, and materials and furnishings shall be selected to minimize vandalism.
- (f) All projects shall provide for equality of educational opportunity without discrimination on account of sex, race, color, religion, sexual orientation or national origin, and shall meet the requirements of M.G.L. c. 76, § 5 and 603 CMR 26.00 and 603 CMR 38.00.
- (g) All projects shall comply with all applicable provisions of federal, state, and local law relative to the accessibility of programs and facilities to persons with disabilities.**
- (h) All projects shall have undergone review, in accordance with applicable state law and regulations, to the extent applicable to the project, by the Massachusetts Historical Commission, the Massachusetts Commission against Discrimination, the Secretary of Environmental Affairs, the Architectural Access Board, and any other department or agency of the Commonwealth required by law to review such projects. The Eligible Applicant shall provide to the Authority written documentation of the reviews conducted herein in such detail and in such format as the Authority shall require.**
- (i) All projects shall have undergone review, in accordance with applicable federal, state and local or district charters, by-laws, ordinances or regulations, including conservation, fire prevention, water, sewer or building code requirements. The Eligible Applicant shall provide to the Authority written documentation of the reviews conducted herein in such detail and in such format as the Authority shall require.
- (j) All Eligible Applicants shall demonstrate that they have identified any collaborative programs in the school district not currently housed in public school facilities, and have reviewed any such programs to determine if students in such programs can be better served by the project.**
- (k) All Eligible Applicants shall acknowledge and assume responsibility for the administration and success of an Approved Project. The provision of technical advice, guidance, approvals, or funds, if any, by the Authority shall not in any way be construed, interpreted or deemed to imply that the Authority shall have any responsibility for the



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administration or success of the Approved Project.

(l) All Eligible Applicants shall certify that Total Facilities Grants awarded by the Authority pursuant to M.G.L. c. 70B and 963 CMR 2.00, if any, shall be used in conformance with M.G.L. c. 70B and St. 2004, c. 208, the provisions of the Project Funding Agreement and any other documents, contracts, forms, statements, certifications or other documents required by the Authority, to achieve the grant objectives and to insure that the purposes set forth in M.G.L. c. 70B and 963 CMR 2.00 are fully executed.

**(m) All Eligible Applicants shall submit documentation supporting the anticipated impact on operating costs of implementing the project in such detail and format as required by the Authority, including but not limited to, an estimate of the costs of additional maintenance spending required of the Eligible Applicant, the costs of additional instructional or support staff spending, additional utility costs, the costs of additional transportation, if any, and the estimated revenue, if any, from the sale or lease of any school facility decommissioned as a result of implementing the project.**

(n) All Eligible Applicants shall use the standard forms, standard format for local votes or approvals, standard contracts, standard clauses for contracts, and any other standard forms, contracts or other language as developed by the Authority.

(o) The Eligible Applicant shall certify to the Authority, in a format and manner prescribed by the Authority, that the Eligible Applicant, or his designee who will be in charge of procurement for a project as approved by the Authority, is designated as a Massachusetts Certified Public Purchasing Official for Design and Construction Contracting in the Massachusetts Certified Public Purchasing Official Program as administered by the Inspector General of the Commonwealth of Massachusetts.

(p) All Eligible Applicants shall ensure that procurements and contracts shall be procured using applicable state procurement and public contract laws.

(q) All Eligible Applicants shall ensure that any parties procured and contracted by them to perform work on an Approved Project are in compliance with M.G.L. c. 268A, whenever applicable.

#### **2.04: General Site and School Construction Standards**

The Eligible Applicant shall make all reasonable efforts to ensure that an Approved Project, including those for the expansion or renovation of an existing building, meet all applicable federal, state, local and regional building code requirements. It shall be the responsibility of the Eligible Applicant to ensure compliance with all such building code requirements, and the Authority shall bear no responsibility for an Eligible Applicant's failure to comply with said requirements.

##### **(1) Design and Construction Standards: General.**

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- (a) Projects shall reflect cost-effective design, material, and finish decisions consistent with good architecture and engineering practice, high quality construction, and the requirements of the Authority.
- (b) To the extent possible, projects shall reflect attention to current and future-oriented technological practices for students, faculty, and school staff.
- (c) The Authority prohibits an Eligible Applicant from utilizing chlorofluorocarbon-based (CFC) refrigerants in any new system for building heating, ventilating, air conditioning, or refrigeration.
- (d) All new construction and reconstruction projects shall meet applicable local ordinances for recycling space and provide space within the building that is dedicated to the separation, collection, and storage of materials for recycling, including, at a minimum, paper (white ledger and mixed), cardboard, glass, plastics, aluminum cans, and metals.
- (e) Construction of new school facilities shall, whenever possible, be oriented on the site in order for the building to maximize natural daylight for classroom spaces.
- (f) The Authority may issue minimum and maximum guidelines and standards for the sustainability of Approved Projects, including school building design guidelines which provide guidelines for design, energy efficiency, materials, finishes, life cycle cost analysis, and systems selections.
- (g) Approved Projects shall have a project identification sign on the construction site during the period of construction. Said sign shall be at least four feet by eight feet in size, shall be visible from the primary roadway adjoining the site, and shall include the following: "This project funded in part by the Massachusetts School Building Authority."
- (h) On all Approved Projects involving the construction of a new school facility, the new school facility shall be designed and constructed to include:
1. interior daylighting and views in classrooms by locating all classrooms identified in the approved Design and Educational Program on exterior walls, except computer rooms, music rooms, digital art rooms, technology rooms, small resource rooms, small laboratories, and other classrooms where daylighting and location on an exterior wall are not appropriate or necessary because of the nature of the classroom;
  2. a glazed area for each classroom identified in the approved Design and Educational Program that is determined to require daylighting pursuant to subsection (i), totaling not less than five percent (5%) of the net floor area of the classroom and which shall be located to provide outdoor views at both standing and sitting heights; and
  3. glare control devices, where applicable, to avoid high-contrast conditions that could impede visual tasks, but such glare control devices shall be constructed only when necessary and if the Designer has determined that glare control devices are the only way to prevent glare.

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(2) Design and Construction Standards: Indoor Air Quality. An Eligible Applicant shall make all reasonable efforts to ensure suitable indoor air quality in an Approved Project. Without regard to any other contract provisions, an Eligible Applicant shall meet the following indoor air quality requirements, to the extent that they apply to an Approved Project, as determined by the Authority.

(a) New heating, ventilating and air conditioning systems shall meet the minimum ventilation rate requirements of American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) Standard 62.1, Ventilation for Acceptable Indoor Air Quality, in effect at time of project approval.

(b) New heating, ventilating and air conditioning systems shall comply with ASHRAE standard 55 for thermal comfort within established ranges per climate zone, in effect at time of project approval, except that winter humidification and summer dehumidification shall not be required.

(c) Eligible Applicants shall implement containment procedures for dusts, gases, fumes, and other pollutants created during construction of an Approved Project if the building is occupied by students, teachers or school department staff while such renovation and construction is occurring. Such containment procedures shall be consistent with the "IAQ Guidelines for Occupied Buildings Under Construction" published by the Sheet Metal and Air Conditioning Contractors National Association, Inc. (SMACNA), in effect at time of project approval. All bids and proposals received for an Approved Project shall include the cost of planning and execution of containment of construction/renovation pollutants consistent with such SMACNA guidelines.

(d) On all Approved Projects involving the installation of new ductwork, HVAC supply and the return openings shall be sealed to protect them from dust infiltration during construction. Procedures shall be consistent with the "Duct Cleanliness for New Construction Guidelines" published by SMACNA, in effect at the time of project approval relative to advanced levels of cleanliness which provide in part that ductwork shall be sealed when transported to the construction site; ductwork shall be stored in clean, dry conditions and kept sealed while stored; internal surfaces of ductwork shall be wiped-down immediately prior to installation to remove dust; open ends on completed ductwork and overnight work-in-progress shall be sealed; and uninstalled ductwork shall be protected from construction dust using surface wrapping.

(e) Filtration media in ventilation equipment shall be replaced with new media immediately prior to occupancy. Filtration media shall have a Minimum Efficiency Reporting Value (MERV) such that mold spores and similarly sized particles are excluded from supply air intakes.

(f) In spaces where chemical use will occur, including housekeeping areas, chemical mixing areas, copying/print rooms, and vocational spaces, partitions shall extend from the top of finished floor to the underside of the floor or roof deck above and shall be provided with a

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dedicated outside exhaust at a rate of at least 0.50 cubic feet per minute per square foot, no air recirculation, and adequate make up air. These spaces shall have negative air pressure, providing an outside exhaust at a rate of at least 0.50 cubic feet per minute per square foot. The spaces shall maintain a negative pressure of at least 5 Pa (0.02 inches of water gauge) to a minimum of 1 Pa (0.004 inches of water) compared to their immediate environment, when their doors are closed.

(g) Each new building entrance shall be provided with a two-part walk-off mat system to capture dirt, particulates and moisture. Part one of the system shall include a drop through mat within the vestibule. Part two shall include a walk-off mat in the entranceway of a minimum length of 15 feet. The Eligible Applicant shall not install drain pans or traps in the vestibule.

(h) Electric ignitions shall be provided for all gas-fired equipment including water heaters, boilers, air-handling units, and cooking stoves.

(i) Where feasible, outside air intake openings shall be located a minimum of 25 feet from any hazard or noxious contaminants such as chimneys, plumbing vents, cooling towers, streets, alleys, parking lots and loading docks. The distance between exhaust air or vent outlets and air intakes shall be the greater of 25 feet or the distance as determined by 780 CMR: *Massachusetts State Building Code*, in effect at the time of project approval. When locating an air intake within 25 feet of a contaminant source is unavoidable, such opening shall be a minimum of two feet below the contaminant source and ten feet horizontally from the nearest edge of the air intake to the nearest edge of the contaminant source. All intakes shall be six feet above landscaped grade including soil, lawn, shrubs, or any plant life within 1.5 feet horizontally of intake.

(j) During construction of an Approved Project, building materials, especially gypsum wallboard, wood, porous insulation, paper, and fabric, shall be kept dry to prevent the growth of mold and bacteria. Stored materials shall be covered to prevent rain damage, and if resting on the ground, spacers shall be employed as necessary to allow air to circulate between the ground and the materials. Water damaged materials shall be dried within 24 hours. Materials that are damp or wet for more than 24 hours, except non-porous materials such as metal, shall be removed from the site. Materials showing signs of mold and mildew shall be immediately removed from the site and properly disposed of, including any with moisture stains. Moldy materials shall be replaced with new, undamaged materials.

(k) Eligible Applicants shall furnish permanent signage on the school site discouraging the idling of vehicles beyond a period of five minutes, in accordance with the statute governing stopped motor vehicles, M.G.L. c. 90, § 16A.

## **2.05: Site Standards**

**(1) The site of an Approved Project shall be owned by the city, town, regional school district, or**

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independent agricultural and technical school, or be under control of the school district or Eligible Applicant pursuant to a lease which assures the school district or the Eligible Applicant exclusive jurisdiction and control of the land for the anticipated useful life of the Approved Project to be constructed thereon.

(2) The site selected shall be chosen on the basis that it will meet the educational need, maximize the use of any available community resources, and minimize any possible adverse educational, environmental, social, or economic impact upon the community. Such adverse impact shall include, but not necessarily be limited to: the need to provide new sewers, roads, transportation facilities, water supply, water connections, and other public infrastructure to the site; existence of soil conditions or hazardous materials that may cause site development costs to be greatly increased; or curtailment of the approved educational program.

(3) To the extent feasible, the site selected shall be proximate to other facilities such as libraries, museums, parks, natural resources, nature study areas, and businesses, which would enhance the proposed educational program.

(4) The site shall be free from noxious pollution or contamination, and should be selected to avoid flood plain, wetlands or other environmentally sensitive areas. A new school site shall not be located within 1000 feet of an active landfill.

(5) The site shall be located to serve efficiently and safely the school population it is intended to serve, and should be of sufficient size to accommodate the building and planned future additions thereto, outdoor educational program, parking areas, bus turnarounds, delivery areas, required setbacks and planned aesthetics.

(6) Exterior grades shall slope away from the building and the building foundation to adequately drain away rain water, snow melt, and HVAC condensate and to prevent ponding, pooling or otherwise saturating the building envelope or foundation. Rain leaders, or downspouts, shall be directed to infiltration structures, on-site storage, rain gardens, or daylight, provided that surface drainage moves water well away from the building and does not result in unintended ponding or pooling.

#### **2.06: Educational Program Space Standards**

(1) **General Provisions.** The approved Design and Educational Program and the Project Scope and Budget Agreement shall be the basis for the design of an Approved Project, and the Approved Project shall not diverge from said Project Scope and Budget Agreement without the prior written consent of the Authority.

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(2) **Enrollment Projection.** The Enrollment Projection, as determined by the Authority. An Eligible Applicant must submit to the Authority enrollment information and related documentation using the Authority's on-line enrollment projection system or as may otherwise be requested by the Authority. The Authority and the Eligible Applicant may have a Design Enrollment Conference to review the Enrollment Projection and discuss any supporting documentation that the Eligible Applicant may have provided. After the Design Enrollment Conference, if any, the Eligible Applicant shall sign an Enrollment Certification that documents the Enrollment Projection which shall be the basis for a potential project. No potential project shall progress through the Authority's capital pipeline process beyond this stage without the Eligible Applicant signing and submitting to the Authority the signed Enrollment Certification.

(3) **Prototypical Gross Square Foot Per Pupil Standards.** The Authority may review the set of educational program space standards contained in the MSBA Educational Program Space Standards and Guidelines, which provide the basis for gross square foot per pupil allowances promulgated under 963 CMR 2.00. Pursuant to M.G.L. c. 70B, § 9(b), the MSBA Educational Program Space Standards and Guidelines may define prototype school design and space recommendations for each specified program activity eligible for funding from the Authority for new construction and said guidelines may also include space recommendations for reconstruction or renovations.

(4) **Per Student Space Allowance.**

(a) The Authority shall not authorize design plans that exceed gross square foot per student allocations based upon the Certified Design Enrollment of the Proposed Project and the limitations in gross square footage established in 963 CMR 2.06: *Tables 1, 2 and 3*, except as provided in 963 CMR 2.00. These standards are reflective of realistic, future-oriented, and contemporary educational program goals and are based on the summation of square foot allocations for each itemized educational space. The gross square footage per student allowances promulgated herein are based upon the MSBA Educational Program Space Standards and Guidelines which are based upon model educational programs for facilities of smaller and larger enrollments in order to develop a variable gross square foot per student allowance that accommodates the differing needs and economies of scale in facilities of smaller and larger enrollments.

(b) The space standards contained in 963 CMR 2.00 and in the MSBA Educational Program Space Standards and Guidelines may not necessarily be applicable to reconstruction, renovation or repair projects. These standards and guidelines were developed by the Authority for determining maximum size and costs related to new construction and should not be used for assessing safety standards or educational adequacy of existing facilities that were constructed in accordance with the standards and guidelines that prevailed at the time of

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construction. The Authority shall consider Proposed Projects on a case-by-case basis and in some cases different square footages may be determined at the discretion of the Authority.

**(c) Grossing Factor – The Grossing Factor is the net-to-gross square footage ratio of a school facility. The Authority shall not approve a Total Facilities Grant for any proposed project that includes design plans for a new school facility that have a Grossing Factor that exceeds 1.50.**

The following tables establish the limitations in gross square footage per student allowable for the corresponding enrollment for elementary schools, middle school and high schools.

Table 1: Gross Square Feet per Student – Elementary Schools

Projected Enrollment	GSF per Student
Less than 300	180
Between 300 and 309	180
Between 310 and 319	179
Between 320 and 329	178
Between 330 and 339	177
Between 340 and 349	175
Between 350 and 359	174
Between 360 and 369	173
Between 370 and 379	172
Between 380 and 389	171
Between 390 and 399	170
Between 400 and 409	168
Between 410 and 419	167
Between 420 and 429	166
Between 430 and 439	165
Between 440 and 449	164

Projected Enrollment	GSF per Student
Between 450 and 459	163
Between 460 and 469	161
Between 470 and 479	160
Between 480 and 489	159
Between 490 and 499	158
Between 500 and 509	157
Between 510 and 519	156
Between 520 and 529	154
Between 530 and 539	153
Between 540 and 549	152
Between 550 and 559	151
Between 560 and 569	150
Between 570 and 579	149
Between 580 and 589	147
Between 590 and 599	146
600 and greater	145

963 CMR: MASSACHUSETTS SCHOOL BUILDING AUTHORITY

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Table 2: Gross Square Feet per Student – Middle and Junior High Schools

Projected Enrollment	GSF per Student	Projected Enrollment	GSF per Student
Less than 400	190	Between 580 and 589	175
Between 400 and 409	190	Between 590 and 599	174
Between 410 and 419	189	Between 600 and 609	173
Between 420 and 429	188	Between 610 and 619	172
Between 430 and 439	187	Between 620 and 629	171
Between 440 and 449	187	Between 630 and 639	170
Between 450 and 459	186	Between 640 and 649	169
Between 460 and 469	185	Between 650 and 659	169
Between 470 and 479	184	Between 660 and 669	168
Between 480 and 489	183	Between 670 and 679	167
Between 490 and 499	182	Between 680 and 689	166
Between 500 and 509	181	Between 690 and 699	165
Between 510 and 519	181	Between 700 and 709	164
Between 520 and 529	180	Between 710 and 719	163
Between 530 and 539	179	Between 720 and 729	163
Between 540 and 549	178	Between 730 and 739	162
Between 550 and 559	177	Between 740 and 749	161
Between 560 and 569	176	750 and greater	160
Between 570 and 579	175		



963 CMR: MASSACHUSETTS SCHOOL BUILDING AUTHORITY

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**Table 3: Gross Square Feet per Student – Academic High Schools**

Projected Enrollment	GSF per Student	Maximum Grossing Factor Limit
Less than 600	<i>to be determined</i>	1.50
Between 600 and 619	226	1.50
Between 620 and 639	226	1.50
Between 640 and 659	222	1.50
Between 660 and 679	219	1.50
Between 680 and 699	216	1.50
Between 700 and 719	214	1.50
Between 720 and 739	212	1.50
Between 740 and 759	210	1.50
Between 760 and 779	209	1.50
Between 780 and 799	207	1.50
Between 800 and 819	206	1.50
Between 820 and 839	205	1.50
Between 840 and 859	204	1.50
Between 860 and 879	202	1.50
Between 880 and 899	201	1.50
Between 900 and 919	200	1.50
Between 920 and 939	200	1.50
Between 940 and 959	198	1.50
Between 960 and 979	197	1.50
Between 980 and 999	195	1.50
Between 1000 and 1019	195	1.50
Between 1020 and 1039	194	1.50
Between 1040 and 1059	193	1.49
Between 1060 and 1079	192	1.49
Between 1080 and 1099	190	1.48
Between 1100 and 1119	189	1.48
Between 1120 and 1139	188	1.48
Between 1140 and 1159	186	1.47
Between 1160 and 1179	185	1.47
Between 1180 and 1199	183	1.46
Between 1200 and 1219	182	1.46
Between 1220 and 1239	181	1.46
Between 1240 and 1259	180	1.45
Between 1260 and 1279	178	1.45
Between 1280 and 1299	177	1.44

Projected Enrollment	GSF per Student	Maximum Grossing Factor Limit
Between 1300 and 1319	175	1.44
Between 1320 and 1339	174	1.44
Between 1340 and 1359	173	1.43
Between 1360 and 1379	172	1.43
Between 1380 and 1399	171	1.42
Between 1400 and 1419	171	1.42
Between 1420 and 1439	170	1.42
Between 1440 and 1459	169	1.41
Between 1460 and 1479	167	1.41
Between 1480 and 1499	166	1.40
Between 1500 and 1519	165	1.40
Between 1520 and 1539	165	1.40
Between 1540 and 1559	165	1.40
Between 1560 and 1579	164	1.40
Between 1580 and 1599	163	1.40
Between 1600 and 1619	162	1.40
Between 1620 and 1639	162	1.40
Between 1640 and 1659	162	1.40
Between 1660 and 1679	162	1.40
Between 1680 and 1699	162	1.40
Between 1700 and 1719	161	1.40
Between 1720 and 1739	160	1.40
Between 1740 and 1759	160	1.40
Between 1760 and 1779	160	1.40
Between 1780 and 1799	160	1.40
Between 1800 and 1819	160	1.40
Between 1820 and 1839	160	1.40
Between 1840 and 1859	159	1.40
Between 1860 and 1879	159	1.40
Between 1880 and 1899	159	1.40
Between 1900 and 1919	158	1.40
Between 1920 and 1939	158	1.40
Between 1940 and 1959	158	1.40
Between 1960 and 1979	158	1.40
Between 1980 and 1999	157	1.40
Greater than 2000	<i>to be determined</i>	1.40

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**(5) Vocational Technical Schools.** Vocational Technical Schools and the Vocational Educational Space components of Comprehensive High Schools shall not exceed 225 gross square feet per pupil and any additional programmatic requirements may be considered on a case-by-case basis by the Authority in conformity with M.G.L. c. 74 requirements and a comparison of existing school facilities with similar vocational program requirements.

**(6) (a) Special Education Spaces.** Spaces for special education classes/programs may receive special consideration at the discretion of the Authority. The gross square feet per student defined herein includes a baseline assumption that 8% of the total planned enrollment will be enrolled in separate special education programs. Notwithstanding the gross square footage maximum standards established herein, additional space consideration may be given, at the sole discretion of the Authority, if the Eligible Applicant documents and certifies to the Authority why there is a need to exceed the maximum gross square footage allowances.

**(b) Educational Collaborative Spaces.** The Authority may, in its sole discretion, consider spaces for special education services provided through Department of Elementary and Secondary Education (DESE) approved Educational Collaboratives to be included within Special Education. For the Authority to consider Collaborative Space, the Eligible Applicant must (1) have executed a formal written agreement to be a member of the collaborative or to receive services from a collaborative, prior to filing a Statement of Interest with the Authority, and (2) certify that any space allowed by the Authority in a school facility for use by a Collaborative shall remain in use for the Collaborative for the useful life of the facility.

**(7) Space Allowance by Program Activity.** The approved Design and Educational Program and Project Scope and Budget Agreement shall be within the limitations as set forth in 963 CMR 2.06: *Table 4*:

**Table 4 Net Square Feet<sup>1</sup>**

	<b>Minimum</b>	<b>Maximum</b>
<b>Elementary School</b>		
Pre-Kindergarten and Kindergarten (including self-contained lavatory)	1,100	1,300
Core Classroom (grades 1-8)	900	1,000
<b>Junior High School/Middle School</b>		
Core Classroom	850	950
<b>High School</b>		
Core Classroom	850	950

<sup>1</sup>Measured from inside wall to inside wall.

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For all other spaces, the MSBA Educational Program Space Standards and Guidelines shall be followed in planning school facilities. Said Guidelines may also provide school designers and school building committees with prototype building programs for elementary, middle, and high schools, and other grade configurations as determined by the Authority. The Eligible Applicant may make reasonable departures from the MSBA Educational Program Space Standards and Guidelines with a prior written determination of the Authority, at their sole discretion, that such departures are consistent with the intent of 963 CMR 2.00 to provide adequate, safe, cost effective and programmatically sound school facilities. The space standards set forth in Table 4 and in the MSBA Educational Program Space Standards and Guidelines may not necessarily be applicable to reconstruction, renovation or repair projects. These standards and guidelines were developed by the Authority for determining maximum size and costs related to new construction and should not be used for assessing safety standards or educational adequacy of existing facilities that were constructed in accordance with the standards and guidelines that prevailed at the time of construction. The Authority shall consider Proposed Projects on a case-by-case basis and in some cases different square footages may be determined at the discretion of the Authority.

#### 2.07: Cost Standards

- (1) The Authority shall develop construction and soft cost standards based upon the cost experience of recently completed and recently bid school projects, taking into account the cost effectiveness of design, construction and programming techniques utilized in such school projects. For the purposes of developing cost standards, the Authority shall, pursuant to M.G.L. c. 70B, § 9(b), develop cost standards for prototypical school components, as outlined in the MSBA Educational Program Space Standards and Guidelines.
- (2) The cost standards may be developed based on Massachusetts regional construction costs reflective of the geographic diversity of the Commonwealth.
- (3) A Proposed Project for which the estimated total budget is less than \$250,000, as determined by the Authority, shall not be eligible for approval by the Authority as an Approved Project and the Authority shall have no obligation to provide a review of a Statement of Interest or any Application materials for said Proposed Project and any Application materials submitted by the Eligible Applicant shall not warrant further consideration.
- (4) For the purposes of calculating a total project budget for an Approved Project which is new construction, cost standards developed pursuant to M.G.L. c. 70B, § 9(b), 963 CMR 2.00 and any other guidelines or policies of the Authority shall be applied to the Enrollment Projection, as determined by the Authority and the gross square footage per student, as defined by the Authority in 963 CMR 2.00. For an Approved Project which is a reconstruction, renovation, or repair

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project, the total project budget shall be calculated based on the approved scope of the project and cost factors, as determined by the Authority.

(5) The Authority shall not reimburse an Eligible Applicant for eligible soft cost components that exceed, in the aggregate, 20% of total construction costs, as determined by the Authority. Said limit may be exceeded with the prior written approval of the Authority.

(6) Basic architectural services shall include, but not be limited to, the following: architectural drawings, conceptual drawings and models, mechanical, electrical, plumbing, fire protection, structural, site development, basic environmental permitting, graphics, lighting design, acoustics, data and communication, visits to the project construction site to administer the contract between the Eligible Applicant and the contractor at a minimum interval of at least weekly for the duration of the project, educational consultants, any specialty consultants for laboratory, library/media center and kitchen space, code consultants, accessibility, making design revisions required to contain costs within the approved project construction budget and other services established pursuant to the Authority's standard designer contract. Additional architectural services may include, but not be limited to: geotechnical consulting, asbestos consulting, wetlands flagging, and other additional services as determined by the Authority.

(7) The provisions of 963 CMR 2.00 shall not preclude an Eligible Applicant from adding additional project elements to an Approved Project, in addition to the project scope defined in the Project Scope and Budget Agreement as approved by the Authority. Any and all costs related to said additional project elements, including but not limited to, the design, construction and implementation of said additional project elements, shall be the sole responsibility of the Eligible Applicant. Project elements that exceed or diverge from the project scope detailed in the Project Scope and Budget Agreement are categorically ineligible to receive funding from the Authority. The Eligible Applicant may retain such elements only by accepting sole financial responsibility for them in writing in a format prescribed by the Authority, prior to said Eligible Applicant including such elements in any designs.

(8) When a facility is to be acquired as part of an Approved Project, the value of such facility to be acquired by an Eligible Applicant shall be determined by the Authority in accordance with the provisions of M.G.L. c. 30B on the basis of the reports of at least two appraisers registered with the Attorney General and retained by the Eligible Applicant. The final approved cost of combined facility acquisition, renovation and conversion work shall not exceed the equivalent costs in new construction, as determined by the Authority.

#### 2.08: Reconstruction, Renovation and Repair Projects

(1) Reconstruction, renovation and repair projects may be considered by the Authority pursuant to the Application process promulgated in 963 CMR 2.00.

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(2) Any Approved Project for the reconstruction, renovation, or repair of an existing school facility shall be subject to a determination by the Authority that such reconstruction, renovation or repair has a life-cycle cost analysis that demonstrates the cost-effectiveness and useful life of said reconstruction, renovation or repair.

(3) The space standards contained in 963 CMR 2.00 and in the MSBA Educational Program Space Standards and Guidelines may not necessarily be applicable to reconstruction, renovation or repair projects. These standards and guidelines were developed by the Authority for determining maximum size and costs related to new construction and should not be used for assessing safety standards or educational adequacy of existing facilities that were constructed in accordance with the standards and guidelines that prevailed at the time of construction. The Authority shall consider proposed reconstruction, renovation and repair projects on a case-by-case basis and in some cases different square footage calculations may be determined at the discretion Authority.

#### **2.09: Statement of Interest Process**

(1) To be considered by the Authority in any Fiscal Year for approval of a Proposed Project for a Total Facilities Grant, an Eligible Applicant shall submit a Statement of Interest to the Authority by no later than July 31<sup>st</sup> of the Fiscal Year in which approval is being sought, unless otherwise agreed in writing by the Authority prior to said July 31<sup>st</sup> date or unless the Eligible Applicant has submitted an Emergency Statement of Interest pursuant to 963 CMR 2.09(6). Any Statement of Interest which is received after July 31<sup>st</sup> or is not completed to the satisfaction of the Authority may be considered by the Authority in a subsequent Fiscal Year. The submission of a Statement of Interest in no way commits the Authority to accept any Application materials, approve an Application, provide a grant or any other type of funding, or places any other obligation or requirement upon the Authority. The Authority expects that the Statement of Interest can be completed at no cost to the Eligible Applicant, and any costs incurred by an Eligible Applicant in connection with considering, completing and/or submitting a Statement of Interest to the Authority shall not be eligible for reimbursement by the Authority and shall be borne solely by the Eligible Applicant. Design documents, plans, schematics or drawings will not be accepted by the Authority with any Statement of Interest submission to the Authority.

(2) No Statement of Interest shall be considered by the Authority unless said Statement of Interest has been submitted in compliance with the provisions stated in the statement of interest, including an approval by a vote of the appropriate governing bodies of the Eligible Applicant, which in the case of a regional school district shall be the regional school committee.

(3) The Authority shall review Statements of Interest pursuant to the priority criteria established by M.G.L. c. 70B, including but not limited to M.G.L. c. 70B, §§ 6, 8, and 9(a). The Authority

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shall review all properly submitted Statements of Interest in the context of the Authority's Enrollment Projections for the Eligible Applicant, general building condition data collected by the Authority and any other information or data as the Authority may deem to be necessary for review. The Authority shall notify an Eligible Applicant if the Authority determines that the Statement of Interest has not met the criteria established in M.G.L. c. 70B, §§ 6, 8, and 9(a).

(4) If the Authority determines that the Statement of Interest and any associated material merit further consideration, the Authority may, in its sole discretion, invite the Eligible Applicant to apply to the Authority for a school facilities grant to meet a portion of the cost of a school project. A city, town, regional school district or independent agricultural and technical school shall have no entitlement to any funds from the Authority. If the Authority determines, in its sole discretion, that a Statement of Interest does not merit further consideration by the Authority, the Eligible Applicant shall not be eligible to apply to the Authority for a Proposed Project related to said Statement of Interest in that Fiscal Year.

(5) No Statement of Interest shall be considered by the Authority for the purposes of student overcrowding if the Authority determines, in its sole discretion, that such overcrowding is the result of district student assignment policies which created such overcrowding or district operational budget constraints which caused the vacancy of classrooms or the overcrowding of classrooms due to personnel reductions.

(6) Emergency Statement of Interest Process

(a) If a school facility, that has been in regular use as a school facility, has been damaged or destroyed by reason of fire, flood, explosion, earth movement, extreme weather conditions, or other unforeseen, extreme facility failure ("Emergency Condition"), such that all or a substantial part of the school facility that is used for educational purposes has been declared unsafe and unfit for student occupancy by the appropriate governmental agency, but excluding any such conditions attributable to neglect or lack of maintenance, the Authority may accept an Emergency Statement of Interest from an Eligible Applicant subject to the following conditions:

1. The Authority is a payor of last resort in the event of an Emergency Condition described herein. If, at any time, the Authority determines, in its sole discretion, that insurance proceeds, damages, awards, payments, grants or donations recovered by a city, town, regional school district, or independent agricultural and technical school ("District"), or which the District is eligible to recover, from insurers, responsible parties or any other funding sources for the repair, reconstruction or replacement of a school facility damaged or destroyed by an Emergency Condition meet or exceed the estimated costs of replacing, reconstructing, or repairing the school facility such that the educational and

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instructional program is restored to that which existed prior to the Emergency Condition, the Authority shall have no obligation to accept an Emergency Statement of Interest or to take any further action to advance an Emergency Statement of Interest that has been submitted, unless otherwise agreed by the Authority in writing. Any Proposed Project that is initiated by the submission of an Emergency Statement of Interest shall only be eligible for reimbursement of project costs, in accordance with the provisions of General Laws Chapter 70B, as amended, and 963 CMR 2.00 *et seq.*, that the Authority determines are necessary to replace, reconstruct, or repair a school facility so that the educational and instructional program is restored to the condition that existed prior to the Emergency Condition. Any additional improvements that the Authority determines exceed those necessary to restore the educational and instructional program to that which existed prior to the Emergency Condition shall be considered only as part of a Statement of Interest submitted under 963 CMR 2.09(1), unless otherwise agreed by the Authority in writing.

2. The confirmation of an Emergency Condition by the Authority as described herein, the submission of an Emergency Statement of Interest to the Authority, the acceptance of an Emergency Statement of Interest by the Authority, and/or the inspection or investigation of an Emergency Condition, shall in no way commit the Authority to accept any Application materials, approve an Application, provide a grant or any other type of funding, or place any other obligation or requirement upon the Authority. A District shall have no entitlement to any funds from the Authority.

3. An Eligible Applicant who has reason to believe that a potential Emergency Condition exists in a school facility shall as soon as practicable, but in no event later than three (3) business days after such Emergency Condition becomes known to the Eligible Applicant, notify the Authority in writing of the potential Emergency Condition and shall as soon as practicable thereafter provide the Authority with any and all information that the Authority may request in its evaluation of the potential Emergency Condition.

4. By no later than ten (10) calendar days after the potential Emergency Condition becomes known to the Eligible Applicant, the Eligible Applicant may submit a written request to the Authority for confirmation of the potential Emergency Condition. The written request shall include: a detailed description of the events resulting in the potential Emergency Condition, evidence sufficient to show that an authorized public safety official has declared the school facility unsafe and unfit for student occupancy; a certification by a professional engineer,

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or other appropriate licensed professional, that the school facility is unsafe and unfit for student occupancy; a statement describing the educational impact and hardship caused to the District by the potential Emergency Condition; and a summary of the steps that the District has taken to accommodate the students displaced by the potential Emergency Condition. Upon receipt of the District's written request, the Authority may assign one or more representatives to inspect and investigate the potential Emergency Condition, to evaluate the damage, and to meet with local officials.

5. The Eligible Applicant shall give the Authority a reasonable opportunity to inspect and investigate the potential Emergency Condition. To the extent possible, the Eligible Applicant shall give the Authority prior written notice of any demolition activity and shall allow the Authority to inspect and investigate the potential Emergency Condition prior to any demolition.

6. The Eligible Applicant shall cooperate with the Authority in its inspection and investigation of the potential Emergency Condition. The Eligible Applicant shall allow the Authority to have access to the affected school facility, police and fire reports, all correspondence, reports and other documents received from or sent to the District's insurers, and all other documentation that the Authority may request. The Eligible Applicant shall promptly submit to the Authority any documentation or information requested by the Authority, including, but not limited to, any certifications, statements, forms, or applications that the Authority may require.

7. After the Authority has had a reasonable opportunity to inspect and investigate the potential Emergency Condition and after the Authority has received all documentation, information, certifications, statements, applications, reports, and forms that it has requested, the Authority shall determine, in its sole discretion, whether an Emergency Condition exists.

8. If the Authority has confirmed in writing that an Emergency Condition exists, the Eligible Applicant may, at the direction of the Authority, submit an Emergency Statement of Interest to the Authority in such format as the Authority may develop no later than 30 calendar days after such confirmation by the Authority. The Authority shall not accept an Emergency Statement of Interest unless the Authority has confirmed the existence of an Emergency Condition.

9. The Authority may take whatever action it deems reasonable and necessary, in its sole discretion, to expedite the processing of an Emergency Statement of



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Interest but, except as otherwise provided in this subsection, an Emergency Statement of Interest shall be processed and considered in accordance with the provisions of General Laws Chapter 70B, as amended, and 963 CMR 2.00 *et seq.*

(b) Emergency Stabilization: As a further condition of the Authority's acceptance of an Emergency Statement of Interest, when a potential Emergency Condition arises, the Eligible Applicant shall forthwith undertake whatever actions are reasonable and necessary to alleviate the potential Emergency Condition; to mitigate the damage or harm to the school facility and to the educational and instructional program; to prevent further damage, harm or deterioration; to make the school facility safe and fit for student occupancy, in whole or in part; and to restore the educational and instructional program, to the extent possible. The Eligible Applicant shall be required to demonstrate to the Authority's satisfaction that it has undertaken, and will continue to undertake, the Emergency Stabilization measures required herein. Costs incurred for Emergency Stabilization shall be the sole responsibility of the Eligible Applicant and shall not be eligible for reimbursement from the Authority.

(c) Eligible Applicant's Duty to Exhaust Alternative Sources of Funding: In the event of an Emergency Condition, the Authority shall be a payor of last resort. To be eligible for a school facilities grant on account of an Emergency Condition, an Eligible Applicant shall have a continuing duty to demonstrate to the Authority's satisfaction that it is using its best efforts to file, perfect, advance, prosecute and, if necessary, litigate any claims that it may have against any responsible insurer, any responsible party, and/or any other available source of funding, and to recover the maximum amount of insurance proceeds, damages, or other payments that are available to be applied against the cost of replacement, reconstruction, or repair of the affected school facility. Any costs incurred by an Eligible Applicant in filing, perfecting, prosecuting, advancing or litigating any claims or in fulfilling any requirements imposed by this section shall be the sole responsibility of the Eligible Applicant and shall not be eligible for reimbursement from the Authority.

1. Insurance Claims: For purposes of these regulations only, if an Emergency Condition is or may be covered by an insurance policy either carried by the District and/or on which the District is an additional insured party, the Eligible Applicant shall use its best efforts to file, perfect, prosecute, advance and, if necessary, litigate its claims under any applicable insurance policies; to fulfill any obligations or conditions imposed by the insurer under any applicable insurance policies, and to recover the maximum amount of proceeds available under the applicable policies.

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2. Responsible Parties: For purposes of these regulations only, the Eligible Applicant shall use its best efforts to identify any additional parties, including but not limited to independent contractors, subcontractors, manufacturers, vendors or individuals, who may be responsible for the Emergency Condition. The Eligible Applicant shall use its best efforts to give notice to any such potentially responsible parties and their insurers; to give any such responsible parties and their insurers a reasonable opportunity to inspect and investigate the Emergency Condition; and to file, perfect, prosecute, advance and, if necessary, litigate its claims against any such responsible parties. This provision shall also apply to claims under product and service warranties, contracts, indemnification agreements and any other potential sources of recovery.

(d) Application of Insurance Proceeds, Damages Awards, Grants, Donations, and other Payments: In the event that an Emergency Statement of Interest results in an Approved Project, if an Eligible Applicant recovers, has recovered, or was eligible to recover any insurance proceeds, damages, awards, payments, grants or donations from insurers, responsible parties or any other funding sources related to the Emergency Condition, other than funding from the Authority, that can be applied to the costs of replacing, reconstructing, refurbishing or repairing the affected school facility, all such proceeds, damages, awards, payments, grants, and/or donations shall be used solely for that purpose. If the total amount of said proceeds, damages, awards, payments, grants and/or donations meet or exceed the total eligible costs of an Approved Project, as determined by the Authority, the Authority shall be reimbursed for its share of the amount of total eligible costs and any excess amounts shall be retained by the Eligible Applicant. If the total amount of proceeds, damages, awards, payments, grants and/or donations are less than the total amount of eligible costs, as determined by the Authority, then such amounts shall be deducted from said total amount of eligible costs and the remaining amount of eligible costs shall be apportioned according to the applicable reimbursement rate, as determined by the Authority.

(e) Insurance for School Facilities: In order to be eligible for a school building grant initiated by an Emergency Statement of Interest, each city, town, regional school district and independent agricultural and technical school shall obtain and maintain, at its sole expense, an insurance policy providing coverages, standard extensions of coverage and optional extensions of coverage as needed to insure against damage, destruction or loss of its school facilities, including both real property and personal property within school facilities, resulting from accident, equipment breakdown, fire, flood, earth movement, lightning, aircraft, explosion, riot, civil commotion, smoke, vehicles, wind or hail, malicious mischief, leakage or accidental discharge from fire protection systems, collapse, terrorism and any other perils commonly insured against in such types and in such amounts

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as are sufficient to cover the replacement cost for repair, replacement, or reconstruction of school facilities as well as the replacement cost of personal property contained in school facilities. The insurance policy shall also contain, at a minimum, such coverages, standard extensions of coverage and optional extensions of coverage as are sufficient to cover demolition costs, operation of building laws, increased construction cost, extra expense during a period of restoration, debris removal and relocation costs related to a covered loss. A city, town, regional school district or independent agricultural and technical school shall make the certificate of insurance evidencing the insurance coverage for school facilities that is required by this section available to the Authority upon request.

(f) Maintenance of Smoke and Fire Alarm Systems and Fire Suppression Systems: In order to be eligible for a school building grant initiated by an Emergency Statement of Interest, each city, town, regional school district and independent agricultural and technical school shall establish and fund by sufficient appropriation a maintenance program to maintain and keep in good repair existing smoke and fire alarm systems and existing fire suppression systems in school facilities.

## **2.10: Application and Approval Procedures**

The Authority shall not accept any complete Application prior to July 1, 2007.

### (1) Application Approval.

(a) The Authority shall approve Applications in accordance with 963 CMR 2.00, the priority criteria established in M.G. L. c. 70B, including but not limited to, M.G.L. c. 70B, §§ 6, 8, and 9(a), and other policies, requirements and guidelines as the Authority may determine are necessary for the approval of a Proposed Project. **The Authority may rescind approval of an Approved Project at any time, and collect any funds it has paid an Eligible Applicant if the Eligible Applicant, or his agent, does not comply with the statutes, regulations, guidelines and/or policies of the Authority.**

(b) The Authority shall not accept an Application or approve funding for any Proposed Project from an Eligible Applicant that, in the reasonable judgment of the Authority, is the result of negligence or a lack of routine maintenance.

### (2) Initial Compliance Certification Process.

(a) The Authority shall not consider an Application if an Initial Compliance Certification has not been properly submitted to the Authority by the Eligible Applicant in the format developed by the Authority. The Eligible Applicant shall certify in the Initial Compliance Certification current and future compliance with the provisions of the rules, regulations, policies and procedures of the Authority.

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(b) Any Eligible Applicant seeking funding from the Authority which has, prior to submitting any part of an Application to the Authority, sold, leased or otherwise removed from service any schoolhouse operated by said Eligible Applicant shall be eligible for such grant only if the Authority determines that the grant is not for the purpose of replacing a schoolhouse sold, leased, or otherwise removed from service in the past ten years or that the need for the Proposed Project covered by the grant could not have reasonably been anticipated at the time that such schoolhouse was sold, leased, or otherwise removed from service pursuant to M.G.L. c. 70B, § 15 (c).

(c) Pursuant to M.G.L. c. 70B, § 8, the Authority shall not approve any Proposed Project for any school district that fails to spend in the year preceding the year of application at least 50% of the sum of said school district's calculated foundation budget amounts for the purposes of foundation utility and ordinary maintenance expenses, and extraordinary maintenance allotment as defined in M.G.L. c.70, for said purposes. From Fiscal Year 1999 forward, no school district shall be given approval for a Proposed Project nor receive any funding from the Authority unless said district has spent at least 50% of the sum of said district's calculated foundation budget amounts in each of the Fiscal Years including and succeeding Fiscal Year 1999.

**(3) School Building Committee.**

(a) The Eligible Applicant shall formulate a school building committee for the purpose of generally monitoring the Application process and to advise the Eligible Applicant during the construction of an Approved Project.

(b) The school building committee shall be formed in accordance with the provisions of the Eligible Applicant's local charter and/or by-laws and it is recommended that the city, town, regional school district, or independent agricultural and technical school make a reasonable effort to include one or more of the following individuals: the local chief executive officer of the Eligible Applicant, or, in the case of a town whose local chief executive officer is a multi-party body, said body may elect one of its members to serve on the school building committee; the town administrator, town manager, or city manager, where applicable; at least one member of the school committee, as required by M.G.L. c. 71, § 68; the superintendent of schools; the local official responsible for building maintenance; a representative of the office or body authorized by law to construct school buildings in that city, town or regional school district, or for that independent agricultural and technical school; the school principal from the subject school; a member who has knowledge of the educational mission and function of the facility; a local budget official or member of the local finance committee; members of the community with architecture, engineering and/or construction experience to provide advice relative to the effect of the Proposed Project on the community and to examine building design and construction in terms of its constructability.

(c) The Authority may hold "best practices" information sessions at varying geographic locations in the Commonwealth for the purposes of keeping school building committees up to date on regulatory and policy activities of the Authority.

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(d) The Eligible Applicant shall submit to the Authority for its approval, a written statement describing the composition of the school building committee and the role of the school building committee in monitoring the Application process and advising the Eligible Applicant during the construction of the Approved Project. The written statement shall be in a format prescribed by the Authority.

(e) The Authority shall approve the composition and role of the school building committee which approval shall not be unreasonably withheld. The Authority's approval will be based on several factors, including, but not limited to:

1. past performance of the school building committee, the building committee, whether temporary or permanent, or any other committee responsible for the oversight, management, or administration of the construction of public buildings, the composition of the school building committee and qualifications of its individual members, the powers and duties of the school building committee; and the school building committee's procedures for conducting its meetings; and

2. the extent to which there is representation of the municipal government, school district personnel with management, educational and maintenance expertise, and representation of members of the local community with design and construction experience. After the approval of the school building committee by the Authority, if any, the Eligible Applicant shall notify the Authority in writing within 20 calendar days of any changes to the membership or the duties of said committee. The Eligible Applicant shall make a reasonable effort to ensure the continuity of membership of the school building committee throughout the life of an Approved Project.

(f) The Eligible Applicant shall not delegate their fiduciary responsibilities to the School Building Committee.

**(4) Design and Educational Program and Budget Statement for Educational Objectives.**

(a) If the Authority determines that the Proposed Project has been deemed to merit further consideration, the Authority may require that an Eligible Applicant submit, in the format prescribed by the Authority, a Design and Educational Program, and a Budget Statement for Educational Objectives. The Eligible Applicant shall outline the specific educational program goals for a Proposed Project and how the Eligible Applicant proposes to align those goals with the operating budget for the District and Proposed Project.

(b) The following spaces shall be categorically ineligible for Authority funding: swimming pools, skating rinks, field houses (only to the same extent as gymnasias), district administrative office space, indoor tennis courts, and other spaces which may be determined ineligible by the Authority.

(c) The Design and Educational Program shall be subject to the approval of the Authority. The Authority may provide, when in the discretion of the Authority it is necessary, technical assistance to the Eligible Applicant with the development of Design and Educational Program elements. The Authority shall review the Budget Statement for Educational Objectives in the context of the Design and Educational Program, and the Authority may

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consult the Division of Local Services at the Massachusetts Department of Revenue. The Authority may require that the Eligible Applicant make changes, adjustments or modifications to the Design and Educational Program or the Budget Statement for Educational Objectives in order to receive approval from the Authority.

(d) After approval of the Design and Educational Program by the Authority, the Eligible Applicant shall certify to the Authority, in the manner prescribed by the Authority, that the local school committee has voted to approve the Design and Educational Program and the Budget Statement for Educational Objectives in a manner prescribed by the Authority and provide the Authority with a copy of the local school committee vote.

(5) Educational Facilities Master Plan.

(a) An Eligible Applicant shall have a current educational facilities master plan that includes both a long term and a short term plan for facilities and an updated building inventory, in accordance with the Educational Facility Master Plan Guidelines established by the Authority.

(b) If the Authority determines that a Proposed Project deems to merit further consideration, the Authority may require that an Eligible Applicant submit an educational facilities master plan, as defined and in the format prescribed by the Authority.

(6) Facilities Assessment.

(a) The Authority may determine that a Facilities Assessment is necessary to understand the extent of deficiencies outlined in the Statement of Interest. The Authority, in cooperation with the Eligible Applicant, may conduct a Facilities Assessment of the facility addressed in the Statement of Interest or any facilities relevant to the facility addressed in the Statement of Interest, as determined by the Authority.

(b) The Facilities Assessment, if any, shall be conducted by the Authority in a format and manner prescribed by the Authority and the Authority shall pay for the costs of conducting such Facilities Assessment, provided that the Eligible Applicant fully cooperates with the Authority in conducting such Facilities Assessment. The Eligible Applicant shall provide complete access to its school facilities for purposes of conducting a Facilities Assessment. In the event that the Eligible Applicant does not cooperate with the Authority in conducting a Facilities Assessment, which, in the reasonable judgment of the Authority results in a delay of the Facilities Assessment or a delay in the Application process, the Authority may decline further consideration of the Eligible Applicant's Application, require that the Eligible Applicant pay for all or a portion of said Assessment, and/or deduct a portion or all of the cost of the Facilities Assessment from any Total Facilities Grant for which the Eligible Applicant may receive approval from the Authority or from any other funds provided to the Eligible Applicant from the Authority.

(c) The Facilities Assessment shall include an assessment of the Eligible Applicant's maintenance process and a review of the maintenance practices and procedures in place at the

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school and district level. Such maintenance review shall be conducted in a format and manner prescribed by the Authority and the information collected at this time shall be used as part of the assessment of incentive percentage points for maintenance ratings, if any, that may be made available by the Authority to an Eligible Applicant pursuant to M.G.L c. 70B, § 10.

(d) At the conclusion of such Assessment, the Authority may determine that the Application does not warrant further consideration at that time, pursuant to the priority criteria established in M.G.L. c. 70B, including but not limited to M.G.L. c. 70B, §§ 6, 8, and 9(a).

(e) The Authority shall bear no responsibility for a decision not to undertake a Facilities Assessment or the results of any Facilities Assessment undertaken. In the event that the Authority decides to conduct a Facilities Assessment, the conducting of said Assessment shall in no way be construed, interpreted or deemed to imply any responsibility on the part of the Authority for the results of said Assessment, nor shall the Authority assume any duty or responsibility with respect to the maintenance, renovation, repair, or construction of any school facility that may be assessed.

**(7) Pre-study Review Meeting.**

(a) If an Eligible Applicant has properly submitted the:

1. Statement of Interest;
2. the Initial Compliance Certification;
3. the Design and Educational Program;
4. the Budget Statement for Educational Objectives;
5. a copy of the educational facilities master plan; and
6. any other materials which the Authority may require

and a Facilities Assessment by the Authority has been completed, if applicable, the Authority and the Eligible Applicant shall meet jointly to discuss the facility deficiencies as identified by the Eligible Applicant in the Statement of Interest and to discuss any further action in which the Authority may participate. The Eligible Applicant, or his agent, shall invite members of the public to attend said meeting and said meeting shall be at a location and in a format determined by the Authority, however, the provisions of M.G.L. c. 30A, § 11A½ and M.G.L. c. 39, § 23b shall not apply. The Pre-study Review Meeting may be attended by representatives of the Eligible Applicant including, but not limited to: one or more representatives of the school committee, one or more members of the building committee, where applicable, a representative of the office or body authorized by law to construct school buildings in that city, town or regional school district, or for the independent agricultural and technical school, the superintendent of schools or his designee, other local officials or representatives at the discretion of the Authority.

(b) After the Pre-study Review Meeting, the Authority may determine that the Application does not warrant further consideration at that time, pursuant to the priority criteria established in M.G.L. c. 70B, including but not limited to M.G.L. c. 70B, §§ 6, 8, and 9(a).

(c) If the Authority determines that a Pre-study Review Meeting has been held to the Authority's satisfaction and the Authority determines that the Application warrants further

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consideration, the Authority may require that a Feasibility Study be conducted.

(8) Feasibility Study.

(a) The Authority may determine that a Feasibility Study is necessary to understand the extent of deficiencies identified in the Statement of Interest or the Facilities Assessment, if one was performed, and to begin to explore the formulation of a solution to those deficiencies as outlined in the Eligible Applicant's Statement of Interest. The Authority may require the Eligible Applicant to conduct a Feasibility Study of the facility addressed in the Statement of Interest and/or any other facilities relevant to the facility addressed in the Statement of Interest. The Design and Educational Program reviewed and approved by the Authority in the Pre-study Review Meeting shall, in part, provide the criteria for the scope of the Feasibility Study.

(b) The Feasibility Study shall be performed at a time and in a format and manner prescribed by the Authority and the Authority may reimburse the Eligible Applicant for a portion of the costs of conducting such Feasibility Study, provided that the Eligible Applicant fully cooperates with the Authority in conducting such Feasibility Study. Feasibility Studies conducted unilaterally by the Eligible Applicant, or without the prior written acknowledgement and concurrence of the Authority, or in a manner or format not acceptable to the Authority, or that, in the discretion of the Authority, do not contain the required information or were not conducted in a manner and format consistent with guidelines developed by the Authority, may, in the sole discretion of the Authority, be non-reimbursable and will be entirely at the expense of the Eligible Applicant and the results of any such Feasibility Study may not be accepted by the Authority, all in its sole discretion. The Eligible Applicant shall provide complete access to its school facilities for purposes of conducting a Feasibility Study. In the event that the Eligible Applicant does not cooperate with the Authority in conducting a Feasibility Study, which, in the reasonable judgment of the Authority results in a delay of the Feasibility Study or a delay in the application process, or conducts a Feasibility Study that is unacceptable to the Authority, the Authority may decline further consideration of the Eligible Applicant's Application, decline to reimburse the Eligible Applicant for any costs associated with the Feasibility Study and/or deduct a portion or all of the cost of the Feasibility Study from any Total Facilities Grant which the Eligible Applicant may receive approval from the Authority or from any other funds provided to the Eligible Applicant from the Authority. The Authority reserves the right to require an Eligible Applicant to revise a Feasibility Study, or conduct a new Feasibility Study.

(c) The Eligible Applicant shall submit to the Authority progress reports, draft copies, documentation and/or other information on the Feasibility Study at predetermined benchmarks while said Study is being conducted.

(d) The purpose of the Feasibility Study is to investigate potential options and solutions, including cost estimates in a format prescribed by the Authority, for the deficiencies and issues identified in the Facilities Assessment, if any assessment was performed, the Design



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and Educational Program, the Educational Facilities Master Plan, the Enrollment Projection, and in the properly submitted Statement of Interest by an Eligible Applicant. The Feasibility Study shall be conducted in accordance with the guidelines established by the Authority. Said guidelines may require Authority participation in the execution the Feasibility Study as well as include multiple steps requiring Authority approval at the conclusion of each step.

**(e) The Feasibility Study shall include, but not be limited to:**

1. an examination and identification of potential alternatives to construction or renovation of a facility whether or not such alternatives are eligible for Authority reimbursement;
2. one of the alternatives shall be an analysis of a no-build or *status quo* option, to be used as a benchmark for comparative analysis of all other alternatives;
3. an analysis of school district student school assignment practices and an analysis of available space in other school facilities in the district;
4. the utilization of under-utilized or vacant facilities potentially available for the proposed use for the Proposed Project;
5. the lease, rental or acquisition of existing buildings that could be made available for school use pursuant to M.G.L. c. 70B, § 8;
6. the use of regionalizing or tuition agreements with adjacent school districts pursuant to M.G.L. c. 70B, § 8;
7. a detailed and itemized cost estimate for each alternative;
8. an evaluation of the environmental and cost impact of construction phasing on students and staff occupying a renovated building, and any relocation options or off-hour construction that may be required for each alternative;
9. an evaluation of the existing conditions at no more than three sites, unless otherwise determined by the Authority, that shall include, but not be limited to, a geotechnical evaluation and soils exploration, a Phase I Initial Site Investigation conforming to 310 CMR 40.00, performed by a licensed site professional.

Unless otherwise required by law or regulation, the Authority may require, at its sole discretion, subsequent environmental testing be performed at a site agreed upon by the Authority and the Eligible Applicant. Said subsequent environmental testing shall, when required or appropriate, include the regulatory authority or authorities having jurisdiction or be in accordance with the requirements of said appropriate regulatory authority or authorities.

**(f) The Feasibility Study shall include a review of the District's operational and capital budget and said review shall include, but not be limited to:**

1. a review and analysis of the Budget Statement for Educational Objectives;
2. a review and analysis of the District's operating and capital budget;
3. an analysis of the ability of the District to support the operating and capital costs of each alternative, including the increased costs of instructional, utilities, maintenance and transportation support and any debt service associated with each alternative, which may be in addition to costs already being incurred.

The Study shall include a plan for each alternative studied showing how the district

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- intends to fund all costs associated with that alternative. Said review and analysis shall be in format determined by the Authority.
- (g) The Authority, in its sole discretion, may share in a portion of the costs associated with the Feasibility Study provided that the Eligible Applicant has cooperated in all aspects of the Study and the Application process. The Authority reserves the right to approve all costs associated with any Feasibility Study for which an Eligible Applicant is seeking reimbursement from the Authority and no Eligible Applicant shall enter into a contract for the provision of services related to the Feasibility Study without prior written approval from the Authority. The Eligible Applicant shall use the standard contracts developed by the Authority. In the event that the Authority decides to share in a portion of the costs associated with the Feasibility Study, the Authority shall calculate its share of approved costs of the Feasibility Study using the formula set forth in M.G.L. c. 70B, § 10 (a), except that no incentive percentage points, as described in M.G.L. c. 70B, § 10 (a)(C), shall be awarded in connection with the Feasibility Study.
- (h) In the event that the Authority determines there are extraordinary or non-customary costs that are not warranted, the Authority may require the Eligible Applicant to fund all said extraordinary or non-customary costs and the Authority may determine that all costs associated with the Feasibility Study are non-reimbursable and that the Eligible Applicant fund all costs associated with the Feasibility Study.
- (i) The Authority may require the Eligible Applicant to fully fund certain environmental or geotechnical site testing costs beyond initial investigatory costs.
- (j) The Eligible Applicant shall provide the Authority with the results of environmental assessment or assessments, if any, which the Eligible Applicant shall also make available for public review and shall provide a reasonable opportunity for public comment thereon. The Eligible Applicant shall submit to the Authority a summary of the public comments, in a format determined by the Authority, prior to the Project Scope and Budget Conference.
- (k) The Authority shall bear no responsibility for the results of any Feasibility Study, environmental assessment, geotechnical site testing, nor for any site remediation, clean-up or other site remediation services. By requiring an Eligible Applicant to undertake a Feasibility Study, the Authority is in no way assuming any duty to ensure that a site of a Project is not contaminated or environmentally unsafe. Nothing stated herein shall preclude an Eligible Applicant from holding public forums, meetings, or discussions regarding any elements of an application or project.
- (l) The final Feasibility Study Report shall be in the format prescribed by the Authority and shall include, but not be limited to, a detailed scope of the Proposed Project, architectural and site drawings as required to convey a successful organization of spaces that will satisfy the special and organizational requirements of the approved Design and Educational Program, a description of the major building construction systems which are proposed for the Proposed Project, a budget cost estimate using the Uniformat II Elemental Classification format (Level 3) in as much detail as determined by the Authority, a projected cash-flow, permitting requirements, a proposed project design and construction schedule including consideration of**

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phasing of the Proposed Project, sustainable design goals including minimization of environmental and transportation impacts, and ways the Proposed Project can meet those goals, and elements of construction or demolition waste that would be recyclable.

(m) At the conclusion of the Feasibility Study, the Authority may determine that the Application does not warrant further consideration at that time, pursuant to the priority criteria established in M.G.L. c. 70B, including but not limited to M.G.L. c. 70B, §§ 6, 8, and 9(a).

(9) Project Scope and Budget Conference. After completion of a Facilities Assessment, if any, and Feasibility Study, if authorized and approved by the Authority, the Authority may invite the local chief executive officer, Chair and or members of the school committee, the Chair and or members of the school building committee, the superintendent of the Eligible Applicant's school district, a representative from the office or body that is authorized by law to construct a school building or undertake a school capital project in that city, town or regional school district, and other local officials as required by the Authority, to meet with authorized representatives of the Authority to discuss proposed solutions to the issues identified through the Statement of Interest, verified by the Facilities Assessment, if any, and analyzed in the Feasibility Study. The Eligible Applicant, or his agent, shall invite members of the public to attend said meeting and said meeting shall be at a location and in a format determined by the Authority, however, the provisions of M.G.L. c. 30A, § 11A½ and M.G.L. c. 39, § 23b shall not apply. No Proposed Project shall receive approval or funding from the Authority unless a Project Scope and Budget Conference is held to the reasonable satisfaction of the Authority, unless the Authority determines in writing that a Project Scope and Budget Conference is not required.

(10) Project Scope and Budget Agreement.

(a) A Project Scope and Budget Agreement, in the format and manner prescribed by the Authority, shall be executed by the Eligible Applicant and the Authority. Such Agreement shall include, but not be limited to:

1. the Authority specifying the remaining actions to be taken by the Authority including the date of an upcoming Board vote on the Proposed Project as detailed in the Project Scope and Budget Agreement and the identification of an initial minimum and maximum potential reimbursement rate from the Authority based on the grant percentage formula established pursuant to M.G.L. c. 70B § 10;
2. the Authority specifying the remaining actions to be taken by the Eligible Applicant, including but not limited to, confirmation of a date certain by which the Eligible Applicant shall receive the necessary local approvals for the Proposed Project;
3. a detailed project scope, including the educational space requirements for the Proposed Project and the preliminary plans and specifications;
4. an itemized total project budget for the Proposed Project which shall include a delineation of all costs, including but not limited to, a project construction budget;
5. a projected cash flow;

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6. a detailed description of the site of Proposed Project;
  7. a timeline for project phasing from design through construction document development up to the acceptance of project bids, which timeline in the case of a Construction Manager at Risk project, shall reflect project phasing including design, selection of a Construction Manager at Risk, negotiation of a guaranteed maximum price, acceptance of trade contractor bids, and a construction schedule through project occupancy, an estimated timeline from the bid date acceptances and a construction schedule through project occupancy which shall be agreed upon by the Eligible Applicant and the Authority;
  8. a complete listing to the satisfaction of the Authority of all furniture, fixtures and equipment that will be purchased for the Approved Project; and
  9. any other information that the Authority may require.
- (b) After the execution of a Project Scope and Budget Agreement the Proposed Project will be submitted to the Board for approval. No Proposed Project will be presented to the Board unless the Authority and the Eligible Applicant have executed a Project Scope and Budget Agreement.
- (c) An executed Project Scope and Budget Agreement is valid for a period of time not to exceed 120 calendar days after the Agreement has been approved by a vote of the Board, unless agreed to in writing at such vote of the Board that a different date is necessary to accommodate local meeting schedules. During said 120 calendar day period, the Eligible Applicant shall acquire and certify local approval for an appropriation and all other necessary local votes or approvals showing acceptance of the cost, site, type and scope, and timeline for the Proposed Project. Said local votes or approvals shall be in the format prescribed by the Authority. If the timelines established by the Project Scope and Budget Agreement are not met by the Eligible Applicant, or if the Eligible Applicant fails to obtain the necessary local approvals, the Authority reserves the right to rescind the offer of a Total Facilities Grant to the Eligible Applicant for the Proposed Project.
- (11) Project Funding Agreement.
- (a) After the Eligible Applicant has acquired local approval in the format prescribed by the Authority, the Eligible Applicant and the Authority shall execute a Project Funding Agreement within 14 calendar days of said local approval. The Eligible Applicant shall document to the Authority the sources and amounts of local funding which will be committed for the Eligible Applicant's share of the Approved Project cost. If the Eligible Applicant does not sign the Project Funding Agreement within said 14 day time period, then the Board vote for approval of the Proposed Project shall be rescinded.
- (b) The Project Funding Agreement shall include, but not be limited to, the Total Facilities Grant, the site of the project, the total project budget, a construction time line, and the scope of the Approved Project to be funded by said grant. The Authority shall not expend any funds for any costs in excess of the Total Facilities Grant established in the Project Funding Agreement. The Total Facilities Grant shall not include funding for categorically ineligible

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costs established pursuant to M.G.L. c. 70B, 963 CMR 2.00 and guidelines issued by the Authority, additions to scope beyond that agreed upon and outlined in the Project Scope and Budget Agreement, or other costs which the Authority deems to be ineligible.

#### 2.11: Owner's Project Manager

(1) If the estimated construction, renovation, reconstruction or repair cost of the Approved Project is estimated to be \$1,500,000 or greater, or if so required by the Authority as a condition to qualify for a funding from the Authority, the Eligible Applicant shall procure the services of an Owner's Project Manager pursuant to the provisions of M.G.L. c. 149, § 44A½, 963 CMR 2.00 and any guidelines established by the Authority, and shall use standard contract forms established by the Authority. All costs associated with the Owner's Project Manager that are incurred prior to the execution of a Project Funding Agreement shall be borne exclusively by the Eligible Applicant, unless otherwise determined in writing by the Authority.

(2) Prior to executing a contract with the Owner's Project Manager, the Eligible Applicant shall request in writing the Authority's approval of the Owner's Project Manager. The Authority shall, in its sole discretion, approve or disapprove of the selection of the Owner's Project Manager. As part of the approval process, Owner's Project Managers shall be required to be certified pursuant to a certification process that will be developed by the Authority. The Authority may collect and maintain performance evaluation data relative to Owner's Project Managers that have been approved by the Authority on school projects and such performance evaluation data may be utilized in the Owner's Project Manager approval process. In the event that the Authority determines that an Owner's Project Manager is not performing to the satisfaction of the Authority, the Authority retains the right to rescind its approval of an Owner's Project Manager at any time or withhold initial approval based on the performance evaluation data that has been collected by the Authority. The Authority may determine that expenditures or project costs related to an Owner's Project Manager whose approval has been rescinded are ineligible costs and not reimbursable.

(3) Prior to executing a contract with the Owner's Project Manager, the Eligible Applicant shall submit documentation to the Authority describing in sufficient detail the selection process utilized in procuring the Owner's Project Manager and certifying in writing to the Authority that the Applicant used a qualifications-based selection process pursuant to M.G.L. c. 149, § 44A½.

(4) In the event that the Eligible Applicant elects to change the Owner's Project Manager during the course of the Approved Project, the Eligible Applicant shall notify the Authority in writing, 30 calendar days prior to the effective date of any such change. The Authority shall, in its sole discretion, approve or disapprove of the change of the Owner's Project Manager prior to said change becoming effective which approval shall not be unreasonably withheld.

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- (5) The duties of the Owner's Project Manager shall include, but not necessarily be limited to:
  - (a) managing and coordinating the daily administration of the Approved Project to completion;
  - (b) monitoring and reporting on the project schedule, total project budget and cash-flow;
  - (c) conducting a build-ability review of the project designs;
  - (d) monitoring and reporting on the Requests for Information from the general contractor to the designer or to anyone else on the project team;
  - (e) monitoring and reporting on the performance of the general contractor and providing administration of the contract between the Eligible Applicant and the general contractor;
  - (f) monitoring and reporting on the performance of the designer and providing administration of the contract between the Eligible Applicant and the designer;
  - (g) assisting the Eligible Applicant in the procurement of other vendors and contractors and execution of other contracts and agreements associated with the Approved Project;
  - (h) maintaining all records and reports related to the project;
  - (i) assisting the Eligible Applicant in preparation of requests for reimbursements and other documentation required to be submitted to the Authority;
  - (j) providing representation at meetings related to the project and at the construction site;
  - (k) notifying, in a timely fashion, the Authority and the Eligible Applicant of defective work; and
  - (l) any other requirements pursuant to 963 CMR 2.00 guidelines, policies or the standard contract as developed by the Authority.
  
- (6) During the course of the Approved Project, the Eligible Applicant shall require the Owner's Project Manager to submit a monthly report of the progress of the Approved Project, including cash flow projections and a project schedule, to the Authority. The monthly reports shall be in writing in a form acceptable to the Authority.
  
- (7) During the course of the Approved Project, the Eligible Applicant shall investigate and review, and shall require the Owner's Project Manager to investigate and review the progress and quality of construction.
  
- (8) The Authority maintains the right to direct the Eligible Applicant to remove the Owner's Project Manager for noncompliance with any applicable provisions of federal, state or local laws, 963 CMR 2.00, any other regulations, the terms and conditions of the Project Funding Agreement between the Eligible Applicant and the Authority, or any administrative directives issued by the Authority now in effect or hereafter promulgated and/or any guidelines, policies or rules established by the Authority.
  
- (9) In the event that a dispute arises between the general contractor, and/or any sub-contractors, and/or the designer, including, but not necessarily limited to, disputes regarding the performance, quality, acceptability, fitness and rate of progress of the Approved Project or the requirements of

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the designer's contract or the contractors' construction contract(s), the Eligible Applicant shall cause the Owner's Project Manager to report any such claims, disputes, or other matters in question relating to the performance by the general contractor, sub-contractor, designer or vendor to the Authority in writing as soon as reasonably possible. The Eligible Applicant shall require the Owner's Project Manager to take all reasonable efforts designed to resolve any such claims, disputes, or other matters in question.

(10) The Eligible Applicant shall provide the Authority and the Owner's Project Manager with unrestricted access to the premises of the project at all reasonable times and to examine all agreements, construction contract documents, books, records and all other documents and materials related to the project, for the purpose of determining compliance with 963 CRM 2.00, the Project Funding Agreement and assessing the progress of the project.

(11) Nothing in 963 CMR 2.00 shall be construed as an assumption by the Owner's Project Manager of the responsibilities or duties of the vendors, contractors or designer. The Owner's Project Manager's services shall be rendered based on industry standards and in coordination with the services provided by the designer. It is not intended that the services of the Owner's Project Manager and designer be competitive or duplicative, but rather complementary. The Owner's Project Manager shall be able to rely upon the vendors, designers and contractors for the proper performance of their obligations pursuant to their respective contracts with the Eligible Applicant.

(12) The Owner's Project Manager shall certify to the Authority, in a format and manner prescribed by the Authority, that the project director for the Owner's Project Manager is certified in the Massachusetts Certified Public Purchasing Official Program as administered by the Inspector General of the Commonwealth of Massachusetts.

## 2.12: Designer Services

(1) Pursuant to M.G.L c. 7, § 38C, every two years the Authority may apply for an exemption from the jurisdiction of the designer selection board of the Commonwealth of Massachusetts and the establishment of a Designer Selection Panel for the selection of designers, programmers and entities providing feasibility studies in connection with public school construction projects seeking funding from the Authority where the estimated construction cost is greater than or equal to an amount established by the Authority. The application by the Authority for exemption from the jurisdiction of the designer selection board of the Commonwealth of Massachusetts may contain a detailed description of the designer selection process and the written designer selection procedures which the Authority proposes to use. The Authority's proposed designer selection process may substantially incorporate the procedures required of the designer selection board of the Commonwealth of Massachusetts as required in M.G.L. c.7 §§ 38B through 38J and § 38M.

(2) Eligible Applicants seeking funding from the Authority for projects where the estimated

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construction cost is less than an amount established by the Authority, shall be conducted pursuant to M.G.L. c. 7, § 38K by the respective city, town, regional school district or independent agricultural and technical school, unless otherwise determined by the Authority. In such cases, prior to executing a contract with the designer, the Eligible Applicant shall submit documentation to the Authority describing in sufficient detail the selection process utilized in procuring the designer and certifying in writing to the Authority that the Eligible Applicant used a selection process pursuant to M.G.L. c.7, § 38K.

(3) The Authority shall, in its sole discretion, approve or disapprove of the appointment of the designer which approval shall not be unreasonably withheld. The Authority may maintain performance evaluation data relative to designers that have provided designer services for school projects and such performance evaluation data may be utilized in the Designer Selection process.

(4) In the event that the Eligible Applicant changes the designer during the course of the Approved Project, the Eligible Applicant shall notify the Authority in writing, 30 days prior to the effective date of any such change. The Authority shall, in its sole discretion, approve or disapprove of the change of the designer prior to said change becoming effective which approval shall not be unreasonably withheld.

(5) When contracting for designer services for an Approved Project, the Eligible Applicant shall use standard contract forms established by the Authority.

(6) The designer shall certify to the Authority, in a format and manner prescribed by the Authority, that the individual directly in charge of the project is certified in the Massachusetts Certified Public Purchasing Official Program as administered by the Inspector General of the Commonwealth of Massachusetts.

### 2.13: Design and Review Process

(1) Program Design. An Approved Project shall be designed based upon the Authority approved Project Scope and Budget Agreement.

(2) Authority Review of Project Plans. The Authority shall implement a technical peer review of each Approved Project at certain phases of design, including but not limited to, the schematic design, design development, and final design phases, or at such other times determined by the Authority. Such a review shall assess the designs for constructability, technical adequacy and compliance with the approved Design and Educational Program, the Project Scope and Budget Agreement and standards set forth by the Authority. Project elements that exceed or diverge from the project scope detailed in the Project Scope and Budget Agreement are categorically ineligible to receive funding from the Authority. The Eligible Applicant may retain such elements only by accepting sole financial responsibility for said elements in writing in a format prescribed by the



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Authority, prior to said Eligible Applicant including such elements in any designs.

(3) Conformity with Established Timelines and Budget.

(a) The Eligible Applicant shall meet the timelines established by the Project Scope and Budget Agreement. If the Eligible Applicant does not meet said timelines, the Authority reserves the right to rescind approval of the Approved Project and/or recapture all or a portion of any Total Facilities Grant paid to the Eligible Applicant for any project.

(b) The Eligible Applicant shall conform to the budget established by the Project Scope and Budget Agreement. If the Eligible Applicant does not meet said budget, the Authority reserves the right to rescind approval of the Approved Project and/or recapture all or a portion of any Total Facilities Grant paid to the Eligible Applicant for any project. Any amount in excess of the budget approved in the Project Scope and Budget Agreement shall be the sole responsibility of the Eligible Applicant.

(c) At each phase of the Approved Project, the designer shall produce a design meeting the requirements of the scope of work and project budget specified in the Project Scope and Budget Agreement. If at any time, the construction cost estimate or low bids or proposals in the case of construction manager at risk projects received for the Approved Project exceed the project construction budget, the Authority may require the Eligible Applicant to direct the designer to revise the design in such ways as necessary to keep the construction cost for the Approved Project within the project construction budget. The designer shall not be entitled to extra compensation for making such revisions to contain costs within the project construction budget.

(4) Construction and Bidding Documents.

(a) In the case of design-bid-build projects, the Eligible Applicant shall provide the Authority with bidding documentation and tabulation sheets within three business days of the opening of such bids, and shall provide any other documentation requested by the Authority.

In the case of construction manager at risk projects, the Eligible Applicant shall provide the Authority with non-fee and fee proposal information within three days of selecting a contractor and trade contractor bids within three days receipt of such.

(b) If bids, or proposals and trade contractor bids in the case of construction manager at risk projects, exceed the project construction budget as determined in the Project Scope and Budget Agreement, then prior to re-bidding the project the Eligible Applicant shall require the designer to revise the design in such ways as necessary to keep the construction cost within the budget established in the Project Scope and Budget Agreement.

(5) Furniture and Fixtures Equipment. No later than when construction is 50% complete, the Eligible Applicant shall submit a final detailed list of furniture, fixtures and equipment to the Authority in a format determined by the Authority.

(6) Commissioning.

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(a) The Authority may engage an independent party, not affiliated or associated with the design or construction teams for the Approved Project, to provide commissioning services with the intent of achieving, verifying and documenting the performance of building systems in accordance with the design intent and the functional and operational needs of the Eligible Applicant.

(b) The commissioning process may entail the development of clear and complete design and operational intent documentation, verifying and documenting proper equipment and system performance, ensuring appropriate operation and maintenance documentation is provided and ensuring sufficient training of building operations and maintenance personnel and building occupants. The Authority shall provide the Eligible Applicant with a completed commissioning report.

#### 2.14: Total Facilities Grant Awards

(1) The Board may annually award Total Facilities Grants within the amounts and at such times as authorized by M.G.L. c. 70B, §§ 7, 10 and 11. Total Facilities Grants shall be awarded to Approved Projects according to the terms, project schedules, and conditions established in the Project Scope and Budget Agreement, Project Funding Agreement or any other agreement, requirement, contract, statement, certification or other document as may be required by the Authority. The Authority reserves the right to rescind approval for Approved Projects and to rescind and/or recapture all or a portion of a Total Facilities Grant for said projects, which do not meet the requirements set forth in M.G.L. c. 70B, 963 CMR 2.00 and/or any other agreement, requirement, contract, statement, certification or other document as may be required by the Authority.

(2) The Authority also may rescind its approval of a Total Facilities Grant if there is substantial evidence of illegality, corruption or fraud associated with the Project, noncompliance with the terms of the Project Scope and Budget Agreement, the Project Funding Agreement or any other agreement, contract, certification or other requirement of the Authority, or improprieties with respect to expenditures of grant funds. The Authority may, in its sole discretion, temporarily suspend a grant payment whenever the Authority becomes aware of allegations, evidence or appearance of illegality, corruption, or fraud associated with the Project or allegations of improprieties with respect to the expenditure of grant funds.

#### 2.15: Payment Requirements and Procedures

(1) All Total Facilities Grants shall be paid by the Authority in accordance with M.G.L. c. 70B, 963 CMR 2.00, the Progress Payment Guidelines, the MSBA Audit Guidelines, the Project Funding Agreement, and any other policies or guidelines of the Authority.

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- (2) The Authority shall not make payment of a Total Facilities Grant or any portion of a Total Facilities Grant for an Approved Project before the Project Funding Agreement has been properly executed as determined by the Authority.
- (3) The Authority shall only make payment of a Total Facilities Grant for eligible costs, which shall be the final approved costs of the Approved Project as determined by the Authority. The eligibility of any costs shall be determined in each instance by the Authority.
- (4) During construction of an Approved Project, staff of the Authority may visit the construction site to assess whether the Approved Project is being built as approved. Staff of the Authority may review the monthly construction progress reports received pursuant to the Project Funding Agreement.
- (5) Proposed change orders shall be reviewed by the Authority and the cost any proposed change orders which are not delineated in and/or exceed the provisions of the Project Scope and Budget Agreement may be deemed ineligible by the Authority.
- (6) The Authority may review and monitor the completed facility, in operation, to assess whether the Approved Project has been maintained and operated as delivered.
- (7) When contracting with vendors, designers, Owner's Project Managers, contractors and subcontractors, the Eligible Applicant shall use standard contracts developed by the Authority. In any instance where a standard contract for a contractor or subcontractor has not been developed by the Authority, the Authority shall approve the contract to be used by the Eligible Applicant prior to execution. Violations of the provisions of standard contracts and/or the Project Funding Agreement may result in the Authority rescinding approval and/or the Authority recapturing all or a portion of the Total Facilities Grant, discontinuance of payments to the Eligible Applicant or the Authority may seek to recover any payments that the Authority may have already made to the Eligible Applicant for any project for which the Authority is making payments to the Eligible Applicant.
- (8) All construction contracts shall be in conformity with applicable laws and regulations related to minority hiring. Every Authority-assisted contract for a project including sub-contracts shall include the Commonwealth's Supplemental Equal Employment Opportunity/Anti-Discrimination and Affirmative Action Program as part of the contract.
- (9) Compliance with and enforcement of all safety and building code provisions, shall be the responsibility of the Eligible Applicant.
- (10) Every contractor and subcontractor working under the terms of any contract for construction on an Approved Project shall comply with applicable provisions of federal, state

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and local law and regulations.

(11) Every contractor and subcontractor working under the terms of any contract for construction on an Approved Project shall file weekly payroll records with the Eligible Applicant in the form described in M.G.L. c. 149, § 27B. The Eligible Applicant shall withhold payment for any construction work performed on an Approved Project for as long as the payroll records for the work performed are not filed with the Eligible Applicant.

(12) Each Eligible Applicant shall submit the contractor and designer evaluations to the Division of Capital Asset Management and Maintenance and the Authority in a form, manner and timeline prescribed in M.G.L. c. 149, § 44D and M.G.L. c. 7, § 38E.

## 2.16: Audit Procedures

### (1) General Audit Process.

(a) In order to determine the eligible costs of an Approved Project and to ensure that only eligible costs are included in a Total Facilities Grant, the Authority shall conduct an Audit or Audits of each Approved Project, at such time or times as may be required by the Authority. The Authority may designate any person it deems qualified to perform an Audit, and such person shall use agreed upon procedures, as determined by the Authority in the performance of said Audit or Audits. Such person shall certify in writing to the Authority that, in conducting the Audit or Audits on behalf of the Authority, he or she is and shall remain in full compliance with the Massachusetts Conflict of Interest Law, M.G.L. c. 268A.

(b) The Eligible Applicant shall cooperate with the Authority and/or its designee, if any, in the conduct of an Audit or Audits. Such cooperation shall include, but not be limited to, scheduling, provision of Audit Materials, provision of adequate work space, responding to requests for documents, providing access to personnel with knowledge of the Approved Project, providing access to Approved Project-related materials stored electronically, or complying with any other requirement of the Authority for the thorough and expeditious conduct of the Audit.

(c) Audits of Approved Projects shall be performed in accordance with MSBA Audit Guidelines, established by the Authority. To advise the Authority on appropriate audit guidelines, the Authority may convene an MSBA Audit Advisory Council, which may consist of representatives from the Office of the Auditor of the Commonwealth, the Office of the Inspector General of the Commonwealth, the Comptroller of the Commonwealth, Division of Local Services of the Massachusetts Department of Revenue, local officials, or other members which the Authority may determine.

(d) Except as provided in 963 CMR 2.00, the cost of the Audit or Audits shall be borne by the Authority. If the Authority determines that the Eligible Applicant:

1. has not reasonably cooperated with the Authority in the conduct of an Audit or

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Audits;

2. is responsible for any delay in an Audit or Audits; and/or
3. is making frivolous or non-meritorious appeals

the Authority may, in its sole discretion, deduct all or a portion of the cost of conducting an Audit or Audits from the Eligible Applicant's Total Facilities Grant, discontinue making payments to the Eligible Applicant or seek to recover any payments that the Authority may have already made to the Eligible Applicant.

(2) Progress Payment Audits.

(a) The Authority, and/or its designee, may perform an Audit of each request for reimbursement submitted by an Eligible Applicant for an Approved Project. Each Audit shall be conducted according to 963 CMR 2.00 and the MSBA Audit Guidelines. In the event that the Authority determines that an item in the submittal is ineligible for reimbursement, the Authority shall adjust the amount of reimbursement to account for the ineligible costs. The Eligible Applicant shall receive from the Authority a summary letter recapitulating the eligible and ineligible costs as determined by the Authority.

(b) If an Eligible Applicant does not concur with the findings of the summary letter, the Eligible Applicant shall respond, in writing of their intent to appeal, within ten calendar days of the date of said letter. The Eligible Applicant's written correspondence shall include a detailed listing of the specific ineligible costs to which the Eligible Applicant does not concur and is appealing. For each ineligible cost being contested by the Eligible Applicant, the Eligible Applicant shall submit to the Authority, documentation that supports the Eligible Applicant's position. If no supporting documentation is submitted within ten days after the date of the Eligible Applicant's letter of intent to appeal, or within a reasonable amount of time as determined by the Authority, the Eligible Applicant's appeal of the Authority's determination of ineligible costs shall not be accepted and the Authority's audit findings shall stand. The Authority shall review properly submitted documentation to determine if the Eligible Applicant's appeal has merit and take the appropriate action thereafter. If the Authority determines that the Eligible Applicant's supporting documentation is insufficient, the audit findings will stand and the Eligible Applicant will have exhausted any further appeal opportunities for those specific non-concurred ineligible costs. In no event including, but not limited to the final Audit, shall the Authority reconsider ineligible costs once an appeal has been completed. All costs related to an appeal may be assessed to an Eligible Applicant.

(3) Final Audit Report.

(a) A final Audit is required to determine the final Total Facilities Grant due to an Approved Project. The Authority and/or its designee shall prepare a draft report, in a form to be determined by the Authority, stating Audit findings and conclusions. The draft report may include findings, schedules and ineligible costs as determined by the monthly Audits performed for Approved Projects receiving funding from the Authority under the progress

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payment system. The draft report shall be reviewed by the Authority. Following the Authority's review of a draft report, the report shall be made available to the Eligible Applicant. If an Eligible Applicant accepts the draft report, said Eligible applicant shall file said acceptance in writing to the Authority within ten calendar days of the date of the draft report letter by concurring with the schedules, findings and ineligible costs contained in the draft audit report, in which case the draft report shall be submitted to the Board of the Authority for its review and approval. Acceptance of a draft report by an Eligible Applicant does not bind the Authority to take any action regarding the determination of the Final Project Costs of an Approved Project.

(b) If an Eligible Applicant declines to accept the draft report, said Eligible Applicant shall respond in writing to the Authority within ten calendar days of the date of the draft report letter of their intent to appeal. The Authority, in its sole discretion, may grant additional time in which the Eligible Applicant may respond, but in no event shall such additional time exceed an additional ten calendar days. These deadlines must be met in order to be eligible to appeal draft findings. Said written correspondence shall include a detailed listing of the specific ineligible costs to which the Eligible Applicant does not concur and for each ineligible cost, documentation that supports the Eligible Applicant's position. If no supporting documentation is included in said written correspondence, the Eligible Applicant's appeal of the draft report shall not be accepted and the draft report, as originally reviewed by the Authority, shall go to the Board of the Authority for approval. The Authority shall review properly submitted documentation to determine if the Eligible Applicant's appeal has merit or not and take the appropriate action thereafter. If the Authority determines the Eligible Applicant's support documentation has no merit the audit findings will stand and the Eligible Applicant will have exhausted all of their appeal opportunities. In no event shall the Authority reconsider ineligible costs once an appeal has been settled. All costs relating to an appeal may be assessed to an Eligible Applicant.

(c) All prior appeal decisions by the Authority shall stand and an Eligible Applicant shall have no right to re-file or request review of previous audit decisions nor shall the Authority have any obligation to review any previous audit decision.

(4) Record-keeping.

(a) Eligible Applicants shall maintain all records related to an Application, a Proposed Project, and/or an Approved Project, if approval for a Proposed Project is granted by the Authority, to ensure that minimum record-keeping requirements to facilitate uniform, fair and efficient administration are met and to ensure accountability for all documents. Nothing in 963 CMR 2.00 is intended to alter the otherwise applicable requirements of M.G.L. c. 66, pertaining to the keeping of public records and access thereto.

(b) It shall be a condition on every Eligible Applicant that the Eligible Applicant maintains, in a secure place and in an organized fashion, all records necessary to evidence conformity with M.G.L. c. 70B, 963 CMR 2.00, and any other requirements of the Authority.

(c) The Eligible Applicant shall maintain all records related to an Approved Project,

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including a full set of the Project Documents, requests for proposals, proposals and evaluations, and “As-Built” drawings, for as long as the Approved Project is in service as a public school. For the purposes of 963 CMR 2.16(4), “all records” shall include, but not be limited to:

1. all executed contracts and purchase orders, including contract amendments and change orders;
2. all Owner’s Project Manager’s reports, including monthly progress reports;
3. issues log;
4. the potential change order log;
- 5 all meeting minutes;
6. a schedule or milestone summary;
7. all requests for reimbursement and forms as submitted to the Authority;
8. all invoices and contractors’ applications for payment; and
9. other such other information, data, logs, documentation, or records as may be required by the Authority.

(d) The Authority shall, in its sole discretion, disallow any costs not adequately supported by contemporaneous, accurate and complete records.

(5) Ineligible Costs. Costs that are categorically ineligible for reimbursement or payment by the Authority shall include, but not be limited to:

- (a) Any costs for an Approved Project in excess of the Total Facilities Grant.
- (b) Financing costs incurred by an Eligible Applicant, including, but not limited to, interest, principal, costs of issuance and any other cost related to short or long term bonds, notes or other certificates of indebtedness, refunding notes or bonds, temporary loans, or any other form of indebtedness issued by an Eligible Applicant in relation to an Approved Project.
- (c) All costs associated with credit rating services, legal services related to the issuance of any indebtedness, and financial consulting services.
- (d) The cost of legal services.
- (e) The provision of any direct or indirect municipal services shall be ineligible costs, except the provision of public safety services as required by law, or services which the Authority determines are necessary for the completion of the Approved Project.
- (f) Any funds expended by the Eligible Applicant prior to the execution of a Project Funding Agreement, unless said costs are costs approved by the Authority in writing related to a Feasibility Study as approved by the Authority, shall be ineligible costs and are not reimbursable by the Authority unless the Board votes to allow reimbursement of such expenses incurred prior to the execution of the Project Funding Agreement.
- (g) All costs associated with site acquisition.
- (h) Unsupported or inadequately supported project costs, as determined by the Authority.
- (i) Maintenance or service contracts and warranties.
- (j) Duplicate costs or costs unrelated to the project.
- (k) The lease, purchase or rental of storage space, storage facilities, storage trailers, or

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storage containers.

(l) Costs that are normal operating and maintenance costs of the school district, as determined by the Authority, such as textbooks, classroom supplies, custodial supplies, administrative support, telephone service and other such operating costs.

(m) Swimming pools, skating rinks, field houses (only to the same extent as gymnasias), district administrative office space, indoor tennis courts, and other spaces which may be determined ineligible by the Authority.

(n) Penalties, processing fees, catalogue fees, sales tax, memberships, and subscriptions.

(o) The costs of local building permits, inspection fees, and any other such fees.

(p) Athletic equipment, bases, balls, bats, racquets, uniforms, helmets, gloves, and all other related equipment.

(q) All costs associated with the purchase, lease, improvement, or maintenance of modular units, unless such costs are deemed by the Authority in writing prior to said purchase or lease, to be the most cost effective option.

(r) All costs associated with the upgrades, maintenance or improvements to swing spaces used for the housing of students.

(s) All costs associated with the transportation of students.

(t) All costs associated with the purchase, lease or use of any vehicle, including but not limited to automobiles, trucks, tractors, and golf carts.

(u) The costs of any supplies related to the Assisted Facility.

(v) All costs associated with the demolition of buildings, unless such costs are deemed by the Authority in writing prior to said demolition, to be the most cost effective option.

(w) All costs associated with utilities.

(x) All costs associated with cell phone purchase or service.

(y) Dedication, ceremonial or celebratory costs.

(z) The Authority reserves its right to disallow any costs associated with any change order that deviates from the scope of the project, as determined by the Authority pursuant to the Project Scope and Budget Agreement.

(aa) Any costs determined by the Authority to be ineligible pursuant to M.G.L. c. 70B, St. 2004, c. 208, 963 CMR 2.00, the MSBA Audit Guidelines, or any other policy, rule, or guideline of the Authority.

#### 2.17: Minimum Spending Requirements for Building Maintenance

(1) Pursuant to M.G.L. c. 70B, § 8, the Authority shall not approve any Proposed Project for any school district that fails to spend in the year preceding the year of application at least 50% of the sum of said school district's calculated foundation budget amounts for the purposes of foundation utility and ordinary maintenance expenses, and extraordinary maintenance allotment as defined in M.G.L. c. 70, for said purposes. From Fiscal Year 1999 forward, no school district shall be given approval for a Proposed Project nor receive school facilities funds unless said district has spent at least 50% of the sum of said district's calculated foundation budget amounts



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in each of the Fiscal Years including and succeeding Fiscal Year 1999.

(2) If an otherwise Eligible Applicant fails to maintain compliance with the building maintenance requirements of M.G.L. c. 70, 963 CMR 2.00, or any guidelines, policies or procedures established by the Authority, said Eligible Applicant shall be prohibited from receiving a Total Facilities Grant, or any portion thereof, for at least one year and shall be subject to a review by the Authority to determine, that after said prohibition, said Eligible Applicant has complied with said requirements.

## **2.18: Grant Percentage Formula**

### **(1) General.**

(a) The Total Facilities Grant for an Approved Project shall be determined by the Authority based on the grant percentage formula established pursuant to M.G.L. c. 70B, § 10, the Project Scope and Budget Agreement, and the cost of the Approved Project as agreed to by the Eligible Applicant and the Authority in the Project Funding Agreement.

(b) In addition to the base percentage, community income factor, community wealth factor and community poverty factor for the most recent available year applicable to the Eligible Applicant under the determinations made by the Authority, an Eligible Applicant may seek incentive percentage points at the sole discretion of the Authority. There is no entitlement to the allocation of any incentive percentage points and the Authority reserves the right in its sole discretion to determine the allocation of incentive percentage points for an Approved Project, if any. Any Eligible Applicant seeking incentive points must notify the Authority in writing 30 calendar days prior to the Project Scope and Budget Agreement Meeting of the specific incentive points which are being requested and provide the documentation to support such request. If at any time the Authority determines that the Eligible Applicant has not met the eligibility requirements necessary to receive the incentive percentage points, the Authority reserves the right to rescind incentive percentage points and any grant amounts related to the allocation of the incentive percentage points and recover any funds that may have been paid to the Eligible Applicant.

(c) No one category of incentive percentage points that may be awarded by the Authority shall exceed six (6) percentage points.

(d) In total, incentive percentage points shall not exceed eighteen (18) percentage points for an Approved Project.

(e) The Authority, in its sole discretion, may award incentive percentage points in fractional amounts.

### **(2) Incentive Points.**

**(a) Overlay Zoning District.** The Authority, in its sole discretion, may allocate up to one incentive percentage point (1%) for an Approved Project in a community that has adopted an

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overlay zoning district pursuant to the provisions of M.G.L. c.40R or c.40S. The Authority may allocate up to an additional ½% for an Approved Project where the M.G.L. c. 40R overlay zoning district provides for either 100 units or more of housing in one, two or three family structures; or in which 50% or more of the total number of allowed housing units in M.G.L. c.40R overlay zoning district are designated for such structures. The Authority may establish guidelines for the distribution of Overlay Zoning District incentive percentage points.

(b) Energy Efficiency / Green School Program. The Authority, in its sole discretion, may allocate up to two incentive percentage points (2%) for an Approved Project for Energy Efficiency /Green School where the Authority makes a determination that elements of an Approved Project meet thresholds established in the Green Schools Guidelines for the allocation of Energy Efficiency / Green School incentive points.

(c) Routine and Capital Maintenance Rating. The Authority, in its sole discretion, may allocate up to two incentive percentage points (2%) for an Approved Project for Routine and Capital Maintenance Ratings, based on the Authority's determination that the Eligible Applicant has exhibited best practices for routine and capital maintenance and upkeep of facilities, including the establishment of long term capital improvement plans, the establishment of segregated local funds dedicated for the capital maintenance of school facilities, the use of facility maintenance manuals, and practices that standardize preventative and routine maintenance procedures, or other practices as determined by the Authority. An Eligible Applicant's maintenance practices may be reviewed at any time and the information collected during any such review shall be used as part of the assessment of incentive percentage points for routine and capital maintenance ratings.

(d) School Facility Maintenance Trust. The Authority, in its sole discretion, may determine that an Eligible Applicant is eligible to receive a matching cash grant in excess of the Total Facilities Grant in an amount not to exceed one incentive percentage point (1%) of approved, eligible project costs for the establishment of a local "School Facility Maintenance Trust". Said trust shall be a segregated local fund used solely for the preventative maintenance and upkeep of an Eligible Applicant's school facilities and which shall supplement current maintenance expenditures by the Eligible Applicant. To be eligible to receive "School Facility Maintenance Trust" matching funds, the Eligible Applicant must provide a local one-for-one match for any funds deposited in the Trust by the Authority, and must provide the Authority with detailed budget information on historical and projected maintenance expenditures. Proceeds from said Trust shall not be used for operating or recurring costs, salaries, purchase of routine maintenance supplies, other expenses which the Authority deems to violate the spirit of the Trust, or to supplant any maintenance funding already being expended by the Eligible Applicant.

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(e) Model School Program. The Authority, in its sole discretion, may award up to five incentive percentage points (5%) for an Approved Project that is approved by the Board for participation in the Model School Program.

(f) Construction Management at Risk. The Authority, in its sole discretion, may allocate up to one incentive percentage point (1%) for an Approved Project utilizing the Construction Management at Risk construction delivery method as certified by the Inspector General of the Commonwealth and pursuant to the

(g) Newly Formed Regional School District. The Authority, in its sole discretion, may allocate up to six incentive percentage points (6%) for an Approved Project if:

(1) the Approved Project is at the site of a school facility that is a member of a regional school district, which regional school district either:

(a) was newly created as a result of working with the Authority during the Application process; or

(b) whose membership changed as a result of working with the Authority during the Application process; and

(2) the Authority determines that a school facility construction, renovation, or repair project was avoided directly as a result of either:

(a) a newly created regional school district; or

(b) a change in a regional school district's membership.

Districts that are not members of a regional school district, or that have not formed a new regional school district or added new members, shall not be eligible for these incentive points.

(h) Renovation or Reuse of an Existing Facility. The Authority, in its sole discretion, may allocate up to five incentive percentage points (5%) for an Approved Project if the project is a renovation of an existing facility that requires no new construction. The Authority may award an amount less than said five percent for an Approved Project which has a combination of renovation of an existing facility and the building of some additional square footage for new educational space, based on a sliding scale that relates the percentage of renovated space to the percentage of newly constructed space. The Authority shall not award any incentive percentage points from this category for construction of a new school facility.

## 2.19: Program Integrity

Where the Authority determines that false or intentionally misleading information or documentation was submitted by an Eligible Applicant, its agents, a city, town, regional school district, or independent agricultural and technical school in support of any effort to influence any action by the Authority, or an Eligible Applicant, its agents, a city, town, regional school district,

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or independent agricultural and technical school does any other act affecting the integrity of the Program, the Authority may permanently revoke any and all payments due to a city, town, regional school district, or independent agricultural and technical school with a vote of the Board. The Authority may also take steps to recover any previous payments made to a city, town, regional school district, or independent agricultural and technical school and/or said city, town, regional school district, or independent agricultural and technical school shall be prohibited from receiving a Total Facilities Grant for a period of time to be determined by the Authority. The Eligible Applicant may be given an opportunity to address the Authority to remedy any or all determinations of such false or intentionally misleading information.

#### 2.20: Waivers

The Authority may, upon written application in a format prescribed by the Authority and with the written recommendation of the Executive Director to the Board, grant a waiver of any of the requirements of 963 CMR 2.00.

#### 2.21: Closing Schools

- (1) A school district shall notify the Authority in writing, in a format prescribed by the Authority, six months prior to the sale, lease or removal from service as a public school building of any school facility, or portion thereof, in said district. The school district also shall submit:
  - (a) a plan for accommodating any displaced school programs and services;
  - (b) a plan for accommodating district students within the remaining school buildings, as a result of the sale, lease or removal from service of said school facility;
  - (c) a long-range plan for accommodating district students based on the Authority's Enrollment Projections;
  - (d) any future plans for the sale or lease of property under control of the school district; and
  - (e) any future plans for the construction, renovation, addition or lease of school facilities in the school district.
- (2) If the Authority determines that said facility that will be sold, leased or removed from service is an Assisted Facility or was an Assisted Facility that has received a payment from the Authority or the Commonwealth, but has not met the 50-year service requirement, the Authority may recapture a portion of the financial assistance that said Assisted Facility has received.
- (3) A final Audit of the Assisted Facility must be completed to determine the final cost of the project.
- (4) The sale, lease or removal from service of the Assisted Facility, or portion of that facility, shall be for no less than fair market value as determined by independent appraisal as agreed to by the Authority, unless the school district receives prior written approval from the Authority to do

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otherwise, and the proceeds from the sale or lease, or the determined fair market value for a facility removed from service, shall be divided between the Authority and the general funds of the applicable school district in proportion to the Commonwealth's and/or Authority's prior investments in the Assisted Facility.

(5) If a school district were to apply to the Authority for a grant, after having sold, leased or removed from service a school facility, said district may be eligible for a grant only if the Authority determines that the grant is not for the purpose of replacing a school facility sold, leased, or removed from service in the past ten years or that the need for the grant could not have been reasonably anticipated at the time of the sale, lease, or removal from service.

(6) The Authority may issue additional guidelines to recapture Commonwealth and/or Authority assistance for Assisted Facilities that are sold, leased or removed from service.

## REGULATORY AUTHORITY

963 CMR 2.00: M.G.L. c. 70B and St. 2004, c. 208.