
DEPOSITORY AGREEMENT

Dated _____, 20__

between

CALIFORNIA SCHOOL FINANCE AUTHORITY

and

[DEPOSITORY]

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DEPOSITORY AGREEMENT

This Depository Agreement (this “Agreement”) is made on _____, 20____, between the California School Finance Authority, a California public instrumentality (the “Authority”), and [DEPOSITORY], a [_____] (Depository).

INTRODUCTORY STATEMENT

The California School Finance Authority Act (the “Act”) authorizes the Authority to receive and accept from any source loans for, or in aid of, the acquisition, construction, expansion, remodeling, renovation, improvement, furnishing and/or equipping of educational facilities (as defined in the Act), to be financed or refinanced under the Act (each, a “Project”), and, pursuant to an agreement between the Authority and a participating party (as defined in the Act), including a charter school established pursuant to the Charter Schools Act of 1992, as amended (constituting Part 26.8 of Division 4 of Title 2 of the Education Code) (the “Charter School Law”), and any person, company, association, state or municipal government entity, partnership, firm, or other entity or group of entities that undertakes the financing or refinancing of a Project pursuant to the Act in conjunction with a charter school, make loans to a participating party to finance or refinance a Project in an amount not to exceed the total cost (as defined in the Act) of the Project, as determined by the participating party and approved by the Authority.

The Borrower owns and operates educational facilities in California.

The Authority will borrow [\$_____] from the Bank (the “Bank Loan”) under a Bank Loan Agreement, and loan the proceeds of the Bank Loan to the Borrower.

The Borrower will expend the proceeds of the loan from the Authority (the “Authority Loan”) to [finance/refinance] the acquisition, construction, expansion, remodeling, renovation, improvement, furnishing and/or equipping of educational facilities located within the state of California.

Under this Depository Agreement, the Depository will hold proceeds of the Authority Loan in trust and facilitate repayment thereof.

Intending to be legally bound, the parties agree as follows.

ARTICLE 1

DEFINITIONS

Section 1.1. Definitions.

Capitalized terms have the meanings given in the Authority Loan Agreement, dated as of the date of this Agreement, between the Authority and the Borrower.

ARTICLE 2

FUNDS

Section 2.1. Project Fund.

- (a) The Depository shall establish a fund designated the “Project Fund.” The Depository shall not commingle the Project Fund with any other fund or account. The Depository shall maintain the Project Fund until all money and all investments are transferred out of it under this Agreement. The Depository shall hold the money and investments in the Project Fund in trust for the Owner’s protection and benefit. The Depository shall not dispose of investments or money in the Project Fund except as stated in this Agreement.
- (b) Immediately upon receipt, the Depository shall deposit the following into the Project Fund:
 - (1) \$_____ from proceeds of the Bank Loan sent by the Bank on the Issue Date; and
 - (2) the net income realized on investments held in the Project Fund.
- (c) The Depository shall disburse amounts from the Project Fund as soon as practicable upon receipt of, and as instructed in, one or more completed Project Fund requisition(s) in the form of Exhibit A to this Agreement. The Depository is entitled to rely on any Project Fund requisition that appears proper on its face. The Depository is not required to disburse funds in excess of the total amount on deposit in the Project Fund.
- (d) As soon as practicable after receipt of a completed Project completion certificate in the form of Exhibit B to this Agreement, the Depository shall transfer all money and investments remaining in the Project Fund to the Payment Fund.
- (e) When the Depository receives notice from the Bank that the Bank has accelerated the Authority Note, the Depository shall transfer all money and investments in the Project Fund to the Payment Fund.
- (f) The Depository
 - (1) may establish accounts within the Project Fund as the Depository may deem necessary or useful for the purpose of identifying more precisely the sources of payments into, and disbursements from, the Project Fund; and
 - (2) shall establish accounts within the Project Fund as directed by the Authority or the Borrower to comply with Code requirements relating to arbitrage.
- (g) This subsection does not change this Agreement’s requirements on commingling, deposit, or use of money in the Project Fund. In establishing accounts under clause (f)(2), the Depository may request, receive, and rely on an Opinion of Bond Counsel, addressed to the Authority, the Depository, the Owner, and the Borrower, that establishing the

accounts will not cause the Authority Note to become an “arbitrage bond” under the Code.

Section 2.2. Payment Fund.

- (a) The Depository shall establish a fund designated the “Payment Fund.” The Depository shall not commingle the Payment Fund with any other fund or account. The Depository shall maintain the Payment Fund until all money and all investments are transferred out of it under this Agreement. The Depository will hold the money and investments in the Payment Fund in trust for the Owner’s protection and benefit. The Depository shall not dispose of investments or money in the Payment Fund except as stated in this Agreement.
- (b) Immediately upon receipt, the Depository shall deposit the following into the Payment Fund:
 - (1) All amounts under the Borrower Note;
 - (2) The net income realized on investments held in the Payment Fund; and
 - (3) All other amounts this Agreement requires be transferred to, or deposited in, the Payment Fund.
- (c) The Depository shall disburse to the Owner from the Payment Fund, on or before the date due, the sums sufficient to pay all of the principal of, and premium, if any, and interest on the Authority Note, whether by reason of maturity or prepayment or acceleration prior to maturity[, except the Depository shall not disburse any funds and investments transferred to the Payment Fund under section 2.1(d) for payments other than interest on the Authority Note].
- (d) If the Depository receives other funds with directions from the provider to disburse those funds to payments on the Authority Note, the Depository shall deposit those funds in the Payment Fund and disburse those funds as directed. The Depository shall not commingle such funds with any other fund or account.
- (e) The Depository is not required to make disbursements to pay the Authority Note from any sources other than those stated in subsections (c) and (d).
- (f) The Depository may establish accounts within the Payment Fund as the Depository may deem necessary or useful for the purpose of identifying more precisely the sources of payments into, and disbursements from, the Payment Fund.

Section 2.3. Investments.

- (a) The Depository shall invest and reinvest money on deposit in the Project Fund and the Payment Fund
 - (1) in a non interest-bearing deposit account with the Depository or

- (2) as directed in Borrower directions approved by the Owner and delivered to the Depository.
- (b) Neither the Authority nor the Depository is accountable for any depreciation in the value of the investments or any losses incurred upon disposition.
- (c) Unless otherwise directed by the Borrower, the Depository may make investments through its own investment department. The Depository may purchase and sell to itself or any affiliate, as principal or agent, investments authorized under this Agreement.
- (d) The Authority acknowledges that regulations of the Comptroller of the Currency grant the right to receive, at no additional cost, brokerage confirmations of security transactions as they occur in funds under this Agreement. To the extent permitted by law, the Authority hereby waives compliance with 12 C.F.R. 12 and hereby notifies the Depository that it need not send to the Authority brokerage confirmations relating to the security transactions as they occur.

ARTICLE 3

AUTHORITY NOTE

Section 3.1 Execution.

- (a) The Authority Note must bear the manual or facsimile signature of its Chairperson signing for the Authority.
- (b) The Authority Note may be authenticated, issued, and delivered even though an Authority officer who signed the Authority Note stops being an Authority officer before the Depository authenticates the Authority Note or the Authority issues the Authority Note. Whether the Authority Note is binding is not affected by a signing officer no longer being an Authority officer. An Authority officer authorized to sign the Authority Note on the date of signing may sign the Authority Note even though that officer was not authorized to sign the Authority note on the nominal date of the Authority Note.

Section 3.2 Registration and Transfer.

- (a) On the Issue Date
 - (1) the Authority shall deliver the Authority Note to the Depository, and
 - (2) the Depository shall register, authenticate, and deliver the Authority Note as directed by the Authority.
- (b) The Depository shall register each transfer of the Authority Note, but only as stated in the Authority Note.

- (c) The Depository shall keep sufficient books for registration of the Authority Notes. The Depository shall make those books open to Authority inspection during normal business hours upon reasonable notice. The Authority and the Depository may treat the registered Owner of the Authority Note as the absolute owner for all purposes, regardless of any contrary notice.

Section 3.3 Mutilated, Lost, Destroyed or Stolen Authority Note.

- (a) If the Authority Note becomes mutilated, the Authority, at the Owner's expense, shall execute, and the Depository shall, upon receipt of an order from the Authority, authenticate and deliver, a new Authority Note of like tenor in substitution for the mutilated Authority Note, but only upon surrender to the Depository of the mutilated Authority Note. The Depository shall cancel every surrendered mutilated Authority Note in accordance with the Depository's customary procedures and shall deliver the canceled Authority Note to, or upon the order of, the Authority.
- (b) If any Authority Note is lost, destroyed, or stolen, evidence of the loss, destruction, or theft may be submitted to the Depository. If the Depository receives satisfactory evidence and indemnity, the Authority, at the Owner's expense, shall execute, and the Depository shall, upon receipt of an Authority order, authenticate and deliver, a new Authority Note of like tenor to substitute for the lost, destroyed, or stolen Authority Note.
- (c) If any mutilated, lost, destroyed, or stolen Authority Note has matured, instead of issuing a substitute Authority Note, the Depository may pay the Authority Note without surrender upon receipt of indemnity satisfactory to the Depository.
- (d) Each of the Authority and the Depository is entitled, upon request, to payment from the Owner of a sum not exceeding the actual costs and expenses of preparing each new Authority Note delivered under this section.
- (e) Any Authority Note delivered under this section instead of any Authority Note alleged to be lost, destroyed, or stolen constitutes an original additional contractual obligation on the part of the Authority whether or not the alleged lost, destroyed, or stolen Authority Note is, at any time, enforceable by anyone, and it is entitled to the benefits of this Depository Agreement.

ARTICLE 4

DEPOSITORY QUALIFICATIONS, REPLACEMENT, AND PRIVILEGES

Section 4.1 Depository Qualifications.

- (a) To qualify under this Agreement, the Depository
 - (1) must be an association or a corporation, in either case, organized and doing business under the laws of the United States or any state,

- (2) must be legally authorized to exercise corporate trust powers,
 - (3) must be authorized under applicable Federal and State laws to serve as the Depository,
 - (4) must have a combined capital and surplus of at least \$20,000,000, and
 - (5) must be subject to supervision or examination by Federal or state authority.
- (b) For an association or corporation that publishes reports of condition at least annually under law or the requirements of any Federal or state supervising or examining authority, the combined capital and surplus will be the combined capital and surplus stated in the most recently published report of condition.

Section 4.2 Initial Depository.

[DEPOSITORY] shall be the initial Depository under this Agreement. [DEPOSITORY] hereby accepts appointment as Depository.

Section 4.3 Resignation.

- (a) If a Depository ceases to qualify under section 4.1, the Depository shall resign.
- (b) A Depository may resign by notifying each of the Authority, the Borrower, and the Owner, of a resignation date not earlier than the [40]th day after the resignation notice date.
- (c) Resignations take effect when a successor Depository accepts appointment under section 4.7, except resignations under subsection (b) take effect no earlier than the resignation date in the resignation notice. A Depository is not required to perform further under this Agreement after the effective date of its resignation.

Section 4.4 Removal.

- (a) The Authority may remove a Depository by notifying each of the Depository, the Borrower, and the Owner, of a removal date not earlier than the [14]th day after the removal notice date. The Authority may remove the depository with or without cause. The Authority shall remove the Depository under this subsection if the Owner requests removal.
- (b) The following circumstances result without further action in removal of the Depository:
 - (1) the Depository becomes incapable of acting,
 - (2) the Depository is adjudged as bankrupt or insolvent,
 - (3) a receiver of the Depository or of its property or of both is appointed, or
 - (4) a public supervisory office takes charge or control of the Depository, its property, its affairs or any of them.

- (c) All removals under subsection (a) and subsection (b) take effect when a successor Depository accepts appointment under section 4.7, but, in the case of removal under subsection (a), no earlier than the removal date in the removal notice. A Depository is not required to perform further under this Agreement after the effective date of its removal.

Section 4.5 Appointment of Successor.

- (a) If a Depository resigns or is removed, the Authority shall appoint the Owner as Depository if the Owner:
 - (1) is qualified under section 4.1,
 - (2) has notified the Authority that it is willing to be the Depository, and
 - (3) was not the Depository that resigned or was removed.

Otherwise, the Authority shall select and appoint a successor Depository qualified under section 4.1. Depository appointments must be made in writing. The Authority shall send copies of appointments to the Borrower and the Owner.

- (b) The Owner or the outgoing Depository may apply to any court of competent jurisdiction to appoint a successor Depository if and only if
 - (1) the Authority fails to appoint a successor Depository under this section by the [120]th day after the Authority receives the Depository's resignation notice under section 4.3 or
 - (2) the Authority fails to appoint a successor Depository under this section by the [30]th day after removal of the Depository under section 4.4,

The court may appoint a successor Depository.

Section 4.6 Merger of Depository.

- (a) The following become successor Depository automatically:
 - (1) any corporation or association into which the Depository is converted or merged,
 - (2) any corporation or association with which the Depository is consolidated,
 - (3) any corporation or association to which the Depository transfers both its corporate trust business and corporate trust assets as a whole or substantially as a whole,
 - (4) any corporation or association that results from a conversion, merger, consolidation, or transfer to which the Depository is a party.
- (b) Subsection (a) does not apply if the succeeding entity is not qualified under section 4.1.

Section 4.7 Transfer of Rights and Property.

Except as stated in section 4.6, every successor Depository shall deliver to each of its predecessor, the Authority, and the Owner a signed written instrument accepting appointment. Upon delivery of the instrument, the successor Depository becomes vested with all the Depository's rights, powers, trusts, duties, and obligations under this Agreement. If any of the Authority, the Owner, or the successor Depository requests, the predecessor Depository shall deliver a signed written instrument transferring to the successor all rights, powers, trusts, duties, and obligations of the predecessor under this Agreement. Each predecessor Depository shall deliver to its successor all funds and investments held by the predecessor under this Agreement. If the successor Depository requests, the Authority shall deliver a signed written instrument vesting in the successor Depository the Depository's rights, powers, trusts, duties, and obligations under this Agreement.

Section 4.8 Liability Limitations.

- (a) The Depository is not responsible for the correctness of the introductory statements under this Agreement. The Depository makes no representation on the legality, validity, or sufficiency of this Agreement, the Authority Note, the Borrower Note, the Bank Loan Contract, the Financing Contract, or any other document related to them, and undertakes no responsibility in respect of them other than in connection with the Depository's obligations under this Agreement or in the Authority Note. The Depository shall be responsible for any recital or representation specifically relating to the Depository or its powers and any representation contained in its authentication certificate on the Authority Note. The Depository is not liable in connection with the performance of its duties under this Agreement, except for its own breach, negligence, or misconduct.
- (b) The Depository may own the Authority Notes with the same rights it would have if it were not the Depository.
- (c) Unless the Depository was negligent, the Depository is not liable for any error of judgment made in good faith by a responsible officer.
- (d) The Depository is not liable with respect to its actions or omissions under this Agreement if its actions or omissions were taken in good faith
 - (1) in accordance with the advice of legal counsel or
 - (2) reasonably believed by the Depository to be authorized or within its discretion, rights, or powers under this Agreement.
- (e) The Depository is under no obligation to exercise any of its rights or powers under this Agreement at the Owner's request, order, or direction unless the Owner offers to the Depository security or indemnity reasonable to it against the costs, expenses, and liabilities that the Depository may incur as a result.

- (f) The Depository is not required to expend or risk its own funds or otherwise incur any financial liability in performing any of its duties or exercising of any of its rights or powers under this Agreement.
- (g) The Depository is not required to make any investigation into the facts or matters stated in any resolution, certificate, statement, requisition, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, coupon or other paper or document. But the Depository, at its expense, may investigate or inquire into the facts or matters.
- (h) The Depository is not responsible with respect to any information, statement, or recital in any official statement, offering memorandum, or any other disclosure material prepared or distributed with respect to the Authority Note.
- (i) The Depository is not liable to the Authority or in breach or default under this Agreement if and to the extent its performance under this Agreement is prevented by terrorism, war, riot, strike, fire, flood, earthquake, epidemic, or other similar occurrence that is beyond the Depository's control and could not have been avoided by exercising due care.
- (j) The Depository is not liable for any special, indirect, punitive, or consequential loss or damage of any kind whatsoever (including lost profits), even if the Depository has been advised of the likelihood of the loss or damage and regardless of form of action.
- (k) The Depository is not required to act on instructions or directions under this Agreement from persons not listed in an incumbency certificate designating the persons authorized to give instructions or directions to the Depository and containing specimen signatures of the designated persons. Incumbency certificates for this purpose may be amended and replaced from time to time.
- (l) Instructions or directions to the Depository under this Agreement may be sent by unsecured electronic mail, facsimile transmission, or other similar unsecured electronic methods. If the Owner, the Borrower, or the Authority elects to give the Depository instructions or directions by one of those methods and the Depository acts upon the instructions or directions, the Depository's reasonable understanding of the instructions or directions controls. The Depository is not liable for any losses, costs, or expenses arising directly or indirectly from the Depository's reliance on, and compliance with, the instructions or directions regardless of whether the instructions or directions are inconsistent with later instructions or directions. The Borrower assumes the risk of the Depository acting on unauthorized instructions or directions, the risk of interception and misuse by third parties, and all other risks arising out of the use of electronic methods to submit instructions and directions to the Depository.

Section 4.9 Reports of Activities; Acknowledgement of Arbitrage Rebate Requirement.

The Depository shall maintain accurate and complete records of fund balances, fund investments, and all transactions involving any fund or account the Depository holds under this

Agreement. The Depository acknowledges that the money and investments in the [Payment Fund and] the Project Fund are Authority Note proceeds subject to the arbitrage restrictions and arbitrage rebate provisions of the Code. The Depository acknowledges that the Authority and the Borrower have agreed to comply with those Code provisions and that the Depository's records are necessary to permit compliance. [The Authority hereby advises the Depository that the first rebate computation period for the Authority Note begins on the Issue Date and ends on _____, 20____, and that any arbitrage rebate payment due for that period must be computed and submitted to the United States Treasury, accompanied by all reports required by the Internal Revenue Service, no later than _____, 20__]. The Depository shall furnish monthly reports and an annual summary to the Borrower. Upon reasonable prior notice to the Depository, the Authority and its agents are entitled to inspect those records and reports at all reasonable times and to make copies and extracts as they may desire.

Section 4.10. Compensation and Indemnification of Depository.

Under a separate fee agreement between the Depository and the Borrower, the Borrower has agreed to pay to the Depository from time to time reasonable compensation for all services rendered under this Agreement, and also all reasonable expenses, charges, legal, and consulting fees and other disbursements and those of its attorneys, agents, and employees, incurred in the performance of its powers and duties under this Agreement. The Authority is not required to make any of those payments or otherwise compensate or reimburse the Depository.

ARTICLE 5

MISCELLANEOUS

Section 5.1. Term.

This Agreement (1) is effective beginning on the Issue Date and (2) terminates when the Authority Note is fully discharged.

Section 5.2. Notices.

- (a) Notices and communications required or permitted to be given under this Agreement must be in writing and signed by the sending party. Notice is deemed given on the date of delivery if (1) delivered in person or sent by same day courier service, (2) sent by overnight courier service, (3) sent by first class, certified or registered mail of the United States Postal Service, postage and charges prepaid, (4) by electronic mail or facsimile, in each case with a copy delivered in a manner described in clause (1) or (2). Notices to the parties must be sent to the applicable addresses below:

To the Authority at:

California School Finance Authority
915 Capitol Mall, Suite 516
Sacramento, California 95814
Attention: Executive Director

Electronic mail address: _____
Facsimile: _____

To the Depository at:

Electronic mail address: _____
Facsimile: _____

To the Owner at:

Electronic mail address: _____
Facsimile: _____

To the Borrower at:

Electronic mail address: _____
Facsimile: _____

- (b) A notice delivered as described in subsection (a), clause (1) is deemed received on the same day. A notice delivered as described in subsection (a), clause (2) is deemed received on the day next following the delivery date. A notice delivered as described in subsection (a), clause (3) is deemed received on the sixth day after the delivery date. A notice delivered as described in subsection (a), clause (4) is deemed received on the same day.
- (c) The period in which a response to notice must be given or an action must be taken with respect to that notice will begin to run from the date it was deemed received by the addressee. Physical address, electronic mail address and facsimile number changes will be disregarded if not noticed to the delivering party under subdivision (d).
- (d) Each party may change its physical address, electronic mail address, and facsimile number for purposes of this section by notifying the other party of the revised physical address, electronic mail address or facsimile number, as the case may be, in the manner provided above for giving notice and referencing this Agreement in the notice.

Section 5.3. Business Days.

If any date specified in this Agreement as the only day, or the last day, for taking action falls on a day that is not a Business Day, then that action may be taken on the next Business Day.

Section 5.4. Governing Law; Forum and Venue.

- (a) The laws of the State govern validity, interpretation, construction, performance, enforcement, and all other matters arising out of or relating to this Agreement.
- (b) Legal proceeding arising out of or relating to this Agreement must be brought in the Sacramento County Superior Court, Sacramento, California, unless the Authority waives this requirement. Each party agrees that the exclusive (subject to waiver as stated in this section) choice of forum stated in this section does not prohibit enforcement of any judgment obtained in that forum or any other forum. Each party hereby waives, to the extent permitted by law, (1) all current and future objections to the laying of venue of any legal proceeding arising out of or relating to this Agreement brought in the Sacramento County Superior Court, Sacramento, California, and (2) all claims that the proceeding has been brought in an inconvenient forum.

Section 5.5. Rules of Construction.

Each party acknowledges that it and its counsel have participated in the drafting and revision of this Agreement. The Authority is not deemed the drafting party of this Agreement for purposes of any rule of construction which disfavors the drafting party.

Section 5.6. Amendments.

Any amendment of this Agreement must be made in writing and signed by the parties. No amendment may be made to this Agreement without both the Owner's consent and the Borrower's consent.

Section 5.7. Benefits of Agreement.

- (a) The Owner and the Borrower are third party beneficiaries of this Agreement. Any amendment of this Agreement delivered in accordance with this Agreement binds the Owner and the Borrower, and any action or consent taken by the Authority on its own behalf or by the Depository on its own behalf binds the Owner and the Borrower for purposes of this Agreement.
- (b) Except as stated in subsection (a), this Agreement does not create any rights of enforcement in any Person who is not a party to this Agreement.

Section 5.8. Successors and Assigns.

This Agreement binds and benefits the parties and their respective successors and assigns.

Section 5.9. Complete Agreement.

This Agreement is the entire agreement between the Authority and the Depository and supersedes any prior understandings between them.

[Signature page follows.]

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The parties are signing this Agreement on the date stated in the introductory clause.

CALIFORNIA SCHOOL FINANCE AUTHORITY

By: _____
Deputy Treasurer
For Chairman, State Treasurer [Name]

By: _____
Executive Director

[DEPOSITORY]

By: _____
[Title]

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EXHIBIT A

Form of Project Fund Requisition

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EXHIBIT B

Form of Project Completion Certificate

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