


LEGISLATIVE FILE

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Enactment Date \_\_\_\_\_  
By \_\_\_\_\_

OAKLAND UNIFIED SCHOOL DISTRICT  
Office of the State Administrator  
June 10, 2009

To: Board of Education

From: Roberta Mayor, Ed.D., Interim Superintendent  
Timothy E. White, Assistant Superintendent of Facilities Planning &  
Management, Buildings & Grounds and Custodial Services

Subject: **Approval of the Ground Lease between the Oakland Unified School District and the City of Oakland regarding the Recreational Facilities at Golden Gate located at 1075 62<sup>nd</sup> Street, Oakland, California.** 

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**ACTION REQUESTED**

Approval by the Board of Education of the Ground Lease between the Oakland Unified School District and the City of Oakland regarding the Recreational Facilities at Golden Gate Elementary School located at 1075 62<sup>nd</sup> Street, Oakland, California, for a term of twenty five (25) years.

**BACKGROUND**

Pursuant to Chapter 4 of Part 10.5 of the Education Code, the State Legislature is concerned that school playgrounds, playing fields, and recreational real property will be lost for those uses by the surrounding communities even if those communities in their planning process have assumed that the properties would be permanently available for recreational purposes and District and City share this concern.

As stated in section 17485, it is the intent of the Legislature to allow school districts to recover their investment in surplus property while making it possible for other agencies of government to acquire the property and keep it available for playground, playing field, or other outdoor recreational and open space purposes.

The land described as "Golden Gate" as shown on Attachment A to the Ground Lease is particularly suited for recreational purposes and has been used as a recreational facility for over fifty (50) years. No other available publicly owned land in the vicinity of the Golden Gate Elementary School is adequate to meet the existing and foreseeable needs of the community for outdoor recreational and open-space purposes, as determined by City, which desires to lease the Golden Gate property, pursuant to Education Code, section 17492.

In keeping with the requirements of section 17492, the governing body of City has made a finding, approved by a vote of two-thirds of its members, that public lands in the vicinity of Golden Gate are inadequate to meet the existing and foreseeable needs of the community for outdoor recreational and open-space purposes. City has grant funds or intends to pursue funds as opportunities arise to fund and has funded the Golden Gate Improvements Project. It will be beneficial to District and City to accept improvements made by City within the leased premises for enjoyment by District students and the general public. The City desires to lease the Golden Gate property from District and District desires to enter into a lease for the property to City to accept the completed improvements and for use of the property for recreational purposes. The term of the Ground Lease is for 25 years.

**FISCAL IMPACT**

Not Applicable. The City will pay the District \$25 (\$1.00 per year) upon commencement of the lease term.

**RECOMMENDATION**

That the Board of Education approves the Ground Lease between the Oakland Unified School District and the City of Oakland regarding the Recreational Facilities at Golden Gate located at 1075 62<sup>nd</sup> Street, Oakland, California for term of twenty five (25) years.

Attachment: Golden Gate Ground Lease

**GROUND LEASE BETWEEN THE OAKLAND UNIFIED SCHOOL DISTRICT AND  
THE CITY OF OAKLAND REGARDING A PORTION OF GOLDEN GATE  
ELEMENTARY SCHOOL GROUNDS LOCATED  
LOCATED AT 1075 62<sup>ND</sup> STREET IN OAKLAND, CALIFORNIA**

**Preamble and Recitals**

This Lease is entered into on June 10, 2009 by and between the Oakland Unified School District, ("District", or "Landlord") and the City of Oakland ("City" or "Tenant") collectively, the "Parties".

**A.** Pursuant to Chapter 4 of Part 10.5 of the Education Code, the State Legislature is concerned that school playgrounds, playing fields, and recreational real property will be lost for those uses by the surrounding communities even if those communities in their planning process have assumed that the properties would be permanently available for recreational purposes and District and City share this concern; and

**B.** As stated in section 17485, it is the intent of the Legislature to allow school districts to recover their investment in surplus property while making it possible for other agencies of government to acquire the property and keep it available for playground, playing field, or other outdoor recreational and open space purposes; and

**C.** The land described as "Golden Gate" or "Premises" as shown on Attachment A hereto is particularly suited for recreational purposes and has been used as a recreational facility for over fifty (50) years immediately preceding the date of this agreement; and

**D.** No other available publicly owned land in the vicinity of the schoolsite is adequate to meet the existing and foreseeable needs of the community for outdoor recreational and open-space purposes, as determined by City, which desires to lease the Golden Gate property, pursuant to Education Code, section 17492; and

**E.** In keeping with the requirements of section 17492, the governing body of City has made a finding, approved by a vote of two-thirds of its members, that public lands in the vicinity of Golden Gate are inadequate to meet the existing and foreseeable needs of the community for outdoor recreational and open-space purposes; and

**F.** City has grant funds or intends to pursue funds as opportunities arise to fund the Golden Gate Improvements Project; and

**G.** It will be beneficial to District and City to accept improvements made by City within the leased premises for enjoyment by District students and the general public; and

**H.** City desires to lease the Golden Gate property from District and District desires to enter into a lease for the property to City to accept the completed improvements and for use of the property for recreational purposes.

THEREFORE, DISTRICT AND CITY AGREE AS FOLLOWS:

**ARTICLE 1  
LEASE OF PREMISES AND TERM OF LEASE**

**Agreement to Lease**

Section 1.01. For and in consideration of the rents to be paid and covenants to be performed by Tenant under this Lease, District agrees to lease Premises to Tenant, and Tenant agrees to lease Premises from District, on the terms and conditions set forth in this Lease. Except as expressly otherwise provided in this Lease, the leased premises includes the real property plus any appurtenances and easements and including any Improvements now or subsequently located on Premises, notwithstanding that any Improvements may or shall be construed as affixed to and as constituting part of the described Premises, and without regard to whether ownership of the improvements is in District or in Tenant.

**Status of Title**

Section 1.02. Title to the leasehold estate created by this Lease is subject to all exceptions, easements, rights, rights-of-way, and other matters of record which are in effect at the time of the execution of this Lease Agreement. District represents that Premises is not subject to any superior liens.

**Term of Lease**

Section 1.03. The term of this Lease shall commence on the date on which the Board of Education executes this Agreement and shall continue for a period of twenty-five (25) years, until 2033, and be irrevocable for that period except only by mutual consent or for cause as set forth herein. At the termination of this agreement, renewal of the terms may be executed by mutual agreement of the parties.

**ARTICLE 2  
RENT**

**Minimum Rent**

Section 2.01. Tenant agrees to pay to District minimum annual rent of One Dollar (\$1.00) ("Minimum Rent") for each year during the term of this Lease. As noted in section 2.02 below, rent shall be due and payable in a lump sum payment of \$25.00 at the commencement of the Lease Term.

**Time and Place for Payment of Rent**

Section 2.02. Tenant shall pay to Landlord as rent, without deduction, setoff, prior notice, or demand, the lump sum of Twenty-five (\$25.00) at the commencement of the Lease Term. All rent shall be paid to Landlord at the address to which notices to Landlord are given.

**ARTICLE 3  
USE OF PREMISES**

**Permitted Use**

Section 3.01. Tenant shall use the Leased premises solely for the purpose of improving and operating a public recreation facility and other necessary improvements and buildings which shall be necessary for the efficient operation of the park and shall use its best efforts to use and maintain Premises for said purposes throughout the term of this agreement. Tenant and District shall use their best efforts to develop and coordinate a mutually agreeable schedule for joint use of Premises that will promote use of Premises for District's physical education classes and accommodate public use of Premises without compromising the safety and security of adjoining District school any time District activities are present at District school. Said schedule shall be mutually agreed upon in writing by District and City.

**Compliance with Laws**

Section 3.02. The Parties shall, at their own cost and expense, comply with all statutes, ordinances, regulations, and requirements of all governmental entities, federal, state, county or municipal, including those requiring capital improvements to Premises or Improvements, relating to any use and occupancy of Premises, whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted. If any license, permit, or other governmental authorization is required for the lawful use or occupancy of Premises or any portion of Premises, City shall procure and maintain it throughout the term of this Lease, with any reasonably necessary assistance from District. The judgment of any court of competent jurisdiction, or the admission by a party in a proceeding brought against the party by any government entity that the party has violated any such statute, ordinance, regulation, or requirement shall be conclusive as between District and Tenant.

**Prohibited Uses**

Section 3.03. Parties shall not use or permit Premises or any portion of Premises to be improved, developed, used, or occupied in any manner or for any purpose that is in any way in violation of any valid law, ordinance, or regulation of any federal, state, county, or local governmental agency, body, or entity. Furthermore, the Parties shall not maintain, commit, or permit the maintenance or commission of any nuisance as now or hereafter defined by any statutory or decisional law applicable to Premises or any part of Premises.

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**ARTICLE 4  
TAXES AND UTILITIES**

**Tenant to Pay Taxes**

Section 4.01. Tenant shall pay during the term of this Lease, without abatement, deduction, or offset, any and all real and personal property taxes, general and special assessments, and other charges (including any increase caused by a change in the tax rate or by a change in assessed valuation) of any description levied or assessed during the term of this Lease by any governmental agency or entity on or against the leased premises, the improvements located on the leased premises, personal property located on or in the leased premises or improvements, and the leasehold estate created by this Lease.

**Utilities**

Section 4.02. Tenant agrees to pay charges for electricity, gas, heat, cooling, telephone, sewer use, water, refuse collection and other utilities used in Premises. Tenant shall arrange for refuse collection services by the City of Oakland.

**ARTICLE 5  
CONSTRUCTION BY TENANT**

**Duty to Construct**

Section 5.01. At Tenant's sole cost and expense, Tenant shall construct on Premises, improvements as set forth in the Grant; and in accordance with applicable state, local and federal law, including compliance with the Field Act, Education Code §§17280-17317.

**Consultation with District**

Section 5.02. Tenant shall consult with District on the design of the Golden Gate Project to ensure the adequacy and acceptability of Premises for Parties joint use.

**Time for Completion**

Section 5.03. Tenant shall complete the construction of the Golden Gate Improvements in accordance with the terms of the funding agency requirement, as the application may be or have been amended.

## **Zoning and Use Permits**

Section 5.04. Should Tenant deem it necessary or appropriate to obtain any use permit, variance, or rezoning of Premises to operate the Golden Gate recreational facility, District agrees to execute any documents, petitions, applications, and authorizations that may be reasonably necessary or appropriate to that end. Any such permits, variances, or rezoning shall be obtained at the sole cost and expense of Tenant and Tenant agrees to protect and save District and the property of District, including Premises, free and harmless from any such cost and expense.

## **Improvements**

Section 5.05. Tenant shall make those improvements, alterations, or fixtures that are included in the plans for construction of the Golden Gate Project.

Section 5.06. Tenant shall promptly repair all damage to Premises caused by Tenant. Upon completion of the work, Tenant shall remove all debris and surplus material, and thoroughly clean Premises.

Section 5.07. Tenant shall require all contractors to provide a labor and materials bond for the full amount of the contract. Tenant shall indemnify and defend Landlord with respect to any claims for labor and materials, damage or injury arising out of the development of the Golden Gate Improvements and shall pay, when due, all sums of money that may be due or become due for any labor, services, materials, supplies or equipment furnished to or for Tenant, in, at, upon, or about the leased premises and which may be secured by any stop notice, material men's or other lien against Premises or Landlord's interest therein.

## **Ownership of Improvements**

Section 5.08. Title to all improvements at Golden Gate, including the Golden Gate Project constructed on Premises by Tenant shall be owned by Tenant until expiration of the term of this Lease. All improvements on Premises at the expiration of the term of this Lease shall, with compensation to Tenant in the amount of one dollar (USD\$1), become District's property.

## **Compliance with Law and Safety**

Section 5.09. For any and all improvements made by Tenant, Tenant shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of Tenant's activities, including all provisions of the Occupational Safety and Health Act of 1979 and all amendments thereto, and all applicable federal, state, municipal, and local safety regulations. All Tenant's activities must be in accordance with these laws, ordinances, codes, and regulations.

Tenant shall be solely and completely responsible for conditions of the work area for any improvements to be installed and constructed by Tenant, including the safety of

all persons and property during performance of said work. Tenant shall fully comply with all state, federal and other laws, rules, regulations and orders relating to safety of the public and workers. All materials, equipment and supplies provided for work performed by Tenant on Premises shall fully conform to all applicable State, local and Federal safety laws, rules, regulations, and orders. Tenant shall observe strict fire and smoking precautions on Premises. Tenant shall not light any fires on Premises and shall not carry firearms, illegal drugs or intoxicating beverages onto Premises.

Tenant and Landlord understand that any work of construction on Premises will take place during school hours and may take place on evenings or weekends, subject to prearrangement and approval of Landlord, in writing, with any associated cost of such arrangement to be at Tenant's sole expense. The parties agree to coordinate with each other to schedule such work and arrange for appropriate precautions to ensure that the work may be performed safely, without unreasonable delay, and with minimal disruption to District's operation of public school at Sobrante Elementary School and on Premises.

Tenant shall require its officers, employees, agents, volunteers and independent contractors involved in work on Premises to comply with the requirements of California Education Code section 45125.2(a) (1) or 45125.2(a)(2).<sup>1</sup>

Tenant shall provide and maintain such fences, barriers, directional signs, lights and flagmen as are necessary to give adequate warning to the public at all times of any dangerous conditions to be encountered as a result of improvement work, and to give directions to the public. Tenant shall surround the work area with a locked fence. Landlord and its authorized representatives shall not enter the work area for any purposes without first providing notice to Tenant or its designated representative. Further, Landlord and its authorized representative shall not enter the work area unless accompanied by Tenant or its designated representative. In the event Landlord or its authorized representative enters the work area without notice or without a designated representative of Tenant, Tenant shall not be responsible for the safety of any such individuals.

Section 5.10. For any and all improvements made by Tenant, if a death, serious personal injury, or substantial property damage occurs in, on or about Premises, Tenant shall immediately notify Landlord's Risk Management Office by telephone. If any accident occurs on Premises Tenant shall promptly submit a written report to Landlord in such form as Landlord may require. This report shall include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Tenant's contractor, if any, (3) name and address of Tenant's liability insurance carriers; (4) a detailed description of the accident.

Section 5.11. For any and all improvements made by Tenant, if a release of hazardous materials or hazardous waste that cannot be controlled occurs on Premises, Tenant shall immediately notify the City of Oakland Police Department and the City of Oakland's Emergency and Toxic Waste Management Office and District's Director of Buildings & Grounds. Tenant shall not store hazardous materials or hazardous waste on Premises without a proper permit from City.

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<sup>1</sup> All Education Code Sections referenced herein are cited in full in Attachment B to this Lease



## **ARTICLE 6**

Reserved.

## **ARTICLE 7 REPAIRS AND RESTORATION**

### **Maintenance by Tenant**

Section 7.01. Premises shall be maintained by City at the sole cost and expense of City. Such maintenance shall not require Tenant to perform major capital projects or repairs. Major capital projects or repairs shall be defined as those projects valued in excess of ten thousand dollars (\$10,000) per occurrence. Tenant and Landlord shall seek joint funding for major capital projects or repairs through their respective capital budgets, joint grant applications or other sources. If funding cannot be obtained by either party either jointly or separately and the capital projects or repairs are necessary to the safe operation of Property, Tenant shall have the right to terminate this Lease.

Section 7.02. Tenant will maintain any and all fencing and gates on and surrounding Premises and keep the fencing and gates in a good and safe condition for public and school use.

### **Option to Terminate Lease for Destruction**

Section 7.03. Tenant shall have the right to terminate this Lease if, during the Lease's term, the improvements are damaged or destroyed by a casualty for which Tenant is not required under this Lease to carry insurance and the cost to repair or restore the damaged or destroyed Improvements exceeds 50 percent of the fair market value of the improvements immediately before the damage or destruction.

## **ARTICLE 8 INDEMNITY AND INSURANCE**

### **Indemnity Agreement**

Section 8.01. Except with respect to the use of Premises by Landlord, Tenant shall indemnify, defend and hold Landlord, its officers, volunteers and employees harmless from: 1) all claims of liability for any damage to property or injury or death to any person occurring in, on, or about the Leased premises; 2) all claims of liability arising out of Tenant's failure to perform any provision of this Lease, or any act or omission by Tenant, its agents, contractors, invitees or employees; and 3) all damages, liability, fines, penalties, and any other consequences arising from any noncompliance or violation of any laws, ordinances, codes, or regulations, including but not limited to the Occupational Safety and Health Act of 1979 and the Americans with Disabilities Act of

1990 for the Leased premises. Except, however, that Landlord shall hold Tenant harmless from all claims of liability for damage resulting from acts or omissions of Landlord or its authorized representatives.

Landlord will defend, indemnify and hold harmless the Tenant from any and all claims, demands, actions, or damages arising out of Landlord's use of Tenant's facilities to which Tenant may be subjected as a direct consequence of this Agreement, except to those claims, demands, actions or damages resulting from the sole negligence of Tenant.

### **Liability Insurance**

Section 8.02. Each party acknowledges that it is permissibly self-insured under the applicable Government Code provision and agrees to provide on an annual basis to the other party adequate proof of self-insurance and excess liability coverage. Each party shall provide to the other a Certificate of Insurance naming the other as an additional insured with respect to the obligations under this Agreement and the use of Premises. Each party shall provide a letter of self-insurance and give a copy to the other party.

Tenant shall at its cost maintain sufficient public liability and property damage insurance with a single combined limit of \$1,000,000 and a property damage limit of not less than \$500,000 insuring against all liability of Tenant and its authorized representatives arising out of and in connection with Tenant's use or occupancy of Premises. All such insurance shall insure performance by Tenant of the preceding indemnity provisions. All insurance shall name the Oakland Unified School District, its officers, agents, volunteers and employees as additional insured and shall provide primary coverage with respect to the same.

Tenant shall forward all insurance documents to Oakland Unified School District, Risk Manager, 1025 Second Avenue, Street, Oakland, California, 94606.

### **ARTICLE 9 EMINENT DOMAIN**

Section 9.01. If the whole or any portion of Premises is taken by any paramount public authority under the power of eminent domain, then the rights and obligations of the parties shall be determined as follows: If Premises are totally taken by condemnation; this Lease shall terminate on the date of taking. If any portion of Premises is taken by condemnation, Tenant shall have the right to either terminate this Lease or to continue in possession of the remainder of Premises under the terms of this Lease or to continue in possession of the remainder Premises under the terms of this Lease. Such right to terminate must be exercised by notifying Landlord within thirty (30) days after possession of the part taken by eminent domain. All damages awarded for such taking shall belong to and be the property of Landlord; provided, however, that Landlord shall not be entitled to any portion of the award made for loss of installations or improvements made by Tenant in accordance with this Lease.

**ARTICLE 10**  
**ASSIGNMENT, SUBLEASING, LEASEHOLD ENCUMBRANCES AND TRANSFERS**

**No Assignment Without District's Consent**

Section 10.01. The parties understand and agree that the purposes of this Lease is to facilitate the construction and joint use of a public recreational facility at Golden Gate and use of Premises. Accordingly, Tenant shall not voluntarily assign, transfer or encumber its interest in this Lease or in Premises, or sublease all or any part of Premises, or allow any other person or entity (except Tenant's authorized representative) to occupy or use all or any part of Premises, without Landlord's consent. Any such action shall be voidable and, at Landlord's election, shall constitute a default. No consent to any assignment, transfer, encumbrance, or sublease shall constitute a further waiver of the provisions of this paragraph.

**ARTICLE 11**  
**ENTRY**

Section 11.01. Landlord and its authorized representatives shall have the right to enter Premises at all reasonable times for any of the following purposes: 1) to determine whether Premises are in good condition and whether Tenant is complying with its obligation under the Lease; 2) to perform any acts that may be necessary to protect Landlord's interest in Premises; and 3) to perform Landlord's duties under the Lease.

Landlord shall not be liable for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Landlord's entry on Premises as provided in this section, except damage resulting from the acts or omissions.

**ARTICLE 12**  
**DEFAULT AND REMEDIES**

**Breach and Default**

Section 12.01. The occurrence of any of the following shall constitute a default:

- a. Abandonment and vacation of premises (failure to occupy and operate Premises for sixty (60) consecutive days shall be deemed an abandonment and vacation).
- b. Failure to perform any other provision of this Lease if the failure to perform is not cured within 30 days after notice has been given to the Party. If the default cannot reasonably be cured within 30 days, Party shall not be in default of this Lease if Party commences to cure the default within the 30 day period and diligently and in good faith continues to cure the default.

- c. Notices given under this paragraph shall specify the alleged default and the applicable Lease provisions, and shall demand that the defaulting Party perform the provisions of this Lease within the applicable period of time, or pay to the non-defaulting Party just compensation for such default. The purpose of the notice requirement set forth in this section is to extend the notice requirements of the unlawful detainer statutes of California.

### **Remedies**

Section 12.02. The Parties shall have the following remedy if the other Party commits a default. This remedy is not exclusive; however, during the term of this Lease, unless otherwise specified, Parties shall not have the right to terminate this Lease:

Right to Cure or Seek Specific Performance. A Party, at any time after the other Party commits a default, can cure the default at the other Party's cost or seek specific performance of the terms of this Lease by the defaulting Party. If the Party at any time, by reason of the other Party's default, pays any sum or does any act that requires the payment of any sum, the sum paid by the Party shall be due immediately from the defaulting Party to the Party at the time the sum is paid, and if paid at a later date shall bear interest at the maximum rate individual is permitted by law to charge from the date the sum is paid by the Party until the Party is reimbursed by defaulting Party.

### **Waiver of Breach**

Section 12.03. The waiver by a Party of any breach by the other Party of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach by the other Party of either the same or a different provision of this Lease.

## **ARTICLE 13 OTHER PROVISIONS**

### **Force Majeure**

Section 13.01. Except as otherwise expressly provided in this Lease, if the performance of any act required by this Lease to be performed by either District or Tenant is prevented or delayed by reason of any act of God, strike, lockout, labor trouble, inability to secure materials, restrictive governmental laws or regulations, or any other cause (except financial inability) not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused. However, nothing contained in this section shall excuse the prompt payment of rent by Tenant as required by this Lease or the performance of any act rendered difficult or impossible solely because of the financial condition of the party required to perform the act.

### **Notices to District**

Section 13.02. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to District by Tenant or any Lender described in this Lease shall be in writing and shall be deemed duly served and given when personally delivered to District, to any managing employee of District, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, and sent by express mail that allows for tracking, addressed to District at Oakland Unified School District, 955 High Street, Oakland, CA 94607, Attn: Assistant Superintendent of Facilities Planning and Management, Buildings and Grounds and Custodial Management. District may change District's address for the purpose of this section by giving written notice of that change to Tenant in the manner provided in Section 13.03.

### **Notices to Tenant**

Section 13.03. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to Tenant by District shall be in writing and shall be deemed duly served and given when personally delivered to Tenant, any managing employee of Tenant, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, and sent by express mail that allows for tracking, addressed to Tenant at City of Oakland, Office of Parks and Recreation, 250 Frank Ogawa Plaza, Suite 3330, Oakland, CA 94612, Attn: Director. Tenant may change its address for the purpose of this section by giving written notice of that change to District in the manner provided in Section 13.02 of this Lease.

### **Governing Law**

Section 13.04. This Lease, and all matters relating to this Lease, shall be governed by the laws of the State of California in force at the time any need for interpretation of this Lease or any decision or holding concerning this Lease arises.

### **Binding on Heirs and Successors**

Section 13.05. This Lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, but nothing in this section shall be construed as consent by District to any assignment of this Lease or any interest in the lease by Tenant except as provided in Article 10 of this Lease.

### **Partial Invalidity**

Section 13.06. If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Lease shall remain in full force and effect unimpaired by the holding.

**Time of Essence**

Section 13.07. Time is expressly declared to be of the essence of this Lease.

**Memorandum of Lease for Recording**

Section 13.08. Neither District nor Tenant shall record this Lease without the written consent of the other. However, District and Tenant shall, at the request of either at any time during the term of this Lease, execute a memorandum or "short form" of this Lease for purposes of, and in a form suitable for, recordation. The memorandum or "short form" of this Lease shall describe the parties, set forth a description of the leased premises, specify the term of this Lease, incorporate this Lease by reference, and include any other provisions required by Lender(s).

**IN WITNESS WHEREOF**, DISTRICT and CITY have executed this Lease Agreement as of the date written on the first paragraph of this Lease.

**OAKLAND UNIFIED SCHOOL DISTRICT**

\_\_\_\_\_  
Noel Gallo, President, Board of Education \_\_\_\_\_  
Date

\_\_\_\_\_  
Edgar Rakestraw, Jr., Secretary, Board of Education \_\_\_\_\_  
Date

**CITY OF OAKLAND**

\_\_\_\_\_  
Dan Lindheim \_\_\_\_\_  
Date

\_\_\_\_\_  
Audree V. Jones-Taylor \_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Danielle Houck, OUSD Interim General Counsel

\_\_\_\_\_  
Date

\_\_\_\_\_  
Office of the City Attorney

\_\_\_\_\_  
Date

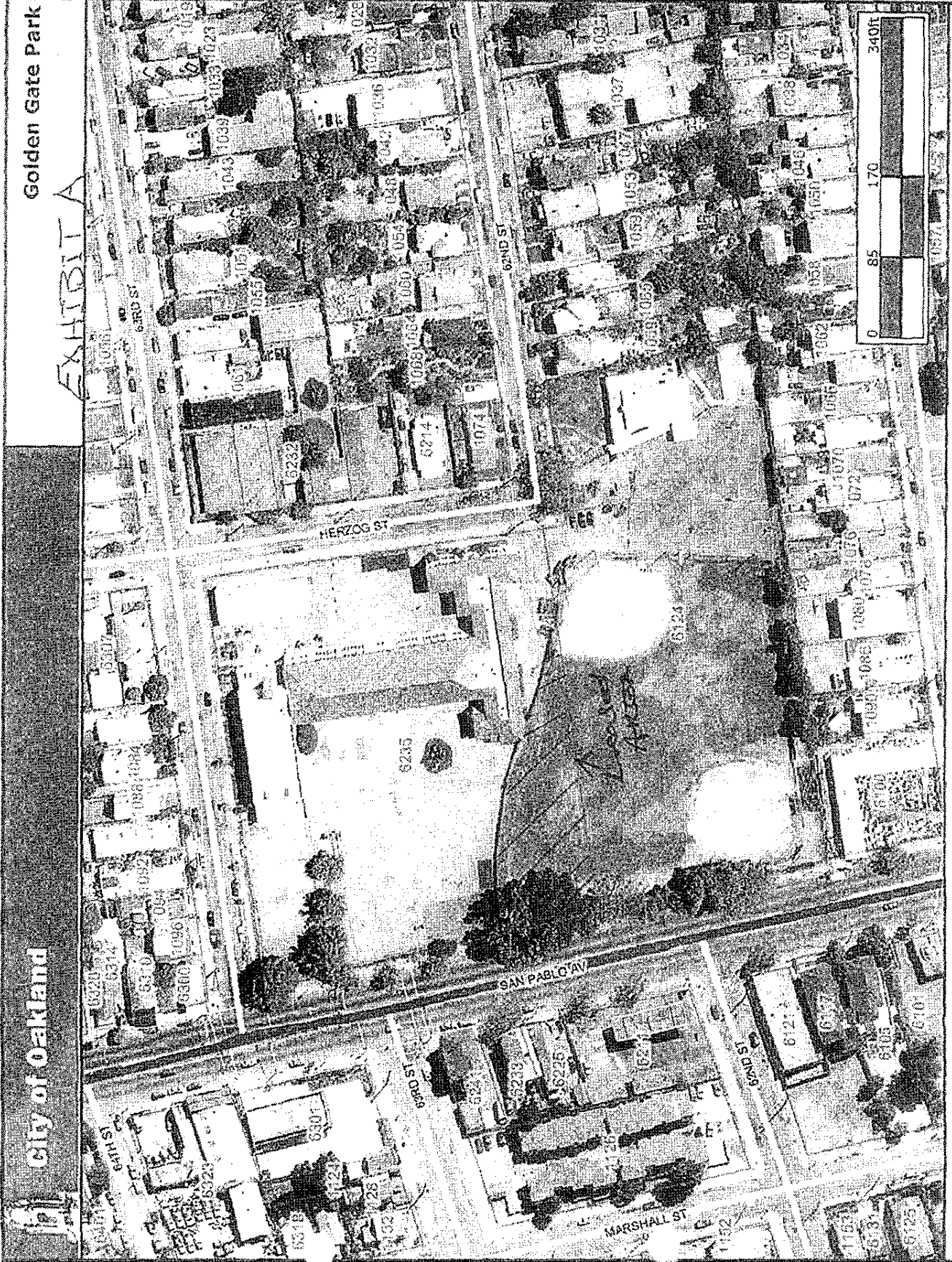
**ATTACHMENT A  
Property Map**



City of Oakland

Golden Gate Park

EXHIBIT A



Printed: 2/25/2007 3:13:24 PM

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**ATTACHMENT B**  
**Sections of the California Education Code Cited in Lease**  
Excerpted from the website: <http://www.leginfo.ca.gov/calaw.html>

**PART 10.5 – School Facilities**

**CHAPTER 4 – Property Sale, Lease, Exchange**

**ARTICLE 5 - Surplus School Playground, Playing Field, and Recreational Property**

**SECTIONS 17485-17500**

**17485.** The Legislature is concerned that school playgrounds, playing fields, and recreational real property will be lost for those uses by the surrounding communities even if those communities in their planning process have assumed that the properties would be permanently available for recreational purposes. It is the intent of the Legislature in enacting this article to allow school districts to recover their investment in surplus property while making it possible for other agencies of government to acquire the property and keep it available for playground, playing field or other outdoor recreational and open-space purposes.

**17486.** This article shall apply to any school site owned by a school district, which the governing board determines to sell or lease, and with respect to which the following conditions exist:

(a) Either the whole or a portion of the school site consists of land which is used for school playground, playing field, or other outdoor recreational purposes and open-space land particularly suited for recreational purposes.

(b) The land described in subdivision (a) has been used for one or more of the purposes specified therein for at least eight years immediately preceding the date of the governing board's determination to sell or lease the school site.

(c) No other available publicly owned land in the vicinity of the school site is adequate to meet the existing and foreseeable needs of the community for playground, playing field, or other outdoor recreational and open-space purposes, as determined by the governing body of the public agency which proposes to purchase or lease land from the school district, pursuant to Section 17492.

**17487.** As used in this article, "school site" means a parcel of land, or two or more contiguous parcels, which is owned by a school district. "Governing board" means the governing board of the school district which owns the school site.

**17488.** The governing board of any school district may sell or lease any school site containing land described in Section 17486, and, if the governing board decides to sell or lease such land, it shall do so in accordance with the provisions of this article.

**17489.** Notwithstanding Section 54222 of the Government Code, the governing board, prior to selling or leasing any school site containing land described in Section 17486, excluding that portion of a school site retained by the governing board pursuant to Section

17490, shall first offer to sell or lease that portion of the school site consisting of land described in Section 17486, excluding that portion retained by the governing board pursuant to Section 17490, to the following public agencies in accordance with the following priorities:

(a) First, to any city within which the land may be situated.

(b) Second, to any park or recreation district within which the land may be situated.

(c) Third, to any regional park authority having jurisdiction within the area in which the land is situated.

(d) Fourth, to any county within which the land may be situated.

The governing board shall have discretion to determine whether the offer shall be an offer to sell or an offer to lease.

An entity which proposes to purchase or lease a school site offered by a school district shall notify the district of its intention, in writing, within 60 days after receiving written notification from the district of its offer to sell or lease.

**17490.** In determining what portion of a school site shall be offered for sale or lease pursuant to this article, the governing board may retain any part of the school site containing structures or buildings, together with such land adjacent thereto which, as determined by the governing board, must be included in order to avoid reducing the value of that part of the school site containing such structures or buildings to less than 50 percent of fair market value.

**17491.** (a) Except as otherwise provided in subdivision (b) or (e), the price at which land described in Section 17486, excluding that portion of a school site retained by the governing board pursuant to Section 17490, is sold pursuant to this article shall not exceed the school district's cost of acquisition, calculated as a pro rata cost of acquiring the entire parcel comprising the school site, adjusted by a factor equivalent to the percentage increase or decrease in the cost of living from the date of purchase to the year in which the offer of sale is made, plus the cost of any improvement to the recreational and open-space portion of the land which the school district has made since its acquisition of the land. In no event shall the price be less than 25 percent of the fair market value of the land described in Section 17486 or less than the amount necessary to retire the share of local bonded indebtedness plus the amount of the original cost of the approved state aid applications on the property, excluding that portion of a school site retained by the governing board pursuant to Section 17489, at the time of the offer.

These provisions shall apply to land that the school district acquired by gift or for consideration.

(b) A school district that offers a portion of a school site for sale may offer such portion of property for sale at its fair market value provided the school district offers an equivalent size alternative portion of that school site for school playground, playing field, or other recreational and open-space purposes.

(c) Land which is leased pursuant to this article shall be leased at an annual rate of not more than 1/20th of the maximum sales price determined pursuant to subdivision (a) of this section, adjusted annually by a factor equivalent to the percentage increase or decrease in the cost of living for the immediately preceding year.

(d) The percentage of annual increase or decrease in the cost of living shall be the amount shown for January 1st of the appropriate year by the then current Bureau of Labor Statistics Consumers Price Index for the area in which the school site is located.

(e) Whenever a school district closes a school site and sells any land described in Section 17486 pursuant to this article to help pay only for capital outlay costs incurred directly as a result of the transfer of pupils from the closed school to another school or other schools of the district, the sale price of the property determined pursuant to subdivision (a) shall be increased by an amount equal to the additional costs incurred due to the school closure.

**17492.** The governing body of a public agency which proposes to purchase or lease land from a school district pursuant to this article shall first make a finding, approved by a vote of two-thirds of its members, that public lands in the vicinity of the school site are inadequate to meet the existing and foreseeable needs of the community for playground, playing field, or other outdoor recreational and open-space purposes.

**17493.** (a) No public agency may purchase surplus school property from a school district pursuant to this article unless it has first adopted a plan for the purchase of surplus school property. The plan shall designate the surplus site or sites all or a portion of which the public agency desires to purchase at the price established pursuant to this article and shall designate at least 70 percent of the total surplus school acreage as property which the agency does not desire to purchase at the price established pursuant to this article. Where the plan indicates that the agency desires to purchase only a portion of a school site at the price established pursuant to this article, it shall designate the percent of the property to be so purchased and provide a description of the general location of the property to be purchased, without designating the metes and bounds.

(b) Any property designated by public agencies as surplus school sites which the agencies do not wish to purchase, pursuant to subdivision (a), may be sold or leased by a school district without regard to this article.

(c) This section shall become operative on April 1, 1982.

**17494.** Any land purchased or leased by a public agency pursuant to this article shall thereafter be maintained by such agency for playground, playing field, or other outdoor recreational and open-space uses. Land which prior to its sale or lease was used for playground or playing field purposes, shall continue to be maintained for such use by the acquiring agency, unless the governing body of that agency, by a two-thirds vote at a public hearing, determines that there is no longer a significant need for the land to be so used, in which case the land may thereafter be used for other outdoor recreational or open-space purposes. The school district may, at any time, reacquire the land at a price calculated in the manner prescribed in Section 17491, and the rights of reacquisition provided in this section shall be set forth in the deed or other instrument of transfer. If the governing board of the public agency determines that the land is no longer needed for playground, playing field, or other outdoor recreational and open-space purposes, the public agency shall offer the property to the school district for reacquisition under this section, and the school district shall notify the public agency within 60 days of its intent to reacquire the land. If the school district intends to sell the property within one year of the reacquisition date, the school district may finance the reacquisition of the land by lien against the proceeds to be obtained from the sale of the land by the school district. If the school district fails to give the public agency timely notice of its intent to reacquire the property, or if it fails to exercise its right of reacquisition, the public agency may use or dispose of the property.

For purposes of this section, "cost of acquisition," as used in Section 17491, shall refer to the cost at which the land was acquired by the public agency.

**17495.** The sale or lease of land by a school district pursuant to this article shall be subject to, and governed by, the provisions of Article 2 (commencing with Section 17230) of Chapter 1 and Article 4 (commencing with Section 17455), except to the extent that the provisions of this article are inconsistent with a provision or provisions of Article 2 or 4, in which event the provisions of this article shall govern the sale or lease.

**17496.** Failure by the school district to comply with the provisions of this article shall not invalidate the transfer or conveyance of real property to a purchaser or encumbrancer for value.

**17497.** Notwithstanding the other provisions of this article, any school district governing board may designate not more than two surplus school sites as exempt from the provisions of this article for each planned school site acquisition if the school district has an immediate need for an additional school site and is actively seeking to acquire an additional site, and may exempt not more than one surplus school site if the district is seeking immediate expansion of the classroom capacity of an existing school by 50 percent or more.

The exemption provided for by this section shall be inapplicable to any school site which, under a lease executed on or before July 1, 1974, with a term of 10 years, was leased to a city of under 100,000 population for park purposes, was improved at city expense, and used for public park purposes.

**17498.** A school district having a school site described in Section 17486 may, as an alternative to sale or lease of the land pursuant to the foregoing provisions of this article, enter into other forms of agreement concerning the disposition of the property with any entity enumerated in Section 17489, in accordance with the priorities therein specified, including, but not limited to each of the following:

(a) An agreement to lease to such entity all or part of the school site for a specified term, with an option to purchase such properties at the end of the term.

(b) An agreement granting to the entity a permanent open-space easement for recreational use over a portion of the leased site.

(c) If the lessee or a grantee under an agreement is an entity having zoning powers, an agreement requiring the entity to rezone any portion of the property retained by the school district in accordance with conditions specified in the agreement, to the extent that rezoning in accordance with the conditions is in compliance with applicable laws of the state.

**17499.** (a) No more than 30 percent of the total surplus school acreage owned by a school district may be purchased or leased by public agencies pursuant to this article.

(b) The right of any public agency to purchase or lease surplus school property pursuant to this article shall exist only with respect to an amount of surplus school acreage within its jurisdictional boundaries which, when added to the surplus school acreage within its jurisdictional boundaries already purchased or leased pursuant to this article, will not exceed 30 percent of the surplus school acreage owned by the school district which is within the jurisdictional boundaries of that agency.

(c) For purposes of this section, "surplus school acreage" of a school district means property which is owned by a district and not used for school purposes, including, but not limited to, undeveloped property and property which contains school buildings that are not in use as a result of a school closure and which is not subject to any lease or agreement executed on or before July 1, 1974, for a term in excess of six years, in which any city containing a population of less than 100,000 had use of the property for park purposes on January 1, 1981, and had improved the property.

(d) Nothing in this section shall be construed to deny local agencies the opportunity to purchase at full market value all or part of the 70 percent of the total surplus school acreage which is not affected by this article.

**17500.** This article shall not apply to any school district having more than 400,000 pupils in average daily attendance.

CALIFORNIA CODES  
EDUCATION CODE  
SECTION 17280-17317

17280. (a) (1) The Department of General Services under the police power of the state shall supervise the design and construction of any school building or the reconstruction or alteration of or addition to any school building, if not exempted under Section 17295, to ensure that plans and specifications comply with the rules and regulations adopted pursuant to this article and building standards published in Title 24 of the California Code of Regulations, and to ensure that the work of construction has been performed in accordance with the approved plans and specifications, for the protection of life and property. Nothing in this section shall be construed to allow a school district to perform work with its own forces in excess of the limitations set forth in Sections 17595 and 17599. In calculating the cost of any project of reconstruction or alteration of, or addition to, any school building for the purpose of determining the applicability of the rules and regulations adopted pursuant to this article and building standards published in Title 24 of the California Code of Regulations, the Department of General Services shall not include, as an element of that cost, any expenses of air-conditioning equipment or insulation materials for that building, or of installing the equipment or materials.

(2) In the alternative, for a leased or purchased building, a school district may comply with this section by complying with Section 17280.5.

(b) Whenever repairs due to fire damage, not including any damage caused by wind or earthquake, must be made to any school building previously approved by the Department of General Services, the approved plans and specifications used in the original work under then existing rules, regulations, and building standards may be used without modification, providing all other provisions of this article are carried out.

(c) Notwithstanding any other provision of law, no school district shall be authorized to construct or reconstruct any school building, regardless of the source of funding, unless and until the governing board of the district, by resolution, has indicated the agreement of the district that any school building construction or reconstruction that exceeds those construction costs and allowable area standards or any allowable building area computed for an attendance area pursuant to Section 17041 shall, in the event of the district's subsequent application for state funding for school facility construction, be deducted from the allowable building area for which the district would otherwise have been eligible, which restriction shall not be subject to waiver or exception as otherwise may be provided by law.

(d) If it is determined that, for any reason, a school district failed to comply with the requirement of this section, the district shall not be eligible for any additional building area pursuant to Section 17049 and may be denied any time priority established for the particular project pursuant to Section 17016.

17280.1. Written rules and regulations adopted pursuant to this article to clarify the application of the California Building Standards Code shall be made available to the public by the State Architect upon request.

17280.5. (a) The Seismic Safety Commission shall convene an advisory committee that shall include, but not be limited to, the State Architect, the State Fire Marshall, representatives from the major professional associations representing architects, engineers, and school facilities designers, and other interested parties.

(b) The advisory committee shall convene by August 19, 2002, and shall study and report on whether a regulatory process may be developed that will allow the State Architect to determine whether a building not originally constructed in compliance with the Field Act, as defined in Section 17281, and its implementing regulations either meets, or can be retrofitted to meet, the equivalent pupil safety performance standard as a building constructed according to the Field Act and its implementing regulations. If the advisory committee finds that the regulatory process may be developed, the advisory committee, shall include within its report the facts and rationale supporting the finding and the essential steps required in that regulatory process. The advisory committee shall report its findings to the Seismic Safety Commission by December 31, 2002.

(c) By January 8, 2003, and after reviewing the advisory committee's findings, the Seismic Safety Commission shall make a determination as to whether the regulatory process described in subdivision (b) may be developed, and shall report that determination to the Governor and the Legislature.

(d) If the Seismic Safety Commission determines that the regulatory process may be developed, the State Architect shall draft regulations to establish that regulatory process and to delineate the required retrofitting, deconstructive testing, continuous inspection procedures, and other necessary certifications and requirements that must be completed for a building to ensure it meets the equivalent pupil safety performance standard as a building constructed according to the Field Act and its implementing regulations. The State Architect shall promulgate the regulations on or before April 1, 2003, as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(e) Notwithstanding any law, a leased or purchased building that is determined to have the equivalent pupil safety performance standard as a building constructed according to the Field Act and implementing regulations is hereby deemed to be in full compliance with the safety requirements of a school building as set forth in Section 17280, and is hereby deemed to be in full compliance with the Field Act.

17281. This article, together with Article 6 (commencing with Section 17365), and Article 7 (commencing with Section 81130) of Chapter 1 of Part 49, shall be known and may be cited as the "Field Act."

17282. (a) It is the intent of the Legislature to expedite the repair, alteration, and reconstruction of school facilities that have been damaged or destroyed by fire, earthquake, flood, or other manmade or natural disasters, to return those school facilities to a condition that makes them useful to school districts in the least amount of time and at the lowest appropriate cost while maintaining the integrity and safety of the structure as required by the laws of this state.

(b) Notwithstanding any other law, if a school facility has been damaged or destroyed by fire, earthquake, flood, or other manmade or natural disaster, all reviews or approvals required by this article shall be expedited. In no event shall any review or approval exceed 60 days, excluding weekends and holidays, from the date of receipt of all complete plans, specifications, and documentation for the facilities from the district.

(c) If, upon review, the plans or specifications require minor amendment or modification, these minor amendments or modifications shall not delay the completion of the review or approval beyond the 60-day requirement specified in subdivision (b) unless the amendment or modification constitutes a major substantive change affecting the entire project. While any minor amendments or modifications are being undertaken, the remainder of the project shall continue under review so that a timely and adequate review may be completed within the 60-day requirement of subdivision (b).

(d) A state agency that is required to perform any review or approval under this article may hire additional personnel or incur any additional costs necessary to perform the review or approval within the time limits set forth in this section and shall charge the district a fee not to exceed the actual cost of the review or approval.

(e) As used in this section, "damaged" means damages to the extent that occupancy is precluded based upon a report of an architect or a structural engineer and the concurrence of the Department of General Services in the report's conclusion that the occupancy of the premises is precluded.

(f) The expedited review and approval required by this section shall not apply if the documents are not submitted within six months of the damage to, or destruction of, the facilities.

17282.5. (a) On or before January 1, 2010, the Division of the State Architect within the Department of General Services shall develop uniform criteria for precheck approval processes for solar design plans, including structural plans and calculations, for a school facility that comply with rules and regulations adopted pursuant to this article and building standards published in Title 24 of the California Code of Regulations. The criteria shall include provisions to ensure fire and life safety.

(b) The Department of General Services shall complete review of solar design plan applications submitted by a school district that conform with the criteria established pursuant to subdivision (a) within 45 calendar days of the receipt of a complete application. If the Department of General Services requests an applicant to submit a corrected application, the Department of General Services shall act on the corrected application within 10 calendar days of the date the applicant submits the corrected complete application to that department for approval.

17283. "School building" as used in this article means and includes any building used, or designed to be used, for elementary or secondary school purposes and constructed, reconstructed, altered, or added to, by the state or by any city or city and county, or by any political subdivision, or by any school district of any kind within the state, or by any regional occupational center or program created by or authorized to act by an agreement under joint exercise of power, or by the United States government, or any agency thereof.

17284. Any school building, as defined in Section 17283, operated by a county official, board, or commission which on the effective date of this section is in violation of this article, if compliance therewith was otherwise required, may be continued in use as a school building after June 30, 1975, provided that no building shall be operated after that date unless the county official, board, or commission requests and obtains from the State Allocation Board authority for use of the building for a specific period after that date.

Concurrent with the request the county official, board, or commission shall file with the State Allocation Board a statement or resolution declaring an intention to utilize the building as a school building after June 30, 1975, pending its repair, reconstruction, or replacement.

The State Allocation Board shall not authorize the county official, board, or commission to use the building after June 30, 1975, unless it has first determined that the affected authority has already proceeded with a plan of total repair, reconstruction, or replacement in a timely manner and the contract has been let for any phase of, and work commenced on, the project.

In no event shall the State Allocation Board authorize the use of these unsafe facilities for a period extending beyond the completion of the replacement facilities or beyond June 30, 1977, whichever occurs first.

17284.5. (a) Notwithstanding any provision of law to the contrary, any waiver granted by the State Allocation Board to a school district for use of a nonconforming existing private building acquired for conversion for use as a school building, that had not expired prior to January 1, 2000, is hereby extended until January 1, 2002, if the work to make the building a conforming structure commenced prior to January 1, 2001, but had not been completed by that date.

17285. (a) Notwithstanding any provision of law except Sections 17286, 17287, 17405, and this section, a leased building that does not meet the requirements of Section 17280 may not be used as a school building, as defined in Section 17283, after September 1, 1990.

(b) A school district may lease a commercial building prior to January 1, 2003, that does not meet the requirements of Section 17280, for use as a school building, as defined in Section 17283, if the governing board of the district finds that all of the following conditions have been met:

(1) The building was constructed in accordance with seismic safety standards for commercial buildings constructed within an earthquake zone.

(2) The building permit for the initial construction of the building was issued on or after January 1, 1990.

(3) A structural engineer has inspected the building and submitted a report to the governing board of the school district that certifies that the building is in substantial compliance with the requirements of the Field Act. This certification requirement is satisfied if the structural engineer affixes his or her seal of approval to the report and he or she attests in that report that to the best of his or her knowledge:

(A) He or she has reviewed the design calculations, construction documents, and the local government construction inspection records of the building to the extent available.

(B) He or she has authorized testing and has observed or reviewed the test results and the inspections of an adequate sample of the structure's welds, anchor bolts, and other structural elements.

(C) He or she has observed that the overhead nonstructural elements, including, but not limited to, light fixtures, heating, and air-conditioning diffusers are adequately braced or anchored.

The governing board of the school district shall submit the report to the Division of the State Architect for its review. The Division of the State Architect has one month to review the report for compliance with the above requirements, and to provide feedback to the structural engineer regarding any insufficiencies with the report, and whether or not the building is in substantial compliance with the requirements of the Field Act. If the Division of the State Architect does not respond within one month of the final and complete report being submitted, the Division of the State Architect will be deemed to have concurred with the structural engineer's report. A final decision by the governing board of the school district to occupy the building for school purposes shall not occur until the governing board has reviewed and considered the feedback of the Division of the State Architect, or the one month review period has passed.

No member of the governing board of a school district, nor any employee of a school district, shall be held personally liable for injury to persons or damage to property resulting from the fact that the governing board of the school district used a commercial building pursuant to this subdivision for a school and the building was not constructed under the requirements of Section 17280. This exemption from personal liability for members of the governing board and employees of a school district is not intended to limit the liability of the school district for injury to persons or damage to property resulting from the fact that the governing board or any employee of the school district used a commercial building pursuant to this subdivision for a school and the building was not constructed under the requirements of Section 17280. This exemption from personal liability for members of the governing board and employees of a school district is not intended to limit the liability of the school district, the governing board or the district's employees pursuant to Section 835 of the Government Code. Section 17312 is not applicable to a person who, pursuant to this section, leases or uses a building for a school building that meets the requirements of this section but does not meet the requirements of Section 17280. Approval and use of a building pursuant to subdivision (b) of Section 17285 does not constitute a violation of the Field Act.

(c) A building leased pursuant to Section 17280 may be used after September 1, 1991, as a regional occupational center or program that does not meet the requirements of Section 17280, provided the building satisfies all of the following conditions:

(1) The facility is one of the following:

(A) A single-story, wood-framed structure.

(B) A single-story, light steel frame structure.

(C) A structure for which a structural engineer has submitted a report that certifies that substantial structural hazards do not exist, as to that structure. The governing board of the regional occupational center or program, as provided for under Section 52310.5, shall review the report prior to approval of the lease and may reject the report if there is any evidence of fraud regarding the facts in the report.

(2) The building or structure complies with all applicable local building standards and all applicable local health and safety standards in the community in which it is located.

(3) The governing board of the regional occupational center or program, as provided for under Section 52310.5, certifies to the State Allocation Board that reasonable efforts have been made to locate the regional occupational center or program in facilities that conform to the seismic safety standards set forth in Part 2 (commencing with Section 2-101), Part 3 (commencing with Section 3-089-1), Part 4 (commencing with Section 4-403), and Part 5 (commencing with Section 5-102), of Title 24 of the California Code of Regulations.

(d) On or before September 1, 1994, and every three years thereafter, each governing board of a regional occupational center or program shall report to the State Allocation Board on the facilities utilized



for the operation of that center or program and on efforts to place the center or program in facilities that conform to the seismic safety standards described in paragraph (3) of subdivision (b).

17286. Where the primary use of either a building or complex within which the building is situated, operated by an official or board of a city, city and county or county, is for purposes other than educational, such as, but not limited to, correctional, forestry, or hospital purposes, the building shall not be considered to be a "school building" within the meaning of Section 17283 notwithstanding any educational use thereof incidental to the primary purpose.

17287. For the purposes of this article and Article 6 (commencing with Section 17365), "school building" does not include (a) any building of a school district or county superintendent of schools which is used solely for classes or programs in outdoor science, conservation, and forestry in accordance with Article 5 (commencing with Section 8760) of Chapter 4 of Part 6 and which does not occupy, in whole or in part, the same parcel of land upon which there is situated any school maintained by the district or county superintendent, or (b) agricultural education laboratory facilities used primarily for plant and animal production or the storage of materials, equipment, and supplies involved in this production.

17288. (a) Notwithstanding Section 17285, any high school pupil who attends a class or classes on a campus of the University of California or the California State University in order to receive specialized educational services and opportunities authorized by Chapter 6 (commencing with Section 58800) of Part 31 and any adult attending a special education program established pursuant to Part 30 (commencing with Section 56000), is considered a pupil of that campus for the purposes of Article 3 (commencing with Section 17280) of Chapter 3 of Part 10.5. Any building or structure or portion of building or structure that pupils occupy pursuant to this section shall not be considered "school buildings" within the meaning of Section 17283.

(b) The governing board of each school district, each county board of education, or each county superintendent of schools, as appropriate, shall notify, in writing, the parent or guardian of each high school pupil who attends a class or classes authorized by Chapter 6 (commencing with Section 58800) of Part 31 and each adult attending a special education program established pursuant to Part 30 (commencing with Section 56000), prior to the pupil's attendance at the class on a university campus that, although University of California and California State University buildings are required to conform to the rigorous standards of the Uniform Building Code (UBC), the buildings on the university campuses may not meet the requirements of Article 3 (commencing with Section 17280) of Chapter 3 of Part 10.5. This notice shall accompany, to the greatest extent possible, any existing notification to parents or guardians regarding specialized educational services and opportunities.

17289. In order to provide alternative, community-based educational opportunities through independent study, any school district or county office of education may request an exemption from the State Allocation Board for a building or structure, or portion of a building or structure, from the definition of "school buildings" within the meaning of Section 17283. The exemptions may be granted for no longer than two years and exemptions are renewable. An exemption may only be granted if the school district or county office of education demonstrates to the satisfaction of the State Allocation Board all of the following:

(a) The building or structure, or portion of building or structure, satisfies all of the following:

(1) It is not located on a regular school site.

(2) It complies with all applicable local building standards and all relevant local health and safety standards in the community in which it is located.

(3) It is used for independent study.

(4) It serves fewer than 25 pupils enrolled in kindergarten or any of the grades 1 to 12, inclusive, at any one time in the building or structure, or in a portion of a building or structure where the remainder of the building or structure is not used for instructional purposes.

(b) The use of the building or structure is critical to providing an effective alternative, community-based program.

(c) The use of other buildings or structures that would meet seismic safety standards for school facilities is not practical.

17291. (a) An owned relocatable building or structure that is to be used for school purposes shall be subject to the provisions of Article 3 (commencing with Section 17280) and Article 6 (commencing with Section 17365).

(b) Notwithstanding any other provision of law, this section shall become operative on September 30, 1997.

17292. (a) Notwithstanding any provision of law, an owned or leased relocatable building that does not meet the requirements of Section 17280 may be used until September 30, 2015, as a school building, if all of the following conditions are met:

(1) The relocatable building was manufactured and was in use for classroom purposes on or before May 1, 2000, and bears a commercial coach insignia of approval from the Department of Housing and Community Development.

(2) The relocatable building is a single story structure with not more than 2,160 square feet of interior floor area when all sections are joined together.

(3) The relocatable building was constructed after December 19, 1979, and bears a commercial coach insignia of approval from the Department of Housing and Community Development.

(4) The bracing and anchoring of interior overhead nonstructural elements, such as light fixtures and heating and air-conditioning diffusers, and the foundation system complies with the applicable rules and regulations adopted pursuant to this article and published in Title 24 of the California Code of Regulations.

(5) The building construction, including associated site construction, except for the relocatable building defined in paragraph (2), complies with the applicable rules and regulations adopted pursuant to this article, Sections 4450 to 4458, inclusive, of the Government Code, and Section 13143 of the Health and Safety Code and the administrative and building standards published in Title 19 and Title 24 of the California Code of Regulations.

(6) The relocatable building is anchored to the ground to resist earthquake and wind loads.

(7) The school district has certified to the Department of General Services that the relocatable building complies with the requirements of this subdivision.

(8) The Department of General Services has issued a certification of compliance with the requirements of this article.

(b) The Department of General Services may assess fees to carry out the requirements of this section. Fees imposed pursuant to this subdivision shall be equal to the costs associated with making the certifications and inspections required by, and otherwise enforcing, this section and shall be deposited in the Public School Planning, Design, and Construction Review Revolving Fund.

(c) For each relocatable building that was used as a school building pursuant to this section, the governing board of the school district shall adopt a resolution by October 30, 2015, certifying to the State Allocation Board that commencing September 30, 2015, the relocatable building is no longer being used as a school building.

17292.5. (a) If the governing board of a school district operates a program for expelled pupils, the governing board shall do one or more of the following:

(1) Utilize available school facilities that conform to the requirements of Part 2 (commencing with Section 2-101), Part 3 (commencing with Section 3-089-1), Part 4 (commencing with Section 4-403), and Part 5 (commencing with Section 5-102), of Title 24 of the California Code of Regulations.

(2) Apply for emergency portable classrooms pursuant to Chapter 25 (commencing with Section 17085) of Part 10.

(3) Enter into lease agreements for facilities, provided that the facilities are limited to a structure where a structural engineer has submitted a report that determines substantial structural hazards do not exist.

(b) Before entering into any lease pursuant to paragraph (3) of subdivision (a), the governing board of the school district shall certify to the State Allocation Board that all reasonable efforts have been made to locate the program in facilities that conform to the structural safety standards listed in paragraph (1) of subdivision (a).

(c) On or before September 1, 1996, and every three years thereafter, each school district shall report to the State Allocation Board on the facilities utilized for the operation of these programs and efforts to place programs in facilities that conform with the requirements of Part 2 (commencing with Section 2-

101), Part 3 (commencing with Section 3-089-1), Part 4 (commencing with Section 4-403), and Part 5 (commencing with Section 5-102), of Title 24 of the California Code of Regulations.

17293. (a) On or after January 1, 1993, if a county superintendent or school district elects to operate a new or expanded pregnant and parenting teen program pursuant to Chapter 6.5 (commencing with Section 8910) of Part 6, the county superintendent or school district may enter into lease agreements for school facilities as set forth in subdivision (b), if both of the following conditions are met:

(1) All available school facilities that conform to the requirements of Article 3 (commencing with Section 17280) and Article 6 (commencing with Section 17320) have been utilized.

(2) If facilities meeting the requirements of paragraph (1) are not available, the school district or county superintendent of schools has applied to lease or purchase emergency portable classrooms pursuant to Chapter 14 (commencing with Section 17085) of Part 10 and the application was either not approved, or the portable classrooms approved will not meet the needs of the county superintendent of schools or the school district.

(b) Notwithstanding any other provision of law, the county superintendent or the school district may enter into lease agreements as follows:

(1) The lease may be for a period of up to five years if a report and certification of safety is prepared by a structural engineer that verifies that the building meets local safety standards and that substantial structural hazards do not exist. The county board of education or school district governing board, as the case may be, shall review the report and certification prior to the approval of the lease and may reject the report if there is evidence of fraud regarding the facts in the report.

(2) Before entering into any lease, the county superintendent or the school district shall certify that all reasonable efforts have been made to locate programs in facilities that conform to paragraph (1) or (2).

17293. (a) On or after January 1, 1993, if a county superintendent or school district elects to operate a new or expanded pregnant and parenting teen program pursuant to Article 7.1 (commencing with Section 54740) of Chapter 9 of Part 29, the county superintendent or school district may enter into lease agreements for school facilities as set forth in subdivision (b), if both of the following conditions are met:

(1) All available school facilities conform to the requirements of Article 3 (commencing with Section 17280) and Article 6 (commencing with Section 17320).

(2) If facilities meeting the requirements of paragraph (1) are not available, the school district or county superintendent of schools has applied to lease or purchase emergency portable classrooms pursuant to Chapter 14 (commencing with Section 17085) of Part 10 and the application was either not approved or the portable classrooms approved will not meet the needs of the county superintendent of schools or the school district.

(b) Notwithstanding any other provision of law, the county superintendent or the school district may enter into lease agreements as follows:

(1) A report and certification of safety shall be prepared by a structural engineer that verifies that the building meets local safety standards and that substantial structural hazards do not exist. The county board of education or school district governing board, as the case may be, shall review the report and certification prior to the approval of the lease and may reject the report if there is evidence of fraud regarding the facts in the report. In addition, the county board of education or the governing board of the school district shall cause to be prepared and maintained on file a report and certification of safety by a structural engineer every five years from the date of the initial lease as long as the building continues to be used and a statement that the building continues to meet local safety standards and that structural hazards do not exist.

(2) Before entering into any lease, the county superintendent or the school district shall certify that all reasonable efforts have been made to locate programs in facilities that conform to paragraph (1) or (2) of subdivision (a).

17294. "Construction or alteration" as used in this article includes any construction, reconstruction, or alteration of, or addition to, any school building.

17295. (a) (1) The Department of General Services shall pass upon and approve or reject all plans for the construction or, if the estimated cost exceeds twenty-five thousand dollars (\$25,000), the alteration of any school building.

(2) To enable the Department of General Services to pass upon and approve plans pursuant to this subdivision, the governing board of each school district and any other school authority before adopting any plans for the school building shall submit the plans to the Department of General Services for approval, and shall pay the fees prescribed in this article.

(b) Notwithstanding subdivision (a) of Section 17295, where the estimated cost of the reconstruction or alteration of, or an addition to, any school building exceeds twenty-five thousand dollars (\$25,000) but does not exceed one hundred thousand dollars (\$100,000), a licensed structural engineer shall examine the proposed project to determine if it is a nonstructural alteration or a structural alteration. If he or she determines that the project is a nonstructural alteration, he or she shall prepare a statement so indicating. If he or she determines that the project is structural, he or she shall prepare plans and specifications for the project which shall be submitted to the Department of General Services for review and approval. A copy of the engineer's report stating that the work does not affect structural elements shall be filed with the Department of General Services.

(c) If a licensed structural engineer submits a report to the Department of General Services stating that the plans or activities authorized pursuant to subdivision (b) do not involve structural elements, then all of the following shall apply to that project:

(1) The design professional in responsible charge of the project undertaken pursuant to this subdivision shall certify that the plans and specifications for the project meet any applicable fire and life safety standards, and do not affect the disabled access requirements of Section 4450 of the Government Code, and shall submit this certification to the department. The letter of certification shall bear the identifying licensing stamp or seal of the design professional. This provision does not preclude a design professional from submitting plans and specifications to the department along with the appropriate fee for review.

(2) Within 10 days of the completion of any project authorized pursuant to subdivision (b), the school construction inspector of record on the project, who is certified by the department to inspect school buildings, shall certify in writing to the department that the reconstruction, alteration, or addition has been completed in compliance with the plans and specifications.

(3) The dollar amounts cited in this section shall be increased on an annual basis, commencing January 1, 1999, by the department according to an inflationary index governing construction costs that is selected and recognized by the department.

(4) No school district shall subdivide a project for the purpose of evading the limitation on amounts cited in this section.

(d) For purposes of this section, "design professional in responsible charge" or "design professional" means the licensed architect, licensed structural engineer, or licensed civil engineer who is responsible for the completion of the design work involved with the project.

17296. Notwithstanding any other provision of law, any school-based facility providing social services or support services, or health care, that is established through agreements with local governments and school districts pursuant to Chapter 5 (commencing with Section 8800) of Part 6 or as part of an integrated children's services program pursuant to Chapter 12.9 (commencing with Section 18986.40) of Part 6 of Division 9 of the Welfare and Institutions Code, respectively, is located on school property, and meets all the requirements of the Uniform Building Code and has been approved by the building department of the appropriate local jurisdiction, as well as those of the appropriate local jurisdiction, shall not be required to obtain approval of plans by the Department of General Services pursuant to Section 17295.

17297. Except as provided in Section 17298, before letting any contract for any construction or alteration of any school building, the written approval of the plans, as to safety of design and construction, by the Department of General Services, shall be first had and obtained.

17298. Before the commencement of any fabrication, construction, or alteration of a relocatable school building of a type previously approved by the Department of General Services, the written approval of the plans, as to the safety and design of construction, by the Department of General Services, shall be first had and obtained.

17299. In each case the application for approval of the plans shall be accompanied by the plans and full, complete, and accurate specifications, and structural design computations, and estimates of cost, which shall comply in every respect with any and all requirements prescribed by the Department of General Services.

17300. (a) The application shall be accompanied by a filing fee in amounts as determined by the Department of General Services based on the estimated cost of the work described in subdivision (a) of Section 17280, according to the following schedule:

(1) For the first one million dollars (\$1,000,000), a fee of not more than 0.7 percent of the estimated cost.

(2) For all costs in excess of one million dollars (\$1,000,000), a fee of not more than 0.6 percent of the estimated cost.

The minimum fee in any case shall be two hundred fifty dollars (\$250). If the actual cost exceeds the estimated cost by more than 5 percent, a further fee shall be paid to the Department of General Services, based on the above schedule and computed on the amount by which the actual cost exceeds the amount of the estimated cost.

(b) The fees determined pursuant to subdivision (a) shall be paid in two installments, as specified by the Department of General Services. The first installment shall be in an amount equal to 70 percent of the estimated cost calculated under subdivision (a), and shall be paid at the time the application is submitted to the department. The second installment shall be in an amount equal to 30 percent of the estimated cost calculated under subdivision (a), and shall be paid no later than five working days after the applicant accepts the bids for construction of the project for which the fees are paid. This subdivision shall become operative January 1, 1994.

(c) The fee shall be paid to the Department of General Services, including, but not limited to, a case in which the application is referred under Section 17306 to a qualified plan review firm.

17301. (a) All fees received by the Department of General Services pursuant to this chapter shall be paid into the State Treasury and credited to the Public School Planning, Design, and Construction Review Revolving Fund, which is hereby created. Notwithstanding Section 13340 of the Government Code, all moneys in the fund are hereby continuously appropriated for expenditure by the Department of General Services to be applied, in the most efficient and expeditious manner possible, to the expenses associated with the review and approval of plans and specifications, and the supervision of public school building construction, pursuant to this article and Article 5 (commencing with Section 17350). The fees paid into the fund shall not be used for or diverted to any other program or purpose. Notwithstanding any other provision of law, any moneys in the Architecture Public Building Fund on the effective date of this section thereupon shall be transferred to the Public School Planning, Design, and Construction Review Revolving Fund for expenditure in accordance with this section.

Adjustments in the amounts of the fees, as determined by the Department of General Services, may be made by the department within the limits set forth in Sections 17300 and 17352 in order to maintain a reasonable working balance in the fund.

(b) The Department of Finance shall provide for the audit of the fund as needed to ensure that it is used solely for the purposes of this article and that the amount of the fee charged does not exceed what is necessary to cover the costs realized by the Department of General Services in carrying out its responsibilities pursuant to this article. The actual cost of the audit shall be paid from the fund.

17302. (a) Except as provided in subdivision (b), all plans, specifications, and estimates shall be prepared by a licensed architect holding a valid certificate under Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code or by a structural engineer holding a valid certificate to use the title structural engineer under Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, and the observation of the work of construction shall be under the responsible charge of such an architect or structural engineer.

(b) For the purposes of this section, a mechanical or electrical engineer holding a valid certificate under Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code may be in responsible charge of preparation of plans, specifications, and estimates, and observation of the work of construction where the work is, as determined by the Department of General Services, of the kind normally performed by engineers certified in the particular branch of engineering for which the engineer is

certified. Any architectural or structural work involved shall be the respective responsibility of a licensed architect holding a valid certificate under Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, or a structural engineer holding a valid certificate to use the title structural engineer under Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code.

17303. (a) The Department of General Services shall establish one or more methods to ensure that each application has been completed sufficiently by the applicant to enable the plan review to be performed.

(b) Upon receipt of a complete application, the Department of General Services shall inform the applicant of the period of time that it anticipates to elapse prior to commencing review of the applicant's plans. Within 10 days of being so notified, the applicant shall make an election to either use the Department of General Services for the review of the applicant's plan or, request that the plan review be performed by one or more qualified plan review firms pursuant to Sections 17305 and 17306. If the applicant elects to use the services of the Department of General Services for review of the applicant's plan, the department, as it deems necessary to expedite review of the applicant's plans, in addition to making a good faith effort to hire state employees, shall do one or more of the following:

- (1) Contract for assistance from one or more qualified plan review firms pursuant to Section 17305.
- (2) Employ additional staff on a temporary basis.
- (3) Maximize the use of department staff through the use of overtime or other appropriate means.
- (4) Any other action determined by the department to have the effect of expediting the review and approval process.

(c) Each application shall identify, for purposes of receiving the notifications required under this subdivision, an employee of the applicant school district and either the applicant's architect or structural engineer. The Department of General Services immediately shall notify that employee, and the identified architect or structural engineer, when each of the following steps in the plan review process occurs:

- (1) The department requests the applicant's architect or structural engineer to correct or complete any part of the application.
- (2) An application number is assigned to the application.
- (3) Review of the applicant's plans is commenced.
- (4) Review of the applicant's plans is completed and the department returns the plans to the architect or structural engineer for correction.
- (5) Corrected plans are returned to the department by the applicant's architect or structural engineer for final review and approval.
- (6) The department approves the plans and causes a final record set of the plans to be printed in accordance with Section 17304.

(d) The Department of General Services may provide additional notifications to applicants as it deems necessary.

17304. (a) Upon approving the plans submitted by an applicant pursuant to this article, the Department of General Services shall cause a final record set of the plans to be printed. The department may contract with one or more private entities to perform that printing at one or more of the regional area offices of the department. The costs incurred pursuant to this subdivision shall be paid by the applicant.

(b) No later than five working days after approving plans submitted by an applicant pursuant to this article, the department shall issue a final letter of approval to the applicant.

17305. (a) Unless the context otherwise requires, the definitions set forth in this section govern the construction of this article.

(1) "Prequalified list" means a list of qualified firms established by the Department of General Services to perform specific types of plan review services.

(2) "Qualified plan review firm" means an individual, firm, or the building official of a city, a county, or a city and county, as defined in Section 18949.27 of the Health and Safety Code, or the authorized representative of the building official that is identified by the Department of General Services as having appropriate expertise and knowledge of the requirements that apply to school buildings under this article.

(b) The department shall establish and maintain a list of qualified plan review firms, and shall make that list available, upon request, to school districts and other interested parties.

(c) Notwithstanding Section 14952 of the Government Code, the Department of General Services shall contract with sufficient numbers of qualified plan review firms for assistance in performing the plan review required under the Field Act.

(d) At the discretion of the Department of General Services, contracts for a qualified plan review firm made pursuant to this article may be advertised and awarded in accordance with this section.

(e) (1) The Department of General Services may establish prequalified lists of qualified firms in accordance with this subdivision.

(2) (A) For each type of plan review for which the department elects to use the process established by this section for advertising and awarding contracts, the Department of General Services may request statements of qualifications from interested firms.

(B) The request for statements of qualifications shall be announced statewide through the California State Contracts Register and publications of relevant professional societies.

(C) Each announcement shall describe the general scope of services to be provided within each generic project category for plan review services that the Department of General Services anticipates may be awarded during the period covered by the announcement. For the purposes of this section, a generic project category shall be defined in a manner that each specific project to be awarded within that discipline meets all of the following requirements:

(i) The project is substantially similar to all other projects within that discipline.

(ii) The project is within the same size range and geographical area.

(iii) The project requires substantially similar skills and magnitude of professional effort as compared to every other project within that discipline.

(3) The Department of General Services shall evaluate the statements of qualifications, and develop a list of qualified plan review firms that meet the criteria established and published by the Department of General Services. Interviews may be held to determine a plan review firm's qualifications. Lists of qualified plan review firms shall be maintained by the Department of General Services for not more than four years.

(4) During the term of a prequalified list, as specific projects are identified by the Department of General Services as being eligible for contracting, the Department of General Services shall contact a firm on the prequalified list, on a rotational basis, for both of the following purposes:

(A) To distribute the work in a fair and equitable manner.

(B) To determine that the firm has sufficient staff and is available for performance of the project.

(5) If the contacted firm is not available, the Department of General Services shall continue to contact firms on the prequalified list, on a rotational basis, until an available firm is identified.

(6) The Department of General Services shall negotiate a contract for the services with the identified firm, including a price and timeframe that it determines is fair and reasonable.

(7) If the identified plan review firm is unable to negotiate a satisfactory contract with the Department of General Services, the department shall terminate negotiations, and shall undertake new negotiations, on a rotational basis, with the next firm available for performance from the prequalified list until a successful negotiation is achieved. If the Department of General Services is unable to negotiate a satisfactory contract with a firm on two separate occasions, that firm may be removed from the prequalified list.

(f) Contracts for plan review services that the Department of General Services elects to advertise and award in accordance with this section are not subject to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

17306. (a) Upon submitting a complete application for review under this article, the applicant may request that the Department of General Services refer the documents necessary for the review of that application to a qualified plan review firm operating under contract with the department pursuant to Section 17305. The department immediately shall grant the request and refer the necessary documents to a qualified plan review firm if the applicant so requests.

Upon completing the review, the qualified plan review firm shall submit the documents referred to it for the review of the application, together with the results of its review, to the Department of General Services.

(b) The Department of General Services shall establish a procedure governing the use by applicants of the review process alternative described in this section, including, but not limited to, provisions restricting the use of qualified plan review firms on the basis of conflict of interest.

17307. No contract for the construction or alteration of any school building, made or executed by the governing board of any school district or other public board, body, or officer otherwise vested with authority to make or execute a contract, is valid, and no public money shall be paid for any work done under a contract or for any labor or materials furnished in constructing or altering any building, unless the plans, specifications, and estimates comply in every particular with the provisions of this article and the requirements prescribed by the Department of General Services and unless the approval thereof in writing has first been had and obtained from the Department of General Services.

17307.5. (a) Notwithstanding any provision of law to the contrary, including, but not limited to, Title 15 (commencing with Section 3082) of Part 4 of the Civil Code, the Department of General Services may issue a stop work order when construction work on a public school is not being performed in accordance with existing law and would compromise the structural integrity of the building, thereby endangering the public safety. The Department of General Services shall allow construction of incidental and minor nonstructural additions or nonstructural alterations without invoking its stop work authority.

(b) A school district, county superintendent of schools, county board of education, or other public board, body, or officer whose construction work on a public school is subject to a stop work order issued pursuant to subdivision (a) shall not be held liable in any action filed against the public board, body, or officer for stopping work as required by the stop work order, or for any delays caused by compliance with the stop work order, except to the extent that an error or omission by the public board, body, or officer is the basis for the issuance of the stop work order.

17308. (a) The Legislature finds and declares that a number of serious discrepancies in the interpretation of the structural standards and architectural barrier requirements that apply to school buildings under this chapter, and of the plan review procedures that apply under this chapter, exist within the Department of General Services, and within and between various firms utilized by the department on a contract basis, applicant school districts, and architects and structural engineers utilized by applicant school districts.

(b) The Department of General Services shall provide training, on an ongoing basis, to its employees and to the employees of architectural and structural engineering firms that contract with the department for the purposes of this chapter. The training shall address all phases of the plan review process established under this chapter, and shall be designed to ensure that all individuals who develop and review school building plans obtain sufficient knowledge of the rules, regulations, and standards that apply under this chapter.

(c) The department shall make the training described in subdivision (b) available to the employees of architectural and structural engineering firms that contract with applicant school districts for the purpose of this chapter, and to any other individuals, firms, and government agencies that are involved in school building design, construction, or inspection and that may benefit from the training. The department may charge a fee for training provided pursuant to this subdivision.

(d) The department shall develop and publish interpretations of the structural standards, architectural barrier requirements, and review procedures referred to in subdivision (a) as may be necessary to remedy the interpretational discrepancies described in that subdivision. These interpretational materials shall be updated at least annually.

17309. From time to time, as the work of construction or alteration progresses and whenever the Department of General Services requires, the licensed architect or structural engineer in charge of observation of construction or registered engineer in charge of observation of other work, the inspector on the work, and the contractor shall each make to the Department of General Services a report, duly verified by him or her, upon a form prescribed by the Department of General Services, based upon his or her own personal knowledge, indicating that the work during the period covered by the report has been performed and materials have been used and installed, in every material respect, in compliance with the approved plans and specifications, setting forth such detailed statements of fact as are required by the Department of General Services.

The term "personal knowledge" as used in this section and as applied to the architect, and the registered engineer, means the personal knowledge which is obtained from periodic visits to the project site of reasonable frequency for the purpose of general observation of the work, and also which is obtained from the reporting of others as to the progress of the work, testing of materials, inspection and



superintendence of the work that is performed between the above-mentioned periodic visits of the architect or the registered engineer. The exercise of reasonable diligence to obtain the facts is required.

The term "personal knowledge" as applied to the inspector means the actual personal knowledge which is obtained from his or her personal continuous inspection of the work of construction in all stages of its progress at the site where he is responsible for inspection and, when work is carried out away from the site, that personal knowledge which is obtained from the reporting of others on the testing or inspection of materials and workmanship for compliance with plans, specifications or applicable standards. The exercise of reasonable diligence to obtain the facts is required.

The term "personal knowledge" as applied to the contractor means the personal knowledge which is obtained from the construction of the building. The exercise of reasonable diligence to obtain the facts is required.

17310. Except as provided in Section 18930 of the Health and Safety Code, the Department of General Services may from time to time make such rules and regulations as it deems necessary, proper, or suitable to carry out the provisions of this article.

The Department of General Services shall adopt and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 of the Health and Safety Code for the purposes described in this article.

17311. (a) The Department of General Services shall make such inspection of the school buildings and of the work of construction or alteration as in its judgment is necessary or proper for the enforcement of this article and the protection of the safety of the pupils, the teachers, and the public. The school district, city, city and county, or the political subdivision within the jurisdiction of which any school building is constructed or altered shall provide for and require competent, adequate, and continuous inspection during construction or alteration by an inspector satisfactory to the architect or structural engineer and the Department of General Services. The inspector shall act under the direction of the governing board and architect or structural engineer as the board may direct. The inspector shall be responsible to the governing board for employment purposes. The inspector shall be responsible to the Department of General Services for enforcement of the plans and specifications of the school project.

(b) In order to ensure the competency and adequacy of the inspectors required under this article, the Department of General Services shall do all of the following:

(1) Revise the examination used to determine the competency of those who provide inspections pursuant to this article. The revision of the examination shall include techniques of inspection, construction, plan reading, required submittal documents, and knowledge of statutes and regulations that apply to school construction. The revision of the examination shall be done not later than 48 months after the last revision and not earlier than 36 months after the last revision.

(2) Provide training on an ongoing basis to all individuals who provide the inspections required under this article. The training shall be designed to ensure that all individuals who provide the continuous inspection of school building construction or alteration are sufficiently knowledgeable of the rules, regulations, and standards that apply under this article.

(3) Require evaluation of the competency of those who provide inspections pursuant to this article. After an initial evaluation a reevaluation shall occur not later than 48 months after the last evaluation or reevaluation and not earlier than 36 months after the last evaluation or reevaluation. An evaluation or reevaluation shall include passage of the examination used to determine competence specified in paragraph (1) and attendance at training specified in paragraph (2).

(c) The Department of General Services may require a fee from all individuals applying for evaluation or reevaluation pursuant to subdivision (b), and a fee for the examination administered in the evaluation or reevaluation. The fees shall not be more than the reasonable costs associated with the development and administration of the examination and the training.

17312. Any person who violates any of the provisions of this article or makes any false statement in any verified report or affidavit required pursuant to this article is guilty of a felony.

17313. Upon written request by the governing board of any school district or upon written request by at least 10 percent of the parents having children enrolled as pupils in any school district as certified to by the county superintendent of schools, the Department of General Services shall make an examination

and report on the structural condition of any public school building of the district, subject to the payment by the governing board of the actual expenses incurred by the Department of General Services. Payment of the expenses may be waived by the Department of General Services on recommendation of the State Superintendent of Public Instruction when it appears to him or her that the school district in which the public school building is located cannot afford to pay them.

17314. Any public school building which has been approved by the Department of General Services (formerly Division of Architecture) for occupancy shall be deemed to meet the local building requirements for use as a private school.

17315. (a) When a school building constructed in accordance with plans and specifications approved by the Department of General Services is completed, the notice of completion is filed, and all final verified reports and all testing and inspection documents, as required by this article or as required by the rules and regulations adopted pursuant to this article, are submitted to and on file with the Department of General Services, and all required fees paid by the school district, the department shall issue a certification that the school building complies with the requirements of this article. Nothing in this article shall prevent beneficial occupancy by a school district prior to the issuance of this certification.

(b) When a school building, constructed in accordance with approved plans and specifications, is completed but final verified reports, as are required under Section 39151, have not been submitted to the Department of General Services due to the incapacitating illness, death, or the default of any persons required to file such reports, the Department of General Services shall, upon written request of the school district, review all of the project records and make such examinations as it deems necessary to enable it to certify that the school building otherwise complies with the requirements of this article. The Department of General Services may request the school district to have made, reported, and verified any other tests and inspections which the department deems necessary to complete its examinations of the construction.

(c) The costs incurred by the Department of General Services in connection with this section shall be paid by the school district. The actual costs to perform the examinations, tests, and inspections shall be an appropriate cost of the project to be paid from the building funds of the district. Certification of the project by the Department of General Services shall be withheld until all the costs have been paid by the school district.

(d) This section shall not relieve any individual of his or her responsibility to file verified reports, as required in Section 17309, or any other documents required by the rules and regulations adopted pursuant to this article. This section shall not abrogate the provisions of Section 17312.

17316.

(a) Any contract entered into by and between the governing board of any school district and any certified architect or structural engineer pursuant to Section 17302 shall provide that all plans, including, but not limited to, record drawings, specifications, and estimates prepared pursuant thereto, shall be and remain the property of the school district for the purposes of repair, maintenance, renovation, modernization, or other purposes, only as they relate to the project for which the certified architect or structural engineer was retained. This subdivision does not preclude the school district from using the plans, record drawings, specifications, or estimates related to the project for the purposes of additions, alignments, or other development on the site.

(b) The contract set forth in subdivision (a) does not transfer or waive the certified architect's or structural engineer's copyrights over these documents, including, but not limited to, all common law, statutory, and other reserved rights, unless the certified architect or structural engineer expressly transfers or waives these rights through the written contract, including, but not limited to, a written addendum or amendment.

(c) Notwithstanding subdivision (a), if the school district proposes to reuse the plans prepared by the certified architect or structural engineer within the school district, the contract entered into between the school district and the certified architect or structural engineer shall specify the terms and conditions for the reuse. If a school district reuses the plans prepared by the certified architect or structural engineer and retains another certified architect or structural engineer for the preparation of those plans for the reuse, the school district shall indemnify and hold harmless the original certified architect or structural

engineer, and their consultants, agents, and employees, from and against any claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from, in whole or in part, the reuse.

17317. (a) The Department of General Services shall, in consultation with the Seismic Safety Commission, conduct an inventory of public school buildings that are concrete tilt-up school buildings and school buildings with nonwood frame walls that do not meet the minimum requirements of the 1976 Uniform Building Code. Priority shall be given to the school buildings identified in the act that added this section that are in the highest seismic risk zones in accordance with the seismic hazard maps of the Division of Mines and Geology of the Department of Conservation.

(b) The Department of General Services shall submit a report by December 31, 2001, to the Legislature and the Governor that summarizes the findings of the seismic safety inventory and makes recommendations about future actions that should be taken to address the problems found by the seismic safety inventory. The report shall not identify individual schoolsites on which inventoried school buildings are located.

**PART 25 - Employees**  
**CHAPTER 5 – Classified Employees**  
**ARTICLE 1 - Employment**  
**SECTION 45125.2**

**45125.2.**

(a) A school district contracting with an entity for the construction, reconstruction, rehabilitation, or repair of a school facility where the employees of the entity will have contact, other than limited contact, with pupils shall ensure the safety of the pupils by one or more of the following methods:

- (1) The installation of a physical barrier at the worksite to limit contact with pupils.
- (2) Continual supervision and monitoring of all employees of the entity by an employee of the entity whom the Department of Justice has ascertained has not been convicted of a violent or serious felony. For purposes of this paragraph, an employee of the entity may submit his or her fingerprints to the Department of Justice pursuant to subdivision (a) of Section 45125.1 and the department shall comply with subdivision (d) of Section 45125.1.
- (3) Surveillance of employees of the entity by school personnel.