

**SUBLEASE AGREEMENT**

**Dated as of June 17, 2008**

**Between**

**LATON UNIFIED SCHOOL DISTRICT**

**and**

**DURHAM CONSTRUCTION COMPANY**

**SUBLEASE AGREEMENT**

This SUBLEASE AGREEMENT ("Sublease") is dated as of June 17, 2008, and is by and between DURHAM CONSTRUCTION COMPANY "Durham", a business entity organized and operating under the laws of the State of California (the "State") as lessor and the LATON UNIFIED SCHOOL DISTRICT (the "District"), a public school district duly organized and existing under the Constitution and laws of the State as lessee.

**RECITALS:**

WHEREAS, pursuant to Section 17406 *et seq.* of the Education Code, the District may enter into leases and agreements relating to real property and buildings used by the District; and

WHEREAS, the District deems it essential for its own governmental purpose, to finance the construction and installation of certain improvements described in Exhibit "A" of the Lease-Leaseback entered into between the District and Durham dated June 17, 2008 (the "Lease-Leaseback Agreement") (the "Project") and situated on the School Site described in Exhibit "A" of the Site lease dated June 17, 2008, between the District and Durham (the "Site Lease"). The

land and the real property improvements described in the Site Lease are herein collectively referred to as the "Site;" and

WHEREAS, pursuant to Section 17406 of the Education Code, the District is leasing the Site to Durham pursuant to the Site Lease in consideration of Durham subleasing the Site, including the Project, to the District pursuant to the terms of this Sublease; and

WHEREAS, the District owns the Site and pursuant to the Lease-Leaseback Agreement has prepared and adopted plans and specifications for the completion of the Project approved pursuant to law as required by Section 17402 of the Education Code; and

WHEREAS, the District and Durham agree to mutually cooperate now or hereafter, to the extent possible, in order to sustain the intent of this Sublease and the bargain of both parties hereto, and to provide payments pursuant to this Sublease on the dates and in the amounts set forth in Exhibit "A" of this Sublease which is incorporated by this reference.

**WITNESSETH:**

In consideration of the mutual covenants hereinafter set forth, the District and Durham agree as follows:

SECTION 1. Sublease. Durham hereby leases and subleases to the District, and the District hereby leases and subleases from Durham, the Site including any real property improvements now or hereafter affixed thereto in accordance with the provisions herein for the full term of this Sublease. Hereinafter, reference to Durham means Durham and Durham's assigns for those rights, interests, and obligations that may be assigned by Durham.

SECTION 2. Term. The terms and conditions of this Sublease shall become effective upon the authorized execution of this Sublease by the parties. The term of the Sublease commences on June 17, 2008 and terminates on the date the parties have agreed to for the Project completion. If on the scheduled date of termination of this Sublease, the Sublease payments for the Site shall not be fully paid, or provision therefore made, or if such Sublease payments shall have been abated at any time and for any reason, then the term of this Sublease shall be extended until the date upon which all such Sublease payments shall be fully paid.

SECTION 3. Representations, Warranties, and Covenants of the District. The District represents and warrants to Durham that:

(a) The District is a political subdivision, duly organized and existing under the Constitution and laws of the State with authority to enter into this Sublease and to perform all of its obligations hereunder;

(b) The District's governing body has duly authorized the execution and delivery of this Sublease and further represents and warrants that all requirements have been met and

procedures followed to ensure its enforceability;

(c) The execution, delivery, and performance of this Sublease do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which the District is a party by which it or its property is bound;

(d) There is no pending or, to the knowledge of the District, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of the District to perform its obligations under this Sublease;

(e) The Project and the Site are essential to the District in the performance of its governmental functions and their estimated useful life to the District exceeds the term of this Sublease;

(f) The District shall take such action as may be necessary to include all Sublease payments in its annual budget and annually to appropriate an amount necessary to make such Sublease payments;

(g) The District shall not abandon the Site for the use for which they are currently required by the District and, to the extent permitted by law, the District shall not seek to substitute or acquire property to be used as a substitute for the use for which the Site is maintained under the Sublease; and

(h) The District shall not allow any hazardous materials or substances to be used or stored on, under, or about the Site.

SECTION 4. Representations and Warranties of Durham. Durham represents and warrants to the District that:

(a) Durham is duly organized, validly existing and in good standing as a business entity and licensed contractor under the laws of the State, with full corporate power and authority to lease and own real and personal property;

(b) Durham has full power, authority, and legal right to enter into and perform its obligations under this Sublease, and the execution, delivery, and performance of this Sublease have been duly authorized by all necessary actions on the part of Durham and do not require any further approvals or consents;

(c) The execution, delivery, and performance of this Sublease do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which Durham is a party by which it or its property is bound;

(d) There is no pending or, to the knowledge of Durham, threatened action or proceeding before any court or administrative agency which will materially adversely affect the

ability of Durham to perform its obligations under this Sublease; and

(e) Durham will not mortgage or encumber the Site or the Sublease or assign this Sublease or its rights to receive Sublease payments hereunder, except as permitted herein.

SECTION 5. Construction/Acquisition.

(a) The District has entered into the Lease-Leaseback Agreement and the Site Lease with Durham in order to acquire and construct the Project. The cost of the acquisition, construction, and installation of the Project is determined by the Guaranteed Maximum Price ("GMP") as set forth in Section 6 of the Lease-Leaseback Agreement.

(b) In order to ensure that moneys sufficient to pay all costs will be available for this purpose when required, the District shall maintain on deposit in its general fund, and shall annually appropriate funds sufficient to make all Sublease payments which become due to Durham under this Sublease.

SECTION 6. Sublease Payments.

(a) The District shall pay Durham lease payments (the "Sublease Payments" and each individually a "Sublease Payment") monthly in advance in the percentage amounts and as set forth in Exhibit "A" hereof, at the office of Durham or to such other person or at such other place as Durham may from time to time designate in writing.

(b) Durham agrees that satisfactory progress pursuant to the time schedule required pursuant to the time schedule required pursuant to Section 11.E. of the Lease-Leaseback Agreement (the "Time Schedule") shall be conditions precedent to the making of Sublease Payments by the District. The determination of whether the Time Schedule has been adequately adhered to shall be made by the District pursuant to Section 22 of the Lease-Leaseback Agreement. If the District determines that pursuant to the Time Schedule, the work required to be performed prior to a given Sublease Payment has not been met, the District shall not be required to make that scheduled Sublease Payment. Once the District's inspector has notified the District that the work scheduled to be completed prior to the Sublease Payment in question has been completed, the District shall make the Sublease Payment corresponding to completion of such work.

(c) The District shall retain an amount equal to ten percent (10%) of each Sublease Payment. However, at any time after fifty percent of the work has been completed, if the governing board of the District finds that satisfactory progress is being made, it may make any of the remaining Sublease Payments in full. The final Sublease Payment shall be made in the manner described in Section 18 of the Lease-Leaseback Agreement.

(d) Should the District fail to pay any part of the Sublease Payments not otherwise excused pursuant to this Section 6 or Section 8 hereof, within fifteen (15) business days from the

due date thereof, the District shall, upon Durham's written request, pay interest on such delinquent payment from the date said payment was due until paid at the rate of ten percent (10%) per annum or the maximum legal rate, whichever is less. The obligation of the District to pay Sublease Payments hereunder shall constitute a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District.

SECTION 7. Fair Rental Value. Sublease Payments shall be paid by the District in consideration of the right of possession of, and the continued quiet use and enjoyment of, the Project and the Site during this Sublease. The parties hereto have agreed and determined that such total rental is not in excess of the fair rental value of the Project and the Site. In making such determination, consideration has been given to the fair market value of the Project and the Site, other obligations of the parties under this Sublease (including but not limited to costs of maintenance, taxes and insurance), the uses and purposes which may be served by the Project and the Site and the benefits therefrom which will accrue to the District and the general public, the ability of the District to make additions, modifications and improvements to the Project and the Site which are not inconsistent with the Lease-Leaseback Agreement and which do not interfere with Durham's work on the Project and Site.

SECTION 8. Sublease Abatement. In addition to delay of Sublease Payments provided in Section 6, above, Sublease Payments due hereunder with respect to the Project shall be subject to abatement prior to the commencement of the use of the Project or during any period in which, by reason of material damage to or destruction of the Project or the Site there is substantial interference with the use and right of possession by the District of the Project and the Site or any substantial portion thereof. For each potential incident of substantial interference, decisions to be made on: i) whether or not abatement shall apply; ii) the date upon which abatement shall commence; iii) the applicable portion of Sublease Payments to be abated; and iv) the concluding date of the particular abatement shall all be subject to determinations by the District in concert with its insurance provider. Durham's right to dispute these decisions is not impaired. The amount of abatement shall be such that the Sublease Payments paid by the District during the period of Project restoration do not exceed the fair rental value of the usable portions of the Site. In the event of any damage or destruction to the Project or the Site, this Sublease shall continue in full force and effect.

SECTION 9. Use of Site and Project. During the term of this Sublease, Durham shall provide the District with quiet use and enjoyment of the Site without suit or hindrance from Durham or its assigns. The District will not use, operate, or maintain the Site or Project improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Sublease. The District shall provide all permits and licenses, if any, necessary for the operation of the Project. In addition, the District agrees to comply in all respects (including, without limitation, with respect to the time, maintenance and operation of the Project) with laws of all jurisdictions in which its operations involving the Project may extend

and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Site or the Project; provided, however, that the District may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Durham, adversely affect the estate of Durham in and to the Site or the Project or its interests or rights under this Sublease. Upon substantial completion of the Project or severable portions thereof, as defined in the Lease-Leaseback Agreement, Durham shall provide the District with quiet use and enjoyment of the Site without suit or hindrance from Durham or its assigns, subject to reasonable interference from ongoing construction operations on any remaining portion of the Site under construction by Durham.

SECTION 10. Durham's Inspection/Access to the Site. The District agrees that Durham and any Durham representative shall have the right at all reasonable times to enter upon the Site or any portion thereof to construct and improve the Project, to examine and inspect the Site and the Project and to exercise its remedies pursuant to Section 21 of this Sublease. The District further agrees that Durham and any Durham representative shall have such rights of access to the Site as may be reasonably necessary to cause the proper maintenance of the Site and the Project in the event of failure by the District to perform its obligations hereunder.

SECTION 11. Project Acceptance. The District shall acknowledge final inspection and completion of the Project by executing a Certificate of Acceptance and recording a Notice of Completion. The validity of this Sublease will not be affected by any delay in or failure of completion of the Project.

SECTION 12. Lease-Leaseback Agreement and Site Lease. The Lease-Leaseback Agreement and Site Lease are incorporated herein in their entirety by this reference.

SECTION 13. Alterations and Attachments. All permanent additions and improvements that are made to the Project shall belong to and become the property of Durham, subject to the provisions of Sections 24 and 25 hereof. Separately identifiable attachments added to the Project by the District shall remain the property of the District. At Durham's request, the District agrees to remove the attachments and restore the Project to substantially as good condition as when acquired and constructed, normal wear and tear excepted, in the event of failure by the District to perform its obligations hereunder.

SECTION 14. Maintenance. The District, at its own cost and expense, shall maintain the Project, to the extent not required to be maintained by Durham pursuant to the Contract Documents as defined in Section 2.C. of the Lease-Leaseback Agreement, and the Site in good repair throughout the term of the Sublease.

SECTION 15. Utilities. Unless otherwise so specified in the Lease-Leaseback Agreement, the District shall, in its own name, contract for and pay the expenses of all utility services required for the Project and Site, such utilities, including but not limited to, all air conditioning, heating, electrical, gas, water, and sewer units. The District shall be liable for payment as well as maintenance of all utility services received.

SECTION 16. Damage, Destruction or Condemnation. With the exception of acts resulting from misconduct or negligence by Durham, its agents and representatives, or responsibilities of Durham assumed or outlined under the Lease-Leaseback Agreement as "Builder," the District assumes all risk of loss of, damage to or condemnation of the Project or the Site from any cause or for any reason whatsoever, and no such loss of, damage to or condemnation of the Project or the Site shall relieve the District of (i) the obligation to make the Sublease Payments hereunder subject to the provisions of Sections 6 and 8 hereof, or (ii) to perform any other obligation under this Sublease. The District may terminate the contract and pay Durham pursuant to section 12B of the Lease-Leaseback Agreement in the event of damage, destruction or condemnation of the Site or Project.

SECTION 17. Physical Damage; Public Liability Insurance. With the exception of Durham's responsibilities as "Builder" under the Lease-Leaseback Agreement, the District shall keep the Project and the Site insured against all risks of loss or damage from every cause whatsoever for which insurance is available at a cost, which, in determination of the District, justifies the risk, for not less than the full replacement value thereof, and the District shall carry public liability and property damage insurance covering the Project and the Site. All said insurance shall be in form and amount and with companies approved by Durham and shall name Durham as loss payee and as an additional insured. The District shall pay the premiums therefore and deliver certification of said policies to Durham. Each insurer shall agree, by endorsement upon the policy or policies issued by it or by independent instrument furnished to Durham, that it will give Durham thirty (30) days written notice before the policy or policies shall be altered or cancelled. The proceeds of such insurance or the proceeds of any condemnation award received with respect to the Project and the Site, at the option of the District, shall be applied: (a) toward the replacement, restoration, or repair of the Project and the Site, or (b) toward the payment of all amounts required in the exercise of the District's purchase option under Section 25. Should the District replace, restore, or repair the Project and the Site as set out in option (a) above, this Sublease shall continue in full force and effect. Subject to prior written consent of Durham, the District may self-insure up to specified limits as evidenced by a rider of self-insurance to be attached hereto (providing that all policies of self-insurance shall be governed by the provisions under this Sublease respecting cancellation and modification and payment of losses to Durham.)

SECTION 18. Taxes. The District shall keep the Project and the Site free and clear of all levies, liens, and encumbrances, and shall pay all license fees, registration fees, assessments, charges, and taxes (municipal, state, and federal) if applicable, which may now or hereafter be imposed upon the ownership, leasing, renting, sale, possession, or use of the Project and the Site, excluding, however, all taxes on or measured by Durham's income.

SECTION 19. Indemnity. In addition to the indemnification set forth in Section 32 of the Lease-Leaseback Agreement, to the extent permitted by law, and with the exception of Durham's responsibilities as "Builder" under the Lease-Leaseback Agreement, the District shall, with respect to the Project and the Site, indemnify Durham against and hold Durham harmless

from any and all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities, including attorney's fees, arising out of, connected with, or resulting from any acts of omission or commission by the District's employees and agents or claims resulting from incidents or occurrences involving the financing of the Project and Lease-Leaseback aspects of the Project and third parties on the Site, including without limitations, the construction, possession, use, or operation of the Project and further, the District agrees, to the extent the law allows, to indemnify Durham against and hold Durham harmless from and against any and all claims, actions, suits, proceedings, cost, expenses, damages, and liabilities, including attorney's fees, arising out of, connected with, or resulting from the clean-up of any hazardous materials or toxic wastes from the Site or the Project; provided, however, that the District shall not be required to indemnify Durham in the event that such liability or damages are caused by the negligence or intentional misconduct of Durham.

SECTION 20. Events of Default. The term "Event of Default," as used in this Sublease means the occurrence of any one or more of the following events: (a) the District fails to make any unexcused Sublease Payment (or any other payment) within fifteen (15) days after the due date thereof or the District fails to perform or observe any other covenant, condition, or agreement to be performed or observed by it hereunder and such failure to either make the payment or perform the covenant, condition, or agreement is not cured within ten (10) days after written notice thereof by Durham; (b) the discovery by Durham that any statement, representation or warranty made by the District in this Sublease, or any document ever delivered by the District pursuant hereto or in connection herewith is misleading or erroneous in any material respect; (c) the District becomes insolvent, is unable to pay its debts as they become due, makes an assignment for the benefit of creditors, applies or consents to the appointment of a receiver, trustee, conservator or liquidator of the District or of all or a substantial part of its assets, or a petition for relief is filed by the District under federal bankruptcy, insolvency or similar laws.

SECTION 21. Remedies on Default. Upon the happening of any Event of Default, Durham may exercise any and all remedies available pursuant to law or in equity or granted pursuant to this Sublease. Durham is expressly authorized to enter and re-enter the Site and the Project and, in addition, at its option, with or without such entry to terminate this Sublease. In the Event of Default and notwithstanding any entry or re-entry by Durham, the District shall continue to remain liable for the payment of Sublease Payments and damages for breach of this Sublease and the performance of all conditions herein such Sublease Payments and damages shall be payable to Durham at the time and in the manner set forth in subsections (a) and (b) of this Section:

(a) In the event that Durham does not elect to terminate this Sublease pursuant to subsection (b) below, the District agrees to and shall remain liable for the payment of Sublease Payments and the performance of all conditions herein and shall reimburse Durham for any deficiency arising out of the re-letting of the Project and the Site, or, in the event that Durham is unable to re-let the Project and the Site, then for the full amount of the Sublease Payments to the end of the Sublease term. District hereby irrevocably appoints Durham as the agent and the attorney-in-fact of the District to enter upon and re-let the Project and the Site in the Event of



Default by the District. If the Project and the Site are re-let to a private operator, the agreement evidencing such re-letting shall conform with requirements of State and Federal law in a manner that will not cause the interest portion of the Sublease Payments to become includable in gross income for Federal income tax purposes.

(b) In the event of termination of this Sublease by Durham at its option and in the manner hereinafter provided on account of default by the District (and notwithstanding any re-entry upon the Project by Durham in any manner whatsoever or the re-letting of the Project and the Site), the District agrees to pay Durham all costs, loss, or damages howsoever arising or occurring payable at the same time and in the same manner as the Sublease Payments. Neither notice to pay Sublease Payments or to deliver up possession of the Project and the Site given pursuant to law nor any proceeding in unlawful detainer taken by Durham shall of itself operate to terminate this Sublease.

No right or remedy herein conferred upon or reserved to Durham is exclusive of any other right or remedy herein, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time; provided, however, that notwithstanding any provisions to the contrary herein, Durham shall not under any circumstances have the right to accelerate the Sublease Payments that fall due in future Sublease periods or otherwise declare any Sublease Payments not then in default to be immediately due and payable.

SECTION 22. Non-Waiver. No covenant or condition to be performed by the District or Durham under this Sublease can be waived except by the written consent of the other party. Forbearance or indulgence by the District or Durham in any regard whatsoever shall not constitute a waiver of the covenant or condition in question. Until complete performance by the District or Durham of said covenant or condition, the other party shall be entitled to invoke any remedy available to it under this Sublease or by law or in equity despite said forbearance.

SECTION 23. Assignment. Without the prior written consent of Durham, the District shall not (a) assign, transfer, pledge, or hypothecate this Sublease, the Project and the Site, or any part thereof, or any interest therein, or (b) sublet or lend the use of the Project or any part thereof, except as authorized by the provisions of the California Civic Center Act, Education Code Section 38130 et seq. Consent to any of the foregoing prohibited acts applies only in the given instance and is not a consent to any subsequent like act by the District or any other person. Durham shall not assign its obligations under this Sublease with the exception of its obligation to issue default notices and to convey or reconvey its interest in the Project and Site to the District upon full satisfaction of the District's obligations hereunder; however, Durham may assign its right, title and interest in this Sublease, the Sublease Payments or other amounts due hereunder the Project in whole or in part to one or more assignees or subassignees at any time without the consent of the District. No assignment shall be effective as against the District unless and until the District is so notified in writing. The District shall pay all Sublease Payments due hereunder pursuant to the direction of Durham or the assignee named in the most recent assignment or notice of assignment. During the Sublease term, the District shall keep a complete and accurate

record of all such assignments. Subject always to the foregoing, this Sublease inures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors, and assigns of the parties hereto.

SECTION 24. Ownership. The Project is and shall at all times be and remain the sole and exclusive property of Durham, and the District shall have no right, title, or interest therein or thereto except as expressly set forth herein.

SECTION 25. Sublease Prepayments/Purchase Option. (a) Sublease Prepayments. At any time during the term of this Sublease, the District may make Sublease Prepayments to Durham of the Sublease Payments ("Sublease Prepayments"). No Sublease Prepayments requested by Durham may be made by the District in an amount which exceeds the aggregate true cost to Durham of the work on the Project completed to date Durham submits the request for a Sublease Prepayment less the aggregate amount of: (1) all Sublease Payments previously made by the District to Durham; (2) all Sublease Prepayments previously made by the District to Durham; (3) all amounts previously retained pursuant to Section 25(a)(3), below, from Sublease Prepayments previously made by the District to Durham (unless Durham shall have previously substituted securities for such retained amounts pursuant to Section 25(a)(3)); and (4) the retention for such Sublease Prepayment pursuant to Section 25(a)(3) hereof. Durham must submit evidence that the conditions precedent set forth in Section 25(a) (1), below, have been met. In the event District elects to make Sublease Prepayments, the Prepayment Price, contemplated in Section 25(b), below, shall be adjusted accordingly.

1. The following are conditions precedent to any Sublease Prepayments made to Durham pursuant to a request of Durham:
  - a. Satisfactory progress of the Construction pursuant to contract plans and specifications, and the construction time schedule under Section 11. E of the Lease-Leaseback Agreement (the "Construction Progress") shall have been made as determined in Section 25.2, below.
  - b. Durham shall also submit to the District (i) duly executed conditional lien releases and waivers (in the form provided in California Civil Code Section 3262) from Durham and all Subcontractors, consultants and other persons retained by Durham in connection with the Project, whereby such persons conditionally waive all lien and stop notice rights against the District, the Project and the Project site with respect to the pending Sublease Prepayment to be made by the District, (ii) duly executed unconditional lien releases and waivers (in the form provided in California Civil Code Section 3262) from Durham and all Subcontractors, consultants, and other persons retained by Durham in connection with the Project, whereby such persons unconditionally and irrevocably waive all lien and stop notice rights against the District, the Project and the Project site with respect to all previous Sublease Prepayments made by the District, and (iii) any other items that Durham may be required to collect and distribute to the District pursuant to the

terms and provisions of the Lease-Leaseback Agreement. Durham shall promptly pay all amounts due to each subcontractor, consultant and other person retained by Durham in connection with the Project no later than ten (10) days after Durham's receipt of a Sublease Prepayment from the District.

2. The ultimate determination of whether satisfactory progress of the Construction has occurred shall be made by the District in association with its architect. If the District determines that the work required to be performed as stated on Durham's Sublease Prepayment request has not been substantially completed in accordance with Construction Progress requirements, Durham shall not be eligible to receive the requested Sublease Prepayment.
3. The District shall retain an amount equal to ten percent (10%) of each Sublease Prepayment ("Retention") made at Durham's request. Durham shall have the right, as delineated in Section 35 of the Lease-Leaseback Agreement, to substitute securities for any retention withheld by the District, pursuant to the provisions of Public Contract Code Section 22300. At any time after fifty percent of the work has been completed, if the Governing Board of the District finds that satisfactory progress is being made, it may make any of the remaining Sublease Prepayments in full.

(a) If the District is not in default hereunder, the District shall be granted options to purchase not less than all the Project in as-is condition. The Prepayment Price at any given time shall be an amount equal to the GMP, as it may be revised from time to time, less the sum of any Sublease Payments and/or Sublease Prepayments made by the District prior to the date on which the District elects to exercise its option under this section. The District may thereupon terminate this Sublease. Following the purchase option date, District shall retain all rights to any claim or warranty arising under the Lease-Leaseback Agreement.

#### SECTION 26. Release of Liens.

- (a) Notwithstanding Section 25 hereof, upon the District executing a Certificate of Acceptance and filing a Notice of Completion on the Project, as such term is defined herein and in the Lease-Leaseback Agreement, Durham or its assignee and the District shall release Durham's leasehold interest in the Project.
- (b) Durham shall authorize, execute and deliver to the District all documents reasonably requested by the District to evidence (i) the release of any and all liens created pursuant to the provisions of the Sublease and the Site Lease, and (ii) any other documents required to terminate the Site Lease and this Sublease.

SECTION 27. Severability. If any provision of this Sublease shall be held invalid or unenforceable by a court of competent jurisdiction, such holdings shall not invalidate or render unenforceable any other provision of this Sublease, unless elimination of such provision materially alters the rights and obligations embodied in this Sublease.

SECTION 28. Entire Agreement. This Sublease, the Site Lease, and the Lease-Leaseback Agreement constitute the entire agreement between Durham and the District, and shall not be amended, altered, or changed except by a written agreement signed by the parties hereto.

SECTION 29. Notices. Services of all notices under this Sublease shall be sufficient if given personally or mailed to the party involved at its respective address hereinafter set forth or at such address as such party may provide in writing from time to time. Any change in the addresses noted shall not be binding upon the other party unless preceded by no less than thirty (30) days prior written notice.

If to Durham: Durham Construction Company  
1025 Holland Ave.  
Clovis, CA 93612  
Attn: Chris Durham

If to District: Laton Unified School District  
P.O. Box 248  
Laton, CA 93242  
Attn: Ralph Vandro

SECTION 30. Titles. The titles to the sections of this Sublease are solely for the convenience of the parties and are not an aid in the interpretation thereof.

SECTION 31. Time. Time is of the essence in this Sublease and each and all of its provisions.

SECTION 32. Sublease Interpretation. This Sublease and the rights of the parties hereunder shall be determined in accordance with the laws of the State.

IN WITNESS WHEREOF, the parties hereto have executed this Sublease by their authorized officers as of the dates so indicated under their respective signatures.

DURHAM CONSTRUCTION  
COMPANY, Inc.

LATON UNIFIED SCHOOL  
DISTRICT

By: 

By: 

## **EXHIBIT A**

### **SCHEDULE OF SUBLEASE PAYMENTS**

The terms of this Sublease shall commence on June 17, 2008. Sublease payments shall be paid monthly and the total Sublease Payments made shall not exceed the amount of the GMP as defined in Section 6 of the Lease-Leaseback Agreement. Each month Durham shall provide District with an itemized summary reflecting the percentage of work performed and signed off by the District's DSA Inspector or other designated employee. The Sublease Payments shall be commensurate with the amount of work performed, invoiced, and signed off by the District.

Notwithstanding the foregoing, the term of this Sublease may be extended and payment options may be modified by written agreement of the parties hereto.

**SITE LEASE**

**Dated as of June 17, 2008**

**Between**

**LATON UNIFIED SCHOOL DISTRICT**

**and**

**DURHAM CONSTRUCTION COMPANY**

## SITE LEASE

This SITE LEASE is dated as of June 17, 2008, and is by and between the LATON UNIFIED SCHOOL DISTRICT, a school district duly organized and existing under the laws of the State of California (the "District") as lessor and DURHAM CONSTRUCTION COMPANY, a business entity organized and operating under the laws of the State of California ("Durham") as lessee.

WHEREAS, the District desires to provide for the financing and construction of certain public improvements more fully described in a Lease-Leaseback Agreement between the District and Durham as builder (the "Project") at the Laton High School site within the District (the "Site"); and

WHEREAS, the District's governing body has determined that it is in the best interests of the District and for the common benefit of the citizens it serves to finance the Project by leasing to Durham land and the existing building on the Site on which the public improvements are to be constructed and subleasing from Durham the Site, including the Project, under a Sublease Agreement effective the same date as this Site Lease (the "Sublease"); and

WHEREAS, the District is authorized under Section 17406 of the California Education Code to lease the Site, and its governing body has duly authorized the execution and delivery of this Site Lease; and

WHEREAS, Durham is authorized to lease the Site as lessee and to construct the Project on the Site, and has duly authorized the execution and delivery of this Site Lease.

### WITNESSETH:

In consideration of the premises and covenants and conditions hereinafter contained, the parties agree as follows:

SECTION 1. Site Lease. The District leases to Durham, and Durham leases from the District, on the terms and conditions set forth herein, the Site situated in the County of Fresno, State of California, more specifically described in Exhibit "A" attached to this Site Lease and incorporated by reference, including any real property improvements nor or hereafter affixed thereto. Hereinafter, reference to Durham means Durham and Durham's assigns for those rights, interest and obligations that may be assigned by Durham.

SECTION 2. Term. The term of this Site Lease shall commence as of the date above and shall remain in full force and effect from such date to and including October 17, 2008, (the "Termination Date"), unless such term is extended or earlier terminated as hereinafter provided:

(a) If the District exercises its option to purchase the Project, pursuant to Section 25 of the Sublease, then the term of this Site Lease shall end on the date of exercise of the option; or

(b) If prior to the Termination Date, all Sublease payments, as defined in the Sublease (the "Sublease Payments") shall be fully paid and retired or provision made for such payment and retirement, or which the parties hereto agree may be released, the term of this Site Lease as to the particular portion of the Site for which Sublease Payments have been fully paid shall end ten (10) days thereafter or ten (10) days after written notice to Durham, whichever is earlier.

SECTION 3. Representations, Covenants, and Warranties of the District. The District represents, covenants and warrants to Durham that:

(a) The District has good and merchantable fee title to the Site and has authority to enter into and perform its obligations under this Site Lease;

(b) There are no liens on the Site other than permitted encumbrances;

(c) All taxes, assessments or impositions of any kind with respect to the Site, if applicable, except current taxes, have been paid in full;

(d) The Site is properly zoned for the intended purpose and utilization of it or the District intends to render zoning inapplicable pursuant to Government Code Section 53094;

(e) The District is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to the Site;

(f) There is no litigation of any kind currently pending or threatened regarding the Site or the District's use of the Site for the purposes contemplated by this Site Lease, the Sublease and the Lease-Leaseback Agreement;

(g) To the best of the District's knowledge, after actual inquiry: (i) no dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, as defined in or governed by the provisions of any State or Federal law relating thereto (hereinafter collectively called "Environmental Regulations"), and also including, but not limited to, urea-formaldehyde, polychlorinated biphenyls, asbestos, asbestos containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, or any other waste, material, substance, pollutant or contaminant which would subject the owner of the Site or Durham or Durham's subcontractors to any damages, penalties or liabilities under any applicable Environmental Regulation (hereinafter collectively called "Hazardous Substances"), are now or have been stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited or disposed of in, upon, under, over or from the Site; (ii) no threat exists of a discharge release or emission of a Hazardous



Substance upon or from the Site into the environment; (iii) the Site has not been used as or for a mine, a landfill, a dump or other disposal facility, or a gasoline service station; (iv) no underground storage tank is now located in the Site; (v) no violation of any Environmental Regulation now exists relating to the Site, no notice of any such violation or any alleged violation thereof has been issued or given by any governmental entity or agency, and there is not now any investigation or report involving the Site by any governmental entity or agency which in any way relates to Hazardous Substances; (vi) no person, party, or private or governmental agency or entity has given any notice of or asserted any claim, cause of action, penalty, cost or demand for payment or compensation, whether or not involving any injury or threatened injury to human health, the environment or natural resources, resulting or allegedly resulting from any activity or event described in (i) above; (vii) there are not now any actions, suits, proceedings or damage settlements relating in any way to Hazardous Substances, in, upon, under, over, or from the Site; (viii) the Site is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or any other list of Hazardous Substance sites maintained by any federal, state or local governmental agency; and (ix) the Site is not subject to any lien or claim for lien or threat of a lien in favor of any governmental entity or agency as a result of any release or threatened release of any Hazardous Substance.

(h) To the extent permitted by law, the District shall not abandon the Site for the use for which it is currently required by the District and further, shall not seek to substitute or acquire property to be used as a substitute for the uses for which the site and Project are to be maintained under the Sublease.

(i) The term "permitted encumbrances" as used herein shall mean, as of any particular time: (i) liens for general ad valorem taxes and assessments, if any, not then delinquent; (ii) this Site Lease, the Sublease, any right or claim of any mechanic, laborer, materialman, supplier, or vendor, if applicable, not filed or perfected in the manner prescribed by law, easements, rights of way, mineral rights, drilling rights, and other rights, reservations, covenants, conditions, or restrictions which exist of record as of the date of this Site Lease and which will not materially impair the use of the Site; (iii) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions, or restrictions established following the date of recordation of this Site Lease and to which Durham and the District consent in writing which will not impair or impede the operation of the Site.

SECTION 4. Representations and Warranties of Durham. Durham represents and warrants to the District that:

(a) Durham is a duly organized business entity, validly existing and in good standing under the laws of the State of California, with full power and authority to lease and own real and personal property.

(b) Durham has full power, authority, and legal right to enter into and perform its obligations under this Site Lease, and the execution, delivery, and performance of this

Site Lease have been duly authorized by all necessary actions on the part of Durham and do not require any further approvals or consents.

(c) Execution, delivery and performance of this Site Lease do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which Durham is a party or by which it or its property is bound.

(d) There is no pending, or to the best knowledge of Durham, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Durham to perform its obligations under this Site Lease.

SECTION 5. Rental. Durham shall pay to the District as and for advance rental hereunder \$1.00 per year per Site, on or before the date of commencement of the term of this Site Lease. The duration of the rental is expected to be from June 17, 2008 through October 17, 2008 unless earlier terminated by either party.

SECTION 6. Purpose. Durham shall use the Site solely for the purpose of constructing the Project thereon and for subleasing the Site and leasing the Project to the District; provided, that in the Event of Default by the District under the Sublease, Durham may exercise the remedies provided for in the Sublease.

SECTION 7. Termination. Durham agrees, upon termination of this Site Lease: (i) to quit and surrender the Site in the same good order and condition as it was in at the time of commencement of the term hereunder, reasonable wear and tear excepted; (ii) to release and reconvey to the District any liens and encumbrances created or caused by Durham; and (iii) that any permanent improvements and structures existing upon the Site at the time of the termination of this Site Lease, including the Project, shall remain thereon and title thereto shall vest in the District. Notwithstanding the District's foregoing rights in the event of termination, Durham shall retain the right to full compensation for all services rendered prior to the termination, including all rights it has under the Lease-Leaseback Agreement and the Sublease, as well as all recourse provided by California law including common law, for the value of the work performed.

SECTION 8. Quiet Enjoyment. The District covenants and agrees that it will not take any action to prevent Durham's quiet enjoyment of the Site during the term of this Site Lease; and that in the event the District's fee title to the Site is ever challenged so as to interfere with Durham's right to occupy, use, and enjoy the Site, the District will use all governmental powers at its disposal, including the power of eminent domain, to obtain unencumbered fee title to the Site and to defend Durham's right to occupy, use, and enjoy that portion of the Site.

SECTION 9. No Liens. The District shall not mortgage, sell, assign, transfer or convey the Site or any part thereof to any person during the term of this Site Lease without written consent of Durham. Nothing herein shall preclude the District from

granting utility easements across the Site to facilitate the use and operation of the Project for which it is intended.

SECTION 10. Right of Entry. The District reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same or to make any repairs, improvements, or changes necessary for the preservation thereof, but in doing so, shall not interfere with Durham's operations on the Project.

SECTION 11. Assignment and Subleasing. Other than the Sublease, Durham will not assign or otherwise dispose of or encumber the Site or this Site Lease without the written consent of the District.

SECTION 12. No Waste. Durham agrees that at all times that it is in possession of the Site it will not commit, suffer, or permit any waste on the Site, and it will not willfully or knowingly use or permit the use of the Site for any illegal act or purpose.

SECTION 13. Default. In the event Durham shall be in default in the performance of any obligation on its part to be performed under the terms of this Site Lease, which default continues for thirty (30) days following notice and demand for correction thereof to Durham, the District may exercise any and all remedies granted by law, except that no merger of this Site Lease and of the Sublease shall be deemed to occur as a result thereof.

SECTION 14. Eminent Domain. In the event the whole or any part of the Site or the improvements thereon is taken by eminent domain, the financial interest of Durham shall be recognized and is hereby determined to be the amount of all Sublease Payments then due or past due, the next succeeding Sublease Payment and the purchase option price stated in Section 25 of the Sublease less any unearned interest as of the date Durham receives payment in full. The balance of the award, if any, shall be paid to the District. For purposes of this Section 14, the Sublease Payment(s) include all amounts withheld pursuant to Section 6.c. of the Sublease.

SECTION 15. Taxes. The District covenants and agrees to pay any and all assessments of any kind or character and also all taxes, including possessory interest-taxes, levied, or assessed upon the Site or the improvements thereon.

SECTION 16. Indemnification. The District covenants and agrees to indemnify and hold Durham harmless from and against any and all losses, claims, suits, damages and expenses, including reasonable attorney's fees, arising out of the condition of the Site, including but not limited to, all costs required to be incurred by Durham as a result of any condition described in Section 3, paragraph (g) hereof, whether or not known to the District on the date of execution of this Site Lease.

SECTION 17. Partial Invalidity. If any one or more of the terms, covenants, or conditions of this Site Lease shall to any extent be declared invalid, unenforceable, void, or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or

order or decree of which becomes final, none of the remaining terms, provisions, covenants, and conditions of this Site Lease shall be affected thereby, and each provision of this Site Lease shall be valid and enforceable to the fullest extent permitted by law.

SECTION 18. Notices. Any notices or filings required to be given or made under this Site Lease shall be served, given or made in writing upon the District or Durham, as the case may be, by personal delivery or registered mail (with a copy sent via fax or regular mail) to the respective addresses given below.

If to Durham:            Durham Construction Company  
                                 1025 Holland Ave.  
                                 Clovis, CA 93612  
                                 Attn: Chris Durham

If to District:            Laton Unified School District  
                                 P.O. Box 248  
                                 Laton, CA 93242  
                                 Attn: Ralph Vandro

SECTION 19. Binding Effect. This Site Lease shall inure to the benefit of and shall be binding upon the District, Durham, and their respective successors in interest and assigns.

SECTION 20. Amendments and Modifications. This Site Lease shall not be effectively amended, changed, modified, altered, or terminated without the written agreement of the District and Durham.

SECTION 21. Execution in Counterparts. This Site Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 22. Applicable Law. This Site Lease shall be governed by and construed in accordance with the laws of the State of California, County of Fresno, and venue shall be the County of Fresno.

SECTION 23. Headings. The captions or headings in this Site Lease are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this Site Lease.

SECTION 24. Time. Time is of the essence in this Site Lease and each and all of its provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Site Lease by their authorized officers as of the dates so indicated under their respective signatures.


**BUILDER**

Durham Construction Company *Inc.*  
1025 Holland Ave.  
Clovis, CA 93612


**DISTRICT**

Laton Unified School District  
P.O. Box 248  
Laton, CA 93242

**LESSEE**

By:   
Chris Durham, ~~Owner~~ *President*

**LESSOR**

By:   
Ralph Vandro, Superintendent

Dated: June 17, 2008

Dated: June 17, 2008

**EXHIBIT "A"**  
**DESCRIPTION OF SITE**

**Exhibit A**

**Site Diagram**

**Laton High School**

6449 DeWoody Street  
(mail: P.O. Box 278)  
Laton CA, 93242

Phone: (559) 922-4080

Fax: (559) 923-4072



**LEASE-LEASEBACK AGREEMENT**

**between**

**LATON UNIFIED SCHOOL DISTRICT**

**and**

**DURHAM CONSTRUCTION COMPANY**



## LEASE-LEASEBACK AGREEMENT

This Lease-Leaseback Agreement (this "Agreement") is entered into this 17th day of June, 2008, by and between LATON UNIFIED SCHOOL DISTRICT, a California school district organized and existing under the laws of the State of California (hereinafter called the "District"), and DURHAM CONSTRUCTION COMPANY, a California business entity and contractor licensed by the State of California, with its principal place of business at Fresno, California (hereinafter called "Builder").

WHEREAS, the District operates a high school within its boundaries (the "School Facility"); and

WHEREAS, the District intends to undertake work, the scope of which is described generally in Exhibit A hereof at the School Facility (the "Project"); and

WHEREAS, California Education Code Section 17406 permits the governing board of a school district, without advertising for bids, to lease to any person, firm, or corporation, any real property owned by the school district if the instrument by which such property is leased requires the lessee to construct on the leased premises, or provide for the construction thereon, of a building for the use of the school district during the term of the lease, and provides that title to that building shall vest in the school district at the expiration of the lease; and

WHEREAS, in connection with the approval of this Agreement, the District will enter into a site lease with Builder (the "Site Lease"), under which it will lease to Builder the Site described in Exhibit A of the Site Lease (the "Site") in order for Builder to construct the Project as described in the Scope of Work set forth in Exhibit A to this Agreement which is incorporated herein by this reference (the "Scope of Work"); and

WHEREAS, upon completion of the Project, the Site Lease will terminate and title to the Site will vest with the District; and

WHEREAS, Builder will lease the Project back to the District pursuant to a Sublease Agreement (the "Sublease"), under which the District will be required to make lease payments to Builder for the use and occupancy of the Site, including the Project; and

WHEREAS, the District and Builder desire to enter into this Agreement to ensure that the Project will meet the District's expectations prior to the lease of the Site back to the District pursuant to the Sublease; and

WHEREAS, Builder, as a contractor, is experienced in the design and construction of the type of facility and type of work desired by the District and is willing to perform said preconstruction and construction work for lease to the District, all as more fully set forth in this Agreement.

NOW, THEREFORE, in consideration of the covenants hereinafter contained, the District and Builder agree as follows:

Section 1. BUILDER'S DUTIES AND STATUS

District hereby awards the contract for the Project to Builder on the terms set forth herein. Builder accepts the contractual relationship established between it and the District by this Agreement, and Builder covenants with the District to furnish reasonable skill and judgment in constructing the Project. Builder agrees to furnish efficient business administration and superintendence and to furnish at all times an adequate supply of professionals, workers, and materials and to perform the work appropriately, expeditiously, economically, and consistent with the Preconstruction Agreement, and the Construction Documents as defined in Section 2, paragraphs C and D, of this agreement.

Section 2. DEFINITIONS

A. CONSTRUCTION. The term "Construction" as used in this Agreement includes all labor and services necessary for the construction of the Project, and all materials, equipment, tools, supplies and incidentals incorporated or to be incorporated in such construction as fully described in the Construction Scope of Work set forth in Section 9 of this Agreement. Unless otherwise expressly stipulated, Builder shall perform all work and provide and pay for all materials, labor, tools, equipment and utilities, including, but not limited to, light, water, and power, necessary for the proper execution and completion of the Project shown on the drawings and described in the specifications developed pursuant to this Agreement.

B. CONTRACT DOCUMENTS. The term "Contract Documents" as used in this Agreement refers to those documents which form the entire agreement by and between the District and Builder. The Contract Documents consist of this Agreement, including the exhibit and attachments, the Construction Documents, the Site Lease, and the Sublease.

C. CONSTRUCTION DOCUMENTS. The term "Construction Documents" means the final drawings, profiles, cross sections, design development drawings, construction drawings, and supplemental drawings based on the plans and specifications developed pursuant to this Agreement, including any reference specifications or reproductions prepared by Architect and specifications approved by the District and the Division of the State Architect, which show or describe the location, character, dimensions or details of the Project and specifications for construction thereof.

D. GUARANTEED MAXIMUM PRICE. The term "Guaranteed Maximum Price" ("GMP") as used in this Agreement means the Guaranteed Maximum Price established pursuant to Section 6 of this Agreement to be paid to Builder for Builder's performance pursuant to this Agreement, subject to any adjustments for Extra Work/Modifications as provided in Section 10 of this Agreement.

E. SUBCONTRACTOR. As used in this Agreement, the term "Subcontractor" shall mean any person or entity, including trade contractors, who have a contract with Builder to perform any of the Construction.

Section 3. Deleted.

Section 4. EXTRA WORK

If the District requests Builder to perform services not described in this Agreement, builder shall provide a cost estimate and a written description of the additional work required to perform such services necessary to complete the extra design review work. Compensation for such additional services shall be negotiated and agreed upon in writing in advance of Builder performing or contracting for such extra work, and paid to Builder in addition to the GMP established pursuant to Section 6 hereof. In the absence of a written agreement, the District will not compensate Builder for extra work, and Builder will not be required to perform it. Nothing in this Agreement shall be construed as limiting the valuation and amount to be paid to Builder for extra design review work or its implementation.

Section 5. OWNERSHIP OF PLANS AND DOCUMENTS

All original field notes, written reports, drawings, specifications, Construction Documents, and other documents, produced or developed for the Project shall, upon tender and acceptance of final payment for said services, be furnished to and become the property of the District, regardless of whether the Project is constructed. This conveyance shall not deprive Builder from retaining electronic data or other reproducible copies of the Construction Documents or the right to reuse information contained in them in the normal course of Builder's professional activities. Builder shall be deemed author of such electronic data or documents, shall retain all rights not specifically conveyed, and shall be given appropriate credit on any public display of such Construction Documents prepared by Builder.

Section 6. ESTABLISHMENT OF GMP

The GMP for the Project shall be One Hundred Forty Two Thousand Six Hundred Forty Seven Dollars (\$142,647.00). The Builder shall assume the risk of cost overruns which were not foreseeable at the time this Agreement is entered into except for events as set forth in Section 29 hereof. Changes to the scope of the Project not contemplated in the Scope of Work (Exhibit A) shall be deemed Extra Work/Modifications pursuant to the procedures set forth in Section 10 of this Agreement. The GMP is a fee to Builder and Builder shall be entitled to any unused portions of it. The GMP shall include, but not be limited to, increases in labor and materials. Sublease Payments by the District to Builder pursuant to the Sublease shall be commensurate with the GMP.

Section 7. NOTICE TO PROCEED WITH CONSTRUCTION

On or before June 17, 2008, the District shall issue a notice to Builder to proceed beyond the Preconstruction Phase to the Construction Phase for the Project. In the event "Notice to Proceed with Construction" is not issued for the Project, or the Project is terminated before completion, Builder shall be entitled to reasonable compensation on the basis of time and materials for all labor, materials, and services as provided in Section 12.B for services rendered,

but not yet invoiced and/or paid and this Agreement, the Site Lease and the Sublease shall terminate.

Section 8. SAVINGS

If Builder realizes a savings on one aspect of the Project, Builder may apply that savings to another aspect of the Project either to enhance that aspect, or to cover unanticipated additional costs of that aspect of the Project. Contractor contingency savings shall be shared 75%-25% in favor of the District.

Section 9. CONSTRUCTION SCOPE OF WORK

A. Prior to commencing Construction, Builder shall comply with the initial schedule requirement set forth in Section 11.E. of this Agreement.

B. Builder shall complete the Construction pursuant to the Construction Documents as amended, subject to any additional DSA approvals as may be required, performing all work set forth in the Scope of Work (Exhibit "A" to this Agreement), and shall make reasonable efforts in scheduling to prevent disruption to classes.

C. Builder shall be responsible for complying with all applicable building codes, mechanical code, electrical code, plumbing code and fire code, latest edition, required by DSA and for arranging and overseeing all necessary inspections and tests including inspections by the DSA, permits and occupancy permits, and ensuring compliance with any Federal and State laws, including, but not limited to, safety procedures and requirements, construction employee training programs which cover among other items, hazardous chemicals and materials.

D. Builder shall establish procedures for the protection of all existing structures, equipment, utilities, and other existing improvements, both on-site and off-site. Builder assumes all risk of loss of vandalism, theft of property or other property damage ("vandalism") which occurs at a Site at which Builder is undertaking construction of the Project, from causes due to negligence or misconduct by Builder, its officers, employees, subcontractors, licensees and invitees. Builder shall replace District property damaged by such vandalism or theft or compensate the District for such loss, including payment of out of pocket expenses such as insurance deductibles the District might incur under such circumstances.

E. Builder shall develop a mutually agreed upon program with the District to abate and minimize the noise, dust, and disruption to normal activities at the existing facilities on the Site, including procedures to control on-site noise, dust, and pollution during construction.

F. The District shall perform any required site mitigation or remediation on the Site at its sole cost, unless such site mitigation or remediation is necessitated by an of the conditions described in Section 29 of this Agreement, in which event the provisions of that Section 29 shall govern.

G. District shall cause the appropriate professionals to stamp and sign, as required, the original Construction Documents or parts thereof and coordinate the Projects design with all Utilities.

H. Builder shall perform and pay for all utility hook-ups and connections and pay for use of temporary utilities during Construction.

Section 10. EXTRA WORK/MODIFICATIONS

A. The District may prescribe or approve additional work or modification of requirements or of methods of performing the Construction which differ from the work or requirements set forth in the Construction Documents ("Extra Work/Modifications"); and for such purposes, the District may at any time during the life of this Agreement, by written order, make such changes as it shall find necessary in the design, line, grade, form, location, dimensions, plan, or material of any part of the work or equipment specified in this Agreement or in the Construction Documents, or in the quantity or character of the work or equipment to be furnished. In the event conditions develop which, in the opinion of Builder, makes strict compliance with the specifications impractical, Builder shall notify District of the need for Extra Work/Modifications by placing the matter on the agenda of regularly scheduled construction meetings with the District for discussion as soon as practicable after the need for the Extra Work/Modifications is determined. Additionally, Builder shall submit to the District for its consideration and approval or disapproval, a written request for Extra Work/Modifications before such work is performed. If the District approves the request in writing, the costs of the Extra Work/Modifications shall be added to or deducted from the GMP or the Scope of Work shall be modified to complete the Project within the GMP, as applicable.

B. Expenses of reconstruction and/or costs to replace and/or repair damaged materials and supplies, provided that Builder is not fully compensated for such expenses and/or costs by insurance or otherwise, shall be paid for by the District if said expenses are the result of the negligent acts or omissions of the District, or its Architect, subcontractors, principals, agents, servants, or employees.

Section 11. TIME OF COMPLETION

A. Within five (5) days of the date the District issued a Notice to Proceed with Construction, Builder shall proceed with the Construction of the Project with reasonable diligence. Builder agrees that the Project will be "substantially" completed within 120 calendar days of the Notice to Proceed. Builder agrees that Final Project Completion will occur within 120 calendar days from the Notice to Proceed, said completion time to be extended for such periods of time as Builder is prevented from proceeding with or completing the Project for any cause described in this Section 11. If the work is not completed in accordance with the foregoing, it is understood that the District will suffer damage. It being impractical and infeasible to determine the amount of actual damage, it is agreed that Builder shall pay to the District as fixed and liquidated damages, and not as a penalty, the sum of Five Hundred Dollars (\$500.00) per day for each calendar day of delay caused solely by Builder from the date established by the date of the Notice to Proceed, until the Project is substantially complete.

Builder and its surety shall be liable for the amount thereof. Any money due or to become due to Builder may be retained by the District to cover said liquidated damages. Should such money not be sufficient to cover said liquidated damages, the District shall have the right to recover the balance from Builder or its surety, who will pay said balance forthwith.

B. In the event that the performance and/or completion of the Project is delayed at any time by any act or omission of the District or of any Architect, subcontractors, principals, agents, servants, employees or tenant of the District, by any separate contractor employed by the District, by changes or alterations in the Project not caused by any fault or omission by Builder, by strikes, by lockouts, by fire, by embargoes, by windstorm, by flood, by earthquake, by acts of war or God, by changes in public laws, regulations or ordinances enacted after the date of execution of this Agreement, by acts of public officials not caused by any fault or omission of Builder, by an inability to obtain materials or equipment not caused by any act or omission of Builder, or by any other cause beyond the reasonable control of Builder, the aforesaid date for substantial completion of the Project shall be extended for reasonable period as a consequence of such delay. Builder shall not be charged liquidated damages because of such delays in completion of work or delays otherwise due to unforeseeable causes beyond the control and without the fault or negligence of Builder.

C. The term "substantially complete" or "substantial completion" as used in this Agreement means completed in such fashion as to enable the District, upon performance of any separate work to be done by the District under separate contract or by day labor, beneficially to occupy the Project and to commence operation therein, provided such occupancy and use does not substantially interfere with Builder's performance of the remainder of the Project as agreed upon between Builder and the District, which may be accomplished prior to the completion of the Project.

D. The term "Fully Completed and Accepted," as used in this Agreement shall mean that all remaining work has been completed in accordance with the Construction Documents and that successful testing, startup and satisfactory operation of the Project as a total unit has been accomplished in substantial conformance with the Construction Documents.

E. Within five (5) days after the District's delivery of a Notice to Proceed with Construction, Builder shall furnish District with a reasonably detailed CPM (Critical Path) Schedule, setting forth the expected dates for commencement and completion of each of the various stages of Construction (the "Time Schedule"). The Time Schedule shall be updated by Builder at least twice per month, and each updated schedule shall be furnished to the District. It is specifically understood that the District will utilize said Time Schedule as it is revised from time to time to determine completion dates of various aspects of the Project. Payments under the Sublease shall be conditioned upon completion of various aspects of the Project as determined by the District's Inspector pursuant to the Time Schedule.

F. Builder shall not be assessed liquidated damages under this Agreement and shall not be subject to any damages for delay in completion of this Project, when such delay was caused by the failure of the District or the owner of a utility to provide for removal or relocation of the existing main or trunkline utility facilities; however, when Builder is aware that removal

or relocation of an existing utility has not been provided for, Builder shall promptly notify the District and the utility in writing, so that the provision for such removal or relocation may be made to avoid and minimize any delay which might be caused by the failure to remove or relocate the main or trunkline utility facilities, or to provide for its removal or relocation. In accordance with Section 4215 of the Government Code, if Builder while performing this Agreement discovers any existing main or trunkline utility facilities not identified by the District in the plans or specifications, it shall immediately notify the District and utility in writing. The public utility, where they are the owner, shall have the sole discretion to perform repairs or relocation work or permit Builder to do such repairs or relocation work at a reasonable price. Builder shall be compensated for the costs of locating, repairing damage not due to the failure of the Builder to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Such compensation shall be in accordance with the extra work provisions set out in Section 10 of this Agreement.

## Section 12. TERMINATION

A. Termination for Breach. If Builder refuses or fails to prosecute the Construction or any separate part thereof with such diligence as will insure its completion within the time specified by this Agreement, or any extension thereof, or fails to complete the Project within such time, or if Builder should be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or Builder or any of its Subcontractors should violate any of the provisions of this Agreement, the District may serve written notice upon Builder and its surety of the District's intention to terminate this Agreement. This notice of intent to terminate shall contain the reasons for such intention to terminate this Agreement, and a statement to the effect that Builder's right to perform this Agreement shall cease and terminate upon the expiration of ten (10) days unless such violations have ceased and arrangements satisfactory to the District have been made for correction of said violations.

In the event that the District serves such written notice of termination upon Builder and its surety, the surety shall have the right to take over and perform this Agreement. If the surety does not: (1) give the District written notice of surety's intention to take over and commence performance of the Agreement within twenty five (25) days of the District's service of said notice of intent to terminate upon surety; and (2) actually commence performance of this Agreement within forty (40) days of the District's service of said notice upon surety; then the District may take over the Project and prosecute the same to completion by separate contract or by any other method it may deem advisable for the account and at the expense of Builder.

In the event that the District elects to obtain an alternative performance of the Agreement as specified above: (1) the District, may without liability for so doing, take possession of and utilize in completing of the Project such materials, appliances, plants and other property belonging to Builder that are on the Site and reasonably necessary for such completion; and (2) surety shall be liable to the District for any cost or other damage to the District necessitated by the District securing an alternative performance pursuant to this Section.

B. Termination for Convenience. (1) The District may terminate performance of the Project called for by the Contract Documents in whole or, from time to time, in part, if the District determines that a termination is in the District's interest. Builder shall terminate all or any part of the Project upon delivery to Builder of a "Notice of Termination" specifying that the termination is for the convenience of the District, the extent of termination, and the "Effective Date" of such termination. After receipt of Notice of Termination, and except as directed by the District, Builder shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:

(a) Stop work as specified in the Notice of Termination;

(b) Complete any work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents;

(c) Leave the property upon which Builder was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety;

(d) Terminate all subcontracts with Subcontractors to the extent that they relate to the portions of the work terminated;

(e) Place no further subcontracts or orders, except as necessary to complete the continued portion of the Project; and

(f) Submit to the District within thirty (30) days from the Effective Date of the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by Builder for labor, materials and equipment through the Effective Date of the Notice of Termination. Any documentation substantiating costs incurred by Builder solely as a result of the District's exercise of its right to terminate this Agreement pursuant to this clause which costs Builder is authorized under this Agreement to incur, shall: (i) be submitted to and received by the District no later than thirty (30) days after the Effective Date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs occasioned by the District's Termination for Convenience."

(2) Termination of this Agreement shall not relieve surety of its obligation for any just claims arising out of or relating to the work performed on the Project. In the event that the District exercises its right to terminate this Agreement pursuant to this clause, the District shall pay Builder, upon Builder's submission of the documentation required by this provision, and other applicable provisions of this Agreement, the following amounts:

(a) All actual costs incurred according to the provisions of this Agreement, and established to the satisfaction of the District, including but not limited to reasonable demobilization costs and insurance costs incurred in connection with the project.



(b) A reasonable allowance for profit on the cost of the work on the Project performed, provided Builder establishes to the satisfaction of the District, that it is reasonably probably that Builder would have made a profit had this Agreement been completed and provided further, that the profit allowed shall in no event exceed fifteen percent (15%) of costs. In no event shall the total amount exceed the sum of the GMP and all approved Extra Work/Modifications.

(c) A reasonable allowance for Builder's administrative costs in determining the amount payable due to termination of this Agreement under this Section 12.B.

C. Termination of this Agreement by Builder. Builder may terminate this Agreement upon ten (10) days written notice to the District, whenever: (1) the entire Project has been suspended for ninety (90) consecutive days through no fault or negligence of Builder, and neither a notice to resume nor a notice to terminate this Agreement has been received from the District within this time period; or (2) the District should fail to pay Builder any substantial sums due it in accordance with the terms of this Agreement and within the time limits prescribed; or (3) the District shall elect not to appropriate funds and/or elect not to make two (2) successive Sublease Prepayments, as defined in Section 25 of the Sublease Agreement, following the receipt by the District or a request from the Builder in its capacity as lessor in the Sublease Agreement for each such Sublease Prepayment submitted pursuant to Section 25(a) of the Sublease. In the event of such termination, Builder shall have no claims against the District except for work performed and reasonable demobilization costs on the Project as of the date of termination, and computed as set forth in Section 12.B.2.(a)-(c), above.

### Section 13. PREVAILING RATES OF WAGES

A. Builder must obtain from the Department of Industrial Relations the general prevailing rates of wages in the locality in which the Project is to be performed and it shall be mandatory upon Builder and upon any Subcontractor to pay not less than the specified rate to all workers employed in the execution of the Project. Builder shall cause a copy to be posted at the Site. Copies of the prevailing rates of wages shall also be on file at the District office, and will be available for review by any interested party upon request.

B. Builder shall forfeit as a penalty to the District not more than fifty dollars (\$50.00) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing rate for any work done by him, except as provided in Labor Code Section 1775 subdivision (b), or by any subcontractor under him, in violation of the provisions of the California Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by Builder.

Section 14. EMPLOYMENT OF APPRENTICES

A. Builder's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code concerning employment of apprentices by Builder or any Subcontractor.

B. Section 1777.5 of the Labor Code, as amended, requires Builder or Subcontractor employing workers, in any apprenticeable craft or trade, to apply to the Joint Apprenticeship Committee nearest the Project, and which administers the apprenticeship program in that trade for a certificate of approval. The certificate will also fix the ratio of apprentice hours to journeyman hours that will be used in the performance of the work required for the Project. The hourly ratio of apprentices to journeymen in such cases shall not be less than one to five except the Joint Apprenticeship Committee may exempt Builder from the one to five requirement if it finds: (1) unemployment for the previous three-month period in the area of coverage by the Joint Apprenticeship Committee has exceeded an average of fifteen percent (15%); or (2) the number of apprentices in training in the area exceeds a ratio of one to five; or (3) there is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth ( $1/30^{\text{th}}$ ) of its journeymen annually through apprenticeship training either statewide or locally; or (4) assignment of an apprentice to any work performed on the Project would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such nature that the training cannot be provided by a journeyman.

C. Builder is required to make contributions to funds established for the administration of the apprenticeship programs if it employs registered apprentices or journeymen in any apprenticeable trade or on such contract and if other contractors on the Site are making such contributions.

D. Builder or any Subcontractor under him shall comply with the requirements of Labor Code Sections 1777.5 and 1777.6 in the employment of apprentices.

E. Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the Director of Industrial Relations, Ex Officio the Administrator of Apprenticeship, San Francisco, California or through the Division of Apprenticeship Standards at its branch offices.

Section 15. HOURS OF WORK

A. Eight (8) hours of work shall constitute a legal day's work. Builder shall forfeit, as penalty to the District twenty-five dollars (\$25.00) for each worker employed in the execution of work on the Project by Builder or any subcontractor under him for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any calendar week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, except that work performed by employees of the Builder and his subcontractors in excess of eight hours per day at