

2/24/07

**LEASE AND SUBLEASE AGREEMENT
BETWEEN LATON UNIFIED SCHOOL DISTRICT
AND DURHAM CONSTRUCTION COMPANY, INC.**

PREAMBLE

This Lease and Sublease Agreement ("Lease" or "Agreement") is entered into as of March 1st, 2007, by and between the **LATON UNIFIED SCHOOL DISTRICT**, a California public school district ("District") and **DURHAM CONSTRUCTION COMPANY, INC.**, a California corporation and contractor licensed by the State of California ("Durham").

RECITALS

A. The District owns and operates the property located at 6449 DeWoody Avenue, Laton, California, that is the proposed site of a Laton High School modernization project for the District. This site shall be referred to herein as the "Site" and is more fully described or depicted in the attached Exhibit "A."

B. The District has qualified for funding from the State of California (State Allocation Board) in order to undertake the modernization of the Site.

C. California Education Code section 17406 permits the Governing Board of the District, without advertising for bids, to lease to any person, firm, or corporation, any real property owned by the District if the instrument by which such property is leased requires the lessee during the term of the lease to construct on the leased premises, or provide for the construction thereon, improvements for the use of the District, and provides that title to those improvements and the Site shall vest in the District at the expiration of the lease.

D. Durham desires to modernize the existing Laton High School for the District at the Site in accordance with the District's plans and specifications ("Project"), with the title to the Project and Site vesting in the District.

E. The District and Durham desire to enter into a site lease under which the District will lease to Durham the Site in order for Durham to construct improvements to the Site as described in the Scope of Project set forth in Exhibit "B" to this Agreement which is incorporated herein by this reference.

F. Durham will lease the Site and the Project back to the District pursuant to a facility sublease provided for in this Agreement (the "Sublease"), under which the District will make lease payments to Durham for the use of the Project.

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

AGREEMENT

ARTICLE I

GENERAL CONDITIONS/SITE LEASE

Section 1.1 Purposes of the Lease. The District hereby leases the Site to Durham and Durham hereby leases the Site from the District. The purpose of this Lease is for Durham to have necessary access to and use of the Site for the purpose of construction of the Project and related improvements on the Site during the term of this Lease.

Section 1.2 Term. The term of this Lease begins on January 1, 2007 and ends when construction of the Project is completed and accepted by the District, which is estimated to be on or around November 30, 2007. Acceptance of the Project by the District shall be by the terms defined in Section 3.4 of this Lease.

Section 1.3 Improvements Vest in District. Durham agrees that all right, title and interest to any improvements, repairs, additions, alterations, or fixtures, including trade fixtures, made to the Site, inclusive of the Project, shall run with the land, regardless of where located on the Site, and will become the property of and be owned and retained by the District upon Acceptance by the District, consistent with the terms to be set forth in Section 3.4 of this Lease.

Section 1.4 Consideration. The Lease payment to be paid by Durham to the District as adequate consideration for lease of the Site shall be one dollar (\$1.00) per year, for the duration of the lease term. Durham shall tender the first payment to the District within thirty (30) calendar days of the Effective Date.

Section 1.5 Permitted Use. Durham shall use the Site during the Lease term only as necessary for the construction of the Project and related improvement to the Site. Durham warrants that it will not engage in any unlawful activities on the Site and that Durham will not engage in activities on the Site not authorized by the District.

Section 1.6 Encumbrances. Durham warrants that at all times during this Lease, the Site and Project shall remain free and clear of all liens (including mechanic's liens), mortgages, deeds of trust, easements and all other encumbrances, other than liens existing at the time the Project starts, unless the District gives Durham prior written permission to place, or allow to be placed, any liens, mortgages, deeds of trust, easements or other encumbrances on the Site.

Section 1.7 Termination by Acceptance of Project. Upon Acceptance of the Project by the District pursuant to Section 3.4 of this Lease, this Lease automatically terminates.

Section 1.8 Project Cost. The total cost of construction provided by Durham for the Project is \$2,221,882.00 (Two Million Two Hundred Twenty-One Thousand Eight Hundred Eighty-Two Dollars and No Cents ("Construction Cost")). Payments made by the District to Durham under the Sublease pursuant to Section 12.3 shall be credited towards said Construction Cost. The District shall pay the balance of said Construction Cost to Durham upon completion of any punch list items, and final Acceptance of the Project. The District may adjust these payment figures to account for any agreed-upon changes in the cost of the Project.

Section 1.9 Complete Agreement. The complete Agreement includes the Contract Documents as defined in the General Conditions, including Exhibits G and H, all of which are incorporated by reference into this Agreement.

ARTICLE II SCOPE OF PROJECT

Section 2.1 Work Scope of Project. The scope of work for the Project is defined by the plans, drawings, and specifications approved by the District and the Division of State Architect. The scope of the Project includes all necessary construction, equipment installation, and on-site improvements, in accordance with the plans, drawings, and specifications referred to in Exhibit "C". Durham shall install and construct the Project in accordance with the plans and specifications and amendments, subject to any additional DSA approval as may be required, from Temple Anderson Moore Architects.

Section 2.2 Construction Meetings. If requested by the District, Durham shall conduct construction progress meetings with District representatives and other interested parties on a schedule to be agreed upon by the parties to discuss such matters as procedures, progress, concerns and scheduling. To the extent requested by the District, Durham shall provide written progress reports to the District. Durham shall promptly inform the District of all anticipated delays in the construction, installation, or improvement of the Project.

Section 2.3 Permit Obligations. Durham shall obtain and pay for all permits and licenses required for the Project. The District shall reimburse Durham for the actual costs of such permits and licenses.

Section 2.4 Protection. Durham shall establish procedures, and be responsible for the protection of all existing structures, equipment, utilities, and other existing improvements, both on-site and off-site. Durham assumes all risk of loss of vandalism, theft of property or other property damage which occurs at Site at which Durham is undertaking construction of the Project, from causes due to negligence or misconduct by Durham, its officers, employees, subcontractors, licensees, and invitees. Durham 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.

Section 2.5 Nuisance Abatement. Durham shall develop a mutually agreed upon program with the District to abate and minimize noise, dust and disruption to normal activities in the area surrounding the Site, including procedures to control on-site noise, dust and pollution during construction. Durham shall solely be responsible for the costs of developing and implementing said program.

Section 2.6 Utilities. The District has furnished and will pay for gas, electricity, water, and sewer service utilities needed for the Project. Durham shall pay actual costs for its temporary use of telephone service and trash collection during construction of the Project.

Section 2.7 Warranties. Durham warrants that material and equipment furnished under the Lease will be of good quality and new unless otherwise required or permitted by the District, that its work will be free from defects not inherent in the quality required or permitted, and that its

work will conform to the requirements of this Lease. Work not conforming to these requirements, including substitutions not properly approved and authorized by the District, may be considered defective.

If, within one (1) year after the filing of the Notice of Completion, any part of the Project is found to be not in accordance with the requirements of this Lease, then Durham shall correct it promptly after receipt of written notice from the District to do so, unless the District has previously given Durham a written acceptance of such condition. This obligation for correction of work shall survive acceptance of the Project under the Lease and termination of the Lease. The District shall give Durham notice of any condition requiring correction promptly after discovery of the condition.

Section 2.8 Taxes. Durham shall pay all sales, consumer, use and similar taxes that were legally enacted at the time its Project proposal was first submitted to the District imposed in connection with construction and installation of the Project.

ARTICLE III COMPLETION AND ACCEPTANCE OF IMPROVEMENTS

Section 3.1 Time and Date of Completion. The District will give Durham a written Notice to Proceed with the Project and Durham shall proceed with the construction of the Project with reasonable diligence. Durham agrees that the Project will be completed within 270 calendar days. For each calendar day or portion thereof where construction is impractical or inefficient due to unusually severe weather or other site conditions, or conditions not the fault or responsibility of Durham or its subcontractors, Durham shall be entitled to an extension of one (1) calendar day to complete the Project. Claims for additional time under this Section 3.1 must be documented by data substantiating that the unusually severe weather or other claimed conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the critical path of the scheduled construction.

Section 3.2 Completion. Durham shall notify the District when Durham believes that the Project is completed.

Section 3.3 Inspection and Notice of Completion. Within ten (10) days of receipt of notice from Durham that Durham believes that the Project is completed, the District shall inspect the Project with Durham to confirm the Project is complete. The District shall notify Durham within five (5) days of the inspection as to whether the District concurs that the Project is complete. If the District concurs, then the District shall issue a Notice of Completion which shall establish the Date of Completion of the Project or shall include a list of items to be completed or corrected, (referred to as the "Punch-List") and shall fix the time within which Durham shall complete items listed therein. Disputes between the District and Durham regarding the Certificate of Completion shall be resolved in accordance with the alternative dispute resolution process provided in Section 13.6 of this Lease. Notwithstanding the terms of this Section, the District shall further have the right to have its employees or agents inspect the Project at any time during construction, upon reasonable notice to Durham.

Section 3.4 Acceptance. Final acceptance of the Project by the District ("Acceptance") shall occur upon the District's notification in writing to Durham that there are no outstanding

Punch-List items. Such Acceptance shall terminate this Lease, with title to the Project vesting in the District pursuant to Section 1.3.

Section 3.5 Liquidated Damages. If the Project is not completed within 270 days from the Notice to Proceed, it is understood and agreed that the District will suffer damage. It being impractical and infeasible to determine the amount of actual damage, it is agreed that Durham shall pay to the District as fixed and liquidated damages, and not as a penalty, the sum of \$1,000 for each calendar day of delay after such time period until Project completion and Acceptance by the District. Durham shall be liable for the amount thereof. Any money due or to become due to Durham may be retained to cover said liquidated damages. Should such money not be sufficient to cover said liquidated damages, then the District shall have the right to recover the balance from Durham, who shall pay said balance forthwith.

ARTICLE IV EMPLOYMENT RESTRICTIONS

Section 4.1 Debarment of Contractors and Subcontractors. Durham may select its own subcontractors, subject to District approval. Durham, or any subcontractor, may not perform work on the Project with a subcontractor who is ineligible to perform work on a public project pursuant to Section 1777.1 or Section 1777.7 of the California Labor Code. Any contract on the Project entered into between Durham and a debarred contractor or subcontractor is void as a matter of law. A debarred contractor or subcontractor may not receive any compensation for performing work as a contractor or subcontractor on the Project.

Section 4.2 Hours of Work

Section 4.2.1 Eight (8) hours of work shall constitute a legal day's work. Durham shall forfeit, as penalty to the District, twenty-five dollars (\$25) for each worker employed in the execution of work on the Project by Durham or any subcontractor under Durham 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, Sections 1810 through 1815 regarding restrictions on number of hours per day and per week for employees of Durham on the Project permitted under California Law ("Workday Laws"). Durham shall not exceed those requirements except that work performed by employees of Durham and its subcontractors in excess of eight hours per day is permitted at not less than one and one-half times the basic rate of pay, as provided in Labor Code section 1815.

Section 4.2.2 Generally, construction work on the Project shall be accomplished on a regular schedule, eight (8) hour per day work shift basis, Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m., however, nothing herein shall prevent Durham from working weekends and after hours in order to complete the Project so long as not otherwise prohibited by law or local ordinance or regulations.

Section 4.2.3 Hold Harmless. As a further material part of this Lease, Durham agrees to hold harmless and indemnify the District, its Board and each member of the Board, its officers, employees and agents from any and all claims, liability, loss, costs, damages, expenses, fines and penalties, of whatever kind or nature, including all costs of defense and attorneys' fees, arising from any failure of Durham or its subcontractors to comply with the Workday Laws of the State of

California. If the District or any of the indemnified parties are named as a party in any dispute arising from the failure of Durham or its subcontractors to comply with Workday Laws, Durham shall defend such parties and shall have the right to obtain counsel of its choice, subject to the approval of the District, which approval shall not be unreasonably withheld.

Section 4.3 Equal Opportunity. Durham herein agrees not to discriminate in recruiting, hiring, promotion, demotion or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age or physical handicap in the performance of this Lease and to comply with the provisions of the following laws:

- (a) California Fair Employment and Housing Act (Gov. Code 12900 et seq., prohibiting discrimination in employment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, or age and prohibiting harassment of an employee or applicant because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, sexual orientation or age.);
- (b) Federal Civil Rights Act of 1964 (42 USC § 2000 et seq., prohibiting discrimination in employment on the basis of race, color, national origin, religion, or sex); Title I of the Americans with Disabilities Act of 1990 (42 USC § 12101 et seq., prohibiting discrimination against qualified individuals with a disability in hiring and employment practices.);
- (c) The Age Discrimination in Employment Act (29 USC § 621 et seq., prohibiting age discrimination in employment against individuals who are at least forty years of age); and
- (d) Any other laws or regulations prohibiting discrimination as may be applicable to Durham.

Section 4.4 Prevailing Wages. Pursuant to the provisions of Section 1770 et seq. of the Labor Code of the State of California, which are hereby incorporated by reference and made a part hereof, the Director of the Department of Industrial Relations has determined the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the work is to be performed, for each craft, classification or type of worker needed to execute this Contract. Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, apprenticeship or other training programs, and similar purposes. Copies of the rates are on file at the District office. The rate of prevailing wage for any craft, classification or type of workmanship to be employed on this Project is the rate established by the applicable collective bargaining agreement which rate so provided is hereby adopted by reference and shall be effective for the life of this Agreement or until the Director of the Department of Industrial Relations determines that another rate be adopted. It shall be mandatory upon Durham and on any subcontractor to pay not less than the said specified rates to all workers employed in the execution of this Agreement.

Pursuant to Labor Code section 1775, Durham and any subcontractor under Durham, as a penalty to the District, shall forfeit not more than Fifty Dollars (\$50.00) for each calendar day

or portion thereof for each worker paid less than the stipulated prevailing rates for such work or craft in which such worker is employed. The difference between such stipulated prevailing wage rates 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 the contractor.

Pursuant to Labor Code section 1776, Durham and each subcontractor shall keep or cause to be kept an accurate record for work on this Project showing the names, addresses, social security numbers, work classification, straight time and overtime hours worked and occupations of all laborers, workers and mechanics employed by them in connection with the performance of this Agreement or any subcontract thereunder, and showing also the actual per diem wage paid to each of such workers, which records shall be open at all reasonable hours to inspection by the District, its officers and agents and to the representatives of the Division of Labor Law Enforcement of the State Department of Industrial Relations.

Section 4.5 Labor Compliance Program. Durham acknowledges that construction beginning on or after April 1, 2003, shall comply with the laws and regulations governing Labor Code section 1771.7, which requires the District to implement a labor compliance plan and requires Durham and any subcontractors to comply with the District's labor compliance plan. The District reserves the right to implement any plans, procedures, rules, and the like, to comply with the requirements of Labor Code section 1771.7, including, but not limited to, the implementation of a labor compliance program. Durham agrees to comply with any such plans, procedures, rules, and the like that are implemented by the District at no additional cost to the District.

The District's labor compliance plan shall include, but is not limited to, provisions requiring compliance with the prevailing rates of wages set forth in Section 4.4 of this Agreement, compliance with legal hours of work as set forth in Section 4.2 of this Agreement, employment of apprentices as set forth in Labor Code Section 1777.5, and maintenance and inspection of payroll records as set forth in Section 4.4 of this Agreement. In addition, the District's labor compliance program may require on-site interviews of workers to ensure that prevailing wages are being paid. Failure to comply with these provisions shall result in the withholding of Payments by the District. Durham expressly acknowledges these provisions and agrees to comply with these provisions and any provisions implemented by the District in furtherance of the laws and regulations governing Labor Code section 1771.1.

Durham shall include Section 4.5 of this Agreement in all subcontracts and require subcontractors to comply with these provisions at no extra cost to the District.

Section 4.6 Disabled Veterans Participation Goals and Records Retention. Compliance with Disabled Veteran Business Enterprise (DVBE) contracting goals is required under this Lease Leaseback Agreement. In accordance with Education Code section 17076.11, the District has a DVBE participation goal of 3% per year of the overall dollar amount of state funds allocated to the District pursuant to the Leroy F. Greene School Facilities Act of 1998, and expended each year by the District. The District is seeking DVBE participation under this Lease Leaseback Agreement.

Builder must make a good faith effort to contact and utilize DVBE contractors and suppliers in securing bids for performance of the Project. Information regarding certified DVBE firms can be obtained from the Office of Small Business Certification and Resources (OSBCR) at

(916) 323-5478 or (916)322-5060 as well as the OSBCR website at www.dgs.ca.gov/osbcr. Verification of DVBE status must be obtained from the OSBCR by receiving an approved certification letter and reference number from that office. Durham is encouraged to retain documentation of its good faith efforts in the event such documentation is requested by the District. Good faith efforts are demonstrated by evidence of the following:

- (a) contact was made with the District regarding the identification of DVBEs;
- (b) contact was made with other state agencies and with local DVBE organizations to identify DVBEs;
- (c) advertising was published in trade papers and papers focusing on DVBEs;
- (d) invitations to bid were submitted to potential DVBE contractors; and
- (e) available DVBEs were considered.

Durham shall certify, under penalty of perjury, that a good faith effort was made to include DVBE contractors and suppliers in the Project.

ARTICLE V SITE CONDITIONS AND USE DURING CONSTRUCTION

Section 5.1 Protection of Persons and Property

Section 5.1.1 Conduct. Durham shall at all times enforce orderly and disciplined conduct among those performing work on the Project and shall not employ on the Project any person not skilled in the task assigned to him/her.

Section 5.1.2 Compliance with Safety Standards. Durham, in performing the work on the Project, shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss. Durham shall erect and maintain, as required by existing conditions and progress of the Project, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, and shall promulgate safety regulations. Durham shall designate a responsible member of its organization employed at the Site whose duties shall include the prevention of accidents.

Section 5.1.3 Fingerprinting. By execution of this Agreement, Durham acknowledges that Durham, its employees, and subcontractors are required to comply with the fingerprinting requirements as set forth in Education Code Section 45125.1. These requirements are shown in the attached Exhibit "D."

Section 5.2 Emergencies. In any emergency affecting the safety of persons or property on the Site, Durham shall act at its discretion to prevent threatened damage, injury, or loss.

Section 5.3 Inspection of Project

Section 5.3.1 District Inspections. The District and its representatives shall at all times have access to the Project whether it is in preparation or progress, and Durham shall provide for such access and for inspection.

Section 5.3.2 Special Inspections. If the specifications, the District's timely instructions, or any public authority shall require the Site or Project to be specially tested or approved, Durham shall give the District forty-eight (48) hours notice of its readiness for such inspection and, if the inspection is to be performed by a party other than the District, of the date fixed for such inspection. Inspections by the District shall be promptly made. If any work required to be inspected by the specifications, by the District's timely instruction, or by a public authority should be covered up before its inspection and without the approval or consent of the District, then it must, if required by the District, be uncovered for examination at Durham's expense.

The District may order re-examination of questioned work, and if so ordered, then Durham shall uncover such work. If such work is found to be in accordance with the specifications, then the District shall pay the cost of re-examination and replacement. If such work is found not to be in accordance with the specifications, then Durham shall make the work comply with the specifications of the Project at Durham's cost, including all costs of re-examination and replacement.

Section 5.4 Supervision. Durham shall maintain at the Site a competent project superintendent and necessary assistants during the construction of the Project. The project superintendent shall represent Durham and all directions given to the project superintendent shall be deemed to have been given to Durham. Durham shall give efficient supervision to the Project, using its skill and attention. It shall be Durham's responsibility to perform the work described in the Project's plans, drawings and specifications in substantial compliance therewith. Any proposed changes, including proposed minor and insignificant changes to the extent possible, are subject to advance approval by the District. For purposes of this Section, the term "minor and insignificant" shall mean changes that result in no change in quality, aesthetics or integrity of the original specifications of the Project.

Section 5.5 Cleaning Up. Durham shall at all times keep the Site free from accumulations of waste material or rubbish caused by the performance of the construction of the Project. At the completion of the construction and prior to the District Acceptance, Durham shall remove from the Site all such waste material and rubbish and all tools, scaffolding and surplus material belonging to Durham and/or subcontractors, laborers or materialmen, it being specifically understood that at the close of construction and prior to turning over the Site to the District for beneficial use and occupancy, Durham shall leave the Site "broom clean," or its equivalent.

Section 5.6 Site Representations. District warrants and represents that the District has, and will continue to retain at all times during the course of construction, legal title to the Site and that said land has appropriate and applicable approvals so as to permit the construction of the Project and use of said Site. District further warrants and represents that title to said land is free of any easements, conditions, limitation, special permits, variances, agreements or restrictions which would prevent, limit, or otherwise restrict the construction or use of the Project. District has provided or will provide information on the Site to Durham and represents that to the best of District's knowledge the Site is in such a condition so as to permit Durham to begin work on the Project without need of additional inspections, surveys, or investigations unless such inspections, surveys or investigations are otherwise specifically required of Durham elsewhere within these contract documents. However, such information and representations shall not relieve Durham of its responsibility, and the interpretation of such data regarding the Site, as disclosed by any borings or other preliminary investigations, is not warranted or guaranteed, either expressly or implicitly, by

the District. Durham shall be responsible for having ascertained pertinent local conditions such as location, accessibility, and general character of the Site, and for having made such surveys and investigations, at the Site or where the Project is to be performed, as are required of it by this Lease. The failure or omission of Durham to review any such information or data pertaining to the Site, which information or data has been provided to Durham by the District, or was otherwise required of Durham by this Lease, or to acquaint itself with conditions there existing shall in no way relieve Durham from any obligation with respect to its obligations under this Lease.

Section 5.7 Hazardous Waste and Unknown Physical Conditions Durham shall promptly, and before the following conditions are disturbed, notify the District in writing, of any:

- (a) Material that Durham believes may be hazardous waste, as defined in Section 25117 of the Health and Safety Code, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
- (b) Subsurface or latent physical conditions at the Site differing from those indicated by the District to Durham, or otherwise discovered by Durham under Section 5.6, including geological, soils, and/or water table issues which impede construction or increase construction costs.
- (c) Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Lease.

The District has advised Durham that it is aware of the presence of asbestos and lead-containing material in, on, or about the Site. See paragraph 6.4 below. If asbestos-related work or hazardous substance removal is discovered which is not disclosed in this Lease, such work shall be performed pursuant to a contract separate from any other work to be performed as required by Section 25914.2 of the Health and Safety Code, as may from time to time be amended, and as further described in Article VI of this Lease.

Section 5.8 Submittals. Durham shall furnish to the District for its approval, all submittals as required in the Project's specifications. District will review and approve or deny such submittals within a reasonable time period so as not to cause delays on the Project.

Section 5.9 Compliance with DTSC Guidelines - Imported Soils. If the Project requires the use of imported soils, Durham shall be responsible to use and shall certify that the imported material it uses is free of any hazardous and/or toxic substance or material of any nature or type as defined in accordance with California Law.

ARTICLE VI ASBESTOS

Section 6.1 Durham shall execute and submit an "Asbestos-Free Materials Certification." Durham further is aware of the following:

Section 6.2 Should asbestos-containing material be installed or caused to be installed by

Durham in violation of this certification, decontaminations and removals will be performed in accordance with the requirements of all applicable laws and will meet the following criteria:

- (a) Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency ("EPA") for such work.
- (b) The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos.
- (c) The asbestos removal contractor shall be chosen by Durham and approved in writing by the District.
- (d) The Project will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.

If removal of asbestos-containing materials is part of the required work on Site, then the cost of all asbestos removal, including, but not necessarily limited to the cost of the asbestos removal contractor, the cost of the asbestos consultant, analytical and laboratory fees, time delays and additional costs that may be incurred by the District, shall be borne entirely by Durham. Specifically excluded from this paragraph are any costs associated with "other asbestos-related work" as defined in the last paragraph of Section 5.7. See further Section 6.4, below.

Section 6.3 Bid Proposal. Durham construction's bid proposal dated November 2, 2006 description of work, exclusions and terms are attached to and made part of this agreement.

Section 6.4 District Representations. Pursuant to Section 5.7 above, the District represents that it is aware of the existence of asbestos and lead on the Site. The District may contract with a third party for the remediation/removal of the asbestos and lead. If asbestos is discovered on the Site as a preexisting condition, then the cost of all such asbestos removal, including but not necessarily limited to the cost of the asbestos removal contractor, the cost of the asbestos consultant, analytical and laboratory fees, time delays and additional costs that may be incurred, shall be borne entirely by the District.

Section 6.5 Hold Harmless. Except as to the asbestos-containing material disclosed by section 5.7 above, any removal of asbestos that is a preexisting condition on the Site shall be executed by the District at the District's risk and discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos-containing products. By execution of this Lease, the District acknowledges the above and agrees to the fullest extent permitted by law to hold harmless Durham, its officers, employees, agents, and representatives for all asbestos liability that may be associated with any preexisting condition on the Site.

ARTICLE VII LIABILITY

Section 7.1 Indemnification/Hold Harmless. The District shall defend and indemnify Durham and its officers, employees and agents from Liability Claims which are caused by the sole negligence or willful misconduct of the District or its agents or employees and from those Liability Claims which are directly caused by the act, error, omission or negligence of the District or its agents or employees.

The District shall not be liable for, and Durham agrees to hold harmless, defend, and to indemnify the District from every claim or demand which may be made by reason of:

- (a) Any injury to person or property sustained by Durham or by any person, firm, or corporation, employed directly or indirectly by it upon or in connection with its work, however, caused; and
- (b) Any injury to person or property sustained by any person, firm, or corporation, caused by any act, neglect, default, or omission of Durham, or any person, firm, or corporation directly or indirectly employed by it upon or in connection with its work, whether the said injury or damage occurs upon or adjacent to the work; Durham at his own cost, expense, and risk, shall defend any and all actions, suits, or other legal proceedings, that may be brought or instituted against Durham on any such claim or demand, and shall pay or satisfy the judgment that may be rendered against the District in any such action, suit, or legal proceedings or result thereof.

The District and Durham shall mutually indemnify, defend, and hold the other harmless from all claims, demands, liability, judgments, awards, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs, related to the legality of, or making or entering into, this Lease.

Section 7.2 Removal of Liens. If any liens or claims are filed against the Site, Durham shall remove or bond around the liens and claims at Durham's own expense. If Durham fails to remove or bond around the liens or claims and any judgment is entered thereon or thereunder, Durham shall pay the judgment. Should Durham fail, neglect, or refuse to remove or bond around any lien or claim by the date of the completion of the Project, the District may, at its sole election, pay any amount required to release any such liens or claims, or to defend any action brought on the liens or claims, in which event Durham shall be liable to the District for all costs, damages, reasonable attorney's fees, and any amounts expended in defending any proceedings or in the payment of any of said liens or claims or any judgment obtained therefore. Durham shall be relieved from any obligations in this paragraph if the liens or claims mentioned in this paragraph were asserted as a result of the District's wrongful failure to timely pay Durham monies owed.

Section 7.3 Attorney's Fees. In the event of a claim or action, including, but not limited to, eviction or litigation as a result of breach or default under this Lease or to interpret this Lease, or if Durham or the District otherwise use an attorney to secure compliance with these provisions, to recover damages, or to terminate this Lease, the prevailing party shall be entitled to reimbursement, upon demand, for all documented, reasonable attorneys' fees, costs and expenses incurred in successfully pursuing or defending the matter.

ARTICLE VIII
INSURANCE

Section 8.1 Insurance Coverage Required of Durham. Before the commencement of the Lease and during the term of the Lease and the one-year warranty period, Durham shall obtain and maintain, at its expense, in companies reasonably acceptable to the District, the following insurance policies:

- (a) commercial general liability insurance for bodily injury, personal injury and property damage, and including products, completed operations, and non-owned and hired automobile coverage, with liability limits of not less than One Million Dollars (\$1,000,000) combined single limit. The policy shall provide coverage for broad form property damages. If the policy contains a General Aggregate, then the liability limits must be not less than One Million Dollars;
- (b) automobile liability insurance for bodily injury, personal injury, and property damages for vehicles owned, non-owned, or hired, with policy limits of not less than \$1,000,000 combined single limit;
- (c) builder's all-risk (ISO "Special Form") insurance for risk of loss to the Project and the Site. Coverage is to provide extended coverage and insurance against vandalism, theft, malicious mischief, perils of fire, sprinkler leakage, civil authority, sonic boom, earthquake, collapse, flood, wind, lightning, smoke, riot, debris removal (including demolition), and reasonable compensation for the District Architect's services and expenses required as a result of such insured loss upon the entire Project which is the subject of the Lease, including completed Project and work in progress to the full insurable value thereof. This insurance coverage need not cover more than five (5)% of the Project Cost for tidal waves or earthquakes in excess of 3.5 on the Richter Scale in magnitude. Such insurance shall include the District and its Architect as an additional named insured and any other person with an insurable interest designated by the District as an additional named insured.

Section 8.2 Insurance Provisions

- (a) The policies described in Section 8.1 above shall:
 - (i) name as additional insured, the District, its board of trustees, officers, and employees when acting in their capacity as such in conjunction with the performance or implementation of this Agreement;
 - (ii) state that such policy is primary and non-contributing with any insurance carried by the District, with respect to covered claims;
 - (iii) state that the naming of any additional insured shall not negate any right that additional insured would have had as a claimant under the policy if not so named; and

- (iv) state that not less than thirty (30) days written notice shall be given to the District before the cancellation, reduction, or non-renewal of coverage or amount of such policy.
- (b) A certificate issued by the carrier of the policies described in subsection 8.1 above shall be delivered to the District prior to Durham's, its employees, volunteers and independent contractor's entry onto the Site. Each such certificate shall set forth the limits, coverage and other provisions required under this Section. A renewal certificate for each of the policies described above shall be delivered to the District not less than thirty (30) days before the expiration of the term of the policy.
- (c) The policy described in Section 8.1 above may be made part of a blanket policy of insurance so long as such blanket policy contains all of the provisions required in this Section and does not reduce the coverage, impair the District's right under this Lease, or negate Durham's obligations under this Lease.
- (d) Durham shall furnish satisfactory proof by one or more certificates issued by insurance carriers satisfactory to the District that it has the foregoing insurance.

Section 8.3 Damages or Destruction. If, during the Lease term, the Project is totally or partially destroyed due to the fault of Durham or its subcontractors, from a risk not covered by the insurance described in section 8.1, rendering the Project totally or partially inaccessible or unusable, at its expense Durham shall restore the Project to substantially the same condition as it was in immediately before the damage or destruction. Such damage or destruction shall not terminate this Lease.

Section 8.4 Workers' Compensation Insurance and Employer's Liability Insurance. Before the commencement of Project, Durham shall provide a certificate of insurance and endorsements on forms reasonably acceptable to the District, for the period of the Lease, with full Workers' Compensation Insurance coverage for no less than the statutory limits, and employer's liability insurance coverage with limits not less than One Million Dollars (\$1,000,000) for all persons whom it employs or may employ in carrying out work under the Lease. This insurance shall be in strict accordance with the requirements of the most current and applicable State Workers' compensation insurance laws.

Section 8.5 Insurance Coverage Required of District. The District shall be responsible for purchasing and maintaining the District's usual liability insurance. Optionally, the District may purchase and maintain other insurance for self protection against claims that may arise from operations under the Lease. Durham shall not be responsible for purchasing and maintaining this optional District's liability insurance unless specifically required by the Lease.

IX
BONDING REQUIREMENT

Section 9.1 Payment Bond. Durham shall provide a separate "Payment (Labor and Material) Bond" ("Bond") from a Surety and in the form attached hereto before commencing construction on the Project. The Payment Bond shall be for One Hundred Percent (100%) of the actual projected cost of the Project as agreed to by the District, to guarantee the payment in full of all claims for labor performed and materials supplied for the Project. The Bond shall be in the form attached hereto as Exhibit "E," and shall be maintained by Durham in full force and effect until the Project is fully completed and accepted and until all claims for materials and labor are paid, and shall otherwise comply with California law.

Section 9.2 Bond Criteria. The Bond required by this section shall meet the following criteria:

- (a) The Bond shall be signed by Durham and the authorized agent of the Surety. All signatures must be notarized.
- (b) To the extent, if any, that the Project Cost is increased in accordance with the Lease, Durham shall cause the amount of the Payment Bond to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the District. To the extent available, the Payment Bond shall further provide that no change or alteration of the Lease (including, without limitation, an increase in the Project Cost, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to Durham will release the surety.
- (c) Should any Surety at any time not be a California admitted surety, notice will be given to the District to that effect, and no further payments shall be deemed due or shall be made under this Agreement until Durham shall obtain a new Surety that qualifies and is accepted by the District.
- (d) Changes in the Project, or extensions of time, made pursuant to the Lease shall in no way release Durham or Surety from its obligations. The Surety shall waive notice of such changes or extensions.

Section 9.3 Performance Bond. Durham shall provide a separate "Performance Bond" ("Bond") from a Surety and in the form attached hereto before commencing construction on the Project. The Performance Bond shall be for One Hundred Percent (100%) of the actual projected cost of the Project as agreed to by the District, to guarantee satisfactory completion of the contract. The Bond shall be in the form attached hereto as Exhibit "E", and shall be maintained by Durham in full force and effect as provided by the terms and conditions of the Bond.

Section 9.4 Bond Criteria. The Bond required by this section shall meet the following criteria:

- (a) The Bond shall be signed by Durham and the authorized agent of the Surety. All signatures must be notarized.
- (b) To the extent, if any, that the Project Cost is increased in accordance with the Lease, Durham shall cause the amount of the Performance Bond to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the District. To the extent available, the Performance Bond shall further provide that no change or alteration of the Lease (including, without limitation, an increase in the Project Cost, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to Durham will release the surety.
- (c) Should any Surety at any time not be a California admitted surety, notice will be given to the District to that effect, and no further payments shall be deemed due or shall be made under this Agreement until Durham shall obtain a new Surety that qualifies and is accepted by the District.
- (d) Changes in the Project, or extensions of time, made pursuant to the Lease shall in no way release Durham or Surety from its obligations. The Surety shall waive notice of such changes or extensions.

ARTICLE X
CHANGES IN PROJECT

Section 10.1 Change Orders. A Change Order is a written instrument prepared by Durham and signed by the District, stating their agreement upon all of the following:

- (a) an additive or deductive change order in the Project requested by the District or Durham;
- (b) an additive or deductive change order in the Project caused by an unforeseen condition;
- (c) an adjustment to the Project Cost;
- (d) an extension for time that adversely impacts the time for completion of the Project caused by change in the Project or any other delay which could extend the time for completion of the Project.

An additive or deductive change order requested by the District or Durham, or an additive or deductive change order caused by unforeseen conditions, shall include a component for change in compensation and a component for time extension to the extent a time extension to the completion date is needed. All other change orders shall be change orders extending time and shall not include any change in compensation.

If the District requests a proposal for a change in the Project from Durham and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Durham for any costs incurred for estimating services, design services or preparation of proposed revisions to the Lease.

Change order mark up: In case of a change order for compensation (as opposed to time extension only), the cost shall include overhead and profit determined per paragraph (a) below. In such case Durham shall provide an itemized accounting together with appropriate supporting data.

The Value of any such extra work, change, or deduction shall be determined at the discretion of the District in one or more of the following ways:

- (a) By acceptable lump sum proposal from Durham with itemization as required by the District.
- (b) By unit prices fixed by subsequent agreement between the District and Durham
- (c) By the cost of material and labor and a percentage for overhead and profit.

The following form shall be followed as applicable for additions and deductions to this Lease:

EXTRA/(CREDIT)

1. Material and equipment costs, including rental equipment (attach itemized quantify and net cost plus sales tax) _____
2. Labor (attach itemized hours and base rates from identified prevailing wage schedules) _____
3. Additional costs of supervision and field office personnel directly attributable to the change; and fees paid to professionals. Durham shall provide an hourly rate schedule which shall apply to this Agreement based upon rates in effect as of the effective date of this Lease _____
4. General Liability and Builder's Risk Insurance, Workers' Compensation Insurance, Social Security, Pension and Unemployment Taxes at actual and verified cost. _____
5. Subtotal _____
6. Subcontractor's overhead and profit not to exceed 10% of item (5) _____
7. Subtotal _____
8. Durham's Overhead and Profit, including extended home office overhead, not to exceed 10% of item (7) _____
9. Subtotal _____
10. Payment Bond Premium, not to exceed 1% of Item (9) _____
11. Total
The total amount shall be added to or deducted from the Project Cost (if approved). _____

Section 10.2 Minor Changes in the Project. Any minor changes in the Project that do not increase the Cost of the Project, and do not extend the completion date, if approved by the District,

may be made without a change order.

Section 10.3 Regulatory Changes. To the extent it applies to a public project, Durham shall be compensated for changes in the construction necessitated by the enactment or revision of codes, laws or regulations during the term of this Lease.

ARTICLE XI CORRECTION IN PROJECT

Section 11.1 Durham shall promptly correct any work on the Project rejected by the District or known by Durham to be defective or failing to conform to the requirements of the Lease, whether observed before or after completion of the Project (so long as during the warranty period for warranty items or the statutory period of limitations for latent defects for latent defects and whether or not fabricated, installed or completed. Durham shall bear all costs of correcting such rejected work, including additional testing and inspections necessitated by such correction.

If Durham fails to correct nonconforming work as required, or fails to carry out the work in accordance with the Lease, the District, by written order signed personally or by an agent specifically so empowered by the District in writing, may order Durham to stop work on the Project, or any portion thereof, until the cause for such order has been eliminated; however, the District's right to stop the Project shall not give rise to a duty on the part of the District to exercise the right for benefit of Durham or other persons or entities.

If Durham defaults or neglects to carry out the Project in accordance with the Lease and fails within fourteen (14) days after receipt of written notice from the District to commence and continue correction of such default or neglect with diligence and promptness, the District may give a second written notice to Durham and, fourteen (14) days following receipt by Durham of that second written notice and without prejudice to other remedies the District may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due Durham, the costs to correct such deficiencies, which will reduce the Project Cost. If the payments then or thereafter due Durham are not sufficient to cover the amount of the deduction, Durham shall pay the difference to the District. Such action by the District shall be subject to dispute resolution procedures as provided in Article XIII.

Should an arbitrator determine that District wrongfully invoked its remedies under this paragraph, to the detriment of Durham, Durham shall be entitled to recover from the District all damages incurred thereby, if Durham has complied with the provisions of Section 13.6 of this Lease.

ARTICLE XII FACILITIES SUBLEASE

Section 12.1 Purpose of the Sublease. Durham hereby subleases the Site to the District and District hereby leases the Site from the Durham ("Sublease"). The purpose of this Sublease is for the District to have necessary access to and use of the Site on and after such times as it will not impede the construction of the Project, and before the termination of the Lease.

Section 12.2 Term. The term of this Sublease coincides with the term of the Lease, as

provided in Section 1.2 of this Agreement.

Section 12.3 Consideration. The Sublease payment to be paid by District to Durham as adequate consideration for sublease of the Site shall be \$2,221,882.00, to be paid in monthly installments in accordance with Exhibit "F." Said sums shall be deducted from any payments to be made by the District to Durham under Section 1.8 of this Agreement

ARTICLE XIII MISCELLANEOUS PROVISIONS

Section 13.1 Access. Durham shall permit the District and its agents to enter into and upon the Site and the Project at all reasonable times for purposes set forth in this Lease. Upon entering, the District shall not unduly disturb, or unreasonably interfere with progress on, Durham's work on the Project and related improvement to the Site.

Section 13.2 Assignment. Durham shall not assign, sublet any of its obligations, rights, or duties under this lease (save and except for subcontracts entered into by Durham with its District-approved subcontractors for the purpose of performing the terms of this Lease), nor sublet the leased Site or any part thereof, without the prior written consent of the District, which will not be unreasonably withheld.

Section 13.3 Binding Effect. The agreements, conditions, and provisions contained in this Lease shall, subject to provisions for assignment in paragraph 13.2, apply to and bind the heirs, executors, administrators, successors and assigns of the parties to it.

Section 13.4 Termination of the Lease. This Lease may be terminated for a material breach of any provision of this Lease and by the individual parties as set forth below in this section.

Section 13.4.1 Termination by District. District may terminate this Lease only with written 15 day notice, pursuant to section 11.1, if (1) Durham materially breaches a provision of this Lease and fails to cure such breach after receipt of proper notice;) (2) refuses or fails to supply enough properly skilled workers or proper materials; (3) fails to make payment to Subcontractors for materials or labor in accordance with Business and Professions Code section 10262; or (4) disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction. Durham shall have fifteen (15) days after the District provides written notice to cure any breach enumerated in this section. If the required cure of the noticed breach cannot be completed within fifteen (15) days, Durham shall be in breach of this agreement unless Durham undertakes to cure the breach within fifteen (15) days of receiving notice and diligently and continuously attempts to complete the cure of the breach as soon as reasonably possible. In the event that the District elects to complete the Project at its own cost following proper termination pursuant to this section, Durham shall promptly make all plans and information concerning the Project and Site available to the District.

Section 13.4.2 Termination by Durham. Durham may terminate this Lease if the District materially breaches a provision of the Lease. If the above-listed reason exists, Durham may, upon written notice of seven (7) additional days to the District, terminate the Lease and recover from the District payment for portions of the Project executed and for reasonable costs verified by the Architect with respect to materials, equipment, tools, construction equipment, and machinery,

including reasonable overhead, profit, and damages.

Section 13.4.3 Time Extension for Unknown Conditions. Durham construction will be entitled to a proper time extension for all change order and unknown conditions encountered throughout the project.

Section 13.4.4 Termination Due to Discovery of Unknown or Changed Conditions. The District reserves the right to terminate this Lease should the District determine not to proceed because of the discovery of any adverse unknown or changed condition of the Site or related to the Project. Durham shall receive payment for all portions of the Project performed to the date of termination.

Section 13.4.5 Mutual Termination For Convenience. Durham and the District may mutually agree in writing to terminate this Lease for convenience. Durham shall receive payment for all portions of the Project performed to the date of termination.

Section 13.5 Force Majeure. If any prevention, delay, or stoppage caused by strikes; lockouts; labor disputes; acts of God; inability to obtain services, labor, or government actions; civil commotions; fire or other casualty; or other causes beyond the reasonable control of a party obligated to perform makes it impossible to perform any portion of this Lease, then that party is excused from performance for a period equal to the period of that prevention, delay or stoppage.

Section 13.6 Resolution of Lease Claims. Any claims arising under this Lease may be resolved through binding arbitration at the parties' agreement in the following manner:

- (a) The dispute review process set forth in this section shall be administered by a neutral mediator/arbitrator or organization engaged in the business of mediation/arbitration, utilizing the American Arbitration Association ("AAA") Construction Industry Arbitration rules in effect at the time of filing (hereinafter called "Administrator"). If the parties are unable to agree on a neutral mediator/arbitrator or organization engaged in the business of mediation/arbitration, AAA shall serve as the Administrator.
- (b) If a dispute arises out of, or relates to this Lease or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the parties agree first to endeavor to settle the dispute using mediation.
- (c) The costs for all mediation, including mediator compensation, and Administrator fees, if any, will be shared equally by both parties. Both parties shall jointly negotiate fees directly with the Administrator, if any. If both parties agree, then the mediation costs may increase as required for resolution of the dispute. Party producing witnesses shall pay the expenses of such witnesses.
- (d) A single mediator, acceptable to both parties, shall be used to mediate the dispute. The mediator will be knowledgeable in construction and will be selected jointly by the parties from names proposed by each, or from lists furnished by an Administrator if an Administrator is utilized. The initial mediation session shall commence within thirty (30) calendar days of filing,

unless otherwise agreed by the parties, or at the direction of the mediator. The parties acknowledge that timing of the Project is of the essence, and that if the deadlines for mediation set forth herein would delay completion of the Project, said deadlines will be expedited to the greatest extent feasible.

- (e) Mediation hearings will be conducted in an informal manner and discovery will not be allowed unless agreed by both parties. All discussions, statements, or admissions will be confidential to the proceedings and will not be used for any other purpose as it relates to the parties' legal positions.
- (f) Any resultant agreements from mediation shall be documented in writing and may be used as the basis for a change order or other directive as appropriate. All mediation results and documentation shall be non-binding and inadmissible for any purpose in any legal proceedings, in accordance with Evidence Code Section 1152, unless such admission is otherwise agreed in writing by both parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.
- (g) If mediation is unsuccessful, the parties thereafter may, but are not required to, agree to submit the matter to the Administrator for binding arbitration. If the parties so agree to arbitrate, the following provision shall govern such arbitration, unless the parties otherwise agree in writing. The parties agree that the matter shall be submitted to one (1) arbitrator unless they agree in writing to three (3) arbitrators. A judgment of a court having competent jurisdiction may be entered upon the arbitrator's award, and such judgment shall be enforceable as a final judgment to the fullest extent under the law. The parties agree to split evenly all arbitration and arbitrator(s)' fees and expenses, subject to readjustment by the arbitrator as part of any award. The arbitration shall be subject to, and proceed in accordance with California Code of Civil Procedure, Sections 1280 through 1294.2, unless the parties agree otherwise. If the parties do not agree to submit to binding arbitration, neither party is prevented from pursuing other legal remedies.

Section 13.7 Remedies. The remedies given to each party shall be cumulative. The exercise of any one remedy by either party shall not waive that party's right to pursue any other remedy.

Section 13.8 Modification. At any time during the term of this Lease, the parties may mutually agree in writing to amend, supplement, terminate, or otherwise modify this Lease.

Section 13.9 Waiver. The waiver by either party of any breach of any term, covenant, or condition, shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same, or any other term, covenant, or condition herein contained.

Section 13.10 Compliance with Laws. Both parties agree to observe and obey all local, state or federal laws, ordinances, rules, statutes and regulation now in effect or promulgated in the future with respect to the use of the Site and activities conducted thereon. Neither party shall use or permit the Site to be used for any purpose or purposes other than the purpose or purposes for which the Site

is hereby leased.

Section 13.11 Prevailing Law. In the event of any conflict or ambiguity between this Lease and state or federal law or regulations, the latter shall prevail. Additionally, all equipment to be supplied or services to be performed under this Lease shall conform to all applicable requirements of local, state and federal law.

Section 13.12 Governing Law and Venue. In the event of litigation, this Lease shall be governed by and construed in accordance with the laws of the State of California. Venue shall be with the appropriate state or federal court serving Fresno County.

Section 13.13 Entire Agreement. This Lease and its Exhibits represents the entire agreement of the District and Durham and hereby supersedes and cancels all previous negotiations, oral agreements, arrangements, brochures, agreements, and understandings between the District and Durham regarding this Lease, except as otherwise set forth herein or in the Exhibits. There are no representations between the District and Durham except as otherwise set forth in this Lease or its Exhibits.

Section 13.14 Severability. If any portion of this Lease is determined to be illegal or unenforceable by a court of law or by later-enacted legislation, this determination shall not affect any other provision of this Lease, and all other provisions shall remain in full force and effect.

Section 13.15 Exhibits. The exhibits specified in this Lease are attached to this Lease and by this reference made a part of it.

Section 13.16 Captions. Any captions in this Lease are included only as a matter of convenience and for reference and in no way define the scope or extent of this Lease or the construction of any provision.

Section 13.17 Recordation of Notice of Completion. The District may elect to record any Notice of Completion relating to the Project.

Section 13.18 Notice. Any and all notices or other communication required or permitted by this Lease or by law to be delivered to, served on, or given to either party to this Lease shall be in writing and shall be deemed properly delivered to such party at the earliest of (i) the date actually received; (ii) three (3) business days after deposit in the United States mail, postage paid, certified or registered, addressed to the respective party at the address identified below; or (iii) one (1) business day if delivered by a commercial service which guarantees next-business-day delivery. Permitted delivery methods include commercial delivery services, facsimile transmission, or certified, registered, or postage prepaid United States mail, when received or refused. Either party may change its address for purposes of notice by giving written notice of such change of address, which shall become effective five (5) business days after giving notice thereof.

Notices to the District (Lessor) shall be sent to:

Ralph Vandro, Superintendent
Laton Unified School District

6259 E. DeWoody Street
Laton, CA 93242

Notices to Durham shall be sent to:

Chris Durham, President
Durham Construction Company, Inc.
1025 Holland Avenue
Clovis, CA 93612

And its attorneys:

Kimble, MacMichael & Upton
5260 N. Palm, Ste. 221
Fresno, CA 93704
Attn: Michael J. Jurkovich, Esq.

Section 13.19 Signature in Counterparts. This Lease may be executed in any number of counterparts, including facsimile copies which shall be treated as originals, all of which, taken together shall constitute one and the same instrument.

Section 13.20 Time. Time is of the essence in this Lease.

Section 13.21 Subject to Approval of Board. This Lease confers no legal or equitable rights until the District Governing Board approves it at a lawfully conducted public meeting.

Section 13.22 Warranty of Authority. Each person signing below warrants and guarantees that s/he is legally authorized to execute this Lease on behalf of the designated entity and that such execution shall bind the designated entity to the terms of this Lease.

Section 13.23 Defined Terms. Each capitalized term not otherwise defined in this Lease shall have the meaning assigned in the Project Plans, Drawings, and Specifications.

Section 13.24 Notification of Third Party Claims. The District shall provide Durham with timely notification of the receipt by the District of any third party claim relating to this Agreement.

LATON UNIFIED SCHOOL DISTRICT


By 
Ralph Vandro, Superintendent

Date 2/28/09

DURHAM CONSTRUCTION COMPANY, INC.,
A California corporation

By 
Chris Durham, President

Date 3/1/07

By 
Corporate Secretary

Date 3/1/07

L:\Documents\00416\007\Agreement\7.00086.DOC

Exhibit B

"Bid Proposal"

Durham Construction Co., Inc.

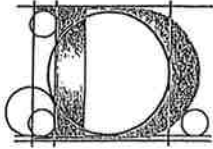
1025 Holland Ave.

Clovis, CA 93612

www.durham-construction.com

Phone (559) 294-9500

Fax (559) 294-9200



Bid Proposal

Attention: Ralph Vandro

Project: Laton High School Modernization

Date: 11/2/06

Description of work: All work according to the plans and specifications for the Laton High School Modernization based upon the drawings dated 01-02-05 prepared by Temple Anderson Moore LLP architects. Deferred Approval for Bleachers only. Asbestos Abatement is to be by owner prior to construction. Bid includes all Demolition, Concrete, Metal Fabrications, Reinforcing Steel, Casework, Rough Carpentry, Finish Carpentry, Sealants and Caulking, Glass, Gypsum Plaster, Cement Plaster, Drywall, Metal Studs, Insulation, Ceramic Tile, Finish Hardware, Doors and Frames, Toilet Partitions, Toilet Accessories, Painting, Acoustical Ceiling, Fire Ext Cabinets, TV Brackets, Marker boards, Blinds, Flooring, Signage, Bleachers, Plumbing Electrical and Low Voltage.

Bid Proposal

\$1,993,810.00

Exclusions: Costs associated with student displacement, HVAC. (Heating Ventilating & Air Conditioning work), Wood Flooring for new gym floor, Architect Fees, DSA submission, permits, Asbestos Abatement. Inspection Fees, Testing Fees, Payment Bond ONLY – no performance bond.

Terms: Project phased as per Durham CPM schedule (Allow 8 months for project completion) Progress Billings Due Net 30, 10% Retention, Lease Leaseback Agreement format by Durham construction.

"Notice To Owner" (Section 7018.5 -- Contractors License Law) Under the Mechanics Lien Law, any contractor, sub-contractor, laborer, material men or other person who helps to improve your property and is not paid for his labor, services or material, has a right to enforce his claim against your property. Under the law, you may protect yourself against such claims by filing, before commencing such work or improvement, an original contract for the work of improvement or a modification thereof, in the office of the county recorder of the county where the property is situated and requiring that a contractor's payment bond be recorded in such office. Said bond shall be in an amount not less than fifty percent (50%) of the contract price, and shall, in addition to any conditions for the performance of the contract, be conditioned for the payment in full of the claims of all persons furnishing labor, services, equipment or materials for the work described in said contract.

Contractors are required by law to be license and regulated by the Contractor's State License Board. Any questions concerning a contractor may be referred to the Registrar, Contractor State License Board [9835 Goethe Road] Sacramento, CA 95827.

Respectfully Submitted by: Chris Durham

Signed: 

This proposal may be withdrawn by us if NOT accepted within THIRTY calendar days.

The above prices, specification and terms of payment are satisfactory and are hereby accepted, Durham Construction Company, or its subcontractors, is authorized to do the work as described above.

Name: _____ Signature: _____ Date: _____

Laton Unified School District

Exhibit C

Plans and Specifications and Drawings
(Attached)

MODERNIZATION OF LATON HIGH SCHOOL

6449 DeWoody Ave.
Laton, California 93242

LATON UNIFIED SCHOOL DISTRICT

DSA File No. 10-H11
Application No. 02-106562

PROJECT MANUAL

January 12, 2005

0248

Exhibit D

"Fingerprinting Requirements" Education Code Section 45125.2

SECTION 00810 - FINGERPRINTING REQUIREMENTS

PART 1 - GENERAL

1.1 SUMMARY:

A. Fingerprinting Requirements:

1. The bill known as the Michelle Montoya School Safety Act, added Section 45125.1 to the Education Code. The new code section applies to any entity that has a contract with a school district, county board of education, or county superintendent of schools to provide services such as janitorial, administrative, landscape, transportation, food-related or similar services. The inclusion of "similar services" has been interpreted by the Owner's Counsel to include other types of contract services not expressly listed, but where contractors will be working on school grounds when children are present. If the employees of such an entity may have any contact with pupils, those employees shall submit (or have submitted) their fingerprints in a manner authorized by the Department of Justice, (DOJ), together with a fee determined by the department.
2. The DOJ shall ascertain whether the individual has been arrested or convicted of any crime. If the Department determines that the individual has been convicted of a violent or serious felony, or has a pending criminal proceeding of such a felony, it must notify you, the employer, of that information. A violent felony is any felony listed in Penal Code section 667.5(c), and a serious felon is any felony listed in Penal Code section 1192.7(c).

B. Important Restrictions:

1. An entity to which this law applies may not permit an employee to come in contact with pupils until the DOJ has ascertained that the employee has not been convicted of a violent or serious felony.
2. An entity to which this law applies may not permit an employee who has been convicted of a violent or serious felon to come in contact with pupils.

1.2 CERTIFICATION TO THE GOVERNING BOARD

- ###### A.
- New Education Code section 45125.1(f) provides that the entity must certify in writing to the governing board of the school district that none of its employees who may come in contact with pupils have been convicted of a violent or serious felony. In addition, the entity must provide to the board a list of the names of its employees who may come in contact with pupils, so that the board can provide relevant lists of employee names to the appropriate school site within its jurisdiction.

1.3 EXCEPTIONS

- ###### A.
- These new requirements do not apply to an entity providing services to a school district in an emergency or exceptional situation, such as when pupil health or safety is endangered or when repairs are needed to make school facilities safe and habitable.
- ###### B.
- These new requirements do not apply when the school district determines that the employee of the entity will have only limited contact with pupils. In making this determination, the district shall consider the totality of the circumstances, including factors such as the length of time the contractors will be working, whether pupils will be in proximity with the site where the contractors will be working, and whether the contractors will be working by themselves or with others.