

not less than one and one-half times the basic rate of pay, as provided in Labor Code Section 1815.

B. Generally, Construction on the Project shall be accomplished on a regularly scheduled eight (8) hour day work shift basis, Monday through Friday, between the hours of 6:00 a.m. and 5:00 p.m., however nothing in this Agreement shall prevent Builder, subject to the District's prior written authorization, from working weekends and after school hours in order to complete the Project so long as not otherwise prohibited by law or local ordinances or regulations.

Section 16. PAYROLL RECORDS

A. Pursuant to Labor Code Section 1776, Builder and each Subcontractor shall keep records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the work.

B. The Payroll records enumerated under Section 16.A. shall be certified and shall be available for inspection at all reasonable hours at the principal office of Builder on the following basis.

(1) A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in Section 16.A. shall be made available for inspection or furnished upon request to the District, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in Section 16.A. shall be made available upon request to the public for inspection or copies thereof made; provided, however, that if a request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, if as requested, payroll records have been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the cost of preparation by Builder, Subcontractors and the entity through which the request was made. The public shall not be given access to such records at the principal office of Builder.

C. The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division of Labor Standards Enforcement.

D. Each contractor shall file a certified copy of the records enumerated in Section 16.A. with the entity that requested such records within ten (10) days after receipt of a written request.

E. Any copy of records made available for inspection as copies and furnished upon request to the public or the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Builder or any Subcontractor performing work on the Project shall not be marked or obliterated.

F. Builder shall inform the District of the location of the records enumerated under Section 16.A., including the street address, city and county, and shall, within five (5) working days, provide a notice of change of location and address.

G. In the event of noncompliance with the requirements of this Section 16, Builder shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Builder must comply with this Section 16. Should noncompliance still be evident after such ten (10) day period, Builder shall, as a penalty to the District, forfeit Twenty-five Dollars (\$25.00) for each calendar day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.

Section 17. BONDING REQUIREMENTS

At the District's option, Builder shall provide the following bonds:

A. A "payment bond" (material and labor bond) from a California admitted surety and in the form attached to this Agreement, shall be provided by Builder for the Project. The payment bond shall be for One Hundred Percent (100%) of the GMP, to satisfy claims of materials suppliers and of mechanics and laborers employed on the Project. The payment bond shall be maintained by Builder in full force and effect for the Project 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.

B. A "faithful performance bond" from a California admitted surety and in the form attached to this Agreement shall be provided by Builder for the Project. The faithful performance bond shall be for One Hundred Percent (100%) of the GMP to guarantee faithful performance of all work required by this Agreement, within the time prescribed, in a manner satisfactory to the District, and that all materials and workmanship shall be free from original or developed defects. The faithful performance bond shall be maintained by Builder 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. The faithful performance bond shall name the District as the entity to which the principal and surety, as defined in the faithful performance bond, are bound.

C. The bonds required by this Section 17 shall meet the following criteria:

(1) Each bond shall be signed by both Builder and a notary and the signature of the authorized agent of the surety shall be notarized.

(2) Should any bond become insufficient, Builder shall renew or amend the bond within ten (10) days after receiving notice from the District.

(3) Should any surety at any time not be a California admitted surety, notice will be given to Builder to that effect. No further payments shall be deemed due or shall be made under this Agreement until a new surety shall qualify and be accepted by the District.

(4) Changes in the work, or extensions of time, made pursuant to this Agreement, shall in no way release Builder or the surety from its obligations. Notice of such changes or extensions shall be waived by the surety.

D. District shall reimburse Builder as part of the GMP, the cost of bonds required hereunder.

Section 18. PAYMENTS TO BUILDER AND RETENTION

A. Builder shall finance the cost of Construction of the Project which costs shall not exceed the GMP, except as otherwise provided in this Agreement. The District shall pay Builder sublease payments pursuant to the terms and conditions of Section 6 of the Sublease (the "Sublease Payments"), which terms and conditions include the ten percent (10%) retention described in Section 6 of the Sublease (the "retention"). The sum of the Sublease Payments shall not exceed the GMP established pursuant to Section 6 hereof. With regard to the retention for the Sublease Payments, the District shall authorize the final payment of ten percent (10%) of the value of work done under this Agreement if the Project is unencumbered by stop notices or those stop notices have been bonded by a stop notice release bond or bonds, to be made within thirty (30) days after the date of completion of the Project, provided however, that in the event of a dispute between the District and Builder, the District may withhold from the final lease payment an amount not to exceed one hundred and fifty percent (150%) of the disputed amount. For purposes of this Section 18, "completion" means any of the following as provided by Public Contract Code Section 7107:

(1) The occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning, by the public agency, or its agent, accompanied by cessation of labor on the work of improvement.

(2) The acceptance by the public agency, or its agents, of the work improvement.

(3) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 100 days or more, due to factors beyond the control of Builder.

(4) After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 30 days or more, if the public agency files for record a notice of cessation or a notice of completion.

B. This Agreement is subject to the provisions of Public Contract Code Section 7107, as may from time to time be amended.

C. For purposes of this Agreement, the acceptance by the District means acceptance made only by an action of the governing body of the District in session. Acceptance by Builder of said final payment of undisputed amounts shall constitute a waiver of all claims against District related to those amounts. At any time after fifty percent (50%) of the Project has been completed, if the District, by action of its governing body, finds that satisfactory progress is made, the District may make any of the remaining payments in full for actual work completed or may withhold any amount not to exceed ten percent (10%) thereof as retention as the District may find appropriate based on Builder's progress.

Section 19. CORRECTION OF WORK: WARRANTY

Neither final payment nor any provision in the Contract Documents shall relieve Builder of responsibility for faulty materials or workmanship incorporated in the Project. Builder warrants that all work under this Agreement will be free of faulty materials or workmanship and hereby agrees, within ten (10) days upon receiving notification from the District, to remedy, repair or replace, without cost to the District, all defects which may appear as a result of faulty materials or workmanship in the Project, at any time, or from time to time, during a period beginning with commencement of the Project and ending one (1) year after the date of substantial completion of the Project, as defined in Section 11 of this Agreement. The foregoing warranty of builder applies to the remedy, repair or replacement of defects which may appear as a result of faulty designs prepared by Builder and/or any party retained by, through or under Builder in connection with the Project sustained by use, wear, intentional acts, accidents, or lack of normal maintenance or as a result of changes or additions to the Project made or done by parties not directly responsible to Builder, except where such changes or additions to the Project are made in accordance with Builder's directions. No guarantee furnished by a party other than Builder with respect to equipment manufactured or supplied by such party shall relieve Builder from the foregoing warranty obligation of Builder. The warranty period set forth hereinabove shall not apply to latent defects appearing in the Project, and with respect to such defects, the applicable statute of limitations shall apply. Builder agrees to pass on equipment and materials warranties provided by manufacturers to District but has no obligation to assist in processing such warranty claims after said one (1) year warranty period.

Section 20. ASSIGNMENT OF ANTI TRUST CLAIMS

Builder offers and agrees to assign to the District all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchase of goods, services, or materials pursuant to this Agreement. This assignment shall become effective at the time the District tenders the final lease payment to Builder, without further acknowledgement by the parties.

Section 21. PROTECTION OF PERSONS AND PROPERTY

A. The District hereby determines that Builder will only have limited contact with pupils when school is not in session, however for any part of the Project for which pupils will be in proximity with the site where the Builder will be working, Builder shall either (i) obtain fingerprint clearance from the Department of Justice (DOJ) pursuant to Education Code Section 45125.1 for all Builder's employees who are anticipated to work on the Project as well as Subcontractors on the Project, or (ii) comply with the provisions of Education Code Section 45125.2 subdivision (a), by ensuring the safety of the pupils by one or more of the following methods:

(1) The installation of a physical barrier at the worksite to limit contact with pupils.

(2) Continual supervision and monitoring of all employees of the Builder by an employee of Builder whom the Department of Justice has ascertained has not been convicted of a serious violent felony (For purposes of this paragraph, an employee of Builder may submit his or her finger prints to the Department of Justice pursuant to subdivision (a) of Section 45125.1). Builder's designated employee for these purposes is Monte Durham.

(3) Surveillance of the employees of Builder by school personnel.

Even when DOJ clearance is obtained, Builder shall take steps to ensure minimal or limited contact between employees/Subcontractors and pupils of the District at the Site by (i) instructing employees and Subcontractors not to mingle or have contact with pupils, (ii) undertaking any other precautions necessary to limit contact between the pupils and Builder's employees or Subcontractors.

B. Builder shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Project. Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss arising out of the performance of its services under this Agreement, to:

(1) all employees on the Project and at the existing School Facilities on the Site and all other persons who may be affected thereby;

(2) all the work and all materials and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody, or control of Builder; and

(3) other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction.

C. Builder shall take into specific account the maturity of students on the Site and enclose the working area with a substantial barricade and arrange work to cause a minimum amount of inconvenience and damage to students and faculty in their regular school activities. Builder shall substantially comply with specifications and directives of the District regarding the timing of certain construction activities in order to avoid unnecessary interference with school functions.

D. Builder shall at all times enforce orderly and disciplined conduct among those performing work on the Project and shall not employ on the work any unfit person not skilled in the task assigned to him, except as provided in Section 14 this Agreement.

E. Builder, in performing the work, 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. Builder 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 and notify owners and users of adjacent utilities. Builder shall designate a responsible member of Builder's organization employed at the Site of the Project whose duty shall be the prevention of accidents. Such person shall be Builder's superintendent unless otherwise designated in writing by Builder to the District.

F. In any emergency affecting the safety of persons or property, Builder shall act at its discretion to prevent threatened damage, injury, or loss. Any additional compensation or extension of time claimed by Builder on account of such emergency shall be determined by mutual agreement between the District and Builder.

Section 22. INSPECTION OF WORK

A. The District and the District's representatives shall at all times have access to the work whether it is in preparation or progress, and Builder shall provide proper facilities for such access and for inspection.

B. If the specifications, the District's timely instructions or any public authority shall require the Site or the Project to be specially tested or approved, Builder shall give the District forty-eight (48) hour notice of its readiness for 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, and, where applicable, shall be at the source of supply. If any work required to be inspected by the specifications, the District's timely instruction or by a

public authority should be covered up without approval or consent of the District, it must, if required by the District, be uncovered for examination at Builder's expense.

C. Re-examination of questioned work may be ordered by the District and if so ordered, such work shall be uncovered by Builder. If such work is found to be in accordance with the Contract Documents, the District shall pay the cost of re-examination and replacement. If such work is not in accordance with the Contract Documents, Builder shall pay such costs, unless Builder can demonstrate to the reasonable satisfaction of District that the defects in such work were caused by persons or entities other than Builder or any of its Subcontractors or employees.

Section 23. SUPERVISION

A. Builder shall maintain on-site a competent project superintendent and necessary assistants during the work. The project superintendent shall represent Builder and all directions given to the project superintendent shall be deemed to have been given to Builder. Important directions shall be confirmed in writing to Builder, and other direction shall be so confirmed to Builder upon the written request of Builder, in accordance with Section 41 of this Agreement and the address listed therein.

B. Builder shall give efficient supervision to the work, using its skill and attention and shall cause working drawings and specifications to be prepared and submitted to District as necessary for the orderly completion of the Project. Following agreement by Builder and the District with respect to said working drawings and specifications, it shall be Builder's responsibility to perform the work described in said working drawings and specifications in substantial compliance with the Construction Documents. Notwithstanding the foregoing, Builder may from time to time make minor and insignificant changes in and said working drawings and specifications and perform the construction in accordance with such changed drawings and specifications without the consent of the District, provided that any such work performed by Builder in accordance with such changed drawings and specifications shall be consistent with that specifically required to be performed by Builder under the Construction Documents. For purposes of this Section 23, the term "minor and insignificant" shall mean changes which result in no change in quality, aesthetics or integrity of the original specifications of the Project. All changes, including minor and insignificant changes to the extent possible, should be placed on the weekly agenda for construction meetings between Builder and the District to ensure that the District is aware of such changes. The District agrees to respond to Builder's request for information and approvals within a reasonable time period under the circumstances; and if the District fails to do so, contract completion dates will be equitably extended and the GMP adjusted accordingly.

Section 24. SEPARATE CONTRACTS

A. The District reserves the right to let other contracts in connection with the construction of portions of the Project which are not performed by Builder pursuant to this Agreement but these contracts and the work they provide for shall in no event interfere with the activities of Builder on the Project, but if they do, the District shall be liable to Builder for its

damages in connection with such interference. Builder shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate the Project with the work of such contractors.

B. If the proper execution of any part of Builder's work on the Project depends upon the work of any such contractors, Builder shall view and promptly report to the District any patent defects or other problems it identifies in such work that render it unsuitable for such proper execution and results. Builder is only required to view the work of such other contractors prior to commencing its own further work in connection or in relation to that other work. Further, Builder is only expected to identify patent defects or other problems, and is not required to do any destructive testing or to monitor the progress of such work by other contractors prior to its completion. In no event shall the work of such other contractors be covered by the warranty give by Builder to the District, nor shall Builder be required to provide insurance for such work.

Section 25. USE OF PREMISES

Builder shall confine operations at the Site to areas permitted by law, ordinances, permits and the Construction Documents and shall not unreasonably encumber the Site or existing School Facilities on the Site with any materials or equipment. Builder shall not load or permit any part of the work to be loaded with a weight so as to endanger the safety of persons or property at the Site.

Section 26. CLEANING UP

Builder shall at all times keep the Site of the Construction free from accumulations of waste material or rubbish caused by the performance of the Construction by Builder, and at the completion of the Construction, Builder shall remove from the Site of the Construction all such waste material and rubbish and all tools, scaffolding and surplus materials belonging to Builder and/or Builder's Subcontractors, laborers or materialmen, it being specifically understood that at the close of Construction and prior to turning over the premises to the District for beneficial use and occupancy, Builder shall leave the Site in substantially the same or better state of cleanliness than when work began and shall be free of all dust and debris resulting from the construction. The cost of such cleanup shall be included in the GMP.

Section 27. SITE REPRESENTATIONS

The 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 is properly subdivided and zoned so as to permit the Construction of use of said Site. The district further warrants and represents that title to said land is free of any easements, conditions, limitations, special permits, variances, agreements or restrictions which would prevent, limit, or otherwise restrict the Construction or use of said Site. Reference is made to the fact that the District has provided information on the Site to Builder. Such information shall not relieve Builder 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. Builder shall be responsible for having ascertained pertinent local conditions

such as location, accessibility and general character of the Site and for having satisfied himself as to the conditions under which the work is to be performed. No claim for any allowances because of Builder's error or negligence in acquainting itself with the conditions at the Site will be recognized.

Section 28. TRENCH SHORING

Builder shall submit to the District for approval at/or prior to the start of Construction, a reasonably detailed plan showing design of shoring, bracing, sloping, or other provisions to be made for worker protection from hazards of caving ground during the excavation of any trench or trenches five feet or more in depth with the understanding that Builder's Subcontractors or Subcontractors making such trenches may modify the plans submitted by Builder. If so, the plan will be revised and re-submitted to the District. Builder shall also submit a copy of its annual trench/excavation permit approved by Cal OSHA. If such plan varies from the shoring system standards established by the registered civil or structural engineer and shall be approved by Cal OSHA. Builder shall designate in writing the "competent person" as defined in Title 8, Chapter 4, Article 2 of the California Code of Regulations, who shall be present at the work site each day that trenching/excavation is in progress. The "competent person" shall provide a copy of this daily trenching/excavation inspection report to the District on a daily basis.

Section 29. HAZARDOUS WASTE AND UNKNOWN PHYSICAL CONDITIONS

A. Builder shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:

(1) Material that Builder believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

(2) Subsurface or latent physical conditions at the Site differing from those indicated, including geological, soils, and or water table issues which impede Construction or increase Construction costs.

(3) 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 this Agreement.

B. The District shall promptly investigate the conditions, and if it finds the conditions to materially so differ, and cause a decrease or increase in Builder's cost of, or the time required for, performance of any part of the work, shall issue a change order under the procedures described in this Agreement. If asbestos-related work or hazardous substance removal is discovered which is not disclosed in the Construction Documents, 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.

C. In the event that a dispute arises between the District and Builder whether the conditions set forth in Paragraph a above materially differ, or involve hazardous waste, or cause a decrease or increase in Builder's costs of, or time required for, performance of any part of the work, Builder shall not be excused from any scheduled completion date provided for by this Agreement, but shall proceed with all work to be performed under this Agreement. Builder shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

D. The provisions of this Section 29 A., B., and C. above shall also apply if this Agreement involves digging trenches or other excavations that extend deeper than four feet below the surface.

Section 30. INDEPENDENT CONTRACTOR

A. Builder is retained as an independent contract and is not employed by the District. No employee or agent of Builder shall become an employee of the District for any purpose. It is agreed that the District is interested only in the results obtained from service under this Agreement and that Builder shall perform as an independent contractor with sole control of the manner and means of performing the services required under this Agreement. Builder shall complete this Agreement according to its own methods of work which shall be in the exclusive charge and control of Builder and which shall not be subject to control or supervision by the District except as to the results of the work. It is expressly understood and agreed that Builder and its employees shall in no event be entitled to any benefits to which the District employees are entitled, including, but not limited to, overtime, retirement benefits, insurance, vacation, worker's compensation benefits, sick or injury leave or other benefits.

B. Builder shall be responsible for all salaries, payments, and benefits for all of its officers, agents, and employees in performing services pursuant to this Agreement.

Section 31. INSURANCE

A. Builder shall procure and maintain during the period of performance of this Agreement (including the one year warranty period) insurance in at least the following amounts:

(1) Worker's compensation insurance in compliance with applicable state and federal laws; and

(2) Employer's liability insurance with a limit of \$1,000,000.00.

(3) Commercial general liability insurance including blanket contractual, broad form property damage, completed operations and independent contractor's liability all applicable to personal injury, bodily injury, and property damage to a limit of \$1,000,000.00 each occurrence and \$2,000,000.00 aggregate.

(4) Comprehensive automobile liability insurance including owned, hired, and non-owned automobiles, for bodily injury and property damage to a combined single limit of \$1,000,000.00 each occurrence.

a. District shall reimburse Builder, as part of the GMP, the cost of Builder's Risk insurance on an "all risk" completed value basis of the work performed by Builder (excluding earthquake and flood). Coverage shall include completed work as well as work in progress. Such insurance shall include the District as Loss Payee. The making of Sublease payments to Builder shall not be construed as creating an insurable risk interest by or from the District or as relieving Builder or Subcontractors or responsibility for loss from any direct physical loss, damage, or destruction, occurring prior to final acceptance of the work by the District. The insurer will waive all rights of subrogation against the District and shall provide the District with a Certificate of Insurance for Builder's Risk insurance coverage and evidence of waiver of rights of subrogation against the District.

B. Builder shall furnish satisfactory proof of one or more certificates issued by the insurance carriers satisfactory to the District that is the foregoing insurance. The public liability and property damage insurance and Builder's all risk insurance shall include as additional insureds, District, its board of directors, officers, and employees when acting in their capacity as such in conjunction with the performance or implementation of this Agreement. Each insurance policy shall contain a clause which provides that the policy may not be canceled or not renewed without thirty (30) days' written notice to the District.

C. Nothing contained in these insurance requirements is to be construed as limiting the liability of Builder or Builder's sureties.

Section 32. HOLD HARMLESS

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

1. Any injury to person or property sustained by Builder or by any person, firm, or corporation, employed directly or indirectly by it upon or in connection with its work, however, caused; and

2. Any injury to person or property sustained by any person, firm, corporation, caused by any act, neglect, default, or omission of Builder, of 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; Builder 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 Builder on any such claim or demand, and pay or satisfy the judgment that may be rendered against the District in any such action, suit or legal proceedings or result thereof.

3. The foregoing indemnity shall not include liability resulting from the negligence or willful misconduct of the District, its officers, agents or employees.

Section 33. RESOLUTION OF CONTRACT CLAIMS

A. Applicable Law. For public work claims of \$375,000.00 or less between the Builder and the District, if District has not elected to resolve disputes by arbitration pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of part 2 of the Public Contract Code, the provisions of Article 1.5 (commencing with Section 20104) of Chapter 1 of part 3 of the Public Contract Code apply (“Article 1.5”) as follows. Nothing in this section shall preclude the parties hereto from agreeing to resolve the matter by arbitration pursuant to Public Contract Code 10240 et seq.

B. Definitions. For purposes of Article 1.5, “public work” has the same meaning as in Sections 3100 and 3106 of the Civil Code. “Claims” means a separate demand by Builder for a time extension, or payment of money or damages for work done by or for Builder, payment for which is not otherwise expressly provided in this Agreement or to which Builder would not otherwise be entitled, or a payment disputed by the District.

C. Filing of Claims. Each claim shall be submitted in writing before the date of final payment and shall include all necessary substantiating documentation. The District shall respond in writing within forty-five (45) days of receipt of the claim if the claim is less than \$50,000.00 or within sixty (60) days of receipt of the claim, if the claim is over \$50,000.00 but less than or equal to \$375,000.00. In either case, the District may request in writing within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the District may have against the claimant. Any additional information shall be requested and upon mutual agreement of the District and the claimant. The District’s written response to the claim shall be submitted to claimant within fifteen (15) days after receipt of the further documentation for claims less than \$50,000.00 or within thirty (30) days after receipt of the further documentation for claims between \$50,000.00 and \$375,000.00 or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

D. Meet and Confer Conference. Within fifteen (15) days of receipt of the District’s response, if claimant disputes District’s written response or within fifteen (15) days of the District’s failure to respond within the time prescribed, the claimant shall provide written notification to the District demanding an informal conference to meet and confer to be scheduled by the District within thirty (30) days. If the claim or any portion of the claim remains in dispute following the meet and confer conference, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the period of time within which a claim must be filed tolled from the time the claimant submits a written claim pursuant to Section 33.C., above, until the time the claim is denied, including time utilized as a result of the meet and confer process.

E. Mediation. If a civil action is filed to resolve claims within sixty (60) days (but no earlier than thirty (30) days) following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties.

The mediation process shall provide that both parties select a disinterested third person mediator within fifteen (15) days, shall be commenced within thirty (30) days of the submittal and concluded within fifteen (15) days from the commencement of the mediation unless time is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

F. Judicial Arbitration. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery act of 1986 (Article 3 (commencing with section 2016) of Chapter 3 of Title 3 or part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. The court may, upon request by any party, order any witness to participate in the mediation or arbitration process.

G. Fees. Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this section shall be experienced in construction law and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates not to exceed their customary rate. Such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds. Any party who, after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment, shall pay the attorney's fees of the other party arising out of the trial de novo in addition to payment of costs and fees required under Chapter 2.5 (commencing with Section 1141.10) of Title 3 of part 3 of the Code of Civil Procedure. The District shall not fail to pay any portion of a claim which is undisputed unless otherwise provided in this Agreement and shall pay interest at the legal rate commencing on the date the suit is filed in court on any arbitration award or judgment.

Section 34. ALTERNATE DISPUTE RESOLUTION

A. For claims not addressed in Section 33 of this Agreement, the dispute review process set forth in this Section 34 shall apply.

B. The dispute review process set forth in this Section 34 shall be administered by the American Arbitration Association (AAA) and governed by their rules in effect at the time of filing, or by any other neutral organization agreed to by the parties (hereinafter called "Administrator").

C. If a dispute arises out of, or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the parties agree to first endeavor to settle the dispute using mediation.

D. The costs for all mediation, including the administrative fees and mediator compensation, will be shared equally by all parties. Fees shall be jointly negotiated by all parties directly with the Administrator. The shared costs are estimated at \$1,500.00 or less for claims up

to \$60,000.00 and \$3,000.00 or less for claims over \$60,000.00. If all parties agree, then the mediation costs may increase as required for resolution of the dispute. The expenses of witnesses for any party shall be paid by the party producing such witnesses.

E. A single mediator, acceptable to all parties, shall be used to mediate the dispute. The mediator will be knowledgeable in construction aspects and will be selected from lists furnished by the Administrator. The initial mediation session shall commence within thirty (30) days of filing, unless otherwise agreed by the parties, or at the direction of the mediator.

F. Mediation hearings will be conducted in an informal manner and discovery will not be allowed unless agreed by all 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 party's legal position.

G. Spokespersons shall be limited to the District, Builder, Subcontractors, and supplier personnel and their consultants. District, Builder, Subcontractors and Suppliers may have an attorney present and shall advise the other parties no less than five (5) working days before the mediation so that the other parties may also have their attorneys present.

H. 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 all parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

I. If mediation is unsuccessful, the parties thereafter may agree to submit the matter to the Administrator for binding arbitration. If the parties 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 to three (3) arbitrators in writing. A judgment of a court having competent jurisdiction may be entered upon the 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. If the parties do not agree to submit to binding arbitration, neither party is prevented from pursuing other legal remedies.

Section 35. SUBSTITUTION OF SECURITY

A. Upon Builder's request, the District will make payment of funds withheld from sublease payments under the Sublease to ensure performance under the contract pursuant to the requirements of Public Contract Code Section 22300 if Builder deposits in escrow with the District or with a bank acceptable to the District, securities eligible for investment under Government Code Section 16430 or bank or savings and loan certificates of deposit, or other security mutually agreed to by Builder and the District, subject to the following conditions:

(1) Builder shall bear the expense of the District and the escrow agent, either the District or the bank, in connection with the escrow deposit made;

(2) Securities or certificates of deposit to be placed in escrow shall be of a value at least equivalent to the amounts of retention to be paid to Builder pursuant to this Section 35;

(3) Builder shall enter into an escrow agreement satisfactory to the District, which agreement shall include provisions governing inter alia:

(a) The amount of securities to be deposited at the time of their deposit into escrow,

(b) The providing of powers of attorney or other documents necessary for the transfer of the securities to be deposited,

(c) Conversion to cash to provide funds to meet defaults by Builder, including, but not limited to, termination of Builder's control over the work, stop notices filed pursuant to law, assessment of liquidated damages or other amounts to be kept or retained under the provisions of this Agreement,

(d) Decrease in value of securities deposit, and

(e) The termination of the escrow upon completion of the Project;

(4) Builder shall obtain the written consent of the performance bond surety to such agreement; and

(5) As an alternative to Builder depositing into escrow securities of a value equivalent to the amounts of retention to be paid to Builder, upon Builder's request District will make payment of retentions earned directly to the escrow agent at the expense of Builder pursuant to and in accordance with Public Contract Code Section 22300.

Section 36. STORM WATER PROVISION

A. Builder shall be required to comply with all conditions of the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff associated with Construction Activity (the "Permit"), if applicable to the Project. The Permit is required for all construction activity which results in the disturbance of in excess of five acres of total land area or which is part of a larger common area of development or sale. The District shall be responsible for filing the notice of intent and for obtaining the Permit. A copy of the Permit and supporting rules and orders by the State Water Board is on file with the District. The District shall provide a draft of the Storm Water Pollution Prevention Program (SWPPP) for the

Project to Builder at least two weeks prior to the commencement of Construction. It shall be Builder's responsibility to evaluate the cost of compliance with the SWPPP in establishing the GMP for the Project. Builder shall comply with all requirements of the State Water Resources Control Board. Builder shall include all costs of compliance with specified requirements in the GMP.

B. Builder shall be responsible for implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. Builder shall provide copies of all reports and monitoring information to the District.

C. Builder shall comply with the lawful requirements of any applicable municipality, the County, drainage district, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

D. Failure to comply with the Permit is in violation of federal and state law. Builder hereby agrees to indemnify and hold harmless the District, its officers, agents, and employees from and against any and all claims, demands, losses or liabilities of any kind or nature which the District, its officers, agents, and employees may sustain or incur for noncompliance with the Permit arising out of in connection with the Project, except for liability resulting from the negligence or willful misconduct of the District, its officers, agents or employees, District may seek damages from Builder caused by Builder's failure to comply with Permit.

E. Where approval by the District or representative of the District is indicated, it is understood to be conceptual approval only and does not relieve Builder of responsibility for complying with the laws, codes, industry standards and does not relieve Builder from liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Builder or its Subcontractors.

Section 37. TITLE TO WORK; RIGHT TO SALVAGE

A. Title to all work completed and in the course of Construction paid for by the District and title to all materials on account of which payment has been made by the District to Builder shall vest in the District pursuant to the applicable provisions of the Sublease.

B. Builder and District agree that District has the right to salvage any materials or personal property from its existing structures and District has first choice in determining what materials, if any, it will salvage.

Section 38. ACCOUNTING RECORDS

Builder shall check all materials, equipment and labor entering into the work and shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Builder for four (4) years from the date of final payment to

Builder of Sublease payments pursuant to the terms and conditions of the Sublease and Section 18 of this Agreement.

Section 39. CONTRACT DOCUMENTS AND INTERPRETATIONS

A. The Contract Documents shall be executed, and/or initialed as appropriate, in duplicate by the District and Builder. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include labor, services and materials, equipment, and transportation necessary for the proper execution of the Project. Materials or work described in words which as applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.

B. Drawings and specifications are intended to be fully cooperative and to agree. However, if Builder observes that Drawings and specifications are in conflict, it shall promptly notify the architect in writing and any necessary changes shall be adjusted as provided in Section 10. If such conflict arises, the following order of precedence shall generally apply, provided, however, that the order of precedence shall not be so rigidly interpreted as to affect an absurd or costly result:

- (1) Special conditions shall take precedence over general conditions.
- (2) Technical specifications implement, in additional detail, the requirements of the general conditions. In the event of conflict between the technical specifications and the general conditions, the general conditions shall take precedence.
- (3) In the event of a conflict between the technical specifications and the drawings, the technical specifications are to take precedence over drawings and shall govern as to materials, workmanship, and installation procedures. Plans identify the scope and location of the work.
- (4) With regard to drawings:
 - (a) Figures govern over scaled dimensions;
 - (b) Larger details govern over general drawings;
 - (c) Addenda/change order drawings govern over Project specific drawings;
 - (d) Project specific drawings govern over standard drawings.
- (5) Work not particularly shown or specified shall be the same as similar parts that are shown or specified.

C. Misunderstandings of drawings and specifications shall be clarified by the Architect, whose decisions shall be final.

D. Standards, Rules, and Regulations referred to are recognized printed standards and shall be considered as one and a part of these specifications within limits specified.

E. It is not intended that work and/or services not covered under any heading, section, branch, class or trade of the specifications shall be supplied, unless it is required elsewhere in the Contract Documents or is reasonably inferable therefrom as being necessary to produce the intended results, in which case such work and/or services shall be supplied by Builder. Words which have well-known technical or trade meanings are used herein in accordance with such recognized meanings. Mutual agreement shall be reached with respect to words which do not have a well-known technical or trade meaning and the definition of which come into question.

Section 40. AGREEMENT MODIFICATIONS

No waiver, alteration or modification of any of the provision of this Agreement shall be binding upon either the District or Builder unless the same shall be in writing and signed by both the District and Builder.

Section 41. NOTICES

A. All communications in writing between the district and Builder, including without limitation, applications for payment, shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by telex, telegram, or fax followed by regular mail, addressed as follows:

If to Builder: Durham Construction Company
1025 HOLLAND AVE.
CLAVIS CA 93612
Attn: Chris Durham

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

B. For the purpose of directions, Builder's representatives shall be _____, Vice President, and the District's representative shall be Ralph Vandro, Superintendent, unless otherwise specified in writing.

Section 42. ASSIGNMENT

Neither party to this Agreement shall assign this Agreement or sublet it as a whole without the written consent of the other, nor shall Builder assign any monies due or to become due to it hereunder without the prior written consent of the District.

Section 43. HEADINGS

The headings in this Agreement are inserted only as a matter of convenience and reference and are not meant to define, limit or describe the scope or intent of the Contract Documents or in any way affect the terms and provisions set forth herein.

Section 44. APPLICABLE LAW

The terms and provision of this Agreement shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Agreement, the action shall be brought in a state court situated in the County of Fresno, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorneys' fees, as determined by the courts or arbitrator(s).

Section 45. SUCCESSION OF RIGHTS AND OBLIGATIONS

All rights and obligations under this Agreement shall inure to and be binding upon the successors and assigns of the parties hereto.

Section 46. EQUAL OPPORTUNITY CLAUSE

Builder agrees not to discriminate in its 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 Agreement 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, or sex, and prohibiting harassment of an employee or applicant because of race, religious creed, color, national origin, ancestry, physical disability, medical condition, marital status, sex, 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 practice);

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);

D. California Labor Code Section 1102.1 (prohibiting discrimination in any aspect of employment or opportunity for employment based on actual or perceived sexual orientation); and

E. Any other laws or regulations prohibiting discrimination as may be applicable to Builder.

Section 47. LABOR COMPLIANCE PROGRAM

R-V C.O.

A. Builder 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.

B. 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.

R-V C.O.

C. 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.

R-V C.O.

D. The Contractor shall forfeit Fifty Dollars (\$50.00) to the District for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the California Department of Industrial Relations for such work or craft in which such worker is employed by the contractor or by any subcontractor, if any tier, in connection with the work. Pursuant to California Labor Code §1775, the difference between such 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 prevailing wage rate, shall be paid to each worker in addition to the penalties. The amount of forfeiture shall be determined by the Labor Compliance Program Officer (along with its consultants) and may be based on consideration of the Contractor's mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages. The Contractor's previous record in meeting his prevailing wage obligations, or the

R-V C.O.

Contractor's willful failure to pay the correct rates of prevailing wages may influence the amount of penalty. *K.V. C.D.*

E. California Labor Code §1742.1 makes the Contractor, any subcontractor and the payment bond insurer jointly and severally liable for liquidated damages equal to the total underpayment of wages remaining uncorrected for sixty (60) days after receipt of the first notice of the underpayment. The underpaid employee will receive both the liquidated damages and the underpayment amount. The District may also request imposition of penalties equal to Fifty Dollars (\$50.00) per day per worker in addition to the liquidated damages and underpayment. *K.V. C.D.*

Section 48. DVBE CERTIFICATE

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

Section 49. NOTIFICATION OF THIRD PARTY CLAIMS

The District shall provide the Builder with timely notification of the receipt by the District of any third party claim relating to this contract, and the District may charge back to the Builder the cost of any such notification.

IN WITNESS WHEREOF, the parties have, by their duly authorized representatives, executed this Agreement, in duplicate, as of the date and year first above written.

BUILDER:

DURHAM CONSTRUCTION COMPANY

By: *Chris Durham*
Chris Durham, President

DISTRICT:

LATON UNIFIED SCHOOL DISTRICT

By: *Ralph Vandro*
Ralph Vandro, Superintendent

[Attach required acknowledgments]

Surety
By
Attorney-in-Fact

**BUILDER'S CERTIFICATE REGARDING
WORKER'S COMPENSATION**

Labor Code Section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance to this State.
- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, either as an individual employee or as one employer in a group of employers, which may be given upon furnishing proof of satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

(In accordance with Article 5 (commencing at Section 1860), Chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this contract.)

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

(Revised) Proposal

**Client: Laton Unified School District
Attn: Ralph Vandro**

**Project: Laton High School Concrete and Plumbing Repairs & Bleachers
Date: 05/15/08**

Description of work:
Replace wood bleacher seating with new 2 x 8 DF #1 wood seating and paint as per school choice with exterior paint
Replace cracked concrete work with 4" concrete as per list supplied by school district
Seal asphalt parking lot stripe as per scope of work letter
Gymnasium and Weight Room Plumbing and electrical as per scope of work sheet

Price includes prevailing wages -- contract to be lease leaseback agreement

Bid Price

\$142,647.00

**Exclusions: Architect Fees, DSA submission, deferred approval items, any items not noted above
Terms: Progress Billings Due Net 30, No Retention**

"Notice To Owner" (Section 7011.5 - Contractors License Law) Under the Mechanics Lien Law, any contractor, sub-contractor, laborer, materialman, 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 this 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 licensed and regulated by the Contractor's State License Board. Any questions concerning a contractor may be referred to the Registrar, Contractor State License Board (9635 Coakley 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)**

Exhibit D

“Fingerprinting Requirements” Education Code Section 45125.2

California Education Code § 45125.2. Ensuring pupil safety

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

(1) The installation of a physical barrier at the worksite to limit contact with pupils.

(2) Continual supervision and monitoring of all employees of the entity by an employee of the entity whom the Department of Justice has ascertained has not been convicted of a violent or serious felony. For purposes of this paragraph, an employee of the entity may submit his or her fingerprints to the Department of Justice pursuant to subdivision (a) of Section 45125.1 and the department shall comply with subdivision (d) of Section 45125.1.

(3) Surveillance of employees of the entity by school personnel.

(b) An entity that contracts with a school district for the construction, reconstruction, rehabilitation, or repair of a school facility is not required to comply with the requirements of Section 45125.1 if one or more of the methods described in subdivision (a) is utilized.

(c) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(d) This section shall not apply to an entity providing construction, reconstruction, rehabilitation, or repair 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.