

ConKer Enterprises Inc. dba Kern Kendall General Contractor  
ROC # 102608 B Residential, #136361 B Commercial

**AGREEMENT BETWEEN OWNER & CONTRACTOR**

This Agreement is made this 7th day of June, 2022 between Conker Ent. Inc. dba Kern Kendall General Contractor (“Contractor”) and Cindy Franklin / Franklin Phonetic Primary School Inc.(“Owner”) at 6116 Hwy 69 Prescott Valley AZ 86314

The work described in Section 1 below shall be performed in accordance with plans, specifications and other Contract documents for the project known as:

Franklin Phonetic Multi Purpose Building

Permit # B21-2683

6101 Hwy 69

Prescott Valley Az 86314

AP# 103-08-009D

The name and address of the construction lender is: N/A

**SECTION 1. SCOPE** The Contractor agrees to furnish all labor, materials, equipment and other facilities required to complete the following work:

1. TI of Building per Plan by Distinctive Homes Dated 4-11-22, w/ Value engineering and Budget Sheet Dated 6/6/22 by Kern Kendall General Contractor

**SECTION 2. PRICE AND PAYMENT** The Owner agrees to pay the Contractor for the strict performance of the work, the sum of **Two Hundred Thousand Dollars (\$200,000.00)** subject to adjustments for changes in the work as may be agreed to by the Owner and the Contractor, as may be required under this Contract.

The Owner agrees to pay the Contractor in progress payments for all work completed.( 15% Deposit to Start, Monthly Billing based on % of completion , Final payment due upon Final Inspection from JHA. Payments will be due and payable within fifteen days of invoice. Final payment to the Contractor shall be made within fifteen (15) days after substantial completion of the Contract and submission of the final invoice to Owner. 2% interests per month will be assessed on all invoices over 30 days. This Contract is subject to the Arizona Prompt Payment Act.

**SECTION 3. ENTIRE AGREEMENT.** This agreement represents the entire agreement between the Contractor and the Owner regarding the work described in Section 1, and supersedes any prior written or oral agreements or representations as to that work.

**SECTION 4. TIME.** Time is of the essence of this agreement. The Contractor shall provide the Owner with a progress and completion schedule and shall conform to that schedule, including any changes to that schedule agreed to between the Owner and the Contractor or required by circumstances beyond Contractor’s control. 6 month estimated time.

**SECTION 5. DIFFERING SITE CONDITIONS.** Contractor shall promptly, and before the following conditions are disturbed, notify the Owner, in writing of any:

- (1) Material that the contractor believes may be material that is hazardous waste, or a toxic pollutant or other substance, the handling of which may subject Contractor to legal liability. If on-site materials are inadequate / insufficient for backfill and compaction, Imported /exported material will be additional charge.
- (2) Subsurface or latent physical conditions at the work site differing from those indicated in the Plans or Contract; Hard Dig Issues , if excessively hard ground or rock is encountered.

(3) Unknown physical conditions at the work site of any unusual nature, materially different from those ordinarily encountered and generally recognized as inherent to work of the character provided for in the Contract, Underground Water or Artifacts.

The Owner shall promptly investigate. If the Owner finds that the worksite conditions do materially differ, or involve hazardous waste or toxic pollutants, the Owner shall cause a decrease or increase in the Contractor's cost of, or the time required for, performance of the affected part of the work by issuing a change order under the procedures described in the Contract.

**SECTION 6. CHANGES IN WORK.** The work shall be subject to changes or additions, deletions or revisions by the Owner. The Contractor will be notified by receipt of written additions and/or revised drawings, specifications, exhibits or written orders.

Whenever an adjustment in the Contract price or Contract time is required because of Owner's request, differing site conditions, errors in the plans and specifications, or other circumstances beyond the control of Contractor (including lack of worksite access, weather, fires, floods, strikes, acts of God, natural disasters, or acts of third parties), the Contractor shall submit to the Owner within a reasonable time a detailed estimate, with supporting calculations, pricing and adjustments in the schedule of the change to the Contract price and the Contract time. Pricing of the adjustment shall be in general accordance with the pricing structure of this Contract. However, to the extent that such pricing is inapplicable, cost of the change or the amount of the adjustment shall be determined on the basis of the cost to the Contractor plus for 5% overhead and 10% profit, plus applicable Sales Tax.

The Contractor shall not be obligated to perform changes in the work or additional work until the Owner has approved, in writing, the changes to the Contract price and the Contract time.

**SECTION 7. SUSPENSION OF WORK.** If any payment is not made to Contractor as required under this Contract, Contractor may suspend work until such payment is made. Contractor may also suspend work under this Contract if a dispute over payment for extra work, differing site conditions, changes by Owner or other circumstances beyond Contractor's control will cause the Contractor to suffer substantial financial hardship if Contractor is required to continue the work. Contractor may request that Owner provide written proof of Owner's ability to pay Contractor for the work remaining to be performed by Contractor at any time prior to or during performance of this Contract. Failure of Owner to provide such proof shall be justification for Contractor's suspension of work under this Contract.

Any suspension of work under this Contract will also suspend the progress and completion dates set forth in Section 4.

**SECTION 8. INSPECTION OF THE WORK.** The Contractor shall make the work accessible at all reasonable time for inspection by the Owner. The Contractor shall inspect all material and equipment delivered to the job site by others to be used or incorporated in the Contractor's work.

**SECTION 9. SITE ACCESS AND RIGHTS OF WAY.** The Owner shall provide, no later than the date when needed by the Contractor, all necessary access to the lands upon which the Work is to be performed, including convenient access to the lands and any other lands designated in the Contract Documents for use by the Contractor. Owner shall continue to provide such access until completion of the Contract. Any failure to provide such access shall entitle the Contractor to an equitable adjustment in the Contract price and the Contract time.

**SECTION 10. REPORTS AND SURVEYS** Owner shall furnish prior to the start of work all maps, surveys and reports describing the physical characteristics, soil, geological and subsurface conditions, legal limitations, utility locations and legal descriptions that might assist the Contractor in properly evaluating the extent and character of the work required. The Owner shall provide all land surveys

and baselines necessary for the Contractor to locate the principal parts of the Work and perform the Work.

**SECTION 11. PERMITS, LICENSES AND REGULATIONS.** Permits and licenses of a temporary nature necessary for the prosecution of the Work shall be obtained and paid for by the Contractor. The Owner shall assist the Contractor in obtaining such permits and licenses. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for the Owner.

The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the performance of the Work. If the Contractor observes that drawings, specifications or other Contract documents are at variance with such laws, ordinances, rules and regulations, the Owner shall promptly be notified and, if necessary, an adjustment made to the Contract time or Contract price.

**SECTION 12. TERMINATION.** The Owner reserves the right to terminate the work for its convenience upon notice in writing to the Contractor. In such an event, the Contractor shall be paid its actual costs for the portion of the work performed to the date of termination, and for all of Contractor's incurred costs of termination, including demobilizations and any termination charges by vendors and subcontractors, plus 20% of all of Contractor's actual and incurred costs for overhead and profit.

**SECTION 13. INDEMNIFICATION** Contractor shall indemnify the owner against claims, demands, lawsuits and liabilities arising out of or connected to property damage or personal injury caused, or alleged to be caused, by Contractor or its subcontractors, suppliers, employees, agents or representatives. Contractor shall have no obligation to defend Owner except to the extent of the following coverage:

**SECTION 14. INSURANCE**

14.1.1. Casualty Insurance

- a. Worker's Compensation and Employer's Liability Insurance;
- b. Commercial General Liability Insurance, including coverage for Contractor's owned, hired and non-owned automobiles.

14.1.2.1 Waiver of Subrogation

Owner and Contractor waive all rights against each other and against all other subcontractors and Owner for loss or damage to the extent reimbursed by any property or equipment insurance applicable to the work, except such rights as they may have to the proceeds of such insurance. If any applicable policies of insurance require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

14.1.2.2. Builder's Risk

"All risk" Builder's Risk insurance (excluding the hazards of earthquake and flood) is purchased by Contractor and such insurance provides property insurance coverage for both Contractor and Owner including loss or damage to Contractor's work. Such insurance shall also apply to any of Owner's property in the care, custody or control of Contractor. Owner waives all rights of recovery against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards, however caused.

**SECTION 15. ARBITRATION.** Any controversy or claim arising out of or relating to this Contract or its alleged breach, which can not be resolved by mutual agreement, shall be settled by arbitration in accordance with JAMS Rules in effect on the date of the Contract, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Owner and Contractor agree that, should Contractor be potentially or actually a party to a lawsuit or arbitration arising

out of or connected to this Contract, Owner shall appear in, and be bound by the decision in, that lawsuit or arbitration. The prevailing party in any action or proceeding to enforce this Contract shall recover its reasonable attorney's fees and costs (including expert witnesses) in that action or proceeding.

**SECTION 16. WARRANTY.** The Contractor warrants for Two Years to the Owner that all materials and equipment furnished under this Contract shall be new unless otherwise specified and that all work under this agreement will be performed in a good and workmanlike manner, shall be of good quality, free from faults and defects, and in conformance with Contract documents.

**SECTION 17. SPECIAL PROVISIONS.** (including unit pricing, if applicable):

- 1. Pricing to be based on "Budget Numbers" of Cost break down sheet dated 6/6/22, Credits will be deducted from total based on invoices recieved.

Dated: \_\_\_\_\_

Dated: June 6th 2022

**OWNER:** \_\_\_\_\_

**CONTRACTOR:** ConKer Ent. Inc DBA

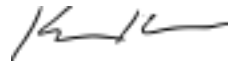
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Kern Kendall General Contractor

By: \_\_\_\_\_

By: Kern Kendall

(Name)



Secretary

\_\_\_\_\_

(Title)

1836 Timber Cove Ln,

\_\_\_\_\_

Prescott Arizona 86305

\_\_\_\_\_

(Address)

(Address)

AZ ROC 136361-B

(Contractors License Number)

NOTE: This document has important legal consequences. Consultation with an attorney prior to use or modification of this document is encouraged. Some contracts may require the use of special provisions not included in this form.