

# **OWNER-CONTRACTOR AGREEMENT**

## **DOCUMENT 00500**

This Construction Agreement is made and entered into between the Summerville Union High School District, a political subdivision of the State of California (“District” or “Owner”) and Njirich & Sons Inc., a California Corporation (“Contractor”).

**WITNESSETH** that the District and the Contractor for the considerations stated herein agree as follows:

### **ARTICLE 1 SCOPE OF PROJECT.**

- 1.1 Contractor shall perform, within the time stipulated, the contract as herein defined, and shall provide all labor, materials, tools, utility services, and transportation to complete in a workmanlike manner, in strict compliance with the contract documents as specified in Article 2, and to the satisfaction of the District as provided in the Contract documents.

### **ARTICLE 2 CONTRACT DOCUMENTS**

- 2.1 Contractor agrees to be bound the terms and conditions contained in the following documents which are incorporated by reference into this Agreement:
  - 2.1.1 Bid Bond and attached Schedule of Values.
  - 2.1.2 Architectural and Engineering drawings made a part of the invitation to bid.
  - 2.1.3 General Conditions as prepared by the Architect.
  - 2.1.4 Any Supplemental conditions prepared by the Architect.
  - 2.1.5 All drawings, maps, specifications, and/or revisions to the above-referenced documents.
  - 2.1.6 Any and all addendum issued by the Architect.
  - 2.1.7 Performance Bond.
  - 2.1.8 Payment Bond.
  - 2.1.9 Contractor’s Certificate Regarding Workers’ Compensation.

- 2.1.10 All Required Insurance certificates, endorsements, or riders.
- 2.1.11 Non-Collusion Affidavit.
- 2.1.12 Designation of Subcontractors.
- 2.1.13 Standard Specifications.
- 2.1.14 Federal and State-required provisions, if any.
- 2.2 If there is a conflict between any of the terms of any document incorporated into this Owner-Contractor Agreement and the provisions of the Owner-Contractor Agreement and the two conflicting provisions cannot be harmonized, the provisions of the Owner-Contractor Agreement shall govern over any other provision in any document incorporated into the Owner-Contractor Agreement.
- 2.3 Work required by one of the above-named documents and not by this Agreement shall be done as if incorporated directly into this Agreement.

### **ARTICLE 3 TIME OF COMPLETION.**

- 3.1 The work shall be commenced on the date stated in the District's notice to proceed, as provided in the General Conditions. As specified in District's notice to proceed, the work shall be completed within 56 calendar days from and after the date stated in such notice, which shall include none (0) working days for normal bad weather, taking into consideration the seasonal weather for the time when construction will be undertaken.
- 3.2 Contractor and District recognize that "Time is of the Essence" in the performance of this Agreement.
- 3.3 Liquidated Damages. Should the Contractor fail to complete any phase of the Total Project provided herein within the time fixed for such completion, pursuant to Government Code Section 53069.85, said Contractor shall forfeit and pay (or District may deduct the amount thereof from any money due or to become due to the Contractor) the sum of \$ 2,500.00 per calendar day as liquidated damages. In accordance with the provisions of Government Code Section 4215, the Contractor shall not be assessed liquidated damages where delay is caused by failure of the Owner or the owner of the utility to provide for the removal or relocation of utility facilities, but only if such utilities are not identified in the plans and specifications.
  - 3.3.1 Extension of Time for Bad Weather Days. Contractor shall abide by Inspector of Record's determination of when inclement weather justifies a cancellation of work for any scheduled workday. A "bad weather day" is a day when the Inspector of Record determines that as a result of the

weather, it is either unsafe for the Contractor or the Contractor's subcontractors to work or unsuitable for the work that was scheduled and/or was to be performed that day. Inspector of Record can require Contractor and/or Subcontractor to perform other work that can be performed on that day. Contractor and District are to agree at the commencement of work on the number of "bad weather days" incorporated into the established completion date. Contractor shall not be granted an extension of the completion date until the number of days declared by the Inspector of Record as "bad weather days" exceeds the number of "bad weather days" incorporated into the established completion date by Contractor and District.

3.3.2 Extension of Completion Date for Causes Other than Weather. Contractor shall receive an extension of time for purposes of completion when the Contractor or the Contractor's subcontractor's performance is delayed due to unforeseeable causes beyond the control and without the fault or negligence of Contractor and/or subcontractor including, but not restricted to: acts of God; acts of a public enemy; acts of the Government; acts of District or anyone employed by it; acts of another Contractor in performance of a contract with District; fires; floods; epidemics; quarantine of campus; strikes; and/or freight embargoes. Contractor shall immediately notify District in writing of the cause(s) of an anticipated delay. District shall ascertain the facts and extent of delay and grant an extension of time for completion of work when, in its judgment, the findings of fact justify such an extension. The District's findings of fact thereon shall be final and conclusive on all parties. In case of a continuing cause of delay, only one claim is necessary. Time extensions to the project should be requested by the Contractor as the causes for such delays occur and without delay. Regardless of the time lines in the schedule submitted by Contractor, no delay claims shall be accepted by District unless the event or occurrence delays the completion of the project beyond the contractual completion date.

3.3.3 District's Liability for Delays. District's liability to Contractor for delays for which District is responsible shall be limited to an extension of time for completion.

#### **ARTICLE 4 PROJECT BUDGET & PAYMENT**

4.1 The estimate for the total project, based on Contractor's completed bid bond and Schedule of Values is Three Hundred Thirty One Thousand Five Hundred\_\_\_\_ (\$\_331,500.00\_\_\_\_) dollars. ("Project Budget")

## **ARTICLE 5 COST BREAKDOWN AND PERIODICAL ESTIMATES**

- 5.1 Contractor shall furnish on forms approved by District:
  - 5.1.1 Within ten (10) days of award of contract a detailed estimate giving a complete breakdown of contract price; and
  - 5.1.2 A periodical itemized estimate of work done for the purpose of making partial payments thereon;
  - 5.1.3 Within ten (10) days of request by District, a schedule of estimated monthly payments which shall be due him under the contract.
- 5.2 Values employed in making up any of these schedules will be used only for determining basis of partial payments and will not be considered as fixing a basis for additions to or deductions from contract price.

## **ARTICLE 6. PAYMENTS AND RETENTION**

- 6.1 Each month as soon as practicable after receipt of approved periodical estimate for partial payment, but in order to avoid the payment of interest, in any event within thirty (30) days of receipt of such periodical estimate, there shall be paid to Contractor a sum equal to ninety percent (90%) of the value of work performed up to the last day of the previous month, less the aggregate of previous payments. Upon receipt of a payment request the District shall as soon as practicable determine whether the payment request is proper. If the request is determined not to be a proper payment request suitable for payment, it shall be returned to the Contractor as soon as practicable within seven days after receipt and shall be accompanied by a statement in writing as to the reasons why the payment request is not proper. Monthly payments shall be made only on the basis of monthly estimates which shall be prepared by Contractor on a form approved by District and filed before the fifth day of the month during which payment is to be made. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall operate to release Contractor or any bondsman from damages arising from such work or from enforcing each and every provision of this contract and District shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall not be entitled to have any payment estimates processed or be entitled to have any payment made for work performed so long as any lawful or proper direction concerning work, or any portion thereof given by the District or architect shall remain uncomplished with.
- 6.2 The final payment of ten percent (10%) of the value of work done under this contract, if unencumbered, shall be made within sixty (60) days after the date of completion of the work, provided however, that in the event of a dispute between the District and the Contractor, the District may withhold from the final payment an amount not to exceed one hundred and fifty percent (150%) of the disputed

amount. Completion means any of the following as provided by Public Contract Code section 7107:

- 6.2.1 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.
- 6.2.2 The acceptance by the public agency, or its agent, of the work of improvement.
- 6.2.3 For purposes of this contract, the acceptance by the District means acceptance made only by an action of the governing body of District in session. Acceptance by Contractor of said final payment shall constitute a waiver of all claims against District arising from this contract.
- 6.2.4 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 the Contractor.
- 6.2.5 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.
- 6.3. This contract is subject to the provisions of Public Contract Code section 7107.
- 6.4 At any time after fifty percent (50%) of the work has been completed, if the District, by action of its governing body, finds that satisfactory progress is being made, District may make any of the remaining payments in full for actual work completed or may withhold any amount up to ten percent (10%) thereof as District may find appropriate based on the Contractor's progress.
- 6.5 Whenever any part of the work is in a condition suitable for use, and the best interest of the District requires such use, the District may take possession of, connect to, open for public use, or use a part thereof. When so used, maintenance and repairs due to ordinary wear and tear or vandalism will be made at District's expense. The use by the District as contemplated in this section shall in no case be construed as constituting acceptance of the work or any part thereof. Such use shall neither relieve the Contractor of any of his responsibilities under the Contract nor act as a waiver by the District of any of the conditions thereof. Contractor shall

continue to maintain all insurance, including Builder's Risk insurance, on the project.

## **ARTICLE 7 PAYMENTS WITHHELD**

- 7.1. In addition to amounts which District may retain under any and all other articles in this contract including those entitled "Payments," and "Time for Completion and Liquidated Damages," District may withhold a sufficient amount or amounts of any payment or payments otherwise due to Contractor, as in its judgment may be necessary to cover:
  - 7.1.1 Payments which may be past due and payable for just claims against Contractor or any subcontractors for labor or materials furnished in and about the performance of work on the project under this contract.
  - 7.1.2 Defective work not remedied.
  - 7.1.3 Failure of Contractor to make proper payments to his subcontractor or for material or labor.
  - 7.1.4 Completion of contract if there exists a reasonable doubt that contract can be completed for balance then unpaid.
  - 7.1.5 Damage to another Contractor.
  - 7.1.6 Amounts which may be due District for just claims against Contractor.
  - 7.1.7 Failure of Contractor to keep the record ("as-built") drawings up to date.
  - 7.1.8 Failure to provide update on construction schedule as required herein.
- 7.2 District may apply such withheld amount or amounts to payment of such claims or obligations at its discretion. In so doing, District shall be deemed the agent of Contractor and any payment so made by District shall be considered as a payment made under contract by District to Contractor and District shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. District will render Contractor a proper accounting of such funds disbursed on behalf of Contractor.

## **ARTICLE 8. CHANGES AND EXTRA WORK**

- 8.1. Changes in Work. District, without invalidating contract, and as provided by law, may order extra work or make changes by altering, adding to, or deducting from work, the contract sum being adjusted accordingly. All such work shall be subject to prevailing wage rates and shall be executed under the conditions of the

original contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

- 8.2 In giving instructions, Contractor agrees that architect shall have authority to make minor changes in work, not involving change in cost, and not inconsistent with the purposes or approvals of the project. Otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless pursuant to a written order from District, and no claim for an addition to the contract sum shall be valid unless so ordered.
- 8.3 Unforeseen Conditions. Contractor shall provide District with notice of unforeseen conditions immediately upon discovery of such conditions.
- 8.4 Value of any such extra work, change, or deduction shall be determined at the discretion of District in one or more of the following ways:
- 8.4.1 By acceptable lump sum proposal from Contractor with itemization as required by District.
- 8.4.2 By unit prices contained in Contractor's original bid and incorporated in contract documents or fixed by subsequent agreement between District and Contractor.
- 8.4.3 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 contract:

EXTRA/(CREDIT)

- |     |                                                                                                                                                                                                                        |       |
|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| (a) | Material (attach itemized quantity and unit cost plus sales tax)                                                                                                                                                       | _____ |
| (b) | Labor (attach itemized hours and base rates from identified prevailing wage schedules)                                                                                                                                 | _____ |
| (c) | General Liability and Builder's Risk Insurance, Workers' Compensation Insurance, Social Security, Pension and Unemployment Taxes at actual and verified cost. <u>(Do not include this amount if OCIP is in place.)</u> | _____ |
| (d) | Subtotal                                                                                                                                                                                                               | _____ |
| (e) | Subcontractor's overhead and profit not to exceed 10% of Item (d)                                                                                                                                                      | _____ |
| (f) | Subtotal                                                                                                                                                                                                               | _____ |
| (g) | General Contractor's Overhead and                                                                                                                                                                                      |       |

- |     |                                                                                       |       |
|-----|---------------------------------------------------------------------------------------|-------|
|     | Profit, including extended home office overhead, not to exceed <b>10%</b> of Item (d) | _____ |
| (h) | Subtotal                                                                              | _____ |
| (i) | Bond Premium, not to exceed 1% of Item (h)                                            | _____ |
| (j) | Total                                                                                 | ===== |
- 8.5 Regardless of whether the cost of the change order is determined pursuant to 1, 2, or 3, above, in addition to the cost of the material and labor for deleted items, Contractor shall credit back an appropriate and reasonable overhead mark-up and the bonding mark up for deleted items.
- 8.6 Should Contractor claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation (i) obligates the District to pay additional compensation to the Contractor; or (ii) obligates the District to grant an extension of time for the completion of the contract; or (iii) constitutes a waiver of any provision in the contract, CONTRACTOR SHALL NOTIFY THE DISTRICT, IN WRITING, OF SUCH CLAIM AS SOON AS POSSIBLE, BUT IN NO EVENT WITHIN MORE THAN FIVE (5) WORKING DAYS FROM THE DATE CONTRACTOR HAS ACTUAL OR CONSTRUCTIVE NOTICE OF THE CLAIM. CONTRACTOR SHALL ALSO PROVIDE DISTRICT WITH SUFFICIENT WRITTEN DOCUMENTATION SUPPORTING THE FACTUAL BASIS OF THE CLAIM. Contractor shall be required to certify under penalty of perjury the validity and accuracy of any claims submitted. The Contractor's failure to notify the District within such five (5) working day period shall be deemed a waiver and relinquishment of the claim against the District. If such notice be given within the specified time, the procedure for its consideration shall be as stated above in this article.
- 8.7 In the event a mutual agreement cannot be reached on the cost of a change order, Contractor and District agree that an industry estimating guide, such as an estimating guide published by Means, shall be used to determine the cost of a disputed change order item.
- 8.8 All costs associated with the change are to be included in the change order proposal to the District. Costs may be in terms of time, money or both.

## **ARTICLE 9. DEDUCTIONS FOR UNCORRECTED WORK**

If District deems it inexpedient to correct work injured or not done in accordance with contract, an equitable deduction from contract price shall be made therefore.



## **ARTICLE 10. PROGRESS SCHEDULE**

- 10.1. Within fourteen (14) days after the date of the Award of the Contract, Contractor shall prepare a baseline progress schedule in hard copy and disk form and shall submit this schedule for the District's approval. The schedule shall clearly identify all staffing and other resources which in the Contractor's judgment are needed to complete the project within the time specified for completion. The schedule shall include milestones and shall include the "critical path" of construction. The Contractor is fully responsible to determine and provide for any and all staffing and resources at levels which allow for good quality and timely completion of the project; the District's approval of the progress schedule does not relieve the Contractor of any such responsibility. Contractor's failure to incorporate all elements of work required for the performance of the contract or any inaccuracy in the schedule shall not excuse the Contractor from performing all work required for a completed project within the specified contract time period, notwithstanding the Owner's acceptance of the schedule. The first payment will not be made unless the District has been provided and has accepted the project schedule.
- 10.2 The schedule shall allow enough time for inclement weather. Such schedule shall indicate graphically the beginning and completion dates of all phases of construction, and shall indicate the critical path for all critical, sequential time related activities. All required schedules shall indicate "float time" for all "slack" or "gaps" in the non-critical activities. Submitted construction schedules shall have a duration which does not exceed the contract time. Excess time may be picked up with "float time" at the discretion of the District. A "bar chart" in reasonably complete detail shall be adequate in contracts over \$1 million and shall show critical path items. All required schedules shall be periodically updated to reflect changes in the status of the job, including weather delays. At a minimum, the Contractor shall be required to provide and keep updated a monthly schedule in order to prevent delay claims.

## **ARTICLE 11 PREVAILING WAGES**

- 11.1 Pursuant to Labor Code § 1775, the Contractor shall, as a penalty to the District, forfeit not more than fifty dollars (\$50) for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the director for the work or craft in which the worker is employed. The amount of this penalty shall be determined by the California State Labor Commissioner and shall be based on consideration of the Contractor's mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages, or the previous record of the Contractor in meeting his or her prevailing wage obligations, or the Contractor's willful failure to pay the correct rates of prevailing wages.
- 11.2 Copies of the prevailing rate of per diem wages are on file at the District Office, and are available to any interested party upon request. [Labor Code § 1773.2.]

The District shall post a copy of the determination of the director of the prevailing rate of per diem wages at each job site.

## **ARTICLE 12 PAYROLL RECORDS**

- 12.1 It is a statutory requirement that the Contractor and each subcontractor maintain payroll records. Effective January 1, 1993, the law requires that 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. [See, Labor Code Section 1776]

## **ARTICLE 13 WORKING HOURS**

- 13.1 The Contractor and all subcontractors shall comply with the Working Hours provisions as set forth at Labor Code sections 1810 through and including 1815.

## **ARTICLE 14 FINGERPRINT REQUIREMENTS**

- 14.1 A school district may determine, on a case-by-case basis, to require an entity providing school site services to comply with the requirements of this section, unless the school district determines that the employees of the entity will have limited contact with pupils. In determining whether a contract employee will have limited contact with pupils, the school district shall consider the totality of the circumstances, including factors such as the length of time the contractors will be on school grounds, 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. If a school district makes this determination, the school district shall take appropriate steps to protect the safety of any pupils that may come in contact with these employees. If a school district requires an entity providing services other than those listed in subdivision (a) and its employees to comply with the requirements of this section, the Department of Justice shall comply with subdivision (e)(1). [See, Education Code section 45125.1, subdivision (d)]
- 14.2 If Contractor believes that its employees will have only limited contact with pupils and should therefore be exempted from these requirements, Contractor must contact the District with its request for exemption within fifteen (15) days prior to the commencement of work. The request for exemption must specify the grounds for such proposed exemption, considering the totality of circumstances, including but not limited to the length of time Contractor will be on school grounds, whether pupils will be in proximity to the site where the Contractor's employees are working, and whether the Contractor's employees will be working by themselves or with others. Whether to grant or deny the exemption is within the sole discretion of the School District governing board.

## **ARTICLE 15 EMPLOYMENT OF APPRENTICES**

- 15.1 Contractor agrees to comply with California Labor Code sections 1773.3, 1777.5 and 1777.6, and 3077 et seq. These sections require that contractors and subcontractors employ apprentices in apprenticeship occupations in a ratio of not less than one hour of apprentice's work for each for every five hours of labor performed by a journeyman, unless an exception is granted, and that contractors and subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public work on the ground of race, religious creed, color, national origin, ancestry, sex, or age. Only apprentices who are training under written apprenticeship agreements will be employed on public works in apprenticeship occupations. The responsibility for compliance with these provisions for all apprenticeship occupations rests with the Contractor.

## **ARTICLE 16 NON-DISCRIMINATION**

- 16.1 In connection with the performance of work under this Contract, the Contractor agrees (as prescribed in Chapter 6 of Division 3 of Title II of the Government Code of the State of California, commencing at Section 12900 and by Labor Code section 1735) not to discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age. The aforesaid provisions shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. The Contractor further agrees to insert the foregoing provisions in all sub-contracts hereunder, except subcontracts for standard commercial supplies of raw materials.

## **ARTICLE 17 FEDERAL IMMIGRATION REFORM AND CONTROL ACT OF 1986**

- 17.1 The Contractor hereby certifies that it is in full compliance with the provisions of the federal Immigration Reform and Control Act of 1986 ("IRCA") in the hiring of its employees, and shall remain in compliance during the performance of the work. The Contractor shall indemnify, hold harmless, and defend the Owner against any and all actions, proceedings, penalties or claims arising out of the Contractor's failure to comply strictly with the IRCA.

## **ARTICLE 18 CONTRACTOR'S LICENSE REQUIREMENT**

- 18.1 Contractors are required by law to be licensed and regulated by the Contractors' State License Board, which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four

years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

#### **ARTICLE 19 ESCROW AGREEMENT FOR SECURITY DEPOSITIONS IN LIEU OF RETENTION**

- 19.1 This project is subject to the provisions of Public Contract Code § 22300 whereby the Contractor may elect to enter into an escrow for the deposit of securities and/or funds withheld to ensure performance of the contract. Any escrow used shall be established using the escrow agreement form used by the District.

#### **ARTICLE 20 ASSIGNMENT OF ANTITRUST AND UNFAIR BUSINESS PRACTICE CLAIMS IN PUBLIC WORKS CONTRACTS**

- 20.1 In accordance with Section 7103.5(b) of the Public Contract Code, the Contractor and subcontractors shall conform to the following requirements. In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 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 purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties.

#### **ARTICLE 21 SUBCONTRACTING**

- 21.1 Subcontracting under this Agreement shall be governed by the California Subletting and Subcontracting Fair Practices Act, Public Contract Code sections 4100 - 4114.
- 21.2 Delegation by Contractor
- 21.2.1 Contractor shall have the right to retain or engage any person, firm or corporation to perform any of its obligations hereunder, provided that Contractor remain responsible for overseeing the performance and shall give notice of any such employment to the District prior to the commencement of any work by such person, firm or corporation. District shall not unreasonably withhold approval for any person, firm, or corporation who is to perform any of Contractor's obligations.

## **ARTICLE 22 TRAVEL AND SUBSISTENCE PAYMENTS**

- 22.1 The Contractor shall be required to pay travel and subsistence payments to each worker who needs to travel in order to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed with the Department of Industrial Relations in accordance with the provisions of Labor Code Section 1773.8.

## **ARTICLE 23 EXISTING UTILITIES**

- 23.1 In accordance with the provisions of Government Code section 4215, the Contractor shall assume the responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the District's site.
- 23.2 If the District fails to identify, with reasonable accuracy, the utilities on its site in the plans and specifications which are made a part of the invitation for bids, the Contractor shall be compensated for the costs of relocating such utilities. The Contractor shall also not be responsible for any damage caused to such unidentified utilities, if such damage is not due to the failure of the Contractor to exercise reasonable care. The Inspector of Record shall decide whether the Contractor failed to exercise reasonable care. In deciding whether the Contractor or a subcontractor exercised reasonable care, the Inspector of Record shall determine whether the Contractor should have anticipated the presence of such utilities on the District's campus from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the construction. The Contractor may also be entitled to additional time pursuant to Section 3.3 of this Agreement if the District's failure to reasonably identify the location of utilities on site results in the Contractor incurring unanticipated delays. Nothing herein shall be deemed to require the District to indicate the presence of existing service laterals or appurtenances.
- 23.3 If the Contractor discovers or suspects that there are utility facilities not identified by the District in the plans or specifications, he or she shall immediately notify the District and/or Architect and the applicable utility verbally and in writing. The public utility shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a price to be agreed upon between the Contractor and the District.
- 23.4 The Contractor shall be solely responsible for working with the County and the various other public utilities for identifying and locating utilities off the District's campus.

## ARTICLE 24 INSURANCE

24.1 Contractor shall provide and maintain throughout the term of this Agreement workers' compensation, comprehensive general liability, contractual liability and comprehensive automobile liability insurance at the following minimum limits:

24.1.1 Workers' compensation and employer's liability insurance with a limit of \$1,000,000 of worker's compensation benefits in accordance with applicable laws (or such higher limit as may be required by law), to provide for payment to Contractor's employees, and/or their dependents, employed on or in connection with the Project Scope covered by this Agreement.

24.1.2 Commercial General Liability insurance, and all operations, including completed operations, contractual and broad form comprehensive endorsement with combined single limit of \$1,000,000 for each occurrence for bodily and/or personal injury, including death and property damage.

24.1.2.1 This policy is to also include an Excess Liability Endorsement with combined single limit of \$2,000,000 each occurrence for bodily and/or personal injury including death and property damage.

24.1.3 Primary Comprehensive Automobile Public Liability Insurance (including owned, non-owned and hired automotive equipment), used in connection with Contractor's operations, with a combined single limit for bodily injury or death and property damage of \$1,000,000 per accident or occurrence.

24.1.4 Professional errors and omissions liability for protection against claims alleging negligent acts, errors or omissions which may arise under this Agreement, whether by the insured's employees or subcontractors, with a minimum liability limit per occurrence of \$1,000,000.

24.1.5 Policy Endorsements: Each general liability, professional liability and automobile liability insurance policy shall be endorsed with the following specific provisions:

24.1.5.1 The Summerville Union High School District, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insured parties ("District Additional Insured Parties").

24.1.5.2 This policy shall be considered, and include a provision it is, primary as respects the District's additional insured

parties, and shall not include any special limitations to coverage provided to the District as additional insured parties. Any insurance maintained by the District, including any self-insured retention the District may have, shall be considered excess insurance only.

24.1.5.3 This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

24.1.5.4 The insurer waives all rights of subrogation against the District as additionally insured parties.

24.1.5.5 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the District additional insured parties.

24.1.6 If requested to do so by the District, Contractor shall deliver to the District, a Certificate(s) of Insurance completed by Contractor and its subcontractors' insurance carrier or agent certifying that minimum insurance coverage, as required above, is in effect.

24.1.7 The insurance policy and endorsements shall not be suspended, voided, cancelled, or reduced in coverage or in limits except after thirty (30) days written notice has been given to the District Superintendent by registered mail, return receipt requested, at Soulsbyville School District, 20300 Soulsbyville Road, Soulsbyville, CA 95372.

24.1.8 In the event any of the Project Scope hereunder is contracted to subcontractors by Contractor, Contractor shall require its subcontractors to carry and maintain the same insurance as specified above. The District shall not be included as an additional named insured on the Workers' Compensation policy(ies).

24.1.9 The naming of the District as an additional named insured shall not obligate the District to pay any premium on the policy(ies).

## **ARTICLE 25. INDEMNIFICATION**

25.1 District shall not be liable for, and Contractor shall defend and indemnify District to the fullest extent permitted by law against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees, expert witness fees, investigation costs and court costs (hereinafter collectively referred to as "Claims"), which arise out of or are in any way

connected to the work covered by this contract arising either directly or indirectly from any act, error, omission or negligence of Contractor or its contractors, licensees, agents, servants or employees, including, without limitation, Claims caused by the concurrent act, error, omission or negligence of District or its agents or employees. However, Contractor shall have no obligation to indemnify District from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the active negligence, sole negligence, or willful misconduct of District or its agents or employees.

## **ARTICLE 26 ENVIRONMENTAL INDEMNIFICATION**

- 26.1 From and after the execution of this Contract, Contractor shall indemnify, defend and hold harmless District from all losses or damages resulting from injury to or death of any person and damage to property, and any fine which is occasioned by or arises out of any breach of the environmental or toxic warranty, representations or covenants of the Contractor under this Contract.
- 26.2 Contractor further agrees to indemnify, defend, and hold harmless District, its Board Members, administrators, employees, and agents, from and against any and all liability as follows:
  - 26.2.1 From all foreseeable and all unforeseeable consequential damages, directly or indirectly arising out of the use, generation, storage, or disposal of hazardous materials by Contractor; and
  - 26.2.2 Without limitation, from the cost of any required or necessary repair, cleanup or detoxification and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following filing of the Notice of Substantial Completion, to the full extent that such action is attributable, directly or indirectly, to the presence or use, generation, storage, release, threatened release or disposal of hazardous materials by any person on the project prior to filing of the Notice of Substantial Completion.
  - 26.2.3 Contractor's obligations pursuant to the foregoing indemnity shall survive the filing of Notice of Completion of the Project.
  - 26.2.4 This agreement, as to indemnity and reimbursement as above set forth to be undertaken by the Contractor, shall survive the performance of the remainder of said Contract and shall remain in full force and effect notwithstanding such performance.



## **ARTICLE 27 COMPLIANCE WITH ANY AND ALL APPLICABLE CALIFORNIA CODE OF REGULATIONS ("CCR")**

- 27.1 Contractor shall comply with, as applicable, the California Code of Regulations (CCR) governing the work of improvement set forth in the Contract documents. Contractor shall keep a copy of the relevant sections of the Regulations on the job site at all times for reference. Nothing in these contract documents shall be construed to permit work not conforming to these codes and/or regulations. A copy of the stamped contract documents shall be kept on the job site and made available to the Owner's Inspector. Where the requirements of these Contract Documents exceed those of such codes or ordinances, these Contract Documents shall govern.

## **ARTICLE 28 INSPECTION BY DISTRICT**

- 28.1 The Contractor shall at all times maintain proper facilities and provide safe access for inspection by the District to all parts of the work, and to the shops wherein the work is in preparation. Where the construction documents require work to be specially tested or approved, it shall not be tested or covered up without timely, written approval by the District.

## **ARTICLE 29 COMPLIANCE WITH BUILDING CODES/SAFETY STANDARDS**

- 29.1 The provisions of all applicable county and state codes, ordinances, and regulations shall be considered a minimum requirement.
- 29.2 Precaution shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery, equipment, and other hazards shall be guarded or eliminated in accordance with the safety provisions of the Construction Safety Orders issued by the Occupational Safety and Health Standards Board of the State of California.

## **ARTICLE 30. MATERIALS**

- 30.1. Except as otherwise specifically stated in this contract, Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendency, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this contract within specified time.
- 30.2 Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of good quality.
- 30.3 Materials shall be furnished in ample quantities and at such times as to insure uninterrupted progress of work and shall be stored properly and protected as

required. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or work under this contract.

- 30.4 No materials, supplies, or equipment for work under this contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in work and agrees upon completion of all work to deliver premises, together with all improvements and appurtenances constructed or placed thereon by him, to District free from any claims, liens, or charges. He further agrees that neither he nor any person, firm, or corporation furnishing any materials or labor for any work covered by this contract shall have any right to lien upon premises or any improvement or appurtenance thereon, except that Contractor may install metering devices or other equipment of utility companies or of political subdivisions title to which is commonly retained by utility company or political subdivision. In event of installation of any such metering device or equipment, Contractor shall advise District as to owner thereof. Nothing contained in this article, however, shall defeat or impair right of persons furnishing material or labor under any bond given by Contractor for their protection or any rights under any law permitting such persons to look to funds due Contractor in hands of District, and this provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing material for work when no formal contract is entered into for such material.

## **ARTICLE 31. SUBSTITUTIONS**

- 31.1 Whenever in specifications any materials, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specification shall be deemed to be used for the purpose of facilitating description of material, process, or article desired and shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer any material, process, or article which shall be substantially equal or better in every respect to that so indicated or specified. Any material, process, or article not exactly meeting the specifications in the documents in every respect shall be considered a substitution. If a material, process, or article offered by Contractor is not, in opinion of architect, substantially equal or better in every respect to that specified, then Contractor shall furnish the material, process, or article specified. Burden of proof as to equality of any material, process, or article shall rest with Contractor.
- 31.2 In accordance with Public Contract Code section 3400 "prior to the award of the contract", district must provide for "submission of data substantiating a request for a substitution of 'an equal' item." Therefore, no later than five (5) days prior to bid date, if a bidder is requesting substitution of "an equal" item or product or work, the make and grade of the item, product or work which is to be substituted shall be provided to the District representative. The documentation submitted

must include any and all illustrations, specifications, and other relevant data including catalogue information which describes the substituted item or product or work and substantiates that it is an "or equal" to the specified item or product or work. In addition, the submittal documentation must also include a statement of the cost implications of the substitution being requested stating whether and why the substitution will reduce or increase the contract price. The documentation submitted must also include information regarding the durability and life cycle cost of the substituted item, product or work. Substantiating data shall include a signed affidavit from the Contractor stating that the substituted item or product or work is equivalent to the specified item or product or work in every way except as listed on the affidavit. The same substitution information is to be included in the sealed bid submittal package. Failure to submit all the needed substantiating data, including the signed affidavit, may result in a determination that the bid is nonresponsive. BIDDERS ARE SPECIFICALLY NOTIFIED THAT THE SUBMISSION OF THIS DOCUMENTATION IN NO WAY OBLIGATES THE DISTRICT OR ITS REPRESENTATIVE TO REVIEW SUCH DOCUMENTATION PRIOR TO CONTRACT AWARD. FURTHERMORE, IF A PROPOSED SUBSTITUTION IS REJECTED, BIDDER SHALL BE RESPONSIBLE TO PROVIDE THE ITEM OR PRODUCT OR WORK AS ORIGINALLY SPECIFIED. DISTRICT HAS THE COMPLETE AND SOLE DISCRETION TO DETERMINE IF AN ITEM OR ARTICLE IS AN EQUAL ITEM.

- 31.3 After award of the contract should the District determine in its sole discretion that substitution of an item or product is reasonable and necessary or reasonable and appropriate, the Contractor shall submit any substitution requests together with all data required to substantiate that the substituted product or item is an "or equal" to the specified product or item. The make and grade of the item, product or work which is to be substituted shall be provided to the District representative. The documentation submitted must include any and all illustrations, specifications, and other relevant data including catalogue information which describes the substituted item, product or work and substantiates that it is an "or equal" to the specified item, product or work. In addition, the submittal documentation must also include a statement of the cost implications of the substitution being requested stating whether and why the substitution will reduce or increase the contract price. The documentation submitted must also include information regarding the durability and life cycle cost of the substituted item, product or work. Substantiating data shall include a signed affidavit from the Contractor stating that the substituted product is equivalent to the specified product or item in every way except as listed on the affidavit. Failure to submit all the needed substantiating data, including the signed affidavit, to the District Representative or Architect in a timely fashion so that the substitution can be adequately reviewed and considered prior to any necessity for its use or application may result in the rejection of the proposed substitution. The District Representative or Architect is not obligated to review multiple substitution submittals for the same product or

item due to the Contractor's failure to submit a complete package either at time of submission of bid documents or in a timely manner after award of contract.

- 31.4 In event Contractor furnishes material, process, or article more expensive than that specified, the difference in cost of such material, process, or article so furnished shall be borne by Contractor.

## **ARTICLE 32 TAXES**

- 32.1 Contractor shall pay all applicable taxes related to the installation or procurement of any Equipment, whether municipal, state or federal, including but not limited to, sales, use and excise taxes related to the installation or procurement of the Equipment. The District shall be responsible for and shall pay all applicable taxes related to operation of the Equipment, including, but not limited to, property taxes.

## **ARTICLE 33 – DIGGING TRENCHES AND EXCAVATIONS**

- 33.1 With regard to any work which involves digging trenches or other excavations that extend deeper than four feet below the surface, the Contractor shall promptly, and before the following conditions are disturbed, notify District, in writing, of any:
- 33.1.1 Material that the contractor believes may be material that is 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.
  - 33.1.2 Subsurface or latent physical conditions at the site differing from those indicated.
  - 33.1.3 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 the contract.
- 33.2 In case of such notification, District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor'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.
- 33.3 In the event that a dispute arises between District and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by this Agreement, but shall proceed with all work to be performed

under the Contract Documents. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the parties.

#### **ARTICLE 34 EVENTS OF DEFAULT/REMEDIES UPON DEFAULT**

34.1 Events of Default by the District: Each of the following shall constitute an event of default by the District:

34.1.1 Any failure by the District to pay Contractor its compensation required by Articles 5 and 26 of this Agreement for a period of more than thirty (30) calendar days after the date the Board approves the Contractor's Notice of Substantial Completion form;

34.1.2 Any representation or warranty furnished by the District in this Agreement which was false or misleading in any material respect when made;

34.1.3 Failure by the District to perform its obligations under this Agreement;

34.2 Events of Default by Contractor. Each of the following events shall constitute an event of default by Contractor:

34.2.1 Failure to perform and/or correct by Contractor its responsibilities pursuant to this Agreement for a period of twenty (20) calendar days after a notice to cure is given either by the Architect, Inspector of Record, or the District.

34.2.2 Any representation or warranty furnished by District in this Agreement that was false or misleading in any material respect when made.

34.3 Remedies Upon Default by the District:

34.3.1 In the event the District fails to pay Contractor its progress payments when due or if any other event of default by the District occurs, Contractor may elect only the remedies listed below:

34.3.1.1 Subject to the notice requirement provided in this Agreement, exercise all remedies available at law or at equity or other appropriate proceedings including bringing an action or actions from time to time for recovery of amounts due and unpaid by the District. The Contractor shall not have the right to cease work on the Project.

34.3.1.2 Notwithstanding anything in this Article, in the event of default by the District other than a failure to pay Contractor its compensation, the District shall have the right to cure

such default for a period of twenty (20) calendar days after written notice.

**34.4 Remedies Upon Default by Contractor:**

34.4.1 In the event of default by Contractor, District may elect only the remedies listed below:

34.4.1.1 Subject to the notice requirement provided in this Agreement, exercise all remedies available at law or at equity or other appropriate proceedings, including an action for recovery of amounts overpaid to Contractor, and/or for specific performance, and/or for damages;

34.4.1.2 Notwithstanding anything in this Article, in the event of a default by Contractor, Contractor shall have the right to cure such default for a period of twenty (20) calendar days after written notice.

34.4.1.3 In the event Contractor fails to perform any other duty, covenant or condition under this Agreement after twenty (20) calendar days' written notice, District may perform such duty at its option and deduct from any amount owed to Contractor for the costs incurred.

**ARTICLE 35 CONSULTATION WITH LEGAL COUNSEL**

35.1 Contractor acknowledges that he or she has the right to have this Agreement and the documents incorporated into this Agreement reviewed by a legal or nonlegal advisor regarding the consequences of signing this Agreement.

**ARTICLE 36 RIGHT TO TERMINATE AGREEMENT**

36.1 The District retains the absolute right to terminate this Agreement in the event it is unable to obtain the approval of the County Public Works Department, approval of CEQA documents, or recognition as a financial hardship district.

**ARTICLE 37 ENTIRE AGREEMENT**

37.1 This written Agreement is the entire agreement between the parties. No verbal or written representations from the Architect or any other party not incorporated into this Agreement shall become part of the terms of this Agreement. No modification of the Agreement is permitted except upon execution of a further written agreement between the parties, which shall specifically refer to this Agreement. This Agreement shall supersede any prior oral or written agreements between the parties.

## **ARTICLE 38 SEVERABILITY**

- 38.1 In the event that a court of competent jurisdiction was to conclude that any provision in this Agreement is invalid or unenforceable, the parties agree that the remaining provisions in this Agreement shall not be affected by such holding, and shall continue in full, force, and effect.

## **ARTICLE 39 CONTRACTOR'S AGREEMENT WITH SUBCONTRACTORS**

- 39.1 Contractor agrees to incorporate the terms and conditions of this Agreement and the documents incorporated into this Agreement into any and all agreements between it and its subcontractors.

## **ARTICLE 40 NOTICE**

- 40.1 Any notice from one party to the other under this Contract shall be in writing and shall be dated and signed by the party giving such notice or by a duly authorized representative of such party unless notice is otherwise authorized herein. Notice shall not be effective for any purpose whatsoever unless served in the following manner:
- 40.2 Notice to the Summerville Union High School District shall be by either personal delivery or by mail to: Mr. Warren Van Bolt, Director of Maintenance, Operations, Summerville Union High School District, 17555 Tuolumne Road Tuolumne, CA 95379-9702.
- 40.3 Notice to Contractor shall be by either personal delivery to Contractor's on-site authorized representative or by depositing the same in the United States mail, enclosed in a sealed envelope, addressed to:

Njirich & Sons Inc. \_\_\_\_\_  
19970 Kelly Drive \_\_\_\_\_  
Sonora CA, 95370 \_\_\_\_\_  
\_\_\_\_\_

## **ARTICLE 41 MISCELLANEOUS**

- 41.1 The District and Contractor agree to execute such instruments and documents and to diligently undertake such actions as may be required in order to undertake their respective responsibilities and obligations as set forth and/or incorporated into this Owner-Contractor Agreement.

#### **ARTICLE 42 HEADINGS**

- 42.1 Any captions to, or headings of, paragraphs of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

#### **ARTICLE 43 WAIVER OR FAILURE TO ENFORCE PROVISION**

- 43.1 The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

#### **ARTICLE 44 LAWS OF STATE OF CALIFORNIA**

- 44.1 This Agreement shall be construed in accordance with the laws of the State of California.

#### **ARTICLE 45 EXECUTION OF AGREEMENT**

- 45.1 Authority to Execute: Each signatory to this Contract warrants that he or she is authorized to enter into this Contract on behalf of his or her principal.
- 45.2 This Construction Agreement may be executed in counterparts and each counterpart shall be considered one and the same agreement.



## SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Construction Agreement as of the day and year first written above.

### SUMMERVILLE UNION HIGH SCHOOL DISTRICT

Date: 6-1-16

By:

Robert N. Griffith

Robert N. Griffith

District Superintendent

Summerville Union High School District

Date: 6/1/16

By:

Dennis R. Spisak

Board President

Summerville Union High School District

### CONTRACTOR

Date: 5-24-16

By:

Njirich & Sons, Inc.

Shelley Njirich