



10960 Wheatlands Ave., Ste. 105
Santee, CA 92071
Ph: 858-277-7988 Fax: 858-277-6768
License # 756809
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Exhibit A

SUBCONTRACTOR GENERAL CONDITIONS

These SUBCONTRACTOR GENERAL CONDITIONS ("SGC"), which shall be incorporated into each SUBCONTRACTOR PROJECT AGREEMENT ("SPA"), and all exhibits thereto and documents referenced therein, constitute the SUBCONTRACT between DOWLING CONSTRUCTION, INC. ("Contractor") and \_\_\_\_\_ ("Subcontractor") to perform work for Contractor on a certain project. The SGC shall be effective as of \_\_\_\_\_ ("Effective Date"). Contractor and Subcontractor are referred to as the "Parties" and individually as a "Party" as follows:

SUBCONTRACTOR NAME/CONTACT INFO

CONTRACTOR

DOWLING CONSTRUCTION, INC.
10960 Wheatlands Ave., Ste. 105
Santee, CA 92071
(858) 277-7988
License No. 756809

License No.:
EIN:

All notices shall be sent to the addresses above.

INSURANCE LIMITS (See Section 13 for additional insurance provisions):

Table with 2 columns: Insurance Type and Limit. Includes Comprehensive General Liability Insurance, General Aggregate (\$2,000,000), Products and completed operations (\$2,000,000), Personal and advertising injury (\$1,000,000), Each Occurrence (\$1,000,000), Fire damage or Damage To Rented Premises (\$50,000), Medical Expense, any one person (\$2,500), and Automobile Combined Single Limit (\$1,000,000).

- 1. Master Contract: Based upon the foregoing, the parties enter into this Master Subcontract. This Master Subcontract will commence on the date set forth above and continue for a period of one year. This Master Subcontract will automatically renew from year to year. Either party may terminate this Master Subcontract at any time by giving written notice to the other. Written notice to terminate this Master Subcontract to Dowling Construction Inc. must be delivered to Jim Dowling, President, of Dowling Construction Inc. in order to be effective. Termination of this Master Subcontract will not affect any project(s) that have been commenced between the parties consisting of and based upon this Master Subcontract. The project specific agreements entered into between the parties pursuant to this Master Subcontract will each be referred to as a "Subcontractor Project Agreement." Each Subcontractor Project Agreement will include definitions of terms used in this Master Subcontract. The SGC shall serve as the basic understanding and agreement between Subcontractor and Contractor and is being entered into in contemplation of Contractor entering into a prime contract (the "Master Contract") with an owner of property (each of which is referred to as an "Owner") for construction work and services, a portion of which shall be performed by Subcontractor.
2. SGC: The terms of specific work performed by Subcontractor shall be identified in a SPA, which shall only modify the terms of the SGC as it relates to the Work described therein. Only addends to the SGC shall permanently modify the terms of the SGC. The term of the SGC shall be for one year from the Effective Date but shall automatically renew for one year periods unless modified or cancelled by written notice.

### 3. Scope of Subcontractor's Work:

- 3.1 Subcontractor's Work** – Contractor hereby contracts with Subcontractor as an independent contractor to perform the work described in the SPA (the "Subcontractor's Work"). Subcontractor shall perform the Subcontractor's Work in accordance with the SPA, SGC, the Master Contract and any plans, drawings revisions and other contract documents described in the SPA (collectively, the "Subcontract Documents"). Subcontractor is an independent contractor and shall comply and cause its employees and its Subcontractors to comply with all applicable safety, workers' compensation and other applicable employment laws and payroll/income taxes and all trade labor agreements. This includes compliance with California Labor Code 1174 and 218.7(f)(1) requiring subcontractor to produce sufficient records to allow contractor to confirm all employees of subcontractor have been paid applicable wages and fringe benefits.
- 3.2 Subcontract Documents** – The Subcontract Documents shall be binding on Subcontractor. Upon Subcontractor's request, Contractor shall furnish a copy of any part of the Subcontract Documents to Subcontractor. Nothing contained in the Subcontract Documents shall cause Subcontractor to become a third party beneficiary to any Master Contract unless Subcontractor is specifically named as an intended third party beneficiary of such agreement.
- 3.3 Conflicts** – The SGC shall control in the event of a conflict between this SGC and the Subcontract Documents.

### 4. Schedule of Work:

- 4.1 Time Is Of Essence** – Contractor shall prepare a schedule for the Subcontractor's Work and revise such schedule as the Work progresses (such schedule as may be revised from time to time is referred to herein as the "Schedule of Work"). Time is of the essence for both Parties and they shall each perform their respective work and the work of their subcontractors so that the entire project referred to in the SPA (the "Project") shall be completed in accordance with the Subcontract Documents and the Schedule of Work.
- 4.2 Duty to be Bound** – Subcontractor shall be bound by the Schedule of Work. Subcontractor shall provide Contractor with any requested scheduling information for the Subcontractor's Work. The Schedule of Work and all subsequent changes thereto shall be submitted to Subcontractor in advance of the required performance.
- 4.3 Schedule Changes** – Subcontractor acknowledges that changes may be made in the Schedule of Work by Contractor and shall comply with any such changes.
- 4.4 Priority of Work** – Contractor shall have the right to decide the time, order and priority in which the various portions of the Subcontractor's Work shall be performed and all other matters relative to the timely and orderly conduct of the Subcontractor's Work. Subcontractor shall commence the Subcontractor's Work on or before the "Start Date" (as defined in the SPA). If the Subcontractor's Work is interrupted for any reason, Subcontractor shall resume such work within two (2) working days from Contractor's notice to do so.

5. **Subcontract Price:** Upon satisfactory performance of the Subcontractor's Work and Contractor's receipt of payment from Owner from such Subcontractor's Work, Contractor shall pay Subcontractor the amount stated in the SPA, subject to any additions or deductions provided under this Subcontract (such amount is referred to herein as the "Subcontract Price").

6. **Payment:**

6.1 **General Provisions:**

6.1.1 **Payment Use Restriction** – Subcontractor shall use any payment received under each Subcontract to satisfy the indebtedness owed by Subcontractor to any person or entity furnishing labor or materials for use in performing the Subcontractor's Work before such payments may be used for any other purpose.

6.1.2 **Payment Use Verification** – Contractor shall have the right at all times to contact the Subcontractor's subcontractors and suppliers to ensure that the same are being paid promptly by Subcontractor for labor or materials furnished for use in performing the Subcontractor's Work.

6.1.3 **Partial Lien Waivers and Affidavits** – As a prerequisite for payment, Subcontractor shall provide, in a form satisfactory to Owner and Contractor, partial lien or claim waivers and affidavits from Subcontractor, and its subcontractors and suppliers for the completed Subcontractor's Work. Such waivers may be made conditional upon payment.

6.1.4 **Subcontractor Payment Failure** – Upon payment by Contractor, Subcontractor shall promptly pay its lower-tier subcontractors and material suppliers the amounts which they are entitled to collect from Subcontractor for performance of the Subcontractor's Work. If Contractor believes labor, material or other obligations incurred in the performance of the Subcontractor's Work are not being paid, Contractor may give written notice of such claim or lien to Subcontractor and may take any steps Contractor deems necessary to assure that progress payments are utilized to pay such obligations, including issuing joint checks. If upon receipt of said notice, Subcontractor does not: (a) supply evidence to the satisfaction of Contractor that the monies owing to such claimants have been paid; or (b) post a bond indemnifying Owner, Contractor, the Contractor's surety and the premises from such claim or lien, then Contractor shall have the right to withhold from all amounts due or to become due to Subcontractor a reasonable amount to protect Contractor from any and all claims stated in Section 12 resulting or arising, directly or indirectly, entirely or in part from any negligence or action or event in connection with any such claim or lien until the claim or lien has been satisfied by Subcontractor.

Contractor may elect at any time to pay Subcontractor's subcontractors and suppliers directly and designate subcontractor and such subcontractor or supplier as payees.

6.1.5 **Subcontractor Assignment of Payments** – Subcontractor shall not assign payment due or to become due under SPA without the prior written consent of Contractor.

- 6.1.6 Effect of Subcontractor's Bankruptcy** – If Subcontractor shall become bankrupt or make an assignment for the benefit of creditors, Contractor may cancel this Subcontract and all outstanding SPAs and perform the balance of Subcontractor's Work with other subcontractors or with its own forces. Upon such performance by Contractor, the trustee in bankruptcy shall be paid the positive difference between the Subcontract Price less any prior payments under the SPA less the costs of completion. Upon demand by Contractor, Subcontractor shall pay Contractor the amount by which the prior payments under the SPA plus the costs of completion exceed the Subcontract Price.
- 6.1.7 Payment Not Acceptance** – No payment to Subcontractor under this Subcontract shall constitute or imply acceptance of any portion of the Subcontractor's Work.
- 6.1.8 Final Payment** – Final payment will not be made to subcontractor until all closeout documents are received. These documents include: final lien waivers from all material suppliers on project, recycling documents and receipts, project/owner manuals for equipment installed, as-built plans, warranties from subcontractor, manufacturer warranties, if applicable.

## **6.2 Progress and Final Payments:**

- 6.2.1 Application** – Subcontractor shall submit an itemized application for payment to Contractor containing any substantiating data as required in the Subcontract Documents. Subcontractor's application shall be notarized if required. Subcontractor's progress payment application for Subcontractor's Work performed in the preceding payment period shall be submitted to Contractor for approval per the terms of this Subcontract and specifically Sections 6.2.2, 6.2.3, and 6.2.4. Subcontractor shall submit progress payment applications to Contractor no later than the day of each payment period as specified in the SPA, if applicable.
- 6.2.2 Time of Payment** – Within ten (10) days after receipt from Owner of compensation allocable to Subcontractor's Work, Contractor shall pay Subcontractor the amount allowed by Owner to Contractor for Subcontractor's Work performed pursuant to a SPA. To the extent Contractor receives payment from Owner for the Subcontractor's Work, Contractor shall pay Subcontractor in accordance with the schedule set forth in the Subcontract Documents relating to payments made by Owner to Contractor. Contractor shall have the right to retain up to 10 percent (10%) of all progress payments from otherwise payable to Subcontractor.
- 6.2.3 Contractor is Conduit for Payment** – Subcontractor acknowledges it shall be paid only from a special fund which shall consist of monies paid to Contractor by Owner. If for any reason such fund does not come into existence, Subcontractor shall not be entitled to payment. Owner's payment to Contractor of funds allocable to the Subcontractor's Work is a condition precedent to Contractor's obligation to make progress payments or final payment to Subcontractor. If Owner delays in paying Contractor for Work attributable in whole or in part to the Subcontractor's Work or if Contractor becomes involved in any legal proceeding with Owner to collect compensation for any such Work, payment to Subcontractor shall be deferred until Contractor receives such compensation from Owner. Further, if the amount collected by Contractor from Owner is reduced by reason of Work attributable in whole or in

part to the Subcontractor's Work, Subcontractor's payment shall be reduced in a like amount. Subcontractor's payment shall be reduced by its pro rata share of Contractor's costs, including attorneys' fees incurred in collecting compensation attributable in whole or in part to the Subcontractor's Work.

**6.2.4 Owner's Refusal to Pay** – Contractor shall be entitled to reduce the balance owed to Subcontractor by an amount equal to the loss sustained by Contractor if Owner refuses to pay Contractor as a result of any defect, delay or other deficiency to the extent such results from or is caused by the Subcontractor's Work; if Subcontractor refuses to or cannot repair or cause to repair said defect within 30 days of receipt of notice to repair.

**6.2.5 Payment of Retention and Final Payment** – Final payment of the remaining balance due of the Subcontract Price shall be made to Subcontractor: (a) upon Contractor's receipt of Owner's waiver of all claims related to the Subcontractor's Work (excluding any unsettled liens, unknown defective work and noncompliance with the Subcontract Documents or warranties); and (b) within ten (10) days after receipt by Contractor of final payment from Owner for such Subcontractors' Work.

## **7. Changes, Claims and Delays:**

**7.1 Changes** – When requested by Contractor in writing, Subcontractor shall make any and all changes in the Subcontractor's Work, which are within the general scope of the SPA without nullifying the SPA. Adjustments in the Subcontract Price or Schedule of Work, if any, resulting from such changes shall be set forth in a "Change Order" (as hereinafter defined). No such adjustments shall be made for any changes performed by Subcontractor which have not been ordered by Contractor in writing. As used in this Subcontract, the term "Change Order" shall refer to a written instrument prepared by Contractor and signed by Subcontractor stating the Parties' agreement to the change the scope of the Subcontractor's Work, adjust the Subcontract Price or modify the Schedule of Work.

**7.2 Claims Relating to Owner** – Subcontractor shall make all claims for which Owner is or may be liable in the manner and within the time limits provided in the Master Contract for like claims by Contractor upon Owner and in sufficient time for Contractor to make such claims against the Owner in accordance with the Master Contract.

**7.3 Claims Relating to Contractor** – Subcontractor shall give Contractor written notice of all claims not included in Section 7.2 within five (5) days after the occurrence of the event for which a claim is made. All other claims, disputes and matters in question between Contractor and Subcontractor not relating to claims included in Section 7.2 shall be resolved in the manner provided in Section 14.

**7.4 Adjustment in Subcontract Price** – Subcontractor shall be entitled to an increase in the Subcontract Price only if a Change Order results in a net economic increase or decrease in Subcontractor's costs. Adjustments in the Subcontract Price shall be determined by one of the following methods selected by Contractor with notice thereof to Subcontractor.

1. mutual agreement on a lump sum increase or decrease with sufficient information to substantiate the amount of the increase or decrease;
2. unit prices already established in the Subcontract Documents or if not established by the Subcontract Documents, then established by mutual agreement

3. in the case of increases in the Subcontract Price, a mutually determined cost plus a jointly acceptable allowance for overhead and profit; or
4. in the case of decreases in the Subcontract Price, a mutually determined cost and profit reduction.

**7.5 Substantiation of Adjustment** – If Subcontractor does not respond in writing within two (2) working days after notice of the adjustment method or disputes the method of adjustment, the method and the adjustment shall be determined by Contractor on the basis of reasonable expenditures and savings of those performing the Subcontractor’s Work attributable to the change. Subcontractor shall maintain for Contractor’s review and approval an appropriately itemized and substantiated accounting of the following items attributable to an adjustment in the Subcontract Price:

1. increases or decreases in labor costs (including Social Security, health, welfare, retirement and other fringe benefits);
2. increases or decreases in costs of materials, supplies, equipment and transportation (whether or not such costs are incorporated in the Subcontractor’s Work or consumed);
3. increases or decreases in costs of renting machinery and equipment (other than hand tools) from Contractor or others;
4. increases or decreases in costs of bond and insurance premiums, permit fees and taxes attributable to the change; and
5. increases or decreases in costs of additional supervision and field office personnel services necessitated by the change.

**7.6 Delay** – If progress of the Subcontractor’s Work is substantially delayed without the fault or responsibility of Subcontractor, the time for completion of the Subcontractor’s Work or any portion thereof shall be extended by a revision to the Schedule of Work evidenced by a Change Order to the same extent Contractor obtains an extension of the Work under the Subcontract Documents. Contractor shall not be liable to Subcontractor for any damages or additional compensation resulting from delays caused by any person not a Party to this Subcontract, unless Contractor first recovers the same on behalf of the Subcontractor from said person. Subcontractor’s sole and exclusive remedy against Contractor for delay shall be an extension of time for performance of the Subcontractor’s Work.

**7.7 Liquidated Damages** – If the Master Contract provides for liquidated or other damages for delay beyond the completion date set forth in the Subcontract Documents and such damages are assessed, Contractor may assess the same against the Subcontractor in proportion to Subcontractor’s share of the responsibility for such delay. Nothing set forth herein shall limit Subcontractor’s liability to Contractor for Contractor’s actual delay damages caused by Subcontractor’s delay. Subcontractor shall be liable to Contractor for Contractor’s actual damages caused by Subcontractor’s delay.

## **8. Contractor’s Obligations:**

**8.1 Subcontract Documents** – Prior to executing this Subcontract, Contractor shall make available to the Subcontractor all Subcontract Documents.

**8.2 Authorized Representative** – Contractor shall designate in the SPA one or more persons as Contractor’s authorized on-site and off-site representatives (“Contractor’s Authorized Representatives”). Except in an emergency, Contractor’s Authorized Representatives shall be the only persons Subcontractor shall look to for instructions, orders or directions.

- 8.3 Storage Applications** – Subcontractor shall not store any of Subcontractor’s materials and equipment at the Project site during the course of Subcontractor’s Work unless Contractor’s designates a storage area for Subcontractor. Contractor shall not be liable to Subcontractor for any loss or damage to such materials and equipment stored on the Project.
- 8.4 Timely Communications** – Contractor shall transmit all submittals, transmittals, and written approvals relating to the Subcontractor’s Work with reasonable promptness.
- 8.5 Non-contracted Services** – Except as otherwise provided in this Subcontract, no claim for non-contracted construction services rendered or materials furnished by Contractor shall be valid unless Subcontractor:
- (a) obtains approval from Contractor prior to furnishing the services and materials (except in an emergency affecting the safety of persons or property);
  - (b) Contractor receives written notice of Subcontractor’s claim within three (3) working days of Subcontractor first furnishing such services or materials; and
  - (c) Subcontractor provides backup documentation for such services or materials no later than the fifteenth (15th) day of the calendar month following that in which the claim originated.

**9. Subcontractor’s Obligations:**

- 9.1 Responsibilities** – Subcontractor shall furnish all of the labor, materials, equipment, and services (including competent supervision, shop drawings, samples, tools, and scaffolding) as are necessary for the proper performance of Subcontractor’s Work in strict accordance with and reasonably inferable from the Subcontract Documents. Subcontractor shall provide a list of proposed subcontractors and suppliers and be responsible for taking field dimensions, providing tests, ordering materials and all other actions required to meet the Schedule of Work.
- 9.2 Shop Drawings** – Subcontractor shall be responsible to Contractor for the accuracy and conformity with the Subcontract Documents and other submittals that pertain to the Subcontractor’s Work. Shop drawings, or their approval by Contractor, shall not be deemed to authorize deviations or substitutions from the requirements of the Subcontract Documents.
- 9.3 Temporary Services** – Except as provided in Section 15, Subcontractor shall furnish all temporary services or facilities necessary to perform the Subcontractor’s Work. Section 15 also identifies those common temporary services, if any, which are to be furnished by Subcontractor.
- 9.4 Coordination** – Subcontractor shall:
- (a) cooperate with Contractor and all others whose work may interfere with the Subcontractor’s Work;
  - (b) specifically note and immediately advise Contractor of any interference with the Subcontractor’s Work; and
  - (c) participate in the preparation of coordination drawings and work schedules in areas of congestion.
- 9.5 Authorized Representative** – Subcontractor shall designate one or more persons in the SPA as Subcontractor’s authorized on-site and off-site representatives (“Subcontractor’s Authorized

Representatives”). Except in an emergency, Subcontractor’s Authorized Representatives shall be the only persons to whom Contractor shall issue instructions, orders or directions.

- 9.6 Provision for Inspection** – Subcontractor shall notify Contractor when portions of the Subcontractor’s Work are ready for inspection. Subcontractor shall at all times furnish Contractor and its representatives with adequate facilities for inspecting materials at the site or any place where materials under this Subcontract may be in the course of preparation, process, manufacture or treatment. Subcontractor shall furnish to Contractor, in such detail and as often as required, full reports of the progress of the Subcontractor’s Work irrespective of the location of such work.
- 9.7 Cleanup** – Subcontractor shall: (a) follow Contractor’s cleanup and safety directions; (b) keep the building and premises free from debris and unsafe conditions resulting from the Subcontractor’s Work; and (c) broom clean each work area prior to discontinuing work in the same area.
- 9.8 Safety** – Subcontractor shall be responsible for the prevention of accidents on or in the vicinity of the Subcontractor’s Work. Subcontractor shall establish a safety program implementing safety measures, policies and standards conforming to those required or recommended by governmental and quasi-governmental authorities having jurisdiction over the Project, Contractor and Owner, including requirements imposed by the Subcontract Documents. Subcontractor shall comply with the reasonable recommendations of insurance companies having an interest in the Project and shall stop any part of the Subcontractor’s Work which is unsafe until corrective measures have been taken. Subcontractor shall notify Contractor immediately following any accident and promptly confirm the notice in writing. Upon request, Subcontractor shall provide Contractor with detailed written report of any accidents. Subcontractor shall protect, defend, indemnify and hold Contractor harmless as provided in Section 12 from all Liabilities resulting or arising, directly or indirectly, entirely or in part from any act, omission, occurrence or event in connection with Subcontractor’s failure to comply with safety requirements.
- 9.9 Protection of Work and Property** – Subcontractor shall take necessary precautions to properly protect the Subcontractor’s Work and the work of others from damage caused by Subcontractor’s operations. If Subcontractor causes damage to the work or property of the Owner, Contractor or others, then Subcontractor shall promptly remedy such damage to the satisfaction of Contractor. If Subcontractor fails to promptly remedy such damage to Contractor’s satisfaction, Contractor may take any reasonable actions necessary to repair, replace or otherwise remedy the damage and deduct the cost thereof from any amounts due or to become due to Subcontractor.
- 9.10 Permits, Fees And Licenses** – Subcontractor shall give adequate and timely notices to authorities having jurisdiction over the Subcontractor’s Work and secure and pay for all permits, fees, licenses, assessments, inspections and taxes necessary to complete the Subcontractor’s Work in accordance with the Subcontract Documents.
- 9.11 Subcontractor Assignment Of Work** – Subcontractor shall not assign, in whole or in part, any of the Subcontractor’s Work without the prior written approval of Contractor, which approval shall be granted in Contractor’s sole and absolute discretion. Lower-tier subcontractors and suppliers previously approved by Contractor may be listed in an attachment to the SPA.



- 9.12 Non-Contracted Services** – Except as otherwise provided in this Subcontract, no claim for non-contracted construction services rendered or material furnished by Subcontractor shall be valid.
- 9.13 Materials Safety** – To the extent Contractor is not obligated by the Master Contract or by law to perform work which involves pollutants, hazardous or toxic substances, hazardous waste, asbestos or PCB's, Subcontractor likewise is not obligated to perform work involving such substances. However, to the extent Contractor is obligated under the Master Contract or by law, Subcontractor shall assume such obligations.

## **10. Subcontract Provisions:**

- 10.1 Layout Responsibility and Levels** – Contractor shall establish principal axis lines of the building and site whereupon Subcontractor shall lay out and be strictly responsible for the accuracy of the Subcontractor's Work and for any loss or damage to Contractor or others by reason of Subcontractor's failure to set out or perform the Subcontractor's Work correctly. Subcontractor shall exercise prudence so that the actual final conditions and details result in alignment of finish surfaces.
- 10.2 Workmanship** – Every part of the Subcontractor's Work shall be executed in strict accordance with the Subcontract Documents and in the most sound, workmanlike and substantial manner. All workmanship shall be of the best of its kind. All materials used in the Subcontractor's Work shall be: (a) furnished in ample quantities to facilitate the proper and expeditious execution of the Subcontractor's Work; and (b) new (except such materials as may be expressly provided in the Subcontract Documents to be otherwise).
- 10.3 Materials Furnished By Others** – If the scope of the Subcontractor's Work includes installation of materials or equipment furnished by others, Subcontractor shall be responsible for examining the items so provided and thereupon handling, storing and installing the items with such skill and care required to ensure a satisfactory and proper installation. Contractor shall deduct any loss or damage resulting from the acts of Subcontractor from any amounts due or to become due to Subcontractor.
- 10.4 Substitutions** – Subcontractor shall not make any substitutions in the Subcontractor's Work unless: (a) expressly permitted by the Subcontract Documents; and (b) Subcontractor receives all approvals required under the Subcontract Documents prior to instituting any substitutions. Subcontractor shall protect, defend, indemnify and hold Contractor harmless from liabilities resulting or arising, directly or indirectly, entirely or in part from any act, omission, occurrence or event in connection with such substitutions regardless of whether or not Subcontractor has obtained approval thereof.
- 10.5 Use Of Contractor's Equipment** – Subcontractor, its agents, employees, subcontractors or suppliers shall not use Contractor's equipment without the express written permission of Contractor's Authorized Representative. Subcontractor shall protect, defend, indemnify and hold Contractor harmless from all liabilities resulting or arising, directly or indirectly, entirely or in part from any act, omission, occurrence or event in connection with Subcontractor's or any of its agents, employees, supplier or lower-tier subcontractors use of any machinery, equipment, tools, scaffolding, hoists, lifts or similar items owned, leased, or under the control of Contractor (except where such loss or damage shall be found to have been due solely to the negligence of Contractor's employees operating such equipment).

- 10.6 Bond Review** – If the Master Contract requires Contractor to obtain a payment and/or performance bond for the Project, Subcontractor shall also provide a payment and/or performance bond.
- 10.7 Privity** – Unless otherwise directed in writing by Contractor, Subcontractor shall not perform any work directly for the Owner or any tenants thereof or deal directly with the Owner’s representatives in connection with the Project, unless approved by Contractor. All Work for this Project performed by Subcontractor shall be processed and handled exclusively by Contractor.
- 10.8 Subcontract Bond** – Contractor may require and Subcontractor to provide payment or and/or performance bonds before the day the Subcontractor’s Work commences. Said bonds shall be in the full amount of the SPA in a form and by a surety satisfactory to Contractor. If agreed to by Contractor, Subcontractor may be reimbursed without retainage for cost of same simultaneously with the first progress payment hereunder, and the reimbursement amount for the bonds shall not exceed the manual rate for such Subcontractor’s Work. If Subcontractor fails to promptly provide the requested bonds, Contractor may terminate this Subcontract and re-let the work to another subcontractor and all Contractor costs and expenses incurred thereby shall be paid by Subcontractor.
- 10.9 Warranty** – Subcontractor warrants the Subcontractor’s Work shall: (a) be free from all deficiencies and defects in materials or workmanship; and (b) be performed in accordance with the Subcontract Documents. Subcontractor shall satisfy any warranty obligations which appear within the warranty period established in the Subcontract Documents without cost to Owner or Contractor. If the Master Contract does not require Contractor to warrant the Work, then Subcontractor shall warrant the Subcontractor’s Work as described above for the period of one year commencing on: (a) the date of substantial completion of all or a designated portion of the Subcontractor’s Work; or (b) acceptance or use by Contractor or Owner of a designated portion of the Subcontractor’s Work. Prior to final payment, Subcontractor further shall execute any special warranties that shall be required under the Subcontract Documents for the Subcontractor’s Work.

## **11. Recourse By Contractor:**

### **11.1 Failure Of Performance:**

- 11.1.1 Breach** – Subcontractor shall be deemed to have materially breached this Subcontract if Subcontractor: (a) refuses or fails to: (1) provide enough properly skilled workers, (2) provide proper materials, (3) maintain the Schedule of Work, or (4) make prompt payment for its workers, lower-tier subcontractors or suppliers; (b) disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the Project; (c) fails to timely perform or satisfy any obligation required to be performed or satisfied under this Subcontract; (d) breaches any covenant, warranty or other obligation under this Subcontract; (e) performs or fails to perform any action which results directly or indirectly, materially or entirely, in Contractor’s breach or default under the Master Contract; or (f) misrepresents or omits a material fact which induced (either entirely or partly) Contractor to enter into Subcontract.
- 11.1.2 Notice of Cure and Default** – If a material breach occurs under this Subcontract, the non-breaching party shall notify the breaching party of the obligation breached and the provisions of this Subcontract under which the obligation arises. After such notice, the breaching party

shall either: (a) cure the breach; or (b) be deemed in default under this Subcontract if such breaching party has failed to commence and continue satisfactory correction of such breach with diligence and promptness within 24 hours after written notification.

**11.1.3 Contractor's Remedies** – Upon the occurrence of default by Subcontractor, Contractor may terminate its future obligations under this Subcontract and seek and recover any and all remedies or damages available under law or this Subcontract, including: (a) supplying such number of workers and quantity of materials, equipment and other facilities as Contractor deems necessary for the completion of the Subcontractor's Work, or any part thereof, which Subcontractor has failed to complete or perform after prior to default and charge the cost thereof to Subcontractor, who shall be liable for the payment of same, including reasonable overhead, profit and attorneys' fees; (b) contracting with one or more additional contractors to perform such part of the Subcontractor's Work as Contractor shall determine will provide the most expeditious completion of the total Work and charge the cost thereof to Subcontractor; or (c) withholding payment of any monies due to Subcontractor pending corrective action in amounts sufficient to cover losses and compel performance to the extent required by and to the satisfaction of Contractor. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity. Contractor may use any materials, implements, equipment, appliances or tools furnished by or belonging to Subcontractor to complete the Subcontractor's Work. Contractor also may furnish those materials, equipment or employ such workers or subcontractors as Contractor deems necessary to maintain the orderly progress of Work. All costs incurred by Contractor in performing the Subcontractor's Work, including reasonable overhead, profit and attorneys' fees, shall be deducted from any monies due or to become due to Subcontractor. Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Price.

**11.1.4 Use Of Subcontractor's Equipment** – If Contractor performs work under this Section 11.1, or subcontracts such work to be so performed, Contractor or the persons to whom work has been sublet shall have the right to take and use any materials, implements, equipment, appliances or tools furnished by, belonging or delivered to Subcontractor and located at the Project.

## **11.2 Bankruptcy:**

**11.2.1 Termination Absent Cure** – If Subcontractor files a petition under the Bankruptcy Code, this Subcontract shall terminate if: (a) Subcontractor or Subcontractor's trustee rejects this Subcontract; (b) there has been a material breach and Subcontractor is unable to give adequate assurance that Subcontractor shall perform as required by this Subcontract; or (c) Subcontractor otherwise is unable to comply with the requirements for assuming this Subcontract under the applicable provisions of the Bankruptcy Code.

**11.2.2 Interim Remedies** – If Subcontractor is not performing in accordance with the Schedule of Work at the time a petition in bankruptcy is filed or at any subsequent time, Contractor, while awaiting the decision of Subcontractor or its trustee to reject or to assume this Subcontract and provide adequate assurance of its ability to perform hereunder, may avail itself of such remedies under this Section as are reasonably necessary to maintain the Schedule of Work.

Contractor may offset against any sums due or to become due to Subcontractor all costs incurred in pursuing any of the remedies provided hereunder, including reasonable overhead, profit and attorneys' fees. Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Price.

- 11.3 Suspension By Owner** – Should Owner suspend the Master Contract or any part of the Subcontract Documents which include the Subcontractor's Work, Contractor shall notify Subcontractor in writing and upon written notification Subcontractor shall immediately suspend the Subcontractor's Work. Upon such Owner suspension, Contractor's liability to Subcontractor is limited to the extent of Contractor's recovery on Subcontractor's behalf under the Contract Documents. Contractor shall cooperate with Subcontractor, at Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an Owner suspension.
- 11.4 Termination By Owner** – Upon termination of the Master Contract by Owner or any part of the Subcontract Documents which include the Subcontractor's Work, Contractor shall notify Subcontractor in writing and upon written notification, the related SPA shall be terminated, and Subcontractor shall: (a) immediately stop the Subcontractor's work; (b) follow all Contractor's instructions; and (c) mitigate all costs. Upon such Owner termination, Contractor's liability to Subcontractor is limited to the extent of Contractor's recovery on Subcontractor's behalf under the Subcontract Documents. Contractor shall cooperate with Subcontractor, at Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of such Owner termination.
- 11.5 Contingent Assignment Of Subcontract** – If the Subcontract Documents provide for a contingent assignment of this Subcontract to Owner, such assignment shall be effective only if Owner: (a) has terminated Contractor for cause; and (b) has accepted the assignment by notifying Subcontractor in writing. This contingent assignment is subject to the prior rights of a surety that may be obligated under Contractor's Performance Bond and/or Payment bond, if any. Subcontractor hereby consents to such assignment and shall be bound to the assignee by the terms of this Subcontract.
- 11.6 Suspension By Contractor** – Contractor may order Subcontractor in writing to suspend, delay or interrupt all or any part of the Subcontractor's Work for such period of time as may be determined to be appropriate for the convenience of Contractor. Such phased or interrupted work, when required, shall not be deemed a suspension of the Subcontractor's Work. Subcontractor shall notify Contractor in writing within five (5) working days after receipt of Contractor's order to suspend, delay or interrupt the Subcontractor's Work, of the effect of such order upon the Subcontractor's Work. To the extent allowed Contractor under the Master Contract, the Subcontract Price or Schedule of Work shall be adjusted by a Change Order for any increase or decrease in the time or cost of performance of the Subcontractor's Work caused by such suspension, delay or interruption. Neither the Subcontract Price nor the Schedule of Work shall be adjusted under this Section for any suspension, delay or interruption to the extent such performance would have been so suspended, delayed or interrupted by the fault or negligence of Subcontractor or by a cause for which Subcontractor would have been responsible. The Subcontract Price shall not be adjusted under this Section for any suspension, delay or interruption to the extent that performance would have been suspended, delayed or interrupted by a cause for which Subcontractor would have been entitled only to a time extension under this Subcontract.

**11.7 Subcontractor's Remedy** – If Contractor does not employ the remedies set forth in this Section, Contractor shall only be liable to Subcontractor for the reasonable value of work performed by Subcontractor.

**12. Indemnification:**

- 12.1 Subcontractor's Performance** – To the fullest extent permitted by law, including without limit Civil Code section 2782, Subcontractor shall indemnify, defend and hold harmless Owner and Contractor and their agents and employee's from claims, demands, causes of actions and liabilities of every kind and nature whatsoever arising out of or in connection with Subcontractor's operations performed under this agreement, and caused or alleged to be caused, in whole or in part, by any act or omission of Subcontractor or anyone employed directly or indirect by Subcontractor. This indemnification shall extend to claims occurring after this Agreement is terminated as well as while it is in force. The indemnity shall apply regardless of any negligent act or omission of Owner or Contractor, or their agents or employees, but Subcontractor shall not be obligated to indemnify any party for claims arising from the sole negligence or willful misconduct of the owner or Contractor or their agents or employees or caused solely by the designs provided by such parties. To the extent that Civil Code Section 2782(c) limits the indemnity obligation of the subcontractor, either to the Owner or the Contractor, the indemnity obligations hereunder are limited to the same extent. The indemnity set forth in this Section shall not be limited by insurance requirements or by any other provision of this Agreement. All work covered by this agreement done at the site or in preparing or delivering materials or equipment to the site shall be at the sole risk of Subcontractor until the completed work is accepted by Contractor.
- 12.2 No Limitation Upon Liability** – If any employee of Subcontractor, anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable asserts a Liability against Owner, Architect, Architect's consultants, agents and employees, Contractor (including its affiliates, parents and subsidiaries) and other contractors or subcontractors or any of their agents or employees, the indemnification obligation under this Section 12 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.
- 12.3 Compliance With Laws** – Subcontractor, at its own cost, shall comply with all federal, state and local laws, ordinances and regulations (hereinafter collectively referred to as "Laws") applicable to the Subcontractor's Work, including without limit, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, safety and all other laws with which Contractor must comply according to the Subcontract Documents. Subcontractor shall be liable to Contractor and Owner for all loss, cost and expense attributable to any acts of commission or omission by Subcontractor, its employees and agents resulting from the failure to comply therewith, including any fines, penalties or corrective measures.
- 12.4 Compliance with AB1701** - Subcontractor is required to defend and indemnify Contractor for claims that are brought pursuant to California Labor Code §218.7 arising from labor performed by employees for Subcontractor and sub-subcontractors. Subcontractor is further required to include a provision in their own contracts with sub-subcontractors that would require lower tier subcontractors to also defend and indemnify Contractor for claims arising from their respective employees' work.

**12.5 Patents** – Except as otherwise provided in the Subcontract Documents, Subcontractor shall pay when due all royalties, license or other fees which may be incurred as a result of the inclusion in the Subcontractor's Work of any patented materials, copyrights or other rights of third parties which may be protected by applicable Laws. Subcontractor shall protect, defend, indemnify and hold Contractor and Owner harmless from any liabilities resulting or arising, directly or indirectly, entirely or in part from any act, omission, occurrence or event in connection with Subcontractor's Work infringement of any copyrights, trade secrets, patents or trademark rights.

**13. Insurance:** Prior to the start of Subcontractor's Work, Subcontractor shall procure for the Subcontractor's Work and maintain in force workers' compensation insurance, comprehensive general liability insurance on an occurrence basis, automobile liability insurance and any other insurance required of Contractor under the Master Contract and set forth in the SPA. Contractor, Owner and other parties as required by and designated in the Subcontract Documents shall be named as additional insureds on each of these policies except for the workers' compensation and automobile liability insurance. Before any payment is made to Subcontractor for work performed hereunder, Subcontractor and each of its subcontractors of every tier shall deliver to Contractor duly issued certificates of insurance naming Contractor and Owner as additional insureds, on the subcontractors (and its subcontractors of every tier) general liability policy. The general liability additional insured endorsements will be for both ongoing and completed operations by combining the CG 2010 07/04 edition with the CG 2037 07/04 edition or its equivalents. The certificates shall also show in force insurance for comprehensive general liability, automobile liability and workers' compensation as required herein.

**13.1 Comprehensive General Liability** – Unless otherwise provided in a SPA, Subcontractor and each of its subcontractors of every tier shall obtain and maintain in force comprehensive general liability policies that are in comprehensive form with a deductible not to exceed \$1,000 per occurrence including: (a) a broad form comprehensive liability endorsement which includes coverage for liability assumed under any oral or written contract relating to the conduct of Subcontractor's business (including this Subcontract); (b) broad form property damage liability coverage; (c) premises-operations coverage; (d) explosion and collapse hazard coverage; (e) underground hazard coverage; (f) products and completed operations hazard coverage; and (g) independent contractor coverage. The limit of liability shall not be less than the limits specified on page 1 of this Subcontract.

**13.2 Automobile Liability** – Unless otherwise set forth in the SPA, Subcontractor and each of its subcontractors of every tier shall obtain and maintain in force an automobile liability policy in comprehensive form affording coverage for owned, hired and non-owned automobiles. The limit of liability shall not be less than the limits specified on page 1 of this Subcontract.

**13.3 Workers' Compensation** – Subcontractor and each of its subcontractors of every tier shall obtain and maintain in force workers' compensation insurance which shall comply with the statutory form; provided, however, Subcontractor hereby waives any benefit under any rule of law or legal decision that would provide a workers' compensation insurance exemption for independent contractors. Thus, all independent contractors must be insured and Subcontractor is responsible for ensuring so. Furthermore, Subcontractor hereby represents and warrants to Contractor that Subcontractor's employees and principals are and shall continue to be fully covered by workers' compensation insurance.

**13.4 Further Requirements** – The comprehensive general liability insurance policy shall be endorsed to provide that:

- (a) Contractor and Owner are additional insureds;
- (b) the insurance afforded by the policy shall apply to Contractor as though a separate policy had been issued to Contractor; and
- (c) the coverage afforded to Contractor is primary and any other insurance in force for Contractor shall be excess and shall not contribute to the primary policies.

- 13.5 Waiver** – Subcontractor hereby waives all rights against Contractor, Owner, all Architects, separate contractors and all other subcontractors for damages to the extent the same are covered by property insurance provided under this Subcontract and the Master Contract, except such rights as they may have to the proceeds of such insurance.
- 13.6 Number Of Policies** – Comprehensive general liability insurance and other liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an excess or umbrella liability policy.
- 13.7 Cancellation, Renewal Or Modification** – Subcontractor shall maintain in effect all insurance coverage required under this Subcontract at Subcontractor’s sole expense and with insurance companies acceptable to Contractor. Unless otherwise required in the Subcontract Documents, all insurance policies shall contain a provision that the coverage’s afforded thereunder shall not be canceled or lapse, nor shall restrictive modifications be added without at least thirty (30) days prior written notice to Contractor. Subcontractor shall submit Certificates of Insurance or certified copies of policies acceptable to Contractor to Contractor prior to the commencement of the Subcontractor’s Work. If Subcontractor fails to obtain or maintain any insurance coverage required under this Subcontract, Contractor may purchase such coverage and charge the expense thereof to Subcontractor or terminate this Subcontract. Subcontractor shall continue to carry completed operations liability insurance for at least two years after final payment. Subcontractor shall furnish Contractor with evidence of such insurance upon final payment of the Subcontract Price and again one year thereafter.
- 13.8 Endorsement** – If the policies of insurance referred to in this Section require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies shall cause them to be so endorsed.

#### **14. Contract Interpretation:**

- 14.1 Inconsistencies And Omissions** – If inconsistencies or omissions appear in the Subcontract Documents, it shall be the duty of Subcontractor to so notify Contractor in writing within three (3) working days of Subcontractor’s discovery thereof. Upon receipt of said notice, Contractor shall instruct Subcontractor as to measures to be taken and Subcontractor shall comply with Contractor’s instructions.
- 14.2 Governing Law** – This Subcontract shall be governed by the law of the State of California.
- 14.3 Severability and Waiver** – The partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other provision. The failure of either Party to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this

Subcontract or to exercise any right herein shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

- 14.4 Attorneys' Fees** – If any Party employs counsel to enforce or interpret this Subcontract, including the commencement of any legal proceeding whatsoever (including insolvency, bankruptcy, arbitration, declaratory relief or other litigation) the prevailing Party shall be entitled to recover its reasonable attorneys' fees and court costs (including without limit service of process fees, filing fees, court and court reporter costs, investigative fees, expert witness fees and the cost of any bonds, whether taxable or not) in addition to any other remedy it may obtain or be awarded. Any judgment or final order issued in any legal proceeding shall include such reimbursement for attorneys' fees and costs. In any legal proceeding, the "prevailing party" shall mean the Party determined by the court to most nearly prevail and not necessarily the Party in whose favor a judgment is rendered.
- 14.5 Entire Subcontract** – This Subcontract is solely for the benefit of the signatories hereto and represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations or agreements, either written or oral.
- 14.6 Successors & Assigns** – This Subcontract shall be binding on and inure to the benefit of Contractor and its successors and assigns.
- 14.7 Representation on Authority of Parties** – Each person signing this Subcontract represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Subcontract. Each Party represents and warrants to the other that the execution and delivery of Subcontract and the performance of such party's obligations hereunder have been duly authorized and that this Subcontract is a valid and legal agreement binding on such party and enforceable in accordance with its terms.
- 14.8 Joint & Several Liability** – To the extent any Party consists of more than one person or entity, each constituent person or entity of such party shall be jointly and severally liable for the performance or satisfaction of such party's obligations under this Subcontract.
- 14.9 Working Days** – As used in this Subcontract, in calculating "working days," Saturday, Sunday and Federal bank holidays shall be excluded.
- 14.10 Notices** – Any delivery of this Subcontract, notice, modification of this Subcontract, collateral or additional agreement, authorization, demand, disclosure, request, consent, approval, waiver, identification, declaration or other communication that either Party desires or is required to give to the other party or any other person shall be in writing. Any such communication may be served personally, transmitted by facsimile or by any nationally recognized overnight delivery service (i.e., Federal Express) or sent by prepaid, first class mail, return receipt requested to the Party's address as set forth on the first page of this Subcontract. Any such communication shall be deemed effective upon personal delivery, confirmed receipt of notice transmitted by facsimile, two days after transmitting the notice by nationally recognized overnight delivery service or three days after mailing in accordance with this Section. Any Party may change its address by notice to the other party. Each Party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this section and that any person to be given notice actually receives such notice.



**14.11 Interpretation** – Wherever the context of this Subcontract requires, all words used in the singular shall be construed to have been used in the plural, and vice versa, and the use of any gender specific pronoun shall include any other appropriate gender. The term “person” shall refer to any individual, corporation or legal entity having standing to bring an action in its own name under California law. The use of the conjunctive “or” shall mean “and/or” unless otherwise required by the context in which the conjunctive “or” is used. The term “including” shall mean “including without limitation” and “including but not limited to” unless otherwise required by the context in which the term “including” is used. This Subcontract has been negotiated at arm’s length and each party has been represented or has had the opportunity to be represented by independent legal counsel in this transaction. Accordingly, each party hereby waives any benefit under any rule of law (including Section 1654 of the California Civil Code) or legal decision that would require interpretation of any ambiguities in this Agreement against the party drafting it.

**15. Special Provisions:**

**15.1 Precedence** – It is understood the work to be performed under a SPA, including the terms and conditions thereof, is as described in the SPA, together with Sections 1 through 15 of this SGC, which are intended to complement same. However, in the event of any inconsistency, the SPA shall govern.

**15.2 Scope Of Work** – The SPA and its exhibits describe the scope of work for any specific Project.

**15.3 Common Temporary Services** – The SPA and its exhibits shall describe which common temporary service or facilities are for the use of all Project personnel and by whom they will be furnished for a particular Project.

**15.4 Other Special Provisions** – The SPA and its exhibits shall describe any special provisions related to a particular Project.

**15.5 Subcontract Documents** – The SPA shall list applicable Subcontract Documents including specifications, drawings, addenda, modifications and exercised alternates for a particular Project.

IN WITNESS WHEREOF, these SGC are executed to be effective as of the Effective Date.

SUBCONTRACTOR

Company: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

CONTRACTOR

Company: Dowling Construction, Inc.

Signature: \_\_\_\_\_

Print Name: James S. Dowling

Title: President