



Form 718
Special Services Agreement

Dana Gunnell

To: _____

Corporate Address:
XXX XXXX XXXX
City, State, Zip
Phone: 801.657.1414

Address: _____

Phone:/Fax: _____

Important Note:

CONSULTANT MAY NOT BEGIN WORK ON ANY PROJECT UNLESS AND UNTIL CONTRACTOR IS IN RECEIPT OF (1) CONSULTANT'S GENERAL LIABILITY, AUTO, PROFESSIONAL LIABILITY AND WORKER'S COMPENSATION CERTIFICATES OF INSURANCE, AND (2) THE SUBCONTRACT EXECUTED BY CONSULTANT. BY STARTING WORK, CONSULTANT ACCEPTS THE TERMS AND CONDITIONS OF THIS AGREEMENT AND GUARANTEES COMPLIANCE.

Special Services Agreement # _____ Agreement Date _____

Project Information	
Project #:	_____
Project Name:	_____
Project Address:	_____
City, State, Zip	_____

This agreement, including attachments, consists of _____ total pages.

This work described herein shall be performed in accordance with the prime contract between Dana Gunnell & my Name (e.g. L3 Residential) (Contractor) and _____ (Owner) and in accordance with all plans, specifications and other contract documents attached to or incorporated into the prime contract.

SECTION 1 - SCOPE OF WORK

The Consultant agrees to furnish all necessary management, services, travel, misc. expenditures and/or any other act or thing required to diligently and fully perform and complete the portions of the work as described in the Contract Documents and below, subject at all times to the terms and conditions of this Agreement, all of which shall be referred to herein as the "Work." Without limitation, the Consultant's Work shall specifically include and be subject to the following:

1. All work to be performed per Attachment "A" (Plans and Specifications) dated _____
2. All work to be performed per Attachment "B" (Scope Document) dated _____
3. All work to be performed per Attachment "C" (Project Schedule) dated _____
4. _____

SECTION 2 - PRICE

[illegible]

Contractor agrees to pay Consultant for the strict performance of his work, the sum of \$_____ (_____ and 00/100 Dollars) subject to adjustments for changes in the work as may be directed in writing by contractor. Payment less retainage of 10% (ten percent) shall be made in monthly progress payments.

The Subcontract Price is inclusive of all costs, overhead and profit relating to performance and completion of the Consultant's Work under this Agreement. Escalation costs applicable to all labor and materials necessary for completion of the Work, and mobilizations, as required, are included in the Consultant Price.

SECTION 3 - STANDARD CONDITIONS

- A. Consultant warrants and agrees to defend and hold harmless the Contractor from and against all suits or claims arising here from for infringement of any patent rights held or alleged to be held by others.
- B. Consultant acknowledges Contractor's status as a consumer. If a sales tax is applicable to the purchase hereunder, Contractor agrees that such taxes are included and paid by Consultant.
- C. The payment terms hereof shall be Net 30. In no instance shall invoices rendered for goods hereunder be considered due until 7 days following receipt of payment therefor to Contractor by the Owner if any act or omission of Consultant shall have contributed to delay or omission of periodic or final payment under said prime contract. Consultant further agrees that no payment hereunder shall be considered due until and unless deliverable for which invoices are rendered has been accomplished in a satisfactory manner and in full compliance with the terms hereof.
- D. Consultant acknowledges and warrants that payment by Contractor, under this agreement, is conditioned upon timely delivery to the Contractor of deliverables fully complying with the contract documents in sound, usable and acceptable condition.
- E. The parties agree that in the event any controversy should arise between them as a result of this agreement, then in that event, the Jefferson County District Court in Golden, Colorado (or the District Court in and for the County of Orange, California for projects out of the California Division office) shall be the forum in which the parties agree to try and have heard any matters of litigation arising out of such controversies. In the event the said court shall find, as a matter of law, that it does not have jurisdiction over the subject matter of the litigation, then such litigation may be heard by such other court in the State of Colorado, or elsewhere which does have jurisdiction over the subject matter related to such litigation. It is further agreed that any written notification or communication connected with this order shall be deemed delivered and received by Consultant when mailed or delivered by hand to an agent or representative of Consultant; or mailed to Consultant at address appearing hereon or to any office maintained by Consultant.
- F. Consultant agrees to extend full cooperation to Contractor in the preparation and submission of any claims involving services under this agreement and, when requested, to extend full cooperation to the Contractor in the preparation and submission of proposals under Value Engineering Clauses.
- G. Time is of the essence of this agreement. The Consultant, having stated or acknowledged the required delivery date or dates, shall be responsible for the necessary execution of orders, planning, scheduling, correlation of documents, preparation, submission and approval of shop drawings, samples, schedules, templates, coordinating and expediting of shipping procedures and shall do all things necessary to guarantee deliverables by the stipulated date or dates. Consultant agrees to exercise due diligence, and to cause each of its authorized agents or representatives to exercise due diligence in executing and processing this order in all of its terms. Consultant agrees to keep the Contractor fully informed as to the delivery status of the services as represented by this order, and to advise the Contractor, in writing, of any delay, circumstance or development in the execution, processing, etc. of this order which may impair his/her ability to meet the required delivery date or dates or which may otherwise affect the discharge of his/her obligations under this agreement. Should the Consultant fail in this, or in any other requirements of the agreement, Contractor may, at its option and in its sole discretion, modify or cancel this order upon 3 days written notice to the Consultant and Contractor may place or re-place the order, in full or part, with others: all without prejudice to any other right or remedy it may have. Consultant acknowledges liability for damages to the Contractor resulting from the Consultant's failure to perform in a timely manner. In any determination of damages directly attributed to failure or deficiency in the performance of the Consultant it is agreed that Contractor shall recover all damages it may sustain, as well as all costs and attorneys' fees which may arise from the enforcement of any suit for damages under this agreement. In the event the Consultant is delayed in the performance of his/her obligations under this agreement by any circumstances beyond his/her control, and for which the owner grants time extensions, he/she hereby agrees to notify the Contractor immediately by filing a written request with Contractor's home office for an extension of time within two (2) days of the date on which the first

delay occurred; otherwise he/she shall waive any future claim with respect to such delay. Contractor will promptly relay any such request deemed valid to the appropriate authority, but shall not be responsible for its acceptance, nor shall this agreement be construed in any way to require acknowledgement by the Contractor of any cause for the delay to be accepted by cognizant authority.

- H. The Contractor shall have the right, and such it is acknowledged, to withhold a fair and equitable amount from any payment due hereunder pending satisfactory settlement of any claims against the project or against the Contractor by third parties for the account of the Consultant, or for disputes involving the Consultant or other Consultants or subcontractors, wherein the Contractor is directly or indirectly an interested party. It is further agreed that the Contractor may withhold a fair and equitable amount from any payment due hereunder pending satisfactory settlement of any charges, expenses or costs incurred as a result of failure of the materials, goods, or services represented by this order to fully meet the requirements of the plans and specifications. It is further agreed that the Contractor may withhold payment on this order without Consultant's claim for payment or security on the project if Consultant shall fail to honor any representations or warranties, express or implied, as to the materials furnished under any agreement between the parties.
- I. In general, and subject only to the provisions hereof, the Consultant shall be bound to the same Contractor by the same terms and conditions by which the Contractor is bound to the Owner. Consultant agrees to furnish a full lien waiver as a condition of final payment, and further agrees to furnish partial lien waivers, upon the request and at the option of the Contractor. All costs of defending the Owner or the Contractor against claims, including mechanical liens asserted or filed against them by creditors of the Consultant shall be deducted from monies otherwise due, provided that a sufficient balance to cover such costs remains unpaid at the time notification of the claim is received. If the full amount of this agreement has been paid or if balance due is not sufficient to offset such costs, the Consultant agrees to reimburse Contractor for any and all expenses arising from the claim or claims, including reasonable attorney fees and costs.
- J. Consultant acknowledges that he/she has familiarized himself/herself with all of the conditions of the locality, project, plans and specifications and any other factor or circumstance which may affect his/her performance under this agreement, and nothing in this agreement shall obligate or render the Contractor liable for additional payment to the Consultant on account of his/her misunderstanding or failure to familiarize himself with such factors and conditions.
- K. It is agreed that the Consultant shall not assign or sublet this agreement or any part hereof, including payments hereunder, without first obtaining the written consent of the Contractor. Unless specifically waived in writing by the Contractor, it is agreed that Contractor shall have a prior claim against payments due or to become due under this or any other agreement between the parties in the event Consultant fails to comply or shall become disabled from complying with the terms of this or any other agreement between the parties. In the event any claim or claims are asserted against the Consultant by parties supplying material or services to the Consultant for use under this or any other agreement between the parties, it is agreed that set off of the proceeds due or to become due hereunder shall exist in favor of the Contractor retroactive to the date of this agreement.
- L. In receiving payment hereunder, Consultant agrees to apply such payment only against this order, and only against the account of the Contractor on or for this project, unless written consent of Contractor shall first have been obtained for application of payments, hereunder against some other account.
- M. Consultant hereby agrees, at the option and request of Contractor, to submit any billing for partial or "Progress" payment on a form and with certification as supplied by Contractor.

- N. Upon full payment of all sums due or anticipated to be due the Consultant under this Agreement and upon performance of all the Contractor's obligations under this Agreement, the latest original Design, Drawings, Electronic data, etc. (Deliverable) prepared by the Consultant for the Project shall become the property of the Contractor. This conveyance shall not deprive the Consultant of the right to retain electronic data or other reproducible copies of the Deliverables or the right to reuse information contained in them in the normal course of the Consultant's professional activities.

SECTION 4 - INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall, with respect to all Work that is covered by or incidental to this Agreement, indemnify, defend and hold harmless Contractor, and its agents, officers, directors, shareholders and representatives from and against all of the following as separate and cumulative obligations:

- A. **Personal Injury / Property Damage.** To the fullest extent permitted by law, the Consultant agrees to indemnify, defend, and save the Contractor, Owner, Architect, their consultants, any other entities as required by Owner to be named as Additional Insureds, and officers, directors, partners, members and agents and employees of any of them (collectively, "Indemnitees") harmless from any and all claims, suits, losses, damages, expenses, fees and costs (including reasonable attorneys' fees) (collectively, "Claims") on account of any injuries to or the death of any and all persons whomsoever, and any and all property damage, including loss of use therefrom, arising out of the Work or Services performed by or for the Consultant's account under this Agreement, to the extent caused in whole or in part by the acts or omissions of the Consultant, its Consultants, anyone directly or indirectly employed by them or anyone for whom they may be liable. Upon receipt of a tender of claim (or demand for defense/indemnity) from Indemnitees, the Consultant shall with respect to its defense obligation elect either to (1) defend at its own expense, in the name of or on behalf of the Indemnitees, all claims or suits or injury to persons or damage to property arising out of the Work or Services carried on under this Agreement to the extent of the negligence attributed to such acts or omissions by the Consultant, its sub-Consultants of any tier, anyone directly or indirectly employed by them or anyone for whom they may be liable, or (2) pay to Indemnitee's, within thirty (30) days of receipt of an invoice, the reasonable allocated share of the Indemnitee's defense fees and costs, on an ongoing basis during the pendency of the claim.
- C. **Unsafe Working Conditions.** To the fullest extent permitted by law, the Consultant shall indemnify, defend, and save the Indemnitees harmless from any and all Claims by its employees or by employees of its contractors, Consultant, or its or the Consultant, or anyone for whose acts they may be liable, when such Claims shall have been incurred or alleged to have been incurred arising in any way from an unsafe place to work or such similar type of complaint, regardless of how such Claim is caused. The Consultant, as well as its lower-tier subcontractors and Consultants, waive immunity of Workman's Compensation Acts or similar laws and assume liability for any actions brought by their own employees against Contractor, Owner, and Architect. Upon receipt of a tender of claim (or demand for defense/indemnity) from Contractor, The Consultant shall proceed as set forth in sub-section A above.
- E. **Payment of Obligations.** Consultant shall promptly pay for all labor, materials, equipment and/or services provided by others in performance of the Work. To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and immediately defend Contractor and its sureties against all claims, demands, liens, costs and expenses, including attorneys' fees, resulting from Consultant's failure to make such payment. If the Contractor is compelled to expend monies in defending, discharging or otherwise disposing of any claim or lien or other demand in excess of retained or withheld funds, the Consultant shall, upon demand, reimburse the Contractor for the excess amount so expended, including reasonable attorney's fees and costs incurred by Contractor incident to such defense, discharge or disposition, and/or incident to Contractor's collection from Consultant of such excess.
- G. **Compliance with Agreement.** To the fullest extent permitted by law, the Consultant shall defend, indemnify and hold harmless, including paying all the expenses and the costs of attorneys' fees incurred by the Indemnitees, for all Claims involving the enforcement of the conditions and obligations of this Agreement, of any bond furnished in the connection therewith, for the

performance or non-performance of the Work thereunder or similar type of claim attributable to the actions, inactions, or other conduct of Consultant, its lower-tier subcontractors and suppliers, anyone directly or indirectly employed by them or anyone for whom they may be liable. Such expenses and costs of attorney's fees shall be recovered for the investigation, defense or the bringing of any such action by the Contractor, Owner or Architect there under whether such claims or allegations are valid or not.

- I. **Patents.** To the fullest extent permitted by law, Consultant shall indemnify, hold harmless and defend Contractor from any claimed liability or liabilities, including court costs, expenses and attorney's fees related to or arising out of any patented or unpatented invention, article or appliance, manufactured, furnished or used, or alleged to be manufactured, furnished or used, in the performance of the Consultant's Work.
- K. **All Other Claims.** To the fullest extent permitted by law, Consultant shall indemnify, defend, and hold harmless Indemnitees from and against all other Claims not otherwise enumerated in this Section 4 arising out of or related to, whether directly or indirectly, from the performance or non-performance by Consultant of the Services or Work under this Agreement, but only to the extent such claims are caused in whole or in part by the acts or omissions of Consultant, Consultant's employees, or any other person or entity working on Consultant's behalf or for whom Consultant may be liable.
- L. Consultant's defense and indemnity obligations under this Section shall include the duty to reimburse all reasonable attorneys' fees and expenses incurred by Contractor or other indemnified parties for any legal action or proceeding to enforce Consultant's defense and indemnity obligations.

SECTION 5 - INSURANCE

Consultant shall purchase and maintain insurance of the following types of coverage and limits of liability. These insurance requirements and the obligations of indemnification provided for in this Agreement shall also apply to anyone hired by the Consultant for Work under this Agreement. By appropriate agreement, the Consultant shall require each of its subcontractor, Consultants and suppliers to be bound to the terms of the insurance requirements set forth in this Section.

All insurance policies required by this Agreement shall be written through companies authorized to transact the particular class of insurance provided in the state of California and shall describe, on the Certificate of Insurance or the Insurance Compliance Statement, the deductible or self-insured retention amounts for each policy.

Coverages shall be maintained without interruption from date of commencement of Consultant Work until the date of any coverage required to be maintained after final payment as set forth herein.

Insurance coverages carried by Consultant shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent or the insurance requirements to be fulfilled by Consultant.

Certificates of Insurance acceptable to Contractor shall be filed with Contractor prior to commencement of the Consultant's Work. These Certificates of Insurance and the policies required by this Agreement shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional Certificate of Insurance evidencing continuation of such coverage shall be submitted with the final application for payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by Consultant with reasonable promptness. Approval, disapproval or failure to act by the Contractor

regarding any insurance of Consultant shall not relieve Consultant of full responsibility or liability for damages and/or accidents. If the project is covered by a Wrap-up policy, the Subcontractor shall provide all of the following required insurance coverages that are not provided by the Wrap-up policy.

All of the following insurance coverages maintained by Consultant shall include a waiver of any right of subrogation of the insurers thereunder in favor of Additional Insureds and all of their respective assigns,

subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any person insured under any such policy (Workers Compensation – where permitted).

A. Workers' Compensation and Employer's Liability:

State:	Statutory
Employers Liability	\$ 1,000,000 Each Accident
	\$ 1,000,000 Disease, Policy Limit
	\$ 1,000,000 Disease, Each Employee

A waiver of subrogation in favor of Contractor and Owner shall be attached to the policy.

B. Commercial General Liability (Occurrence Form):

Combined Bodily Injury and Property Damage

\$1,000,000 Each Occurrence
\$1,000,000 Personal and Advertising Injury
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$50,000 Fire Damage Legal Liability
\$10,000 Medical Expense

The following coverages must be included:

- Premises Operations
- Independent Contractor's Protective
- Explosion, Collapse, and Underground
- Contractual (including the contract obligations specified in the Indemnification Section of this Agreement)

No exclusions for the following:

- Defective Construction exclusion or conformance, townhouse, multifamily or apartment construction
- Subsidence or other earth movement exclusions
- Exterior Insulation and Finish Systems (EIFS)
- Damage to work performed by subcontractor or Consultants on your behalf or exclusions for claims arising out of defective materials or construction type endorsements.

General Aggregate Limit (applies to each project)

Contractor and Owner, and their subsidiaries, directors, officers, employees and agents shall be named and included as Additional Insureds (using CG forms 20 10 04 13 for ONGOING ops and CG 20 37 04 13 for COMPLETED ops, or their equivalent under the Consultant policy and the policy shall be endorsed to be primary and non-contributory with any insurance maintained by Contractor and Owner, their subsidiaries, directors, officers, employees and agents. The additional insured endorsement meeting the requirements of this provision shall be shown or described on the Certificate of Insurance, and original copies of the endorsements provided to Contractor prior to commencement of work.

Consultant shall maintain the products/completed operations coverage required herein, including additional insured status, in full force and effect until the statute of limitation or statute of repose, whichever is longer, applicable to this Work, has lapsed. Consultant shall continue to provide evidence of such coverage to Contractor on an annual basis during the aforementioned period including all of the terms of the insurance and indemnification requirements of this agreement.

Liability insurance shall extend to and cover Consultant both for on-premises and off-site activities in connection with each project.

C. Pollution Liability Policy – Occurrence Form

Consultants must provide and maintain a separate Pollution Liability Insurance policy. Pollution Liability policy must include contractual liability coverage aligned with indemnification obligation of this Agreement, with the following limits:

\$1,000,000 or higher as determined by the Contractor.

The pollution policy shall name Contractor and all other parties as required under the Prime Contract as Additional Insureds including completed operations.

Unless otherwise determined acceptable by Contractor, The policy shall cover the liability of the Consultant during the process of construction, removal, storage, encapsulation, transport and disposal of hazardous waste and contaminated soil and or asbestos abatement. The policy shall include coverage for on-site and off-site bodily injury and loss of damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gas, waste materials or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental, including no exclusion for mold or asbestos. The policy shall also include defense and clean-up costs.

The Consultant shall maintain pollution liability coverage for the statute of repose following completion of the project. Should mold coverage be required and be provided by a claims made form, the coverage shall be maintained annually, following completion, for the statute of repose.

D. Business Auto Policy:

Combined Bodily Injury and Property Damage

\$1,000,000 Each Accident

Contractor and Owner, shall be included as an additional insured

The following coverages must be included:

- a. Owned Automobile
- b. Non-Owned and Hired Automobiles.

The Auto insurance shall include:

- Coverage for bodily injury, death and property damage arising out of ownership, maintenance or use of any motorized vehicle on or off the site of the Project, and Contractual Liability coverage
- If hauling of hazardous waste is part of the Scope, Automobile Liability Insurance with a \$1,000,000 combined single limit per occurrence for bodily injury and property damage applicable to all hazardous waste hauling vehicles, and include MCS 90 endorsement and the ISO Form CA 9948 (Pollution Liability Broadened Coverage for Business Automobile).
 - o If CGL 12/04 or later edition is provided, the CA0051 1204: Mobile Equipment Subject to Motor Vehicles Laws shall also be provided. This additional endorsement is not required if the 2006 ISO Auto form is provided.

E. Umbrella Policy:

Commercial Umbrella/Excess Liability Insurance for bodily injury and property damage liability must sit over Subcontractor's primary Employer's Liability, Commercial General Liability and Commercial Automobile Liability with limits of:

\$2,000,000 Each Occurrence/\$2,000,000 Aggregate

All coverages and terms required under the Commercial General Liability, Automobile Liability and Employer's Liability must be included on the Excess/Umbrella Liability policy.

Higher limits may be required by Contractor or Owner on a project by project basis.

Consultant's Excess/Umbrella Liability Policy shall provide liability coverage, subject to the terms and conditions of the policy, in excess of all available underlying coverage before any primary or excess coverage held by any Additional Insured.

F. Professional Liability Policy:

If Consultant or any party hired by Consultant is providing professional services both those parties shall provide and maintain Professional Liability Insurance coverage. The policy coverage shall be effective (retroactively, if applicable) from the date of commencement of all professional activities in connection with the scope of Consultant's Work.

1. Consultant and its subconsultant's or suppliers and vendors of every tier shall have proof of professional liability coverage in the amount of \$1,000,000 per claim with a maximum deductible of \$25,000 to be paid by Consultant.
2. Coverage shall include coverage for contractual liability
3. The Subcontractor/Vendor and its subcontractors and suppliers of every tier shall maintain such insurance through the applicable statute of repose.

G. Unmanned Aerial Systems Liability Insurance ("Drone" Insurance):

If, as part of the performance of the Work, Subcontractor/Vendor operates any "Unmanned Aerial System" or "UAS", or hires any such operations through a vendor or sub-subcontractor/vendor, Subcontractor/Vendor shall provide and maintain liability insurance for operation of the UAS. For purposes of this Section G, "UAS" includes all elements required for flight, including, but not limited to, ground control stations, data links, dashboards, applications, survey equipment and the unmanned aerial vehicle.

1. This liability insurance shall be provided by either a separate aviation policy or an endorsement to the general liability policy required hereunder, provided that the limit of liability shall be no less than \$1,000,000 per occurrence.
2. Contractor, Consultant, and any other party as required by Contractor shall be included as additional insureds and a waiver of subrogation apply in favor of all additional insured parties.

H. Builder's Risk

If required per Contractor contract with Owner:

Contractor and Consultant waive all rights against (1) each other and any of their Vendors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, and any of their Subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other perils to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as fiduciary.

Consultant shall be responsible for the deductible in the event of the losses experienced singularly by this Consultant, or proportionately if several entities are involved. Waivers of subrogation against Owner and Contractor are required for all property insurance.

I. Wrap-Up Policy

If the Project is under a Contractor's or Owner's Project Wrap-Up Insurance Program, then Consultant shall be responsible for payment of the deductible for any covered claim arising from its Work in accordance with the Insurance Manual issued for the project. Consultant shall be responsible for payment of the deductible in proportion to its percentage of responsibility of the entire loss (covered under the wrap-up insurance program), as calculated prior to the application of the deductible.

SECTION 6 - INDEPENDENT CONTRACTOR STATUS

The Consultant certifies that it is, or that prior to the commencement of Work under this Agreement it will become an "independent contractor" and "employing unit" subject, as an employer for purposes of, and shall comply with, all applicable laws and regulations with respect to such status. The Consultant agrees the Contractor shall have no control over the obligations for or to the Consultant, its employees, agents, or suppliers during the term of this Agreement, other than on the project site as the site is defined in the Specifications.

Contractor will not in any way be liable as an employer of, or on account of, any of the employees of Consultant, and nothing herein shall be construed to create an employment relationship between Contractor and Consultant. Consultant agrees to defend Contractor against any claim or assertion of an employer-employee relationship between Contractor and Consultant's workmen, and to indemnify and hold Contractor harmless against any expense or liability imposed upon Contractor by reason of a finding of such an employer-employee relationship.

SECTION 7 - SAFETY

Prevention of accidents at the site is the responsibility of the Contractor, Consultant, and all other subcontractors, persons and entities at the site. Consultant shall be bound by the Contractor's Safety and Health Manual. Hard hats, safety glasses, reflective vests, and proper work boots shall be worn at all times. If the task requires hand protection, gloves shall be worn and provided by the Consultant. Establishment of a safety program by the Contractor shall not relieve the Consultant of its safety responsibilities. The Consultant shall establish its own safety program implementing safety measures, policies and standards conforming to those required or recommended by authorities having jurisdiction over the Project or Consultant, and by the Contractor and Owner, including, but not limited to, requirements imposed by the Contract Documents.

- A. Compliance with Laws.** The Consultant shall strictly observe and comply with all applicable safety laws, rules and regulations, including applicable federal and state OSHA standards, and with the accident prevention program required under the applicable provisions of the Contract Documents and/or as directed by the Contractor. Whenever the Contract Documents shall require any special safety, first aid, or emergency treatment facilities, it is agreed that same shall be provided by the Consultant for his own use; or that, when such alternative is made available by the Contractor, the Consultant shall cooperate with Contractor and with other subcontractors or Consultants for the provision thereof; and the entire cost thereof shall be prorated among the participants in proportion to the number of employees engaged on the project each month by the respective participants. Consultant shall indemnify, defend, and hold harmless Indemnitees for any Claims arising from or related to any violations of this Section 7 subparagraph A.
- C. Safety Devices/Controls.** The Consultant agrees that if in the performance of its Work it becomes necessary, convenient or advisable to remove, replace or interfere with any safety devices or controls installed by the Contractor or another subcontractor or Consultant, it will replace or restore such devices or controls at its own expense. In the event such devices or controls are not so restored, Consultant agrees to reimburse the Contractor for doing so on Consultant's behalf.
- E. Incident Reporting.** No later than 24 hours after the occurrence of any safety-related incident in which an actual injury requiring first aid occurs, or an injury requiring first aid could have occurred but for proper functioning of safety equipment, the Consultant shall notify the Contractor in writing with a description of the nature, affected personnel, location and timing of the incident. The Contractor shall issue a warning for the first failure to report such an incident. The Contractor may impose, and the Consultant agrees to pay, a fine for any subsequent failures to report such an incident.

SPECIAL PROVISIONS

- A. Incorporation of Prime Contract.** The Consultant agrees to be bound by and shall strictly comply with the terms and conditions of the Prime Contract between the Contractor and the Owner, the Project Specifications and project Drawings, including all amendments and addenda, all of which are incorporated into and made part of this Agreement, insofar as they relate in any way, directly or indirectly, to the Work furnished or to be furnished by Consultant. Contractor

hereby assumes toward the Consultant all the rights and remedies the Owner has against Contractor under the Prime Contract, and Consultant hereby assumes toward the Contractor all the obligations and duties the Contractor has to the Owner under the Prime Contract, to the extent related to the Consultant's Work. Where reference is made to Contractor in the Prime Contract, and the Work or Specifications therein pertain to the Consultant's Work, then such references shall be interpreted to apply to and reference Consultant instead of Contractor. Paragraph 15A "Dispute Resolution: Arbitration" of this Agreement shall supersede the terms of this paragraph and govern the resolution of disputes between Contractor and Consultant regardless of dispute resolution procedures in the Prime Contract.

- C. Right of Rejection.** The Owner has the right to reject any proposed Consultant. This Agreement issued pursuant to it is conditioned, as to each project, upon Owner acceptance of the Consultant. The Contractor reserves the right to reject any proposed lower-tier subcontractor or supplier of Consultant.
- E. No Waiver.** The failure of Contractor, from time to time, to insist on full performance of any term provision or covenant hereof shall not be construed as a waiver of such nor preclude Contractor from insisting on full performance of such at any other time. Waiver by Contractor of any breach hereof shall not constitute a waiver of any subsequent breach of the same or any other provision hereof.
- G. Communications.** All communications between Consultant and Owner or Architect shall be conducted through Contractor.
- I. Effective Date.** The effective date of this Agreement is intended by both parties to be the date indicated at the beginning of this Agreement. The dates appearing by the signatures at the end of this document merely indicate the dates that the signatures were affixed.
- K. Headings.** The Section headings used in this Agreement are for the ease of reference only and shall not be considered a part of nor affect the interpretation or meaning of this Agreement.
- M. Agreement Modifications.** No alteration to the form terms and conditions of this Agreement shall be incorporated without a separate attachment that is signed by an officer both of Contractor and Consultant. Any alterations or interlineations of this form document shall not be incorporated into this Agreement, and absent a separate attachment signed by an officer of both companies, all terms and conditions of Contractor's original Form 718 for the Consultant Agreement shall be binding without exception.
- O. Entire Agreement.** This Agreement represents the entire and integrated agreement between Contractor and the Consultant and supersedes any prior written or oral representations and/or negotiations. This Agreement is solely for the benefit of Contractor and Consultant, and shall not be construed to create a contractual relationship between persons or entities other than Contractor and Consultant.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have executed this agreement for themselves, their heirs, executors, successors, administrators and assigns, on the day and year first written above.

Dana Gunnell Entity Name (e.g. DG Residential)

Date

(Printed name of authorized agent)

Contractor's License #

Consultant Name

Date

(Printed name of authorized agent)

Contractor's License #

(Faxed or Scanned signatures are acceptable and shall be legal and binding)

Consultant is (check as applicable):

☐ Company is incorporatedFederal Tax I.D. No.

☐ Company is not incorporatedSocial Security No.

DANA GUNNELL - REFERENCE COPY