

Back's Construction, Inc.  
1602 Front Street, Suite 100  
San Diego, CA 92101  
Phone: 619-713-2566  
Fax: 619-713-0992

## **MASTER SUBCONTRACT AGREEMENT**

This subcontract made and entered into this **Friday, April Day, 2020** with **Subcontractor Name** located at **Subcontractor address** hereinafter Subcontractor, and Back's Construction, Inc., a California corporation, hereinafter sometimes called "Back's Construction".

### **ANY Back's Construction PROJECT**

#### **ARTICLE 1 THE SUBCONTRACT DOCUMENTS**

**§ 1.1** The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Agreement; (4) other documents listed in Article 16 of this Agreement; and (5) Modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in Article 16.

**§ 1.2** Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the General Conditions governing this Subcontract shall be the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

**§ 1.3** The Subcontract may be amended or modified only by a Modification. The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

§ 1.4 The Subcontractor shall be furnished copies of the Subcontract Documents upon request, but the Contractor may charge the Subcontractor for the reasonable cost of reproduction.

## **ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES**

§ 2.1 The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that the provisions of the edition of AIA Document A201 current as of the date of this Agreement apply to this Agreement pursuant to Section 1.2 and provisions of the Prime Contract apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under such documents, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under such documents, assumes toward the Owner. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor which the Owner, under such documents, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies and redress against the Contractor which the Contractor, under such documents, has against the Owner, insofar as applicable to this Subcontract. Where a provision of such documents is inconsistent with a provision of this Agreement, this Agreement shall govern.

§ 2.2 The Contractor may require the Subcontractor to enter into agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities which the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other which the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 SERVICES PROVIDED BY THE CONTRACTOR**

§ 3.1.1 The Contractor shall cooperate with the Subcontractor in scheduling and performing the Contractor's Work to avoid conflicts or interference in the Subcontractor's Work and shall expedite written responses to submittals made by the Subcontractor in accordance with Section 4.1 and Article 5. As soon as practicable after execution of this Agreement, the Contractor shall provide the Subcontractor copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. The Subcontractor shall be notified promptly of subsequent changes in the construction and submittal schedules and additional scheduling details.

§ 3.1.2 The Contractor shall provide suitable areas for storage of the Subcontractor's materials and equipment during the course of the Work. Additional costs to the Subcontractor resulting from relocation of such facilities at the direction of the Contractor, except as previously agreed upon, shall be reimbursed by the Contractor.

§ 3.1.3 Except as provided in Article 14, the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms.

## **§ 3.2 COMMUNICATIONS**

§ 3.2.1 The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, which affects this Subcontract and which becomes available to the Contractor subsequent to execution of this Subcontract.

§ 3.2.2 The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or material suppliers unless such persons are designated as authorized representatives of the Subcontractor.

§ 3.2.3 Requests for information will be forwarded to Contractor. Unless Contractor has given prior approval.

§ 3.2.4 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Contractor, a subcontractor or anyone directly or indirectly employed by them (other than the Subcontractor), the Contractor shall, prior to harmful exposure of the Subcontractor's employees to such substance, give written notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

§ 3.2.5 The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner's interest therein.

§ 3.2.6 If the Contractor asserts or defends a claim against the Owner, which relates to the Work of the Subcontractor, the Contractor shall make available to the Subcontractor information relating to that portion of the claim, which relates to the Work of the Subcontractor.

## **§ 3.3 CLAIMS BY THE CONTRACTOR**

§ 3.3.1 Liquidated damages for delay, if provided for in Section 9.3 of this Agreement, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract.

§ 3.3.2 The Contractor's claims for services or materials provided the Subcontractor shall require:

- .1 Seven days' prior written notice except in an emergency;
- .2 written compilations to the Subcontractor of services and materials provided and charges for such services and materials no later than the fifteenth day of the following month.

### **§ 3.4 CONTRACTOR'S REMEDIES**

**§ 3.4.1** If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within three working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, after three days following receipt by the Subcontractor of an additional written notice, and without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor.

## **ARTICLE 4 SUBCONTRACTOR**

### **§ 4.1 EXECUTION AND PROGRESS OF THE WORK**

**§ 4.1.1** The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the Work of the Contractor, other subcontractors or Owner's own forces.

**§ 4.1.2** The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

**§ 4.1.3** The Subcontractor shall submit to the Contractor a schedule of values allocated to the various parts of the Work of this Subcontract, aggregating the Subcontract Sum, made out in such detail as the Contractor and Subcontractor may agree upon or as required by the Owner, and supported by such evidence as the Contractor may require. In applying for payment, the Subcontractor shall submit statements based upon this schedule.

**§ 4.1.4** The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment, which may be in the course of preparation, manufacture or transit.

**§ 4.1.5** The Subcontractor agrees that the Contractor and the Architect will each have the authority to reject Work of the Subcontractor, which does not conform to the Prime Contract. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

**§ 4.1.6** The Subcontractor shall pay for all materials, equipment and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

**§ 4.1.7** The Subcontractor shall take necessary precautions to protect properly the Work of other subcontractors from damage caused by operations under this Subcontract.

**§ 4.1.8** The Subcontractor shall cooperate with the Contractor, other subcontractors and the Owner's own forces whose Work might interfere with the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors or the Owner's own forces.

#### **§ 4.2 LAWS, PERMITS, FEES AND NOTICES**

**§ 4.2.1** The Subcontractor shall give notices and comply with laws, ordinances, rules, regulations and orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

**§ 4.2.2** The Subcontractor shall comply with Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Subcontract.

#### **§ 4.3 SAFETY PRECAUTIONS AND PROCEDURES**

**§ 4.3.1** The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by the Contractor and with applicable laws, ordinances, rules, regulations and orders of public authorities for the safety of persons and property in accordance with the requirements of the Prime Contract. The Subcontractor shall report to the Contractor within 8 hours an injury to an employee or agent of the Subcontractor, which occurred at the site.

**§ 4.3.2** If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

**§ 4.3.3** If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. The Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of

demobilization, delay and remobilization, which adjustments shall be accomplished as provided in Article 5 of this Agreement.

**§ 4.3.4** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 4.3.3 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

#### **§ 4.4 CLEANING UP**

**§ 4.4.1** The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for unclean conditions caused by other contractors or subcontractors.

**§ 4.4.2** As provided under Section 3.3.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

#### **§ 4.5 WARRANTY**

**§ 4.5.1** The Subcontractor warrants to the Owner, Architect and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless otherwise required or permitted by the Subcontract Documents, that the Work of this Subcontract will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Subcontract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Subcontract Documents.

#### **§ 4.6 INDEMNIFICATION**

**§ 4.6.1** To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's

Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.6.

**§ 4.6.2** In claims against any person or entity indemnified under this Section 4.6 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 4.6.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

#### **§ 4.7 REMEDIES FOR NONPAYMENT**

**§ 4.7.1** If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' written notice to the Contractor, stop the Work of this Subcontract until payment of the amount owing has been received.

#### **ARTICLE 5 CHANGES IN THE WORK**

**§ 5.1** The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of such a Modification issued subsequent to the execution of the Subcontract Agreement, the Contractor shall promptly notify the Subcontractor of the Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work which would be inconsistent with the changes made by the Modifications to the Prime Contract.

**§ 5.2** The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract Time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents.

**§ 5.3** The Subcontractor shall make all claims promptly to the Contractor for additional cost, extensions of time and damages for delays or other causes in accordance with the Subcontract Documents. A claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor not less than two working days preceding the time by which the Contractor's claim must

be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound. Subcontractor waives any claim against Back's Construction, Inc. for compensation or equitable adjustment for such claims, changed conditions, or work, except to the extent the claim is allowed to Back's by the Owner as provided.

## **ARTICLE 6 MEDIATION AND ARBITRATION**

### **§ 6.1 MEDIATION**

**§ 6.1.1** Any claim arising out of or related to this Subcontract, except claims as otherwise provided in Section 4.1.5 and except those waived in this Subcontract, shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

**§ 6.1.2** The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Subcontract and the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

**§ 6.1.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### **§ 6.2 ARBITRATION**

**§ 6.2.1** Any claim arising out of or related to this Subcontract, except claims as otherwise provided in Section 4.1.5 and except those waived in this Subcontract, shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section 6.1.

**§ 6.2.2** Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. Demand for arbitration shall be filed in writing with the other party to this Subcontract and with the American Arbitration Association, and a copy shall be filed with the Architect.

**§ 6.2.3** A demand for arbitration shall be made within the time limits specified in the conditions of the Prime Contract as applicable, and in other cases within a reasonable time after the claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitations.

**§ 6.2.4** Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.

**§ 6.2.5** Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

## **ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT**

### **§ 7.1 TERMINATION BY THE SUBCONTRACTOR**

**§ 7.1.1** The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, Sub-subcontractors or their agents or employees or other persons performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

### **§ 7.2 TERMINATION BY THE CONTRACTOR**

**§ 7.2.1** If the Subcontractor persistently or repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within 24 hours after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, after three days following receipt by the Subcontractor of an additional written notice and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

**§ 7.2.2** If the Owner terminates the Contract for the Owner's convenience, the Contractor shall deliver written notice to the Subcontractor.

**§ 7.2.3** Upon receipt of written notice of termination, the Subcontractor shall:

- .1** cease operations as directed by the Contractor in the notice;
- .2** take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and
- .3** except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

**§ 7.2.4** In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed not to exceed 15%.

### **§ 7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE**

**§ 7.3.1** The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

**§ 7.3.2** An adjustment shall be made for increases in the Subcontract Time and Subcontract Sum, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent:

- .1 That performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible;
- .2 That an equitable adjustment is made or denied under another provision of this Subcontract.

### **§ 7.4 ASSIGNMENT OF THE SUBCONTRACT**

**§ 7.4.1** In the event of termination of the Prime Contract by the Owner, the Contractor may assign this Subcontract to the Owner, with the Owner's agreement, subject to the provisions of the Prime Contract and to the prior rights of the surety, if any, obligated under bonds relating to the Prime Contract. In such event, the Owner shall assume the Contractor's rights and obligations under the Subcontract Documents. If the Work of the Prime Contract has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted.

**§ 7.4.2** The Subcontractor shall not assign the Work of this Subcontract without the written consent of the Contractor, nor subcontract the whole of this Subcontract without the written consent of the Contractor, nor further subcontract portions of this Subcontract without written notification to the Contractor when such notification is requested by the Contractor.

## **ARTICLE 8 THE WORK OF THIS SUBCONTRACT**

**§ 8.1** The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others.

*(Insert a precise description of the Work of this Subcontract, referring where appropriate to numbers of Drawings, sections of Specifications and pages of Addenda, Modifications and accepted Alternates.)*

See project specific Purchase Order

**ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

§ 9.1 The Subcontractor's date of commencement is the date from which the Contract Time of Section 9.3 is measured; it shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Contractor.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

Project specific

§ 9.2 Unless the date of commencement is established by a notice to proceed issued by the Contractor, or the Contractor has commenced visible Work at the site under the Prime Contract, the Subcontractor shall notify the Contractor in writing not less than five days before commencing the Subcontractor's Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 9.3 The Work of this Subcontract shall be substantially completed not later than [ ]

*(Insert the calendar date or number of calendar days after the Subcontractor's date of commencement. Also insert any requirements for earlier Substantial Completion of certain portions of the Subcontractor's Work, if not stated elsewhere in the Subcontract Documents.)*

**Portion of Work**

Per project specific Purchase Order

**Substantial Completion date**

TBD

, subject to adjustments of this Subcontract Time as provided in the Subcontract Documents.

*(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)*

N/A

§ 9.4 With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Subcontract.

§ 9.5 No extension of time will be valid without the Contractor's written consent after claim made by the Subcontractor in accordance with Section 5.3.

**ARTICLE 10 SUBCONTRACT SUM**

§ 10.1 The Contractor shall pay the Subcontractor in current funds for performance of the Subcontract the Subcontract Sum of; Please refer to Back's job specific purchase order.

( [ ] ), subject to additions and deductions as provided in the Subcontract Documents.

§ 10.2 The Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Owner and the Contractor:

*(Insert the numbers or other identification of accepted alternates.)*

N/A

§ 10.3 Unit prices, if any, are as follows:

Description	Units	Price (\$ 0.00)
N/A		

#### ARTICLE 11 PROGRESS PAYMENTS

§ 11.1 Based upon applications for payment submitted to the Contractor by the Subcontractor, corresponding to applications for payment submitted by the Contractor to the Architect, and certificates for payment issued by the Architect, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor and Subcontractor for Work properly performed by their contractors and suppliers shall be held by the Contractor and Subcontractor for those contractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor or Subcontractor for which payment was made to the Contractor by the Owner or to the Subcontractor by the Contractor, as applicable. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor or Subcontractor, shall create any fiduciary liability or tort liability on the part of the Contractor or Subcontractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor or Subcontractor for breach of the requirements of this provision.

§ 11.2 The period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.3 Provided an application for payment is received by the Contractor not later than the 25th day of a month, the Contractor shall include the Subcontractor's Work covered by that application in the next application for payment which the Contractor is entitled to submit to the Architect. The Contractor shall pay the Subcontractor each progress payment within three working days after the Contractor receives payment from the Owner.

§ 11.4 If an application for payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next application for payment submitted to the Architect.

**§ 11.5** Each application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require. This schedule, unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's applications for payment.

**§ 11.6** Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the application for payment.

**§ 11.7** Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as follows:

**§ 11.7.1** Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion of the Subcontractor's Work in the schedule of values, less that percentage actually retained, if any, from payments to the Contractor on account of the Work of the Subcontractor. Pending final determination of cost to the Contractor of changes in the Work which have been properly authorized by the Contractor, amounts not in dispute shall be included to the same extent provided in the Prime Contract, even though the Subcontract Sum has not yet been adjusted;

**§ 11.7.2** Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing, less the same percentage retainage required by the Prime Contract to be applied to such materials and equipment in the Contractor's application for payment;

**§ 11.7.3** Subtract the aggregate of previous payments made by the Contractor; and

**§ 11.7.4** Subtract amounts, if any, calculated under Section 11.7.1 or 11.7.2 which are related to Work of the Subcontractor for which the Architect has withheld or nullified, in whole or in part, a certificate of payment for a cause which is the fault of the Subcontractor.

**§ 11.8** Upon the partial or entire disapproval by the Contractor of the Subcontractor's application for payment, the Contractor shall provide written notice to the Subcontractor. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

**§ 11.9 SUBSTANTIAL COMPLETION**

**§ 11.9.1** When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make prompt application for payment for such Work. Within 30 days following issuance by the Architect of the certificate for payment covering such substantially completed Work, the Contractor shall, to the full extent allowed in the Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor's Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's substantially completed Work to the same percentage of retainage as that on the Contractor's Work covered by the certificate.

**ARTICLE 12 FINAL PAYMENT**

**§ 12.1** Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, the Architect has issued a certificate for payment covering the Subcontractor's completed Work and the Contractor has received payment from the Owner. If, for any cause which is not the fault of the Subcontractor, a certificate for payment is not issued or the Contractor does not receive timely payment or does not pay the Subcontractor within ten working days after receipt of payment from the Owner, final payment to the Subcontractor shall be made upon demand.

*(Insert provisions for earlier final payment to the Subcontractor, if applicable.)*

N/A

**§ 12.2** Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied.

**ARTICLE 13 INSURANCE AND BONDS**

**§ 13.1** The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability:

Type of insurance	Limits of liability (\$ 0.00)
See Attached Insurance Requirements	

**§ 13.2** Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Subcontractor's Work until date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor.

**§ 13.3** Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by this Article 13 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 the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Article 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness according to the Subcontractor's information and belief.

**§ 13.4** The Contractor shall furnish to the Subcontractor satisfactory evidence of insurance required of the Contractor under the Prime Contract.

**§ 13.5** The Contractor shall promptly, upon request of the Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.

**§ 13.6** Performance Bond and Payment Bond:  
*(If the Subcontractor is to furnish bonds, insert the specific requirements here.)*

Bond type	Bond amount (\$ 0.00)	Bond delivery date	Bond form
N/A			

**§ 13.7 PROPERTY INSURANCE**

**§ 13.7.1** When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

**§ 13.7.2** If the required property insurance is not in effect for the full value of the Subcontractor's Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor's Work, and the Subcontractor shall be reimbursed for the cost of the insurance by an adjustment in the Subcontract Sum.

**§ 13.7.3** Property insurance for the Subcontractor's materials and equipment required for the Subcontractor's Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for through the application for payment process.

**§ 13.8 WAIVERS OF SUBROGATION**

**§ 13.8.1** The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, 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 causes of loss 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 a fiduciary. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

#### **ARTICLE 14 TEMPORARY FACILITIES AND WORKING CONDITIONS**

**§ 14.1** The Contractor shall furnish and make available to the Subcontractor the following temporary facilities, equipment and services; these shall be furnished at no cost to the Subcontractor unless otherwise indicated below:

<b>Temporary Facility, Equipment or Service</b>	<b>Cost, if any (\$ 0.00)</b>
Toilets, Hand Wash Stations, Temporary Power and Water	N/A

**§ 14.2** Specific working conditions:

*(Insert any applicable arrangements concerning working conditions and labor matters for the Project.)*

N/A

#### **ARTICLE 15 MISCELLANEOUS PROVISIONS**

**§ 15.1** Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

**§ 15.2** Payments due and unpaid under this Subcontract shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

N/A

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's, Contractor's and Subcontractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to*

*deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

**§ 15.3** Retainage and any reduction thereto is as follows:

10%

**§ 15.4** The Contractor and Subcontractor waive claims against each other for consequential damages arising out of or relating to this Subcontract, including without limitation, any consequential damages due to either party's termination in accordance with Article 7.

#### **ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS**

**§ 16.1** The Subcontract Documents, except for Modifications issued after execution of this Subcontract are enumerated as follows:

**§ 16.1.1** This executed 1997 edition of the Standard Form of Agreement Between Contractor and Subcontractor, AIA Document A401-1997;

**§ 16.1.2** The Prime Contract, consisting of the Agreement between the Owner and Contractor dated as first entered above and the other Contract Documents enumerated in the Owner-Contractor Agreement;

**§ 16.1.3** The following Modifications to the Prime Contract, if any, issued subsequent to the execution of the Owner-Contractor Agreement but prior to the execution of this Agreement:

<b>Modification</b>	<b>Date</b>
N/A	

**§ 16.1.4** Other Documents, if any, forming part of the Subcontract Documents are as follows:

*(List any additional documents that are intended to form part of the Subcontract Documents. Requests for proposal and the Subcontractor's bid or proposal should be listed here only if intended to be part of the Subcontract Documents.)*

#### **ADDENDUM:**

The subcontractor further acknowledges that it has checked the approaches and access to the jobsite, nearby structures, telephone and power lines, and all governmental laws, ordinances and regulations relating to the use of streets, highways, and alleyways, which may in any manner restrict, interfere with, delay or otherwise affect the delivery, storage, handling, hoisting, and rigging of any and all materials and equipment, and the Subcontractor agrees that no additional charge will be made by reason of any such conditions laws, ordinances, regulations or restrictions.

One set of plans and specifications will be furnished to the Subcontractor without cost. Additional sets may be procured at rates established by the Owner, or by Back's Construction, if not established by the Owner.

All invoices must be submitted on a work-done on jobsite basis once per month by the 25<sup>th</sup> and will be paid as soon as possible and no later than 30 days after Back's Construction pay request is accepted by the Owner provide the Owner has paid Back's Construction, as subject, in all events. As condition precedent to the obligation of Back's Construction to make said payments, the following provisions must be met:

- i. Subcontractor must submit invoice no later than 30 days after completion of work.
- ii. The Subcontractor's Conditional Affidavit and Waiver of Lien form must accompany Subcontractor's invoice.
- iii. Subcontractor's invoice shall show original subcontract amount and approved change orders. No change orders shall be paid without proper Back's Construction written authorization
- iv. On receipt of payment from Back's Construction, Subcontractor must submit appropriate Unconditional Affidavit and Waiver of Lien form, properly executed by the Subcontractor.

All costs, including attorneys' fees, incurred in any arbitration or other claim for the benefit of subcontractor shall be borne solely by Subcontractor. No change order requested by either the Owner or Back's Construction shall invalidate any bond furnished by Subcontractor.

In the event the Subcontractor shall default in any respect in the full, faithful, and punctual performance of any of its obligations hereunder or shall fail to adequately man the job and such default shall continue for twenty-four (24) hours after written notice thereof. Back's Construction shall have the right to terminate, in whole or in part, this Subcontract. Upon termination, Back's Construction shall have the right to take possession of the work to be performed by the Subcontractor. Back's Construction shall not be limited to such right and remedy in the event of any default on the part of the Subcontractor, but shall have and be entitled to such other rights and remedies as the Owner may be entitled to assert against Back's Construction under the Agreement or as may be provided to either the Owner or Back's Construction by law. If any costs, expenses or damages are assessed or recovered against Back's Construction by the Owner by the Subcontractor to the full extent the Subcontractor shall be responsible for the acts, failures, and or delays subjecting Back's Construction to such liability.

## **INSURANCE**

- A. Subcontractor shall take out and furnish satisfactory proof, by Certificate and specific policy endorsements, that Subcontractor has procured insurance coverage with insurance carrier(s) satisfactory to Back's Construction and the Owner. All such liability insurance shall protect Back's Construction and Owner against loss, including death by any person or persons, except as covered by Workers Compensation

Insurance, resulting directly or indirectly from the performance or execution of the work specified in this Subcontract or any contract hereunder. On all such policies of insurance Back's Construction and Owner shall be named as "Additional Insured." Subcontractor shall furnish Certificates of Insurance and policy endorsements to Back's Construction before commencing work hereunder. Subcontractor will maintain the following types of insurance, coverage, limits of liability, and other requirements, throughout the life of the project, including all warranty periods and the costs of this is included in the Agreement price.

- i. **Comprehensive General Liability Insurance.** Subcontractor shall furnish a Certificate of Insurance showing evidence of Commercial General Liability coverage on ISO Form CG0001, or its equivalent, which includes Contractual Liability covering the Subcontractor's obligations under this Subcontract, as well as coverage on all of Back's Construction equipment owned, hired or used in the performance of the work, with limits not less than:
  - a)
    - (1) \$1,000,000 each occurrence; and
    - (2) \$2,000,000 General Aggregate; and
    - (3) \$1,000,000 products – Completed Operations Aggregate; and
    - (4) \$1,000,000 Personal Injury Liability; or
  - b) \$1,000,000 combined single limit for bodily injury and property damage.
  1. The above-referenced Commercial General Liability coverage shall include:
    - a) A per project general aggregate endorsement;
    - b) Explosion, collapse and underground coverage; and
    - c) Subsidence/earth movement coverage.
  2. The required insurance certificate, as identified above, must have the CG2010(11/85) endorsement attached naming the following as additional insureds:
    - a) Back's Construction, Inc.
    - b) Owner; and
    - c) Any other person or entity required by Back's Construction or the Owner to be named as an additional insured.
  3. The Additional Insured Endorsement must be attached to the Certificate and state that this insurance is primary to any other insurance. Endorsement, which limit or exclude coverage, will need to be attached to the certificate.
- ii. **Automobile Liability Insurance.** Subcontractor shall supply a Certificate of Insurance showing commercial Automobile Liability Coverage, including Contractual Liability, covering all motor vehicles owned, non-owned, hired or used in the performance of the work, with limits not less than:
  - a) \$1,000,000 each occurrence (combined single limit for bodily injury and property damage).

- iii. **Umbrella Form.** Subcontractor shall supply a Certificate of Insurance showing evidence of Umbrella coverage with the following limits:
  - a) \$1,000,000 each occurrence; and
  - b) \$1,000,000 aggregate.
- iv. **Workers' Compensation and Occupational Disease Insurance.** Subcontractor shall supply a Certificate of Insurance showing Workers Compensation Employee's liability coverage, with limits not less than:
  - a) \$1,000,000 each/accident (bodily injury by accident);
  - b) \$1,000,000/disease – policy limit (bodily injury by disease); and
  - c) \$1,000,000/disease – each employee (bodily injury by disease).

A waiver of subrogation endorsement (WC 04 03 06) shall be attached in favor of Back's Construction and the Owner.

- v. **Professional Liability.** If Subcontractor is a licensed architect, engineer or designer; provides architecture, engineering and/or design services or retains any said services, a Certificate of Insurance shall be supplied showing errors and omissions coverage in an amount not less than \$1,000,000 per occurrence.
- B. Subcontractor is to include the provisions of this Section 11 in all third party contracts, and is to require those third party contractors to furnish insurance certificate, which evidence their compliance with this Section. Subcontractor agrees to provide Back's Construction with copies of third party contractor insurance certificates to Back's Construction that the appropriate insurance certificates have been received prior to the commencement of work under said third party contract.
  - C. All insurance policies identified in this Section 11 shall contain a provision that the coverages afforded there under shall not be cancelled (for non-payment of premium or any other reason) or written notice has been given to Back's Construction.
  - D. In the Event Back's Construction receives written notice from the insurer that the insurance of Subcontractor has been cancelled, and Back's Construction has not received certificates verifying that Subcontractor has procured new or substitute insurance as specified herein, then it is agreed that Back's Construction may, but is not obligated to, procure such insurance and change all premiums plus a reasonable sum of overhead to Subcontractor's account, all of which sums may be deducted from any amounts due Subcontractor. This is in addition to such other rights as Back's Construction may have for breach of the Agreement.
  - E. All insurance policies identified in Section 11 shall (i) provide that coverage afforded to Back's Construction is primary and any other insurance in force for Back's Construction will be excess and will not contribute to the primary policies; and (ii) be written by insurance companies with an A.M. Best's rating of A X and be admitted in

California; except as it relates to State Fund, in which case B+ is acceptable. Any deviation from the requirements set forth in this Section E. or elsewhere in this Section 11 must be approved in writing by Back's Construction.

- F. All certificates must be in the office of Back's Construction prior to any work being commenced on the project. Failure to supply the required insurance coverage will cause removal of the Subcontractor from the job site and withholding of any payments.
- G. The carrying of the insurance described above shall in no way be interpreted as relieving the Subcontractor of responsibility or liability under this Subcontract otherwise.
- H. Subcontractor shall maintain completed operations liability insurance for ten (10) years after acceptance of the Subcontract work, substantial completion of the project, or to the time required by the Subcontract documents, whichever is longer. Subcontractor shall furnish to Back's Construction evidence of such insurance at the time of completion of the Subcontract work and before payment.

#### **SAFETY**

- I. Subcontractor agrees to furnish Back's Construction with all applicable MSDS forms, etc. in relation to all materials used and /or furnished to the job.
- J. Subcontractor shall not sublet the work to be performed under this Subcontract either in whole or in part without the written consent of Back's Construction. All subcontracts under this Subcontract shall be subject to the provisions of the Agreement and this subcontract but shall create no contractual relationship with Back's Construction.

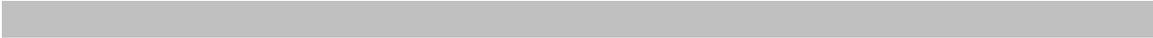
#### **EXAMINATION OF SITE DRAWINGS, SPECIFICATIONS, AND OTHER DOCUMENTS**

Subcontractor represents that it has visited the location of the project and has fully acquainted itself with conditions as they exist, or has had fully opportunity to do so, and has satisfied itself that it fully understands the facilities, difficulties and restrictions attending the performance of Subcontractor's work. Subcontractor further represents that it has thoroughly examined the plans, specifications, and any addenda or other documents, all of which have been made part of this Subcontract.

#### **CORRECTION OF WORK AFTER COMPLETION**

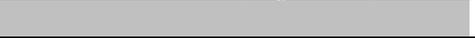
If, within one (1) year of occupancy or completion, whichever occurs last, any work by Subcontractor is found to be defective, Subcontractor shall correct it at Subcontractor's expense promptly after receipt of written notice. Subcontractor shall be bound to Back's Construction to the same extent that

Back's Construction is bound to the Owner. Subcontractors shall not sublet the work to be performed under this Subcontract.



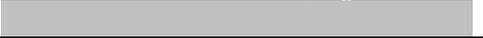
This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
**CONTRACTOR** *(Signature)*



*(Printed name and title)*

\_\_\_\_\_  
**SUBCONTRACTOR** *(Signature)*



*(Printed name and title)*