

SUBCONTRACTOR MASTER AGREEMENT

THIS SUBCONTRACTOR MASTER AGREEMENT ("Agreement") is made as of the date specified in Section 1.01 below by and between the contractor specified in Section 1.02 below, and the subcontractor specified in Section 1.03 below. In consideration of the agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, both parties agree as follows:

Terms: Section 1 contains the basic terms ("Basic Terms") of this Agreement between the Contractor and Subcontractor identified in this Agreement. The other sections of this Agreement and the Exhibits attached hereto and incorporated herein by reference, explain and define the Basic Terms and contain other contractual provisions, all of which are to be read in conjunction with the Basic Terms. In the event of any conflict between the Basic Terms and any other provision in this Agreement, however, such other provision shall prevail.

The terms of this Agreement also include all of the provisions, conditions and obligations contained in all of the attachments and/or exhibits referred to herein below and incorporated herein by reference, including, but not limited to, Exhibit "A" **Terms & Conditions** and Exhibit "B" **Terms of Payment**. Contractor and Subcontractor fully understand and agree that the Subcontractor's Proposal will be subject to and must comply with all of the terms and conditions of this Agreement.

Section 1:

1.01 **Date of Agreement:** _____, 20__

1.02 S.P. WHITE CONSTRUCTION, INC. ("Contractor")
2540 Gateway Road
Carlsbad, California 92009
(760) 931-1130
License #:452513

1.03 _____ ("Subcontractor")

(_____) _____ - _____
(License #: _____)

1.04 **Term:** This Agreement will remain in effect from year to year thereafter Commencement date, unless earlier terminated pursuant to the provisions of this Agreement:

Commencing on: _____, 20__

1.05 Any Subcontract Proposal accepted and entered into by and between the Contractor and the Subcontractor during the Term of this Agreement shall be subject to and bound by all of the terms and conditions set forth in this Agreement. The procedure will be as follows:

- 1.05a The Subcontractor will provide Contractor with a proposal
 - 1.05b If the proposal is accepted, a White Construction Project Manager will approve it in writing
 - 1.05c The terms and conditions set forth in this Master Subcontractor Agreement apply and supersede any provision in the Subcontractor Proposal
- 1.06 Subcontractor agrees to provide building construction services with costs not to exceed \$100,000.00 USD per project. For construction projects with costs over \$100,000.00 USD, the S.P. White Construction job specific subcontract will be used.
- 1.07 **Insurance:** Subcontractor shall at all times maintain in full force and effect the insurance all insurance coverage in the amounts and under the terms set forth in Exhibit "A" **Terms & Conditions**.
- 1.08 **Licensing:** Subcontractor must be fully licensed at all times and shall at all times maintain said license(s) in good standing as required by state law.
- 1.09 **Payment & Payment Schedule:** Subcontractor agrees to be paid in accordance with the terms and conditions set forth in Exhibit "B" **Terms of Payment**.
- 1.10 A Subcontractor proposal signed by the Contractor during the term of this Master Agreement shall constitute a binding agreement under this Master Agreement, and Subcontractor acknowledges and agrees to be bound by all of the terms and provisions of this Master Agreement with respect to every Subcontractor proposal signed by the Contractor during the term of this Master Agreement wherein the Subcontractor's proposal is selected.

Section 2:

2.01 Continuing Work: Subcontractor agrees not to participate in or encourage any cessation of services, which may occur as a result of a labor dispute. Should there be a work stoppage or shutdown which involves the participation of Subcontractor's personnel, Subcontractor agrees to take appropriate and prompt action to provide qualified personnel to perform the Subcontract services. In the event Subcontractor is unable to provide said personnel, Subcontractor agrees to reimburse Contractor for any expenses incurred by Contractor in providing said services, or, at Contractor's sole option, Contractor may offset such expense against monies currently owed to Subcontractor. Subcontractor agrees to take appropriate, prompt action to minimize delay by fully cooperating in every reasonable way to eliminate any work stoppage or the effect of any work stoppage.

2.02 Compliance with Law: In the performance of this Agreement, Subcontractor agrees to abide by all present and future laws, codes, ordinances, rules or regulations of federal, state or municipal governments or instrumentality's having jurisdiction. Subcontractor shall obtain, at its sole cost and expense, and keep current all licenses, permits, tax stamps and other documents which are required by law, rule or regulation and which are necessary to perform the services herein, and shall deliver a copy of such licenses, permits or other documents to Contractor. Subcontractor shall indemnify and hold harmless Contractor and Contractor's officers, directors, partners, employees and agents from and against any violation by Subcontractor, its agents, servants, vendors or employees, of any and all laws, rules or

regulations occurring during the performance of this Agreement.

2.03 Assignment: Subcontractor shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the Contractor, which consent may be granted or withheld in Contractor's sole discretion. In addition to the foregoing and in the event of any approved assignment of delegation, Subcontractor shall remain fully liable for the assignee's timely and full compliance with all of the terms and conditions of this Agreement. Any prohibited assignment or delegation shall be null and void. This Agreement may be assigned by Contractor and, upon delivery to Subcontractor of an executed duplicate original of such assignment document, Contractor named herein shall be relieved of all obligations thereafter accruing under this Agreement.

2.04. No Waiver: The failure by Contractor to insist upon strict performance of any of the terms and conditions of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be considered to be a waiver or relinquishment of such performance by Subcontractor or rights of Contractor, and all terms and conditions shall remain in full force and effect.

2.05 Entire Agreement & Amendments: This Agreement contains the entire Agreement between Contractor and Subcontractor with respect to the subject matter hereof and supersedes all prior discussions, negotiations and agreements between Contractor and Subcontractor, whether written or oral, and Contractor and Subcontractor agree that there are no other oral or written agreements or representations between Contractor and Subcontractor with respect to the Services. This Agreement may not be modified or amended unless such modification or amendment is in writing and duly executed by both Contractor and Subcontractor.

2.06 Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of California. The proper venue for interpreting this Agreement shall be North San Diego County, California.

2.07 Time of the Essence: Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Agreement.

2.08 Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be attached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by other parties to this Agreement attached thereto.

2.09 Invalidity: Wherever possible, each provision of this Agreement shall be interpreted in such a manner to be valid under applicable law, but, if any provisions of this Agreement shall be invalid or prohibited thereunder, such validity or prohibition shall be construed as if such invalid or prohibited provisions had not been inserted herein and shall not affect the remainder of such provision or the remaining provisions of this Agreement.

2.10 Interpretation: The language in all parts of this Agreement shall in all cases be construed simply according to its fair meaning and not strictly for or against any of the parties

hereto. Section headings of the Agreement are solely for convenience of reference and shall not govern the interpretation of any of the provisions of this Agreement.

EXECUTED on _____, 20____ in _____, California.

By: _____

Print Name & Title: _____

SUBCONTRACTOR

EXECUTED on _____, 20____ in _____, California.

By: _____

Print Name & Title: _____

CONTRACTOR

EXHIBIT "A"

TERMS & CONDITIONS

#1 Plans, Specifications and Subcontract. The plans, specifications and the Subcontract are intended to supplement each other. In case of conflict, however, the provisions of the contract between the Owner and the Contractor regarding conflict shall apply. If there is no such provision, the plans shall control the specifications, and the provisions of the Subcontract shall control both the plans and specifications.

#2 Labor and Material. Subcontractor shall pay all valid charges for labor and materials used on the work covered by the Subcontract, but is excused from this obligation for bills received in any period during which Contractor is in arrears in making progress payments to Subcontractor. If Contractor is required to pay for any labor or materials ordered by Subcontractor on the project, Subcontractor shall immediately reimburse Contractor.

#3 Extra Work. The subcontract price set forth in the Subcontractor's Proposal signed by the Contractor shall be deemed to be full compensation for all work and materials furnished by the Subcontractor whether or not specifically called for by the contract, plans, or specifications, and no additional compensation shall be paid to the Subcontractor unless a written extra work order is signed by the Contractor in advance, stating that the work is extra work and designating the amount to be paid for the extra work.

3.1 If the Subcontractor contends that any work or materials furnished by the Subcontractor should be paid for as extra work, the Subcontractor must give the Contractor written notice to that effect before the work or materials in question are furnished. Otherwise, it will be conclusively presumed that the Contractor and Subcontractor have agreed that such work or materials are within the scope of the original contract and that no additional compensation shall be paid.

#4 Cleanup. 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. 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.

#5 Subcontractor Default. If the Subcontractor defaults or neglects to carry out the work in accordance with the Subcontract and fails within two working days after delivery of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may thereafter, 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.

#6 Termination by the Contractor. If the Subcontractor persistently or repeatedly fails or neglects to carry out the work in accordance with the Subcontract and fails within two working days after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, 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 Attorney Fees. If either party becomes involved in litigation arising out of the Subcontract or the performance thereof, the court in such litigation, or in a separate suit, shall award attorney fees to the prevailing party. Unless judgment goes by default, the attorney fee awarded shall not be computed in accordance with any court schedule, but shall be sufficient to fully reimburse all attorney fees actually incurred in good faith, regardless of the size of the judgment, it being the intention of the parties to fully compensate for all attorney fees paid or incurred in good faith.

#8 Bankruptcy. If the Contractor or the owner of the Subcontractor should become bankrupt or make an assignment for the benefit of creditors, the Subcontractor, its trustee in bankruptcy, shall be paid the reasonable value of all work theretofore performed, and the obligations of all parties under the Subcontract shall thereupon terminate.

#9 Notices. Any notice required or permitted under the Subcontract may be delivered in person, by any overnight express mail carrier, or by ordinary mail at the address contained in the Subcontract, but such address may be changed by written notice given by one party to the other from time to time. Notice shall be deemed delivered by ordinary mail two (2) days after the postmark date on the envelope, one (1) day after the date shown on the delivery instructions for overnight express mail carrier, and on the same day that notice was delivered personally.

#10 Arbitration. If the prime contract calls for arbitration, and an arbitration concerning or related to Subcontractor's work is commenced between the Owner and the Contractor, Subcontractor will, upon demand of Contractor, become a party to such arbitration proceedings and shall submit to any award which may be rendered therein. Subject to the foregoing, if any questions arise regarding the work required under the Subcontract, or regarding the rights and obligations of the Contractor and Subcontractor under the terms of the Subcontract or the plans or the specifications, such questions shall be subject to arbitration.

10.1 Arbitration shall be conducted in accordance with the Rules of the American Arbitration Association, which are in effect at the same time the demand for arbitration is filed. Should any party refuse or neglect to appear or participate in the arbitration proceedings, the arbitrator is empowered to decide the controversy in accordance with whatever evidence is presented. The arbitrator is authorized to award any party or parties such sums as the arbitrator shall deem proper, including, but not limited to, attorney fees for the time, expense and trouble of arbitration.

#11 Alternates. The Subcontractor shall not deviate from the requirements of the plans and specifications as to materials and equipment to be furnished, or the method of performing the work unless prior written approval has been obtained from the Contractor and/or the Owner. The Subcontractor warrants that any alternate equipment, material or method proposed by the Subcontractor will meet and achieve all performance standards established by the Subcontract and other related documents.

#12 Insurance. Subcontractor will maintain in full force and effect a worker's compensation insurance policy and a comprehensive liability insurance policy and the policies shall be written for not less than the limits of liability required by law or by those shown below, whichever is greater. Subcontractor shall furnish certificates of insurance to the Contractor before commencing work. The failure of Contractor to demand delivery of certificates hereunder shall not relieve Subcontractor of any obligation under this paragraph. The minimum required insurance shall be:

1. Worker' Compensation: Statutory Employer's Liability:

\$1,000,000 each accident
\$1,000,000 disease-policy limit
\$1,000,000 disease-each employee

2. Commercial General Liability Insurance and Automobile Liability with limits of not less than \$2,000,000.
3. Commercial General Liability and Automobile Liability Policies shall name S.P. White Construction, Inc. as Additional Insureds and shall provide specifically that such policies are primary and non-contributing with any other insurance carried or available to said Additional Insureds.
4. Certificates of insurance shall provide that the insurance will not be cancelled until the expiration date of at least thirty (30) days after written notice of such cancellation has been given to the Contractor.
5. All insurance carriers shall have a rating of A.M. Best's rating of at least A-VII (A minus 7).

#13 Indemnification. To the fullest extent permitted by law, Subcontractor shall defend and indemnify and hold harmless Contractor and Owner and their agents and employees from claims, demands, costs, attorney fees, causes of action and liabilities of every kind whatsoever arising out of or in connection with Subcontractor's work performed for Contractor. This defense and indemnity shall extend to claims occurring after the Subcontract is completed or terminated as well as while it is in force. The defense and indemnity shall apply regardless of any active and/or passive negligent act or omission of the Contractor, Architect, or Owner, or their agents or employees, but Subcontractor shall not be obligated to indemnify any party for claims arising from the sole gross negligence or willful misconduct of the Contractor or its agents or employees. The defense and indemnity set forth in this section shall not be limited by any insurance requirements, or by any other provision of the Subcontract. All work done at a site or in preparing or delivering materials or equipment to the site shall be at the sole risk of Subcontractor until the work is accepted by Contractor.

13.1 In claims against any person or entity indemnified under Paragraph #13 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 Paragraph #13 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.

#14 Safety. Subcontractor is required to follow all Federal, State and Local regulations regarding safety.

14.1 Subcontractor shall provide material safety data sheets (MSDS's) prior to bringing any hazardous substance onto the job site.

#15 The One Year Warranty: New Construction and Remodels

The standard "one year expressed limited warranty" also known as the "Fit and Finish warranty" is an industry standard and a California law [CALIFORNIA CIVIL CODE 900], and is considered an implied warranty. Even though the state has adopted a standard for the warranty, a written warranty is required at completion of the project and must be submitted with the Subcontractor's close-out package.

#16 Chinese Drywall. Subcontractor warrants that any drywall material used on the project is not manufactured in China

EXHIBIT "B"
Terms of Payment

BILLING AND PAYMENT PROCEDURES

1. Invoices are due in our office on the 25th of each month and must be dated through the work completed date; however, you may bill prior to the 25th of any given month if you are 100% complete on a project. If you invoice more than the work completed to date, then your invoice will be returned to you to be revised and may delay payment.
2. Invoice format (see attached): We require that all invoices be prepared in this format or a similar format on your letterhead (holding 10% Retention is not required on contracts with a total of less than \$3,000). Final Retention will be held until after final inspection is received and work is 100% complete.
-You must include our job number on all your invoices in order to be processed (refer to signed proposal or contact a WCI Project Manager for job number).
3. A proper lien release must be submitted with all invoices and the release must comply with the requirements of Civil Code Section 3262 (d).
4. All invoices along with an appropriate lien release must be either faxed, e-mailed or mailed (please do not fax and mail both).
5. It is our policy to require joint checks or lien releases from your suppliers on jobs in which a preliminary lien notice has been filed by your supplier(s). If you do not want your check to be joint with your supplier, then you are responsible for providing the appropriate unconditional lien release from your supplier(s) at the end of each month's billing cycle. In addition, before final retention is paid an unconditional final lien release must be received in our office by your supplier(s).
6. Contractor shall pay subcontractor in monthly installments based on percent complete with ten-percent retention held until final inspection is received (holding of 10% retention is not required on contracts with a total of less than \$3,000). Monthly installments will be made within 30-45 days of the invoice date unless the payment policies of the owner/tenant are stated differently. Retention will be due within 60 days of final inspection. No payments will be made until the requested insurance and contractor information is received.

INVOICE FORMAT

Invoice Date: (must be dated through the work completed date)

Invoice Number: (you must have an invoice number)

Subcontractor Name:

Address:

City:

State & Zip Code:

Project Number: (this is the job number issued by White Construction. Refer to approved Subcontractor Proposal or call White Construction's Project Manager for the job number)

Project Name:

Project Address:

Period from _____ to _____.

A.	Original Contract Amount:	\$ _____
B.	Approved Change Orders (please attach an itemized list with a brief description of work completed and date approved):	\$ _____
C.	Revised Contract Amount:	\$ _____
D.	Total Completed and Stored To Date (_____%):	\$ _____
E.	Less Previous Gross Billed	\$(_____)
F.	Total Gross This Invoice	\$ _____
G.	Less 10% Retention:	\$(_____)
H.	Total Due This Request:	\$ _____