

owner copy



STANDARD FORM OF AGREEMENT
BETWEEN CONTRACTOR AND OWNER

AGREEMENT made this Tenth day of September, 1998

BETWEEN The Contractor: Porter/Cal-Western Inc. at 19393 Cordelia Ave. Sonora, CA. 95370-9718
and ODDFELLOWS SIERRA PARK AT POST OFFICE BOX 116 LONG BARN, CA. 95335.

and the OWNER: known above as owners

FOR Project: Repair and recoating of 210,000 gallon steel tank interior as described
in Quote # 98-007 on June 30, 1998 and MEMOFAX dated August 13, 1998 both
attached to this contract as a legal binding agreement.

THE CONTRACTOR AND THE OWNER AGREE AS SET FORTH BELOW:

ARTICLE 1

The Work

- 1.1 The Contractor shall be responsible for performing the work described as follows:
As dedscribed in Quote 98-007 and MEMOFAX described above except for the addition of top load pipe down to reach level for the amount of \$500.00

ARTICLE 2

Time of Commencement and Completion

calendar 98

- 2.1 The Work to be performed under this Agreement shall be commenced on or about September 25 and both parties shall endeavor to accomplish its substantial completion by Oct. 20, 1998. The Date of Substantial Completion of the work or designated portion thereof shall be that date when the Work is sufficiently completed that the Owner can occupy or utilize the Work or any designated portion thereof for the use for which it is intended.
- 2.2 The agreement time shall be extended for such amount of time as shall be reasonably required if the progress of the Work is delayed by:
- 2.2.1 any act or failure to act of the Owner, any agent of the Owner, any separate contractor employed by the Owner or any employee of such Owner, agent or separate contractor, including delays authorized by the Owner pending arbitration;
 - 2.2.2 changes ordered in the Work or made necessary by unforeseen or concealed conditions or errors in the drawings or specifications;
 - 2.2.3 labor disputes, fire, unusual delays in transportation, acts by public utilities, public bodies, inspectors, adverse weather conditions, unavoidable casualties, catastrophes, war, civil disturbances, Acts of God, or other causes beyond the Contractor's reasonable control.
- 2.3 Appropriate adjustments in the contract price and profit thereon shall also be made to compensate the Contractor for his additional costs and overhead occasioned by such delays and extensions of time as specified in Section 2.2 and its subsections.
- 2.4 Extensions in the contract time for other reasons may be mutually agreed upon.

ARTICLE 3

Agreement Sum

- 3.1 The Owner shall pay the Contractor the following sum for the performance of the Work, subject to additions or deductions for changes as provided in Article 11:
- 3.2 Any monies not paid when due under this Agreement shall bear interest from the day such payment is due at the rate of one and one-half (1-1/2%) percent per month or the highest interest rate permitted by law, whichever is less.

ARTICLE 4

Progress Payments

4.1 Unless the Work is substantially completed within a period of thirty days after commencement, the Owner shall make progress payments to the Contractor N/A in the following manner:

4.2.1 The Contractor shall submit an application for payment based on value of work completed or fabricated for this contract and of materials stored on the site and at offsite locations.

4.2.2 No credits or adjustments to the application for payment shall be made unless mutually agreed by Contractor and Owner.

4.3 If requested by the Owner, the Contractor shall submit conditional waivers of liens in connection with that portion of the Work for which the contractor has previously received progress payments.

4.4.1 The Owner shall make full payment to the Contractor within 10 days of receipt of application for payment.

4.4.2 If Owner fails to make the scheduled progress payments as defined in this Article, then Contractor has the absolute option to cease the performance of any further work until such time said payment is made. If said payment is more than 10 working days late, Contractor may, at its option, treat said lateness as a material breach of this Agreement and justifiably refuse to complete the balance of the Work. Contractor may then institute arbitration proceeding as described herein for any and all damages incurred including, but not limited to, lost profits.

ARTICLE 5

NO DEPOSIT NECESSARY

Final Payment

5.1 The entire unpaid balance of the agreement sum shall be due and payable 30 days after Substantial Completion of the Work or of occupancy of the facilities or use of the Work by the Owner, whichever occurs first.

ARTICLE 6

Insurance

6.1 The Owner shall purchase and maintain property insurance upon the entire Work and upon all existing premises at or about which the Work is performed to the full insurable value thereof, including all-risk Builder's Risk insurance for physical loss or damage from the perils of fire, extended coverage, theft, vandalism, malicious mischief, collapse and water damage, and also including such boiler, machinery, and loss-of-use insurance as may be required. The Owner shall file a copy of all policies with the contractor before an exposure to loss may occur. The interest of the Contractor, his subcontractors, and their officers and employees shall be included in such coverages.

6.1.1 If the Owner does not intend to purchase such insurance for the full insurable value as specified, he shall inform the Contractor in writing prior to commencement of the Work so the Contractor may secure insurance which will protect his interests and those of his subcontractors, and the Owner shall reimburse the Contractor for the costs of such insurance.

6.2 The Contractor shall purchase and maintain Contractor's liability insurance to protect him from claims under workers' compensation acts and for damages arising out of his operations under the Agreement. Certificates of such insurance shall be furnished to the Owner upon request.

ARTICLE 7

Agreement Documents

7.1 The agreement documents listed in Article 1, together with any modifications agreed upon in writing by both parties after execution of this Agreement, shall constitute the entire agreement between the Contractor and the Owner.

7.2 The Contractor shall not be liable for any errors, inconsistencies, or omissions in the agreement documents. The Contractor shall be permitted time extensions and shall be compensated for delays and additional costs, including overhead and profit, associated with remedying such errors, inconsistencies or omissions as required.

7.3 All applicable standards adopted by The Painting and Decorating Contractors of America shall be incorporated into these documents.

ARTICLE 8

Responsibilities of the Owner

8.1 At the time of execution of this Agreement and from time to time thereafter on reasonable demand, the Owner shall furnish the Contractor reasonable evidence that sufficient funds exist to fulfill the Owner's financial obligations under this agreement and to cover the entire cost of the work.

8.2 "Owner," as referred to in this Agreement, means the person or entity having the authority to contract for the Work performed hereunder. If the Work is performed on premises owned in whole or in part by others, the Owner shall provide evidence to the Contractor of the Owner's authority to contract for such improvements in real property owned by others.

8.3 The Owner shall, upon request by the Contractor, furnish a legal description of the site; information on legal restrictions, existing encumbrances on the title to the site, and utility locations; and all needed surveys describing physical characteristics of the site.

8.4 The Owner shall provide all information or services under his control and shall designate in writing his representative or representatives who shall have authority to approve work authorization orders, change orders and render decisions on his behalf and on whose actions and approvals the Contractor may rely.

8.5 The Owner shall secure and pay for: easements, zoning permits, environmental statements and permits, and other assessments and charges required for the construction, alteration, use and occupancy of the facilities; special utility connection permits, and all other necessary approvals required by law or regulation before commencement of construction.

8.6 The Owner shall promptly notify the Contractor in writing if it becomes aware of any fault, neglect, or non-conformance with the agreement documents on the part of the Contractor or his employees or subcontractors.

8.7.1 The Owner shall be fully responsible for coordinating the work of other separate contractors and of its own work forces, suppliers, and agents with the Work of the Contractor and shall reimburse the Contractor for any delays or damages resulting from the acts or failures to act in a timely manner of other such separate contractors or suppliers or of the Owner or his agents.

8.7.2 Contractor assumes no responsibility for work done by others and shall not be liable for damages or defects occasioned by the neglect, negligence or actions of others. If Contractor incurs expense resulting from repair or replacement of any part of Contractor's work because of damage to that work caused by the failure, repair, or replacement of the work of others, that expense shall be added to the Agreement Sum and the extra work shall be deemed to have been required by the Agreement.

8.8.1 The Owner shall be responsible for compliance with all applicable safety and health regulations in connection with work performed by its employees, with facilities and equipment provided by the Owner for use by the Contractor, and with those portions of the premises over which it retains control. The Owner shall also assure compliance by other contractors with all applicable safety and health regulations.

8.8.2 In the event Contractor encounters on the job site lead-based paint or any other hazardous material such as, but not limited to, asbestos or polychlorinated biphenyl (PCB) and about which the Contractor has not been notified in writing prior to entering into the Agreement with the Owner, the Contractor shall immediately stop work and shall not be responsible for the testing, removal, disposal or rendering harmless of such material. The Owner agrees to hold the Contractor harmless as to any liability resulting from such material in the event the Contractor has not been notified as aforesaid. Additional costs including overhead and profit incurred by these conditions shall be reimbursed to the Contractor.

8.9 The Owner shall indemnify and hold harmless the Contractor, his subcontractors, his suppliers, his employees and his agents from and against all claims, damages, losses and expenses arising out of or resulting from activities, facilities or equipment of the Owner or his other contractors or of his or their suppliers, employees or agents, provided that any such claim, damage loss or expense (a) is attributable to bodily injury, sickness, disease or death or to injury to or destruction of property including the loss of the use resulting therefrom, and (b) is caused in whole or in part by any negligent act or omission of the Owner or his other contractors or of his or their suppliers, employees or agents.

8.10 If a surety bond is required by Owner, the premium cost shall be paid by the Owner.

ARTICLE 9

Responsibilities of the Contractor

9.1 The Contractor shall supervise and direct the Work of his employees, subcontractors and suppliers in compliance with the contract documents.

9.2 The Contractor shall supply materials, equipment and devices for installation as specified or, if not specified, of a type approved for the purpose under applicable codes and ordinances and in accordance with normal trade practice.

9.3 The Contractor shall, in the performance of the Work, comply with applicable safety and health regulations.

9.4 The Contractor shall secure building and other permits, licenses, inspection fees and approvals required by law or government regulation which are customarily secured after award of contract, but excluding assessments, permits, charges and approvals set forth in Section 8.5. The Contractor shall bear the costs of permits which he is obligated to secure under this paragraph to the extent such fees had been enacted at the date of this Agreement.

ARTICLE 10

Subcontracts

10.1 The Contractor shall have the option of subcontracting portions of the Work at the site to other persons or entities.

10.2 In the event the Owner reserves in the bidding documents or the contract documents the right to approve, disapprove or object to subcontractors selected by the Contractor, failure of the Owner to object promptly in writing to any proposed subcontractor named by the Contractor shall constitute consent for the Contractor to award the work proposed to such subcontractor.

ARTICLE 11

Changes in the Work

11.1 The Owner may authorize or direct additions, deletions, or modification in the Work which are consistent with this Agreement by issuing written change orders signed by an authorized representative of the Owner. Each such change order or a separate change order subsequently issued shall make appropriate adjustments in the Agreement Time and the Agreement Sum as mutually agreed upon between the Owner and the Contractor to reflect the effects of such changes in the work.

11.2 Change orders shall also be issued providing for increases in the Agreement Sum and Agreement Time to compensate the Contractor for his increased costs, including overhead and profit, as a result of:

11.2.1 delays in the work which are not attributable to the fault of the Contractor; weather permitting (no penalty)

11.2.2 changes in the Work required by design errors or omissions not the responsibility of the Contractor;

11.2.3 changes in the Work necessary to comply with laws, codes, rules, regulations, restrictions, or requirements of public authorities; and

11.2.4 additional costs of the Work performed or to be performed under the original agreement and previous changes as a result of delays, time extensions, congestion, work out of sequence, or disruption of schedules resulting from change orders or constructive changes, including but not limited to increased labor, material and equipment costs, or repair of Contractor's work due to damage of others, or due to postponement of portions of the Work through no fault of the Contractor and additional costs of warranty performance resulting from completion delays.

11.3 In the event the Owner fails to issue written change orders covering the cost and time adjustments necessitated by delays; design errors; omissions; concealed, changed or unknown conditions; or changes in laws, rules and regulations, and such changes must be made in the Work in order for the Contractor to continue or complete the Work and to secure necessary approvals prior to the Owner's use or occupancy thereof, such changes shall be regarded as constructive changes entitling the Contractor to an equitable adjustment in the Agreement Sum and the Agreement Time.

ARTICLE 12

Warranty

12.1 Unless otherwise agreed by both parties in writing, the sole warranty of the work shall be as follows: if, within one year of the final application for payment, deficiencies in the work occur due to improper workmanship, Contractor shall correct the defective portions of the application, which shall be Owner's sole remedy. This correction is conditioned upon the Owner's delivery to Contractor by certified mail within 10 days of first discovery of such conditions, and within one year from the date of final billing, written notification thereof.

THIS WARRANTY CONSTITUTES THE SOLE AND EXCLUSIVE WARRANTY MADE BY CONTRACTOR AND THERE ARE NO OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED AND EXCLUDED BY THE PARTIES. THIS WARRANTY ALSO CONSTITUTES OWNER'S EXCLUSIVE REMEDY AGAINST CONTRACTOR INCLUDING FOR ALLEGED NEGLIGENCE OF CONTRACTOR AND OTHERWISE, AND CONTRACTOR SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LIQUIDATED, DELAY DAMAGES, OR OTHER DAMAGES.

ARTICLE 13

Arbitration

13.1 All claims, disputes and other matters in question between the Contractor and the Owner arising out of or relating to the agreement documents or the breach thereof, except for claims which have been waived by the making or acceptance of final payment, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association in force unless the parties mutually agree in writing otherwise. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction.

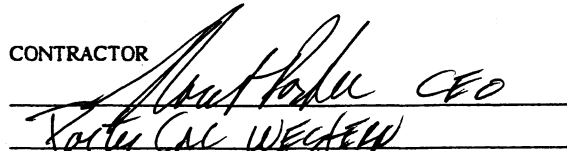
13.2 Notice of a demand for arbitration shall be filed within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall such demand be entertained after the date when legal proceedings based on such claims, disputes or other matter in question would be barred by the applicable statute of limitations.

13.3 Following demand for arbitration and during any arbitration proceedings, both parties shall continue to fulfill their obligations under the Agreement unless mutually agreed upon otherwise.

This Agreement executed on the day and year first written above.

OWNER

CONTRACTOR



Mark P. ... CEO

INSTRUCTIONS

FIRST PAGE:

Insert pre-lien notice and/or license identification as required by state law.

Article 1, The Work

1.1 Here insert a description of the work, including a designation of the premises and references to drawings by numbers, specifications by sections, addenda modifications and other applicable contract documents in addition to this Agreement. If the Contractor is responsible for design of the Work or any portion, this should be set forth also. Inclusion or omission of responsibility of the Contractor for temporary services, other temporary facilities and utility services during construction should be set forth here if not clearly set forth in other documents referred to.

Article 3, Agreement Sum \$18,845.00 + \$500.00 for the top load down to reach level.

3.1 Insert lump sum amount, prepayment, or provision for "time and material," cost plus overhead and profit, cost plus a fee, unit prices or applicable taxes.

Article 4, Progress Payments

4.1 Insert weekly, monthly, etc.

Please note: Entry is forbidden into tank at any stage of work with permission of the contractor. This area is a controlled confined space. All sand waste shall be removed by Contractor.

Any other work ordered will be done by Quote only.