

SUB CONTRACT



ROBERT E. PORTER
Construction Co., Inc.

Subcontract No. _____
Job No. _____
License No. _____

THIS AGREEMENT, made this _____ day of _____, 20____, by and between Robert E. Porter Construction Co., Inc., 1720 W. Lincoln St., Phoenix, AZ 85007 (AZ ROC 074603; 278369; 099055; NV 0032344; CA 860252) hereinafter called the CONTRACTOR, and

Sample For Review Only

_____ hereinafter called the SUBCONTRACTOR.

1. Contract Documents: SUBCONTRACTOR agrees to furnish all supervision, labor, services, transportation, tools, equipment, materials, supplies, and other facilities of every kind and description, necessary to perform, and to perform all work set forth in Section 2 hereof in connection with the construction of:

JOB NAME:

Sample For Review Only

JOB ADDRESS:

OWNER:

hereinafter called OWNER, in accordance with the terms and provisions of the contract between OWNER and CONTRACTOR dated _____ including all general and special conditions, drawings, specifications, and other documents forming or by reference made a part of the contract between CONTRACTOR and OWNER, all of which shall be considered a part of this Subcontract by reference thereto, and SUBCONTRACTOR agrees to be bound to CONTRACTOR and OWNER by the terms and provisions thereof.

2. Scope of Work: SUBCONTRACTOR agrees to perform the following described work:
Provide all labor, supervision, communication, services, transportation, tools, equipment, supplies, materials and other facilities of every kind and description necessary to fabricate, furnish and install, and to perform, do and complete all -

Sample For Review Only

Exclude:

Sales Tax:

The following is required for ALL Contractors, Subcontractors or Vendors working on the project.

1. A current drug policy, with random testing, if you have any employees who are card holders for medical marijuana, the employee(s) cannot be using or in possession of marijuana at the workplace or be impaired while on the jobsite.
2. All employees must be marked with Company Identification. (i.e. company badges, company shirts, etc.)

By executing this Subcontract, Subcontractor agrees to comply with OSHA Hazard Communication Standards, including, but not limited to, furnishing to the CONTRACTOR all MSDS's for all hazardous substances used on site. Clean up and removal of all SUBCONTRACTOR generated debris is included.

3. Contract Price: CONTRACTOR agrees to pay SUBCONTRACTOR for the performance of this Subcontract as specified herein the sum of \$ _____

(which includes all Federal, State, County and Municipal taxes required by law to be paid by said SUBCONTRACTOR), subject to Additions and Deductions for changes agreed upon or determined, as hereinafter provided, and to make payment in accordance with Section 5 hereof. State and City Sales Taxes are not a part of this Subcontract.

4. Price Breakdown: Within ten (10) days after the date of this Subcontract, SUBCONTRACTOR shall submit to CONTRACTOR a schedule of prices covering the various divisions of work to be done under this Subcontract. The schedule of prices shall aggregate the total contract prices, and when approved by CONTRACTOR, shall be used as a basis for determining partial payments.

5. Payment Schedule: CONTRACTOR agrees to pay SUBCONTRACTOR, each month, the amount that is then due to SUBCONTRACTOR under this Subcontract which is in direct proportion to the amount which CONTRACTOR actually receives from the OWNER and/or OWNER'S Lender for SUBCONTRACTOR'S work. CONTRACTOR may hold retainage that shall not exceed the percentage retained by the OWNER. In other words, both CONTRACTOR and SUBCONTRACTOR equally bear the risk of reduced payment or nonpayment by OWNER or OWNER'S Lender, and payment to SUBCONTRACTOR is expressly conditioned and contingent upon CONTRACTOR'S actual receipt of payment from OWNER and/or OWNER'S Lender. SUBCONTRACTOR further intends and agrees that it will look exclusively and only to such payment to CONTRACTOR from OWNER and/or OWNER'S Lender as and for the source of funds with which to pay SUBCONTRACTOR the amount due it under the Subcontract, and SUBCONTRACTOR will not look to any other assets of CONTRACTOR for such payment due under this Subcontract. CONTRACTOR will pay SUBCONTRACTOR within seven (7) days after receipt of funds from the OWNER and/or the OWNER'S Lender. Upon complete performance of this Subcontract by SUBCONTRACTOR, and final approval of SUBCONTRACTOR'S work and materials by OWNER, CONTRACTOR'S actual receipt of final payment from OWNER and/or OWNER'S Lender, CONTRACTOR shall make final payment to SUBCONTRACTOR of the balance due to it under this Subcontract within seven (7) days after full payment for such work and materials has been actually received by CONTRACTOR from OWNER and/or OWNER'S Lender. No partial payments to SUBCONTRACTOR shall constitute an approval or acceptance of work done or materials furnished hereunder. If SUBCONTRACTOR is more than one individual, payment to any one thereof shall be payment to all.

Sub. Initial

Contr. Initial

5.1 SUBCONTRACTOR will be required to send to CONTRACTOR the percentage draw request each month **on or before the 25th day of the month** and estimate what will be completed through the balance of that month. Failure to do so will mean that CONTRACTOR or the Architect submit an estimate for the percentage of work completed and SUBCONTRACTOR will have to abide by same.

5.2 Preliminary Notices: If any material supplier or sub-tier subcontractor delivers a preliminary lien notice to CONTRACTOR for the project, CONTRACTOR will contact the material supplier or sub-tier subcontractor to determine the balance due through the cutoff date for the current pay period and either:

(a) SUBCONTRACTOR will provide an **original, signed Unconditional Lien Waiver** from the Material Supplier or Sub-tier Subcontractor before payment is issued; or

(b) CONTRACTOR will issue a joint check naming as payees both the material supplier or sub-tier subcontract and the SUBCONTRACTOR for that amount. If CONTRACTOR has received more than one preliminary notice for SUBCONTRACTOR'S material suppliers or sub-tier subcontractors, CONTRACTOR will issue separate joint checks for each material supplier or sub-tier subcontractor. The original, signed Lien Waiver(s) issued with the joint check(s) must be returned to CONTRACTOR before any further payments will be issued.

6. Working Conditions: SUBCONTRACTOR shall begin and end the work day at the same time as the General Contractor and shall take their lunch break the same time as the General Contractor. These times may change with the seasons.

SUBCONTRACTOR shall work a full eight (8) hours so long as there is uncompleted work unless otherwise authorized.

SUBCONTRACTOR'S refreshment time must be approved by the CONTRACTOR.

SUBCONTRACTOR shall be responsible for any and all damages done to the construction site or project by SUBCONTRACTOR'S workers or equipment.

SUBCONTRACTOR is to conform and meet CONTRACTOR'S schedule for this project.

SUBCONTRACTOR is to be bound to the CONTRACTOR the same as the CONTRACTOR is bound to the OWNER. (Copies of the plans, specifications and OWNER-CONTRACTOR contract are available at the CONTRACTOR'S office for inspections by SUBCONTRACTOR.)

SUBCONTRACTOR shall abide by CONTRACTOR'S dress code whereby all employees are required to wear shirts while on the jobsite. All employees must be marked with Company Identification. (I.e., company badges, company shirts, etc.) No cut-offs are permitted to be worn.

SUBCONTRACTOR shall have a current drug policy, with random testing. Any employees who are card holders for medical marijuana, the employee(s) cannot be using or in possession of marijuana at the workplace or be impaired while on the jobsite.

7. **Changes:** SUBCONTRACTOR hereby agrees to make any and all changes, furnish the materials and perform the work that CONTRACTOR may require, without nullifying this Subcontract, at a reasonable addition to, or reduction from, the contract price stated herein, and pro rata to the same. SUBCONTRACTOR shall adhere strictly to the plans and specifications unless a change therefrom is authorized in writing. Under no conditions shall SUBCONTRACTOR make any changes, either as additions or deductions, without the written order of the CONTRACTOR, and CONTRACTOR shall not pay any extra charges made by the SUBCONTRACTOR that have not been agreed upon in writing by CONTRACTOR; and, in no event shall CONTRACTOR make payment for any such extra charges, unless and until the CONTRACTOR itself receives payment from OWNER. SUBCONTRACTOR shall submit immediately to CONTRACTOR, written copies of his firm's cost or credit proposal for the changes in the work. Disputed work shall be performed as ordered in writing by CONTRACTOR and the proper cost or credit breakdowns therefore shall be submitted without delay by SUBCONTRACTOR to CONTRACTOR.

SUBCONTRACTOR shall give notice of claim relating to any work for which extra compensation is asserted within ten (10) days after such work is performed, or SUBCONTRACTOR shall be deemed to have abandoned and waived any claim therefore.

If the SUBCONTRACTOR initiates a substitution, deviation or change in the work that affects the scope of the work, or the expense of other trades, SUBCONTRACTOR shall be liable for the expense thereof.

No change, alteration, or modification in, or deviation from this Subcontract or the plans and specifications, whether made in the manner herein provided or not, shall release or exonerate, in whole or in part, any surety on any bond given in connection with this Subcontract and neither OWNER nor CONTRACTOR shall be under any obligation to notify the surety or sureties of any such change.

8. **Insurance:** SUBCONTRACTOR shall obtain and submit before any work is performed under this Subcontract or within five (5) calendar days after award of the Subcontract, whichever occurs first, certificates from SUBCONTRACTOR'S insurance carriers indicating coverage with limits of liability as set forth in the OWNER-CONTRACTOR contract, but in no event shall the limits be less than those specified herein. Insurance must be carried for the warranty period plus an additional one (1) year. Certificates of insurance shall comply with requirements as specified in this Subcontract. All insurance required hereunder shall be issued by a financially responsible company that is authorized to do business in the state where the project is located and that have an **A.M. Best rating of A- VII or better.**

- (I) Workers' Compensation
 - Coverage A Statutory Benefits
 - Coverage B Employers Liability
 - Bodily Injury by Accident \$1,000,000 each accident
 - Bodily Injury by Disease \$1,000,000 policy limit
 - Bodily Injury by Disease \$1,000,000 each employee

Coverage must include a waiver of subrogation endorsement.
- (II) Commercial General Liability Insurance on an "occurrence" form, including coverage for (a) all operations; (b) subcontract work; (c) contractual obligations; (d) product/completed operations; (e) personal and advertising injury; with limits of at least \$1,000,000 for each occurrence and \$2,000,000 general aggregate and \$2,000,000 products/completed operations aggregate. **The General Aggregate shall apply on a per project basis. Coverage must include a waiver of subrogation endorsement.**
- (III) Commercial Automobile Liability insurance for all motor vehicles operated by or for SUBCONTRACTOR, including but not limited to owned autos, hired or non-owned autos, with limits of at least \$1,000,000 per occurrence for bodily injury and property damaged combined.

Each policy described in subparagraph (II) and (III) above shall name CONTRACTOR, the project OWNER and any additional parties as required by the specifications as additional insureds at no expense to OWNER or CONTRACTOR for the full limits of liability purchased by the subcontractor even if those limits of liability are in excess of those required by this agreement. Actual Endorsements must be attached. SUBCONTRACTOR shall furnish CONTRACTOR with certificates of all required insurance including ISO endorsement form **CG2010 07/04 and CG2037 07/04** or their equivalents, before commencing work under this Subcontract. Such certificates shall certify (1) that each policy is then in full force and effect with the expiration date indicated thereon; (2) that each policy described in subparagraphs (I), (II) and (III) above shall not be canceled or reduced in coverage without thirty (30) days prior written notice; and (3) that each policy described in subparagraphs (II) and (III) above names **OWNER and CONTRACTOR** as additional insureds and contains a provision stating that **coverage is "primary" and that any coverage maintained by OWNER or CONTRACTOR shall be "non-contributory"** for the full limits of liability purchased by the subcontractor even if those limits of liability are in excess of those required by this agreement. SUBCONTRACTOR shall assume sole responsibility for loss control and compliance with applicable laws, rules and regulations. **Both Worker Compensation and General Liability coverage must include a waiver of subrogation endorsement.**

9. Indemnity: All work covered by this Subcontract at the site of construction or in preparing or delivering materials to the site shall be at the risk of SUBCONTRACTOR alone. SUBCONTRACTOR agrees to save, indemnify, defend and keep harmless CONTRACTOR against any and all liability, claims, judgments or demands, including the obligations of CONTRACTOR on account of any similar agreement CONTRACTOR has with OWNER, including demands arising from injuries or death of persons (SUBCONTRACTOR'S employees included) and damage to property arising directly, or indirectly, out of the obligations herein undertaken, or out of the operations conducted by SUBCONTRACTOR, caused in whole or in part by the negligent or willful act or omission of SUBCONTRACTOR, save and except claims or litigation arising through the sole negligence or sole willful misconduct of CONTRACTOR, and will make good to and reimburse CONTRACTOR for any expenditures, including reasonable attorney's fees, CONTRACTOR may make by reason of such matters and, if requested by CONTRACTOR, will defend any such suits at the sole cost and expense of SUBCONTRACTOR.

9.1 In addition to the foregoing paragraph 9, SUBCONTRACTOR agrees to indemnify and hold harmless the CONTRACTOR and the OWNER of the project for any and all aspects of SUBCONTRACTOR'S performance. SUBCONTRACTOR shall indemnify CONTRACTOR against any negligence on the part of CONTRACTOR to discover problems and/or dangerous conditions caused by SUBCONTRACTOR.

10. Bond: Concurrently with the execution of this Subcontract, or at any time during its performance, SUBCONTRACTOR shall, if required by CONTRACTOR, execute a Labor and Material Payment Bond and Performance Bond, in any amount equal to one hundred percent (100%) of the Subcontract price in Section 3. Said bonds shall be executed by a corporate surety acceptable to CONTRACTOR and shall be in a sum satisfactory to CONTRACTOR. CONTRACTOR shall pay the premium on said bonds unless otherwise provided herein or in the contract documents. No other forms of security will be accepted.

11. Time: Time is of the essence of this Subcontract. It shall be SUBCONTRACTOR'S obligation to conform to CONTRACTOR'S progress schedule, subject to CONTRACTOR'S modification, which is incorporated herein by this reference and made a part hereof. SUBCONTRACTOR shall prepare and obtain approval as required by the contract documents for all shop drawings, details, and samples, and shall do all other things necessary and incidental to the prosecution of his work in conformity with the said progress schedule. CONTRACTOR shall coordinate the work covered by this Subcontract with that of all other contractors, subcontractors, and of CONTRACTOR in a manner that will facilitate the efficient completion of the entire work. CONTRACTOR shall have complete control of the premises on which the work is to be performed and shall have the right to decide the time or order in which the various portions of the work shall be installed or the priority of the work of other subcontractors and, in general, all matters representing the timely and orderly conduct of the work of SUBCONTRACTOR on the premises. SUBCONTRACTOR shall provide, at its sole cost and expense, such additional shifts and/or overtime as CONTRACTOR may require should CONTRACTOR deem such additional shifts and/or overtime necessary to meet CONTRACTOR'S progress schedule.

Should SUBCONTRACTOR be delayed in the performance or completion of the work by the act, neglect or default of OWNER, of ARCHITECT, or of CONTRACTOR, or should SUBCONTRACTOR be delayed waiting for materials, if required by this Subcontract to be furnished by OWNER or CONTRACTOR, or by damage caused by fire or other casualty for which SUBCONTRACTOR is not responsible, or by the combined action of the workmen, in no way caused by, or resulting from default or collusion on the part of SUBCONTRACTOR, or in the event of a lock-out by CONTRACTOR, then the time herein fixed for the completion of the work shall be extended the number of days that SUBCONTRACTOR has thus been delayed, but no allowance or extension shall be made unless a claim therefor is presented in writing to the CONTRACTOR within 24 hours of the commencement of such delay, and under no circumstances shall the time of completion be extended to a date which will prevent CONTRACTOR from completing the entire project within the time that OWNER allows CONTRACTOR for such completion.

No claims for additional compensation or damages for delays, whether in the furnishing of material by CONTRACTOR, or delays by other SUBCONTRACTOR or OWNER, will be allowed by CONTRACTOR, and said extension of time for the completion shall be the sole remedy of SUBCONTRACTOR; provided, however, that in the event, and in such event only, that CONTRACTOR obtains additional compensation from OWNER on account of such delays, SUBCONTRACTOR shall be entitled to such portion of the additional compensation so received by CONTRACTOR from OWNER as is equitable under the circumstances. Nothing herein contained shall require CONTRACTOR to make any claim against OWNER for such delays, and it is specifically agreed that the failure of CONTRACTOR to prosecute any such claim against OWNER shall not entitle SUBCONTRACTOR to any claim for damages against CONTRACTOR.

12. Damages Caused by Delays: Should SUBCONTRACTOR default in the proper performance of its work, whereby causing delay to the prime contract work, SUBCONTRACTOR shall be liable for any and all loss and damages, including liquidated damages, sustained by CONTRACTOR as a result thereof. The payment of such damages shall not release SUBCONTRACTOR from its obligation to otherwise fully perform this Subcontract. Upon written request by CONTRACTOR, SUBCONTRACTOR shall furnish to CONTRACTOR such evidence as CONTRACTOR may require relating to SUBCONTRACTOR'S ability to fully perform the Subcontract in the manner and within the time specified herein.

13. Liens: SUBCONTRACTOR shall at all times indemnify and save CONTRACTOR and OWNER harmless against all liability for claims and liens for labor performed or materials used or furnished to be used on the job, including any costs and expenses for attorneys' fees and all incidental or consequential damages resulting to CONTRACTOR or OWNER from such claims or liens. Further, in case suit on such claim is brought, SUBCONTRACTOR shall defend said suit at its own cost and expense and will pay and satisfy any such lien or judgment as may be established by the decision of the court in said suit. SUBCONTRACTOR agrees within ten (10) days after written demand to cause the effect of any suit or lien to be removed from the premises, and in the event SUBCONTRACTOR shall fail to do so, CONTRACTOR is authorized to use whatever means in its discretion it may deem appropriate to cause said lien or suit to be removed or dismissed and the cost thereof, together with reasonable attorneys' fees, shall be immediately due and payable to CONTRACTOR by SUBCONTRACTOR. SUBCONTRACTOR may litigate any such lien or suit provided it causes the effect thereof to be removed, promptly in advance, from the premises, and shall further do such things as may be necessary to cause OWNER not to withhold any monies due to CONTRACTOR from OWNER by reason of such liens or suits.

It is understood and agreed that the full and faithful performance of this Subcontract on the part of the SUBCONTRACTOR (including the payment of any obligations due from SUBCONTRACTOR to CONTRACTOR, and any amounts due to laborers or material suppliers furnishing labor or material for said work) is a condition precedent to SUBCONTRACTOR'S right to receive payment for the work performed, and any monies paid by CONTRACTOR to SUBCONTRACTOR under the terms of this Subcontract shall be impressed with a trust in favor of laborers and material suppliers furnishing labor and material to SUBCONTRACTOR on the work herein subcontracted.

14. Recourse by Contractor: In the event that SUBCONTRACTOR at any time refuses or neglects to supply a sufficient number of properly skilled workmen or a sufficient quantity of materials of proper quality, or is adjudicated a bankrupt, or files an arrangement proceeding, or commits any act of insolvency, or makes an assignment for benefit or creditors without CONTRACTOR'S consent, or fails to make prompt payment to its material suppliers and laborers, or fails in any respect to properly and diligently prosecute the work covered by this Subcontract, or fails to fulfill any of the provisions of Section 16, hereof by it to be performed, or otherwise fails to perform fully any and all of the agreements herein contained, CONTRACTOR may, at its option, after giving twenty-four (24) hours written notice to SUBCONTRACTOR, provide any such labor and materials as may be necessary and deduct the cost thereof from any money then due or thereafter to become due to the SUBCONTRACTOR under this Subcontract, or CONTRACTOR may, at its option, terminate SUBCONTRACTOR'S right to proceed with the work and, in that event, CONTRACTOR shall have the right to enter upon the premises of the project and take possession, for the purpose of completing the work included in this Subcontract, of all materials, tools and appliances of SUBCONTRACTOR, and may employ any other person or persons to finish the work and provide the materials therefor. In case of such termination of SUBCONTRACTOR'S right to proceed with the work, SUBCONTRACTOR shall not be entitled to receive any further payment under this Subcontract until the work undertaken by CONTRACTOR in its prime contract is completely finished. At that item if the unpaid balance of the amount to be paid under this Subcontract exceeds the expenses incurred by CONTRACTOR in finishing SUBCONTRACTOR'S work, such excess shall be paid by CONTRACTOR to SUBCONTRACTOR; but, if such expense shall exceed such unpaid balance, then SUBCONTRACTOR shall promptly pay to CONTRACTOR the amount by which such expense exceeds such unpaid balance. The expense referred to in the last sentence shall include expenses incurred by CONTRACTOR for furnishing materials, for finishing the work, for attorneys' fees, and any damages sustained by CONTRACTOR by reason of SUBCONTRACTOR'S default, plus a mark-up of ten percent (10%) for overhead and profit on any and all of such expenses; and CONTRACTOR shall have a lien upon all materials, tools and appliances taken possession of, as aforesaid, to secure the payment thereof. The notice referred to in this paragraph will be sufficient and complete when mailed to SUBCONTRACTOR at its address in this Subcontract. CONTRACTOR may withhold, or on account of subsequently discovered evidence, nullify the whole or a part of any payment under Section 5 to such extent as may be necessary to protect CONTRACTOR from loss, including costs and attorneys' fees, on account of (1) unsatisfactory job progress; (2) defective construction work or material; (3) disputed work; (4) failure to comply with material provisions of the Subcontract; (5) third party claims filed or reasonable evidence that such claim will be filed; (6) failure of SUBCONTRACTOR to make timely payments for labor, equipment and materials; (7) damage to CONTRACTOR or another subcontractor or material supplier; or (8) reasonable evidence that the Subcontract cannot be completed for the unpaid balance of the Subcontract sum.

When the above grounds are removed, such amounts as are then due and owing shall be paid or credited to SUBCONTRACTOR.

15. Termination of Agreement: In the event the OWNER-CONTRACTOR contract is terminated prior to its completion, SUBCONTRACTOR shall be entitled only to payment for the work actually completed by it at the pro rata of the price herein set forth unless CONTRACTOR itself received additional compensation or damages on account of such termination; in which event, SUBCONTRACTOR shall be entitled to such proportion of the additional compensation or damages actually received as is equitable under all the circumstances. Nothing herein contained shall require CONTRACTOR to make any claim against OWNER for such additional compensation or damages in the event of termination before completion, and it is specifically agreed that the failure of CONTRACTOR to prosecute any such claim against OWNER shall not entitle SUBCONTRACTOR to any claim for additional compensation or damages against CONTRACTOR. Notwithstanding the preceding paragraph, CONTRACTOR reserves the absolute right to terminate this

Subcontract. In the event of termination without cause, SUBCONTRACTOR shall be entitled to payment only as follows:

- (1) Cost of the work actually completed in conformity with this Subcontract; plus
- (2) Other costs actually incurred by SUBCONTRACTOR; plus
- (3) 10% of costs referred to in Paragraph 1 above, for overhead and profit.

There shall be deducted from such sums as provided in this paragraph the amount of any payments made to SUBCONTRACTOR prior to the date of termination of this Subcontract. SUBCONTRACTOR shall not be entitled to any claim, or claim of lien, against CONTRACTOR or against OWNER for any additional compensation or damages in the event of such termination and payment.

In the event this Subcontract is terminated for cause, SUBCONTRACTOR shall not be entitled to receive any further payment until the work undertaken by CONTRACTOR in the OWNER-CONTRACTOR contract is completely finished. At that time, if the amounts earned but not paid SUBCONTRACTOR before said termination exceed the expenses incurred by CONTRACTOR in finishing SUBCONTRACTOR'S work, any excess shall be paid by CONTRACTOR to SUBCONTRACTOR. But if such expense shall exceed the said amount earned and unpaid, SUBCONTRACTOR shall promptly pay to CONTRACTOR the amount by which the expense exceeds said sum. The expense incurred by CONTRACTOR, as just referred to, shall include CONTRACTOR'S expense for furnishing materials, for finishing the work, for attorneys' fees and for any damages incurred by CONTRACTOR by reason of SUBCONTRACTOR'S default.

16. Satisfactory Employees: Employment of labor by SUBCONTRACTOR shall be effected under conditions which are satisfactory to CONTRACTOR. SUBCONTRACTOR shall remove or cause to have removed from the project any employees who are considered unsatisfactory by CONTRACTOR.

SUBCONTRACTOR, in connection with all work covered by this Subcontract, shall comply with and be bound by any labor agreements executed by the CONTRACTOR or on CONTRACTOR'S behalf to the extent such agreements apply to subcontractors. Failure at any time to comply with any of the provisions of such agreements will, at the option of CONTRACTOR, be cause for immediate termination of this Subcontract for default and CONTRACTOR shall have all of the rights contained in Section 15 with regard to such termination. If, by reason of strikes, picketing or disputes of any nature between SUBCONTRACTOR and any individual group, or organization, SUBCONTRACTOR should be persistently, repeatedly or for a period of five (5) consecutive days, unable to supply enough properly skilled workmen or proper materials to execute the work defined in this Subcontract, then CONTRACTOR may terminate the Subcontract for default and proceed in accordance with Section 15 thereof. SUBCONTRACTOR shall keep a representative at the jobsite during all times when SUBCONTRACTOR'S work is in progress and such representative shall be authorized to represent SUBCONTRACTOR as to all phases of the work. Prior to the commencement of the work, SUBCONTRACTOR shall notify CONTRACTOR who SUBCONTRACTOR'S representative is to be and in the event of any change of representative, SUBCONTRACTOR shall notify CONTRACTOR who the new representative is to be prior to such change becoming effective.

SUBCONTRACTOR shall comply with all federal, state or local statutes, ordinances, regulations, rules, orders, and directives relating to discrimination in employment and shall comply with the provisions, if any, in the prime contract on that subject, insofar as its own employees are concerned.

17. Layout Responsibility: CONTRACTOR shall establish principal axis lines and levels whereupon SUBCONTRACTOR shall be strictly responsible for the accuracy of its work and for any loss or damage to other contractors engaged in work on the site by reason of failure of SUBCONTRACTOR to set out or perform its work correctly. SUBCONTRACTOR shall exercise prudence so that actual final conditions and details shall result in perfect alignment of finish surfaces.

18. Workmanship: Every part of the work herein described shall be executed in strict accordance with the contract documents in the most sound, workmanlike, and substantial manner. All workmanship shall be of the best of its several kinds, and all materials used in the work herein described shall be furnished in ample quantities to facilitate the proper and expeditious execution of the work and shall be new and the best of their respective kinds, except such materials as may be expressly provided in the contract documents to be otherwise.

19. Provision for Inspection: SUBCONTRACTOR shall furnish to CONTRACTOR and its representatives ample facilities at all times for inspecting materials at the site of construction, at the shops, or any place where materials under this Subcontract may be in course of preparation, process, manufacture or treatment. SUBCONTRACTOR shall further furnish to CONTRACTOR as often as required, full reports of the progress of the work at any place where materials under this Subcontract may be in the course of preparation or manufacture said reports to show the progress of such preparation and manufacture in such details as may be required by CONTRACTOR, including any plans, drawings, or diagrams in course of preparation.

20. Materials Furnished By Others: In the event the scope of work includes installation of materials or equipment furnished by others, it shall be the responsibility of SUBCONTRACTOR to examine the items so provided and thereupon handle, store and install the items with such skill and care as to insure a satisfactory installation. Loss or damage due to acts of SUBCONTRACTOR shall be charged to the account of SUBCONTRACTOR and deducted from monies due under this Subcontract.

The SUBCONTRACTOR or material suppliers shall be responsible for all loss or damage to all property, materials, tools or equipment, etc.

21. Protection of Work: SUBCONTRACTOR shall effectually secure and protect the work done hereunder and assume full responsibility for the condition thereof until final acceptance by ARCHITECT, OWNER and CONTRACTOR. SUBCONTRACTOR further agrees to provide such protection as is necessary to protect the work and the workmen of the CONTRACTOR and other subcontractors from its operations.

SUBCONTRACTOR shall be liable for any loss or damage to any work in place or to any equipment and materials on the jobsite caused by him or its agents, employees or guests.

22. Use of Contractor's Equipment: In the event SUBCONTRACTOR shall use CONTRACTOR'S equipment or facilities, he shall reimburse CONTRACTOR at a predetermined rate, unless otherwise stated herein. Further, that in so doing SUBCONTRACTOR assumes all responsibility for, and shall hold CONTRACTOR harmless from any claims, actions, demands, damages, liabilities, or expenses, including attorneys' fees, resulting from the use of such equipment or facilities by SUBCONTRACTOR or its agents, employees or permittees.

23. Clean-up: During the course of construction, SUBCONTRACTOR shall remove waste materials from the site recurrently as is necessary to maintain the premises in a clean and orderly condition. Upon completion of the work under this Subcontract, SUBCONTRACTOR shall remove from the site all temporary structures, debris and waste incident to its operation and clean all surfaces, fixtures, equipment, etc., relative to the performance of this Subcontract. If SUBCONTRACTOR fails to perform a clean-up function within two days after notification from CONTRACTOR to do so, CONTRACTOR may proceed with that function as he judges necessary and in any manner he may deem expedient, and the cost thereof shall be charged to SUBCONTRACTOR and deducted from monies due under this Subcontract.

24. Guarantees: SUBCONTRACTOR guarantees all materials and workmanship and agrees to replace at its sole cost and expense, and to the satisfaction of CONTRACTOR, any and all materials adjudged defective or improperly installed as well as guarantee the OWNER and CONTRACTOR against liability, loss or damage arising from said installation during a period of one year from completion and acceptance of the work covered by the prime contract.

If, however, the period of guarantee is stipulated in excess of one year by the contract documents, SUBCONTRACTOR shall be bound during the longer period stipulated.

25. Indemnification from Patent Rights: SUBCONTRACTOR shall indemnify and hold CONTRACTOR harmless against any claim, suit or action, or any alleged violation or infringement of patent rights which may be made against CONTRACTOR by reason of the use in connection with or as a part of the performance of the work or the furnishing of materials hereunder, of anything which is now or may hereafter be covered by patent, copyright or trademark, and also against all expense, including attorneys' fees, which CONTRACTOR may incur in defending or adjusting any such claim, suit or action.

26. Assignment of Contract: SUBCONTRACTOR shall not, without written consent of CONTRACTOR, assign, transfer, nor sublet any portion or part of the work required by this Subcontract nor assign any payments hereunder to others. CONTRACTOR may assign or transfer the whole or part of this Subcontract, and its rights hereunder, to any corporation, individual or partnership.

27. Independent Contractor: SUBCONTRACTOR is an independent contractor and shall, at its sole cost and expense, and without increase to the Contract Price, comply with all laws, rules, ordinances, and regulations of all governing bodies having jurisdiction over the work; obtain all necessary permits and licenses therefor; pay all manufacturers' taxes, sales taxes, use taxes, processing taxes, and all federal and state taxes, insurance and contributions for Social Security and Unemployment which are measured by wages, salaries, or other remunerations paid by SUBCONTRACTOR'S employees, whether levied under existing or subsequently enacted laws, rules, or regulations. SUBCONTRACTOR, upon request, shall furnish evidence satisfactory to CONTRACTOR that any or all of the foregoing obligations have been fulfilled.

SUBCONTRACTOR agrees to comply with all statutory or contractual safety requirements applying to its work, including those requirements which may be initiated by CONTRACTOR and shall report within three (3) days to CONTRACTOR any injury to SUBCONTRACTOR'S employees occurring at the jobsite.

In the event that SUBCONTRACTOR violates any safety requirement which, by direction of any governmental agency, results in a suspension of work on the project, in whole or in part, SUBCONTRACTOR shall be liable for all damages or expense resulting from such suspension.

28. Waiver: Any act or omission of CONTRACTOR which SUBCONTRACTOR might claim as an excuse for its own failure to perform shall be deemed waived by SUBCONTRACTOR unless SUBCONTRACTOR shall notify CONTRACTOR of its intention to assert such excuse within ten (10) days after the occurrence of any such act or omission.

29. Attorneys' Fees: In the event that either CONTRACTOR or SUBCONTRACTOR institutes suit in court against the other party, or against the surety of such party, in connection with any dispute or matter arising under this Subcontract, the party which prevails in that suit shall be entitled to recover from the other its attorneys' fees in reasonable amount, which shall be determined by the court and included in the judgment in said suit.

30. Arbitration: In the event the OWNER-CONTRACTOR contract contains a provision for arbitration of disputes arising between CONTRACTOR and OWNER, the following clauses shall be in effect as part of this Subcontract, but not otherwise:

If, at any time any controversy shall arise between CONTRACTOR and SUBCONTRACTOR regarding anything pertaining to this Subcontract and which the parties hereto do not promptly adjust and determine, or which OWNER'S representative or ARCHITECT cannot decide to the satisfaction of both parties, then the written orders of CONTRACTOR to SUBCONTRACTOR shall be followed. The controversy shall be submitted to and determined by arbitration in Phoenix, Arizona under the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, and the parties hereto agree to be bound by the Award in such Arbitration.

In addition, SUBCONTRACTOR shall be bound to CONTRACTOR to the same extent CONTRACTOR is bound to OWNER, by all terms and provisions of the OWNER-CONTRACTOR contract and be expressly bound by any provisions thereunder to arbitrate.

Both CONTRACTOR and SUBCONTRACTOR agree that in the event either of them become involved in arbitration proceedings, with third parties concerning work to be performed under this Subcontract, then both CONTRACTOR and SUBCONTRACTOR agree to participate in said arbitration when requested and to be bound by the same.

31. Architect: The work "ARCHITECT" as used herein refers to the person appointed by OWNER to supervise the work of the CONTRACTOR on behalf of the OWNER.

32. Specific Provisions Inserted: The attachment hereto of specific provisions of the OWNER-CONTRACTOR contract is for purposes of emphasis or to comply with applicable law or regulations and is not to be construed as an exclusion of other provisions of that contract.

33. Prior Understanding or Representations: CONTRACTOR assumes no responsibility for any understanding or representations made by any of its officers or agents prior to the execution of this Subcontract unless such understanding or representations by the CONTRACTOR are expressly stated in the Subcontract.

34. Captions: The captions at the beginning of each section of this Subcontract are for convenience only and are to be given no weight in construing the provisions of this Subcontract.

35. Binding Effect: This Subcontract shall be binding upon and insure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties hereto.

36. Authorized Parties: The following people are authorized by this company to sign Change Orders, Lien Waivers and to pick up checks on behalf of this company. (Please write "none" on any unused lines.)

Name (Print)

Title

Name (Print)

Title

Name (Print)

Title

I, the Undersigned Subcontractor, signify by my signature below and my initials at Paragraph Five (5) that I have read and understand said subcontract.

IN WITNESS WHEREOF, the parties hereto have executed this Subcontract:

Subcontractor _____

Robert E. Porter Construction Co., Inc.

By _____

By _____

Title _____

Title _____

Date _____

Date _____

