



STANDARD FORM OF AGREEMENT MASTER SUBCONTRACT AGREEMENT

amended Jan 27, 2009

Preston Pipelines, Inc.
General Engineering Contractor

This AGREEMENT is entered into this _____ day of _____, 2009 by and between **PRESTON PIPELINES, INC.**, hereinafter called CONTRACTOR, whose address is 133 Bothelo Avenue, Milpitas, CA 95035-5325, and _____, hereinafter called SUBCONTRACTOR, whose address is: _____.

I. PURPOSE, SCOPE AND APPLICABILITY

CONTRACTOR and SUBCONTRACTOR are entering into this AGREEMENT with the intent and understanding that it will serve as a master agreement for all projects for which CONTRACTOR engages SUBCONTRACTOR, unless the parties expressly agree in writing to the contrary. Use of a master agreement will avoid the parties having to negotiate and execute a new, separate agreement for each project. Instead, for each project on which SUBCONTRACTOR is engaged, a WORK AUTHORIZATION FORM, sample attached as Exhibit C, will be executed by both parties. The parties agree that this AGREEMENT, without further acknowledgement, signature, or agreement, will govern all projects for which a WORK AUTHORIZATION FORM is executed.

This AGREEMENT does not create an agreement that CONTRACTOR will request, or that SUBCONTRACTOR will perform, work on any specific project. CONTRACTOR is under no obligation to hire SUBCONTRACTOR to perform work on any particular project. CONTRACTOR shall have no liability in the event that it does not hire SUBCONTRACTOR for a particular project. Should CONTRACTOR desire that SUBCONTRACTOR perform work on a project to which this AGREEMENT shall be applicable, it shall furnish a WORK AUTHORIZATION FORM and SUBCONTRACTOR shall communicate its acceptance by executing the WORK AUTHORIZATION FORM.

The WORK AUTHORIZATION FORM will include terms, conditions, information and descriptions applicable to the specific project on which SUBCONTRACTOR is to perform work. The WORK AUTHORIZATION FORM shall also include information regarding the name and address of OWNER, HIRER (defined as the entity hiring Contractor if not the OWNER) and of any construction lender; however, the omission of such information shall not affect the validity of the WORK AUTHORIZATION FORM. The WORK AUTHORIZATION FORM modifies and supplements the provisions contained in the AGREEMENT and all other documents incorporated therein by reference. In the event of any actual conflict, inconsistency or ambiguity between the terms and provisions of the WORK AUTHORIZATION FORM, on the one hand, and the AGREEMENT or any other SUBCONTRACT DOCUMENTS, (defined below), on the other hand, the WORK AUTHORIZATION FORM shall take precedence. However, wherever possible the documents will be construed to avoid such a conflict. CONTRACTOR and SUBCONTRACTOR agree that SUBCONTRACTOR shall perform the work, as described herein, in accordance with the terms and conditions set forth in the CONTRACT DOCUMENTS. In the event CONTRACTOR fails to issue a WORK AUTHORIZATION FORM, or the WORK AUTHORIZATION FORM is not fully executed, any work performed by SUBCONTRACTOR at the request of CONTRACTOR shall nonetheless be governed by this AGREEMENT.

On any WORK AUTHORIZATION FORM involving more than \$25,000 in WORK, SUBCONTRACTOR shall contact CONTRACTOR'S main office and confirm with an authorized representative of the CONTRACTOR that the work is authorized. In the event that SUBCONTRACTOR fails to do so, and the work was not approved by a duly authorized officer of CONTRACTOR, then SUBCONTRACTOR shall be deemed to have proceeded at its own risk and shall not be entitled to compensation, a mechanic's lien, stop notice, or claim on any bond, to the extent permitted by law.

This document represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, proposals, stipulations, or agreements, either written or oral, including, without limitation, SUBCONTRACTOR'S bid form or proposal. All prior or contemporaneous agreements to be included in this AGREEMENT are expressly identified herein. No agent or representative of either party has authority to make, and the parties shall not be bound by or liable for, any statement, representation, promise or agreement not set forth herein or in a valid WORK AUTHORIZATION FORM. No changes, amendments or modifications to the terms of this AGREEMENT shall be valid unless reduced to writing and signed by both parties.

The "SUBCONTRACT DOCUMENTS" consist of **(1)** this AGREEMENT; **(2)** for each project for which a WORK AUTHORIZATION FORM is issued, and as to that project only, the specifications, plans and other relevant documents for the project, including the PRIME CONTRACTS defined as (a) the contract between OWNER and CONTRACTOR, or, (b) where CONTRACTOR is hired by entity other than the OWNER, the contract between the OWNER and HIRER and contract between HIRER and CONTRACTOR, and (c) any other documents enumerated therein, including conditions of the contract (general, supplementary and other conditions), drawings, specifications, manuals, supplements, schedules, addenda, bulletins, RFI responses, and modifications issued prior to or subsequent to the execution of the PRIME CONTRACTS, and other documents listed in PRIME CONTRACTS **(3)** other documents incorporated into this AGREEMENT or its attachments; and **(4)** Modifications to this AGREEMENT issued after its execution. These documents are as fully a part of this AGREEMENT as if they were attached to this AGREEMENT or retyped herein.

SUBCONTRACTOR and its lower tier subcontractors and suppliers shall be bound by the SUBCONTRACT DOCUMENTS insofar as they relate in any way, directly or indirectly, to the work required to be performed under this AGREEMENT. SUBCONTRACTOR agrees that it will provide its lower tier subcontractors, suppliers, vendors, and employees with the terms of the SUBCONTRACT DOCUMENTS. Where, in the PRIME CONTRACTS, reference is made to CONTRACTOR, and the work or specifications therein pertains to SUBCONTRACTOR'S trade, craft, or type of work, then such work or specifications shall be interpreted to apply to SUBCONTRACTOR instead of CONTRACTOR. In addition to any other rights and remedies, and without limiting the same, CONTRACTOR shall have the same rights and privileges as against SUBCONTRACTOR herein as OWNER or HIRER has against CONTRACTOR under the terms of the PRIME CONTRACTS and any agreements between OWNER and HIRER and CONTRACTOR.

Anything mentioned in the specifications and not shown on the plans or drawings, or shown on the plans and drawings and not mentioned in the specifications, shall be deemed shown and mentioned in both. For purposes of the provision below, the "PROJECT" refers to the project for which a WORK AUTHORIZATION FORM has been issued and consists of the entire construction to be completed by CONTRACTOR, as well as all work to be performed by SUBCONTRACTOR. The term "DAY" shall mean calendar day unless otherwise specifically designated. The term "CONTRACT PRICE" shall mean the

price for completion of all of SUBCONTRACTOR'S work with regard to a particular project for which a WORK AUTHORIZATION FORM has been issued.

II. AGREEMENT PRICE

- (a) Pursuant to the "Preston Pipelines, Inc. Standard Payment Terms," attached hereto as Exhibit B and incorporated by reference, CONTRACTOR will pay SUBCONTRACTOR those amounts set forth in the WORK AUTHORIZATION FORM for the satisfactory performance of the work listed in the WORK AUTHORIZATION FORM.
- (b) CONTRACTOR agrees to pay SUBCONTRACTOR for said work subject to additions and deductions as herein provided, payable as work progresses, on estimates made and approved by CONTRACTOR and within ten (10) days after CONTRACTOR actually receives payment from OWNER on account of SUBCONTRACTOR'S work. CONTRACTOR shall be entitled to withhold at its option ten percent (10%) of each estimate until final payment and may withhold any payment until SUBCONTRACTOR has furnished CONTRACTOR with suitable evidence (which may include affidavits) that SUBCONTRACTOR has paid in full for all labor including union benefits, materials, supplies, taxes, withholding and other obligations in connection with the work included in this AGREEMENT, written acceptance by the engineer, full payment therefore by OWNER, and receipt of Unconditional/Conditional Waivers and Releases.
- (c) CONTRACTOR may in addition withhold from any payment or retention up to 150% of the amount of any disputed item, including without limitation, amounts CONTRACTOR believes may be necessary to withhold to protect CONTRACTOR from any potential claims caused by SUBCONTRACTOR or claims which may result from SUBCONTRACTOR failing to furnish appropriate waivers and releases for itself or any lower tier subcontractors or suppliers.
- (d) On public works projects with the State of California or any subdivision thereof, the amounts (if any) which CONTRACTOR is obligated by this AGREEMENT to pay as retention shall be paid within seven (7) days after receipt of retention by CONTRACTOR, instead of within the ten (10) days otherwise provided herein; additionally, on such state or local projects, the percentage of retention withheld (when there are no additional reasons for withholding) shall not exceed the percentage required to be withheld under CONTRACTOR'S contract with OWNER or HIRER. On such a state or local public works project, a SUBCONTRACTOR with a contract of 5% or more of the project price also may have the right under applicable law and depending on the circumstances either to post securities in lieu of retention or to receive interest on certain sums when CONTRACTOR has posted securities in lieu of retention.
- (e) Notwithstanding any other term of this AGREEMENT, CONTRACTOR shall be permitted a reasonable period of time to pursue remedies and collect from OWNER or other persons for progress payments, final payments or other payments on account of SUBCONTRACTOR'S work or claims, before payment shall become due to SUBCONTRACTOR. What is a "reasonable time" shall be decided based upon all relevant circumstances, but shall in no event be less than the amount of time needed to pursue to conclusion (including collection) available remedies against OWNER or HIRER, insurers, other subcontractors, or any other party responsible for payment.

III. SUBCONTRACTOR'S OBLIGATIONS

- (a) SUBCONTRACTOR acknowledges and agrees that prior to the submission of a proposal or bid for any Project, it shall read and be familiar with the SUBCONTRACT DOCUMENTS and all plans and specifications. SUBCONTRACTOR agrees to comply with and perform all provisions applicable to SUBCONTRACTOR.
- (b) The SUBCONTRACTOR shall conform in all respects to the provisions and regulations of any general or local act or ordinance, or any local authority which may be applicable to the work, and shall hold harmless, defend, and indemnify INDEMNITEES (defined below) against all penalties by reason of nonobservance of any such provisions or regulations as more fully set forth in Section VI.
- (c) SUBCONTRACTOR agrees to obtain and pay for all permits, licenses and official inspections made necessary by its work and to comply with all codes, laws, ordinances and regulations bearing on its work.
- (d) SUBCONTRACTOR shall remove daily from the premises, or more often if directed by CONTRACTOR, all rubbish and surplus material which may accumulate from the prosecution of said work. Should SUBCONTRACTOR fail to do so, CONTRACTOR may, at its option, remove same without further notice at SUBCONTRACTOR'S expense.
- (e) SUBCONTRACTOR shall submit copies of submittal data as required in the CONTRACT DOCUMENTS. Refer to the applicable sections of the SUBCONTRACT DOCUMENTS for requirements concerning submittals, including the number of submittals to be provided. Submittals shall reference the project title, number and applicable specification sections. All submittals must be submitted to CONTRACTOR within twenty (20) working days of receipt of SUBCONTRACTOR'S executed WORK AUTHORIZATION FORM, or sooner if necessary to meet the CONTRACTOR'S progress schedule requirements.
- (f) SUBCONTRACTOR acknowledges that it has conducted its own independent investigation of the wage rates to be paid, whether its work will be subject to prevailing wage requirements, and the applicability of California prevailing wage laws, the Davis-Bacon Act, or any similar laws, regulations, or contract requirements, SUBCONTRACTOR has not relied upon any statements or representations by CONTRACTOR with respect to such matters. On all projects subject to state or local prevailing wage requirements, SUBCONTRACTOR shall comply with any applicable California prevailing wage laws. With respect to such projects, the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 are attached hereto and incorporated herein by this reference. On all such projects, as a condition precedent to final payment, SUBCONTRACTOR agrees to provide an affidavit that complies with the terms of Labor Code Section 1775(b) (4). SUBCONTRACTOR shall comply with all applicable laws, regulations, or other requirements concerning payment of wages and conditions of employment, and record keeping in accordance therewith. SUBCONTRACTOR agrees to furnish certified payrolls promptly upon demand and further agrees to cooperate fully in any effort by CONTRACTOR to verify compliance with labor laws and regulations, including requirements under the Davis-Bacon Act or the California Labor Code. Such cooperation shall include, without limitation, furnishing copies and originals of records and providing access to employees or witnesses for interviews and statements. In addition to and without derogation to any other rights that CONTRACTOR may enjoy, CONTRACTOR may withhold sufficient funds to protect CONTRACTOR against any claims related to labor requirements, including without limitation,

requirements under the Davis-Bacon Act or the California Labor Code. SUBCONTRACTOR agrees that the amounts set forth as the Agreement Price shall be deemed to be full compensation for compliance with such laws, regulations, or requirements, including payment of all applicable wage rates, and that no additional compensation will be owed to SUBCONTRACTOR in the event that SUBCONTRACTOR is required thereunder to pay higher wages or incur additional costs that SUBCONTRACTOR contends that it did not anticipate.

- (g) SUBCONTRACTOR, as a part of the obligations assumed by it in this AGREEMENT, accepts exclusive liability for all taxes and contributions required of CONTRACTOR or SUBCONTRACTOR by the Federal Social Security Act and the Unemployment Compensation Law or similar law in any state with respect to the employees of SUBCONTRACTOR in the performance of the work herein provided for, and agrees on request to furnish CONTRACTOR with suitable written evidence that it has been authorized to accept such liability. SUBCONTRACTOR further agrees that if it cannot furnish said evidence or should fail to do so prior to beginning its work, CONTRACTOR may, at its option, pay or reserve for payment said taxes and contributions and deduct the amount paid or reserved from payments due, or to become due, SUBCONTRACTOR. SUBCONTRACTOR agrees to hold harmless, defend and indemnify INDEMNITEES (defined below) against all liability in respect to said employees under said act of law as more fully set forth in Section VI.
- (h) SUBCONTRACTOR accepts exclusive liability for any and all sales tax or use tax which may be assessed against materials, equipment or labor used in this part of the work, regardless of whether the rates or application of such taxes may have changed since SUBCONTRACTOR submitted a bid.
- (i) SUBCONTRACTOR shall provide safe and sufficient facilities to OWNER, HIRER, CONTRACTOR, or their duly authorized representatives or agents for inspection of the work by SUBCONTRACTOR.
- (j) SUBCONTRACTOR shall provide safe and sufficient facilities for SUBCONTRACTOR'S own workers, suppliers, and any other individuals for whom SUBCONTRACTOR is responsible.
- (k) SUBCONTRACTOR shall within twenty-four (24) hours after receiving written notice from CONTRACTOR proceed promptly to remove from the site all materials and work which the engineer or owner's representative has condemned or failed to approve and shall promptly make good all such work and all other work damaged or destroyed in removing or making good said condemned work.
- (l) Subcontractor warrants to Owner and Contractor that all materials and equipment furnished shall be free from faults and defects, and be of good quality. SUBCONTRACTOR shall warrant and guarantee all work done by it under this AGREEMENT against deficiencies and defects in materials and/or workmanship for the period of time of CONTRACTOR'S warranty and guarantees to OWNER/HIRER or the longest period permitted by the law of this State, whichever period is longer, but in no event for less than one year after notice of completion is recorded.
- (m) SUBCONTRACTOR shall at all times supply adequate tools, appliances and equipment, a sufficient number of properly skilled workers and a sufficient amount of materials and supplies of proper quality to efficiently and promptly

prosecute said work. SUBCONTRACTOR shall promptly pay for all materials purchased, and shall pay all workers each week furnishing CONTRACTOR weekly with two (2) copies of certified payroll upon request.

- (n) SUBCONTRACTOR shall personally supervise the work or have a competent foreperson or superintendent satisfactory to CONTRACTOR on site at all times during SUBCONTRACTOR'S performance with authority to act for SUBCONTRACTOR.
- (o) As more fully set out in Section XI(b), if hazardous substances of a type which an employer is required by law to notify its employees are being used on the site by SUBCONTRACTOR, its lower tier subcontractors or anyone directly or indirectly employed by them, SUBCONTRACTOR shall, prior to exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to CONTRACTOR in sufficient detail and time to permit compliance with such laws by CONTRACTOR, other subcontractors and employers on the site.
- (p) In the event of a dispute, SUBCONTRACTOR shall comply with CONTRACTOR'S written directives and shall continue performance in accordance with Section IV(e).

IV. PERFORMANCE OF WORK

- (a) Time is of the essence of this AGREEMENT. SUBCONTRACTOR shall commence work promptly on notice by CONTRACTOR and shall prosecute the same diligently, continuously and at a pace that will not cause delay in the progress of CONTRACTOR'S work or the work carried on by other subcontractors, HIRER or OWNER. CONTRACTOR may require SUBCONTRACTOR to prosecute in preference to other parts of the work such part or parts as CONTRACTOR may specify. The AGREEMENT completion time shall be as set forth in the WORK AUTHORIZATION FORM, or if no time is specified therein, in CONTRACTOR'S schedule for the project that is the subject of the WORK AUTHORIZATION FORM.
- (b) SUBCONTRACTOR at CONTRACTOR'S request and at the time specified in such request shall submit to CONTRACTOR progress, procurement, and man-hour completion schedules, satisfactory in form and content to CONTRACTOR and upon CONTRACTOR'S acceptance of the schedules shall prosecute the work in accordance therewith.
- (c) To secure performance by SUBCONTRACTOR and any funds expended by CONTRACTOR hereunder, CONTRACTOR shall have a lien upon all materials, tools, appliances and equipment of SUBCONTRACTOR on the premises or used in connection with said work.
- (d) SUBCONTRACTOR shall not deviate from the plans and specifications except on written order from CONTRACTOR. SUBCONTRACTOR shall be responsible for any damage, inconvenience, or increase of costs arising directly or indirectly from failure of SUBCONTRACTOR or its lower tier subcontractors to observe the same. CONTRACTOR shall have the right to make changes in the plans and specifications, and SUBCONTRACTOR upon notice thereof shall be governed thereby. Allowance for extra work and deductions for omissions shall be by mutual agreement between CONTRACTOR and SUBCONTRACTOR or determined in accordance with procedures specified in the PRIME CONTRACTS. No changes are to be made except upon a prior written order from CONTRACTOR and CONTRACTOR

shall not be held liable to SUBCONTRACTOR for any extra labor, materials, or equipment furnished without such written order.

- (e) In the event a dispute arises between SUBCONTRACTOR and CONTRACTOR, SUBCONTRACTOR expressly agrees that it will continue to perform its work regardless of the nature of the dispute. To the greatest extent permitted by law, SUBCONTRACTOR waives any right to rescind or to suspend performance.

V. DELAYS

- (a) Any damages for delay caused by SUBCONTRACTOR shall be deducted by CONTRACTOR from the agreed price, subject, however, to the options of CONTRACTOR to terminate said AGREEMENT for default as herein elsewhere provided.
- (b) Except as provided in subparagraph (d) and (e), CONTRACTOR shall not be liable to SUBCONTRACTOR for delay to SUBCONTRACTOR'S work by the act, neglect or default of CONTRACTOR, HIRER, OWNER, its architects and/or engineers, or by reason of strikes or lockouts, on account of any acts of God, or any other cause beyond CONTRACTOR'S control; but CONTRACTOR will cooperate with SUBCONTRACTOR to enforce any just claim against HIRER, OWNER, its architects and/or engineers for delay.
- (c) Should SUBCONTRACTOR be delayed in its work by CONTRACTOR and a written claim for delay is made to CONTRACTOR within forty-eight (48) hours from the time of the beginning of the delay, then CONTRACTOR shall owe SUBCONTRACTOR only an extension of time for completion equal to the delayed cause.
- (d) In the event that CONTRACTOR in its sole discretion shall seek compensation from OWNER or HIRER as a result of any delay, SUBCONTRACTOR shall be entitled to an equitable portion of any amount recovered by CONTRACTOR less an equitable share of the cost of pursuing said claim. This provision shall not be construed to require CONTRACTOR to pursue any claim against OWNER or HIRER or any other party.
- (e) To the greatest extent permitted by law, the remedies set forth at paragraphs (b), (c) and (d) hereof shall constitute SUBCONTRACTOR'S exclusive remedies for delay, disruption, inefficiency, trade stacking, loss of productivity, schedule compression, interference with performance acceleration, or similar issues relating to schedule or timely performance (hereinafter "DELAY AND DISRUPTION CLAIMS"), regardless of cause. Notwithstanding the foregoing, however, to the extent that the PRIME CONTRACTS expressly authorize CONTRACTOR to recover from OWNER or HIRER for DELAY AND DISRUPTION CLAIMS, then SUBCONTRACTOR shall to the same extent have the same rights and ability to recover from CONTRACTOR for such DELAY AND DISRUPTION CLAIMS.

VI. INDEMNITY

To the greatest extent permitted by law, SUBCONTRACTOR shall defend, indemnify and hold harmless CONTRACTOR, OWNER, HIRER, and OWNER'S architect and engineer (for activities not related to design), and any of their respective directors, officers, agents, employees, parents, affiliates, subsidiaries, partners, and representatives, and any other persons or entities designated by any of them (collectively, the "INDEMNITEES") from and against all actions, penalties,

assessments, actions by governmental authorities, fines, demands, liabilities, claims, damages, costs, losses and expenses, including but not limited to attorney's fees and costs, which arise out of or are in any way related (i) to this AGREEMENT, (ii) to the work under the SUBCONTRACT DOCUMENTS, (iii) to actually or alleged actions or omissions by SUBCONTRACTOR or any of its lower tier subcontractors, suppliers, vendors, employees, or persons for whom it is responsible, or (iv) to the project(s) to which the AGREEMENT relates (all collectively referred to as "Liabilities"). Notwithstanding the foregoing, if any of the other SUBCONTRACT DOCUMENTS impose more stringent defense, indemnity, contribution or hold harmless obligations than are set forth herein, then the more stringent provisions shall apply, and SUBCONTRACTOR shall owe the same defense, indemnity, contribution, and hold harmless obligations to INDEMNITEES as CONTRACTOR owes to INDEMNITEES identified in the PRIME CONTRACTS.

The obligations of Section VI shall apply notwithstanding the passive or active negligence or other fault of the INDEMNITEES. The obligations specified above shall not extend to any claims, demands, damages, costs, or liabilities arising out of the sole negligence or willful misconduct of the persons to be indemnified, defended, or held harmless. The obligations of the Section VI are in no way limited or relieved by SUBCONTRACTOR having obtained insurance, by the provisions of Section VII, and/or to the extent permitted by law by the provisions of any worker's compensation law, regulation or arrangement.

The duty to defend commences once the tender of the claim is made. In circumstances where a claim of construction defect in residential construction as defined in Civil Code Section 2782(c)-(e) is asserted, SUBCONTRACTOR is required to provide a defense to INDEMNITEES as provided above. If after a final resolution of the residential construction defect claim, a determination is made that the defense SUBCONTRACTOR provided INDEMNITEES exceeds its proportional percentage of negligence, the parties agree to submit any defense reimbursement issues pursuant to the Dispute Resolution Procedures in Section XIII.

VII. INSURANCE

Before performing work or conducting any activities at the site of the Project, SUBCONTRACTOR and its lower tier subcontractors shall comply with all of the insurance provisions set forth in Exhibit A (attached). Commencing work constitutes a representation by SUBCONTRACTOR that it is in compliance with this Section VII. However, the commencement of work shall not be considered or construed to be a waiver of any of these provisions.

VIII. LIENS

SUBCONTRACTOR shall at all times maintain the project in a good condition, free and clear of all claims, encumbrances or liens and shall hold harmless and indemnify INDEMNITEES from all claims, encumbrances, and liens growing out of the performance of this AGREEMENT. SUBCONTRACTOR, at its own cost and expense (including attorneys' fees), shall defend all suits to establish such claims, and shall pay any such claim

or lien so established. In the event that a lien or claim is made against the project or INDEMNITEES, SUBCONTRACTOR agrees that within forty-eight (48) hours of written notice, to have such claim, lien or encumbrance removed from the job and to place with INDEMNITEES adequate security to ensure compliance with this provision.

IX. BONDS

SUBCONTRACTOR, upon request, shall furnish to CONTRACTOR a performance bond and a labor and materials payment bond in amount, form and substance and with a surety or sureties satisfactory to CONTRACTOR. CONTRACTOR will pay the cost of such bond, up to two percent (2%) of the bond premium rate. Rates in excess of 2% are the responsibility of SUBCONTRACTOR.

X. TERMINATION

- (a) Should SUBCONTRACTOR or its lower tier subcontractors at any time breach this AGREEMENT or fail to prosecute the said work with promptness, diligence and efficiency, or fail to perform any of the requirements hereof, CONTRACTOR may after forty-eight (48) hours written notice, proceed as follows:
1. Provide such materials, supplies, equipment and labor as may be necessary to complete said work, pay for same and deduct the amount so paid from any money then or thereafter due SUBCONTRACTOR;
 2. Withhold payment of any estimate in the event SUBCONTRACTOR be in default under this AGREEMENT or any provision hereof, other provisions of this AGREEMENT notwithstanding; and/or
 3. Terminate the employment of SUBCONTRACTOR, enter upon the premises and take possession for use in completing the work of all the materials, supplies, tools, equipment and appliances of SUBCONTRACTOR or its lower tier subcontractors thereon and complete the work or have same completed by others and be liable to SUBCONTRACTOR for no further payment under the AGREEMENT until final payment is due and then only if and to the extent that the unpaid balance of the amount to be paid under this AGREEMENT exceeds the expense of CONTRACTOR in finishing the work.
- (b) If the amount expended by CONTRACTOR under (a)(1) or the cost of completing the work under (a)(3) exceeds the unpaid balance of the AGREEMENT price herein stated, SUBCONTRACTOR shall pay CONTRACTOR such excess within seven (7) calendar days of issuance of invoice.
- (c) Should SUBCONTRACTOR at any time fail to pay for all labor, materials or supplies used by SUBCONTRACTOR in said work when due, CONTRACTOR at its option may pay for same and charge to SUBCONTRACTOR or may, at its discretion and with the consent of SUBCONTRACTOR, pay at any time claims for labor, material and supplies used in the work.
- (d) Should SUBCONTRACTOR or its lower tier subcontractors default in any of the provisions of this AGREEMENT and should CONTRACTOR employ an attorney to enforce any provision hereof, or to collect damages for breach of the AGREEMENT, or to recover on the bond mentioned in Article IX above, or to obtain rights pursuant to insurance provided or to have been provided pursuant to Exhibit A, SUBCONTRACTOR and its surety agree to pay CONTRACTOR such

reasonable attorneys' fees as it may expend. As against the obligations here contained, SUBCONTRACTOR and its surety waive all rights of exoneration.

- (e) In its sole discretion and to the extent permitted by law, CONTRACTOR may terminate this AGREEMENT without cause. In the event of such a termination, SUBCONTRACTOR shall be paid only for its actual out-of-pocket direct costs in connection with the project to the extent that these have not already been paid for by CONTRACTOR. In no event shall the total amount paid to SUBCONTRACTOR after a termination without cause (including all prior payments) exceed the price as set forth in Section II(a) as multiplied by the percentage of completion of SUBCONTRACTOR'S work. Upon a termination for convenience, SUBCONTRACTOR shall not be entitled to any lost profits or consequential damages, or any recovery other than that set forth previously in this subsection (e). If CONTRACTOR is found to have terminated this AGREEMENT improperly under any other section, such as subsection (a), then the termination shall be deemed to have been a termination without cause, and SUBCONTRACTOR'S remedies shall be limited accordingly.
- (f) The rights and remedies granted to CONTRACTOR under this Section X and pursuant to the other provisions of this AGREEMENT shall be cumulative and are not intended to be in lieu of any legal right or remedy which CONTRACTOR may have against SUBCONTRACTOR for breach of this AGREEMENT or default hereunder, afforded by state or federal law.

XI. COMPLIANCE WITH LAWS, PERMITS, AND SAFETY PROGRAMS

- (a) **Laws, Regulations, and Permits.** SUBCONTRACTOR shall at its sole expense obtain and pay for all necessary permits and licenses pertaining to the work and shall comply with all federal, state, municipal and local laws, ordinances, codes, rules, regulations, standards, and requirements including but not limited to those relating to state contractor license requirements, safety, discrimination in employment, fair employment practices or equal employment opportunity, and any applicable disadvantaged or minority preference or hiring programs without additional charge or expense to CONTRACTOR. SUBCONTRACTOR agrees to hold harmless and indemnify INDEMNITEES from and against any and all actions, penalties, assessments, actions by governmental authorities, fines, demands, liabilities, claims, damages, costs, losses and expenses, including but not limited to attorney's fees and costs occasioned directly or indirectly by SUBCONTRACTOR'S failure to comply with any said laws, ordinances, rules, regulations, standards, orders, notices or requirements or to correct said violations.
- (b) **Compliance with Proposition 65.** SUBCONTRACTOR will comply with all provisions of "Proposition 65" (California State Drinking Water Act of 1986) which shall include, but not be limited to, posting any required notices, with the prior written submission to and with the written permission of CONTRACTOR. SUBCONTRACTOR shall not use or bring on to the project any of the chemicals or compounds listed by the California State Attorney General under the provisions of Proposition 65 (the List) without delivering a clear written notice, at the time submittals are written, to CONTRACTOR and OWNER informing them of the dates and locations where such items shall be delivered, used, or stored. Notwithstanding anything to the contrary contained or indicated herein or in any of the CONTRACT DOCUMENTS or purchase orders or anywhere else,

SUBCONTRACTOR shall not incorporate into the work, or allow to be incorporated into the work, any of the items on the List without specific advanced written notice having first been delivered to CONTRACTOR prior to SUBCONTRACTOR becoming actually contractually obligated to purchase or take delivery thereof from its suppliers, and then only to the extent CONTRACTOR gives clear written approval of the uses proposed in the notice. The notice shall contain clear descriptions of the type, amount, uses, locations and content of such items incorporated into or used in said work. SUBCONTRACTOR expressly acknowledges and agrees that it shall indemnify and hold harmless INDEMNITEES from any and all claims, demands, suits, or liability of whatsoever nature by reason of the use or possession of the items set forth on the list on the subject project.

- (c) **Compliance with Safety Requirements and Programs.** At its sole expense, SUBCONTRACTOR shall institute and maintain a safety program to the extent such a program is required by applicable law. SUBCONTRACTOR at its sole expense shall fully cooperate with and adhere to any safety program or requirements of CONTRACTOR, whether such program is a stand-alone program or is a program modified to conform to OWNER'S safety program. SUBCONTRACTOR is required to conduct inspections of the Project to determine that safe working conditions exist, and accepts sole responsibility for providing its employees, lower tier subcontractors, suppliers and vendors a safe place to work. All personnel of SUBCONTRACTOR, its lower tier subcontractors and suppliers are required when appropriate to wear hard hats, safety vests, and any other necessary safety garments or devices, while visiting or working at a construction site in any way related to this AGREEMENT. To the greatest extent permitted by law, SUBCONTRACTOR agrees to defend and indemnify INDEMNITEES, and any of its directors, partners, officers, employees, affiliates, subsidiaries, successors, and assigns, from any OSHA or other regulatory penalties, fines, sanctions, assessments, or claims, including any increased penalties, fines, sanctions, assessment, or claims that result from CONTRACTOR'S prior record or history. Failure to comply with safety requirements may result in termination under Section X of this AGREEMENT.

XII. CLAIMS

- (a) Other than for Delay Claims as specified in Section V, if any dispute arises between CONTRACTOR and SUBCONTRACTOR involving performance of this work or any alleged change in the work, SUBCONTRACTOR shall timely perform the disputed work and shall give written notice of a claim for additional compensation for the work within five (5) days after commencement of the disputed work. SUBCONTRACTOR'S failure to give written notice within five (5) days constitutes an agreement by SUBCONTRACTOR that it will receive no extra compensation for disputed work.
- (b) Notwithstanding the foregoing, if the SUBCONTRACT DOCUMENTS contain notice provisions that are more stringent than those contained in this AGREEMENT, then SUBCONTRACTOR shall comply with the provisions of the SUBCONTRACT DOCUMENTS and, in addition, shall give CONTRACTOR sufficient notice to comply with the provisions of the SUBCONTRACT DOCUMENTS.
- (c) With regard to claims arising from differing conditions, changes directed by OWNER or others, or which otherwise are not solely the fault of CONTRACTOR, SUBCONTRACTOR'S sole and exclusive remedy shall be a claim for that portion of the additional compensation received by CONTRACTOR from OWNER or HIRER on

account of such matters as is equitable under all of the circumstances. SUBCONTRACTOR agrees to be bound by OWNER'S or HIRER'S determination and by the determination in any proceeding in which OWNER or HIRER is involved, regardless of whether SUBCONTRACTOR was a party to such proceeding. SUBCONTRACTOR and CONTRACTOR shall cooperate in the prosecution of such claims, and SUBCONTRACTOR shall pay a pro rata share of the costs and expenses incurred in connection therewith, to the extent that said claim is made by CONTRACTOR on behalf of SUBCONTRACTOR. Nothing herein shall require CONTRACTOR to pursue such a claim on behalf of SUBCONTRACTOR. Payment of any and all claims shall be subject to the terms of Section II of this AGREEMENT.

XIII. DISPUTE RESOLUTION

- (a) Any claims resolution incorporated in the PRIME CONTRACTS shall be deemed incorporated in the related work, project or operations performed by SUBCONTRACTOR for CONTRACTOR, and shall apply to any disputes arising hereunder. In the absence of a claims resolution procedure in the PRIME CONTRACTS, the parties hereto shall be obligated to submit any and all claims, except those which have been waived by the making or acceptance of final payment, to binding arbitration which shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction. SUBCONTRACTOR and CONTRACTOR agree that in the event that CONTRACTOR and OWNER, HIRER, or another third party selects a forum for the resolution of disputes, SUBCONTRACTOR agrees to participate and be bound by any decision or award given in such forum.

XIV. LABOR RELATIONS

- (a) SUBCONTRACTOR acknowledges that CONTRACTOR has entered into labor agreements covering work at its construction job sites with the labor unions listed below. Subcontractor agrees to comply with all of the terms and conditions of those labor agreements. Subcontractor further agrees to make trust fund payments set forth in the respective labor agreements insofar as Subcontractor may lawfully do so. Subcontractor agrees to comply with the terms and provisions of said agreements setting forth the jurisdiction and scope of work therein for jurisdictional disputes. In the absence of any such procedure, or if such procedure fails to promptly resolve the jurisdictional dispute, Subcontractor agrees, at its own cost and expense, upon request of Contractor, to take any and all lawful steps to secure a binding and final determination of said jurisdictional dispute by the National Labor Relations Board.
- (b) Subcontractor acknowledges that the terms and conditions of the labor agreements with the unions listed herein may require that Subcontractor comply with additional labor agreements with unions affiliated with the AFL-CIO but not listed. When the terms and conditions of the below referenced labor agreements so require, Subcontractor shall perform its job site work pursuant to all terms and conditions of an appropriate labor agreement affiliated with the AFL-CIO.
- (c) Should there be picketing on Contractor's job site, and Contractor establishes a reserved gate for Subcontractor's purpose, it shall be the obligation of

Subcontractor to continue the performance of its work without interruption or delay.

- (d) Subcontractor further promises and agrees that it will bind and require all of its subcontractors and their subcontractors performing job site work covered by any of the labor agreements specified below to agree to all of the foregoing promises and undertakings, to the same effect as herein provided with respect to itself.
- (e) Subcontractor shall comply with all equal employment opportunity and affirmative action requirements promulgated by any governmental authority, including, without limitation, the requirements of the Civil Rights Act of 1964. Subcontractor shall comply with and agrees to be bound by all applicable Federal, State, and local laws and regulations, including, but not limited to, all Fair Labor Standards Act provisions and California Labor Code provisions covering the work. Upon request, Subcontractor agrees to submit certified payroll reports to contractor no later than three (3) working days after labor has been paid.
- (f) In addition, SUBCONTRACTOR and its lower tier subcontractors, suppliers, vendors, and employees shall comply with the terms of any Project Labor Agreement that may apply to the Project.
- (g) The price to be paid under this AGREEMENT shall be deemed full compensation for compliance with this Section XIV, and no further compensation shall be afforded for such compliance.
- (h) The Contractor has entered into labor agreements with the following:
 - a. Operating Engineers Local Union No. 3 of the International Union of Operating Engineers, AFL-CIO
 - b. Northern California District Council of Laborers Affiliated with Laborers' International Union of North America AFL-CIO
 - c. Plumbers U.A. Local Union 467

XV. MISCELLANEOUS PROVISIONS

- (a) SUBCONTRACTOR shall not sublet, assign or transfer this AGREEMENT, or any part thereof, without the prior written consent of CONTRACTOR.
- (b) This AGREEMENT shall be governed by and construed in accordance with the Laws of the State of California.
- (c) If any term of this AGREEMENT is held by a court of competent jurisdiction to be void or unenforceable, the remainder of the AGREEMENT shall remain in full force and effect.
- (d) ***This AGREEMENT shall renew automatically at the end of each calendar year, unless written notice of termination is given by either party to the other of the intent to terminate this AGREEMENT at least forty-five (45) days prior to the end of the calendar year. If such notice of termination is timely and properly given, this Agreement shall terminate at 11:59 PM PST, on December 31st of the year in which such notice is given. The parties' obligations under this AGREEMENT, all WORK AUTHORIZATION FORM(s), and SUBCONTRACT DOCUMENTS, existing prior to the time that this AGREEMENT terminates pursuant to this***

paragraph shall be unaffected, until fully completed.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

SUBCONTRACTOR

CONTRACTOR

PRESTON PIPELINES, INC.

By: _____

By: _____

Title: _____

Title: _____

Address: _____

Address: 133 Bothelo Avenue

City: _____ State: _____ Zip: _____

City: Milpitas State: CA Zip: 95035

License no. (required): _____

License no. (required): 367660

NOTICE: THE USE OF THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES. YOU SHOULD CONSULT WITH AN ATTORNEY AND OBTAIN INDEPENDENT LEGAL ADVICE BEFORE YOU USE THIS DOCUMENT. NO WARRANTY IS MADE CONCERNING THE APPROPRIATENESS OR LEGAL EFFECTIVENESS OF THIS AGREEMENT OR ANY OF ITS TERMS.

LEGAL NOTICE REQUIRED BY BUSINESS & PROFESSIONS CODE SECTION 7030: CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTOR'S STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN TEN YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACT MAY BE REFERRED TO THE REGISTRAR, CONTRACTOR'S STATE LICENSE BOARD, P. O. BOX 26000, SACRAMENTO, CALIFORNIA 95826.

\\Sfdata\Conversion\0841-0001\M\183496.doc

CALIFORNIA LABOR CODE PROVISIONS

Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815

1771. Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works. This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

1775. (a) (1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

(2) (A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

(i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.

(B) (i) The penalty may not be less than ten dollars (\$10) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) The penalty may not be less than twenty dollars (\$20) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or

subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

(iii) The penalty may not be less than thirty dollars (\$30) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.

(C) When the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section.

(D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

(E) The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

(3) Upon becoming aware of the failure of the

subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

(4) Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.

(c) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.

1776. (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fees and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.

(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the

street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(h) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(i) The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

1777.5. (a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

(b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

(1) The apprenticeship standards and apprentice agreements under which he or she is training.

(2) The rules and regulations of the California Apprenticeship Council.

(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade

on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Chief of the Division of Apprenticeship Standards, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Chief of the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds

that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(l) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m) (1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract. (2) At the conclusion of the 2002-03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Division of Apprenticeship Standards for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

(A) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.

(B) If there are two or more approved

multiemployer apprenticeship programs serving the same craft or trade and geographic area for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices registered in each program.

(C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of the Division of Apprenticeship Standards.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, all money in the Apprenticeship Training Contribution Fund is hereby continuously appropriated for the purpose of carrying out this subdivision and to pay the expenses of the Division of Apprenticeship Standards.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000).

(p) All decisions of an apprenticeship program under this section are subject to Section 3081.

1813. The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

1815. Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and

notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay.