



# STANDARD FORM OF AGREEMENT BETWEEN GENERAL CONTRACTOR AND SUBCONTRACTOR

amended November 2, 2007

Preston Pipelines, Inc.  
General Engineering Contractor

Job Name

## I. PROJECT DESCRIPTION

| Project Location | Owner | General Contractor | Contractor | Subcontractor | Lender | Surety Com |
|------------------|-------|--------------------|------------|---------------|--------|------------|
|                  |       |                    |            |               |        |            |

This AGREEMENT is entered into this date 17<sup>th</sup> day of October, 2008, by and between CONTRACTOR, Preston Pipelines, Inc., whose address is 133 Bothelo Avenue, Milpitas, CA 95035, and SUBCONTRACTOR hereinafter called SUBCONTRACTOR, whose address is ADDRESS.

## II. CONTRACT DOCUMENTS

- (a) "The Contract Documents" include this Agreement; the Agreement between General Contractor and the Owner (Prime) and any change order or Addenda setting forth any modifications or interpretations of any of said Documents.
- (b) The Contract Documents are fully incorporated in this Agreement. Subcontractor agrees to be bound to Preston Pipelines in the same manner and to the same extent as Preston Pipelines is bound to Owner under the Contract Documents. Where reference is made to Contractor in the Contract Documents, such reference shall be interpreted to apply to Subcontractor instead of Contractor. Subcontractor agrees to be bound by all notice and other procedural provisions of the Contract Documents to the same extent as Preston Pipelines is bound to Owner. In no event shall Subcontractor have any less of an obligation to Preston Pipelines with respect to its work than Preston Pipelines has to Owner.

## III. SCOPE OF WORK

- (a) SUBCONTRACTOR shall furnish all labor, material, supplies and equipment, and perform all work necessary to complete the following part or parts of the work of the CONTRACT DOCUMENTS in all respects as is therein required of Preston Pipelines, and all work incidental thereto, namely:

Put the scope here

all in accordance with the terms and conditions of the CONTRACT DOCUMENTS including the General Conditions, Drawings, Specifications and other Documents, which by reference, are made part of said CONTRACT DOCUMENTS all of which shall be considered part of the AGREEMENT by this reference thereto, and SUBCONTRACTOR agrees to be bound to PRESTON PIPELINES and OWNER by the terms and Provisions thereof.

- (b) PRESTON PIPELINES shall have the same rights and privileges against SUBCONTRACTOR herein as OWNER in the CONTRACT DOCUMENTS has against PRESTON PIPELINES.

## IV. AGREEMENT PRICE

- (a) PRESTON PIPELINES will pay SUBCONTRACTOR for the satisfactory performance of this AGREEMENT the sum of \$
- (b) PRESTON PIPELINES 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 PRESTON PIPELINES and within ten (10) days after PRESTON PIPELINES actually receives payment from OWNER on account of SUBCONTRACTOR'S work. PRESTON PIPELINES shall be entitled to withhold at its option ten percent (10%)

**Subcontractor: Subcontractor Name**

**Job Number:**

of each estimate until final payment and may withhold any payment until SUBCONTRACTOR has furnished PRESTON PIPELINES 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) PRESTON PIPELINES may in addition withhold from any payment or retention up to 150% of the amount of any disputed item, including without limitation, amounts PRESTON PIPELINES believes may be necessary to withhold to protect PRESTON PIPELINES from any potential 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 PRESTON PIPELINES is obligated by this AGREEMENT to pay as retention shall be paid within seven (7) days after receipt of retention by PRESTON PIPELINES, 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 PRESTON PIPELINES'S contract with OWNER. 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 PRESTON PIPELINES has posted securities in lieu of retention.
- (e) Notwithstanding any other term of this AGREEMENT, PRESTON PIPELINES 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, insurers, other subcontractors, or any other party responsible for payment.

**V. SUBCONTRACTOR'S OBLIGATIONS**

- (a) SUBCONTRACTOR acknowledges that it has read the CONTRACT DOCUMENTS and all plans and specifications and is familiar therewith and agrees to comply with and perform all provisions thereof applicable to SUBCONTRACTOR.
- (b) 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 PRESTON PIPELINES against all penalties by reason of nonobservance of any such provisions or regulations.
- (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 and the conduct thereof.
- (d) SUBCONTRACTOR shall remove from the premises, as often as directed by PRESTON PIPELINES, all rubbish and surplus material which may accumulate from the prosecution of said work and should SUBCONTRACTOR fail to do so, PRESTON PIPELINES 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 CONTRACT 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 PRESTON PIPELINES within twenty (20) working days of the award of a contract to SUBCONTRACTOR or per the specifications, whichever is less.
- (f) SUBCONTRACTOR acknowledges that it has conducted its own independent investigation of the wage rates to be paid and whether its work will be subject to prevailing wage requirements or the requirements of the Davis-Bacon Act and that it has not relied upon any statements or representations by PRESTON PIPELINES with respect to such

**Subcontractor: Subcontractor Name**

**Job Number:**

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 1735, 1771, 1775, 1776, 1777.5, 1777.6, 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 acknowledges and agrees that it has performed its own investigation as to the applicability of California prevailing wage laws, the Davis-Bacon Act, or any similar laws, regulations or contract requirements; 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 PRESTON PIPELINES 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 PRESTON PIPELINES may enjoy, PRESTON PIPELINES may withhold sufficient funds to protect PRESTON PIPELINES 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 there under to pay higher wages or incur additional costs that SUBCONTRACTOR contends that it did not anticipate.

(1) Labor Discrimination-The Subcontractor's attention is directed to Section 1735 of the California Labor Code. The Subcontractor agrees to comply with the provisions of said section that reads as follows:

"No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical handicap, mental condition, marital status or sex of such person, except as provided in Section 12940 of the Government Code, and every contractor for public works violating this section is subject to all penalties imposed for a violation of this chapter."

The Subcontractor's attention is further directed to Section 1777.6 of the California Labor Code, and the Subcontractor agrees to ensure compliance with the provisions of the said section which provides as follows:

"It shall be unlawful for an employer or a labor union to refuse to accept otherwise qualified employees as registered apprentices on any public works, on the ground of the race, religious creed, color, national origin, ancestry, sex or age, except as provided in Section 3077, of such employee."

- (g) SUBCONTRACTOR, as a part of the obligations assumed by it in this AGREEMENT, accepts exclusive liability for all taxes and contributions required of PRESTON PIPELINES 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 to furnish PRESTON PIPELINES 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, PRESTON PIPELINES 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 PRESTON PIPELINES against all liability in respect to said employees under said act or law.
- (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, ENGINEER, PRESTON PIPELINES,

**Subcontractor: Subcontractor Name**

**Job Number:**

or their duly authorized representatives for inspection of the work by SUBCONTRACTOR.

- (j) SUBCONTRACTOR shall provide safe and sufficient facilities for SUBCONTRACTOR'S own workmen, suppliers, and any other individuals for whom SUBCONTRACTOR is responsible.
- (k) SUBCONTRACTOR, within twenty-four (24) hours after receiving written notice from PRESTON PIPELINES, shall proceed promptly to remove from the site all materials and work which the ENGINEER 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 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 PRESTON PIPELINES warranty and guarantees to OWNER, 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 and shall promptly pay for all materials purchased and shall pay all workers each week and obtain and furnish PRESTON PIPELINES 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 PRESTON PIPELINES on site at all times during SUBCONTRACTOR'S performance with authority to act for SUBCONTRACTOR.
- (o) If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by SUBCONTRACTOR, its 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 PRESTON PIPELINES in sufficient detail and time to permit compliance with such laws by PRESTON PIPELINES, other subcontractors and employers on the site.
- (p) In the event of a dispute, SUBCONTRACTOR shall comply with PRESTON PIPELINES'S written directives and shall continue performance in accordance with Section IV(e).

**VI. PERFORMANCE OF WORK**

- (a) Time is of the essence with respect to this AGREEMENT. SUBCONTRACTOR shall commence work promptly upon notice by PRESTON PIPELINES and shall prosecute the same diligently, continuously and at a speed that will not cause delay in the progress of PRESTON PIPELINES'S work or the work carried on by other subcontractors or OWNER, PRESTON PIPELINES may require SUBCONTRACTOR to prosecute in preference to other parts of the work such part or parts as PRESTON PIPELINES may specify. The AGREEMENT completion time is

Place time completion here.

- (b) SUBCONTRACTOR at PRESTON PIPELINES'S request and at the time specified in such request shall submit to PRESTON PIPELINES progress, procurement and labor-hour completion schedules, satisfactory in form and content to PRESTON PIPELINES and upon PRESTON PIPELINES'S acceptance of the schedules shall prosecute the work in accordance therewith.
- (c) To secure performance by SUBCONTRACTOR and any funds expended by PRESTON PIPELINES hereunder, PRESTON PIPELINES 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 PRESTON PIPELINES. SUBCONTRACTOR shall be responsible for any damage, inconvenience, or increase of costs arising directly or indirectly from failure of SUBCONTRACTOR to observe the same. PRESTON PIPELINES shall have the right to make changes in the plans and specifications, and SUBCONTRACTOR on notice thereof shall be governed thereby. Allowance for extra work and deductions for omissions shall be by mutual agreement between

**Subcontractor: Subcontractor Name**

**Job Number:**

PRESTON PIPELINES and SUBCONTRACTOR or determined in accordance with procedures specified in the CONTRACT DOCUMENTS. No changes are to be made however except upon a prior written order from PRESTON PIPELINES and PRESTON PIPELINES 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 PRESTON PIPELINES, 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.

## **VII. DELAYS**

- (a) Should OWNER withhold damages for delay, whether liquidated damages or otherwise, against PRESTON PIPELINES because of any delay arising out of or in connection with SUBCONTRACTOR or its Sub-Subcontractors or suppliers, SUBCONTRACTOR shall reimburse PRESTON PIPELINES for such damages. PRESTON PIPELINES and SUBCONTRACTOR agree that it would be impossible for PRESTON PIPELINES to calculate the actual loss caused by such a failure. Should the SUBCONTRACTOR fail to complete work or portions thereof, which creates a delay to the completion of the project, the parties agree that PRESTON PIPELINES will suffer damages, and the SUBCONTRACTOR shall therefore pay to PRESTON PIPELINES liquidated damages and not as a penalty in the amounts as listed below for each calendar day the SUBCONTRACTOR fails to complete the Work. It is agreed and understood that this sum represents the best estimate of PRESTON PIPELINES and SUBCONTRACTOR as to the loss, which would be sustained by PRESTON PIPELINES and shall not be deemed to be a penalty or forfeiture.
- (b) Except as provided in subparagraph (d) and (e), PRESTON PIPELINES shall not be liable to SUBCONTRACTOR for delay to SUBCONTRACTOR'S work by the act, neglect or default of PRESTON PIPELINES, OWNER, , its architects and/or engineers, or by reason of strikes, lockouts, or on account of any acts of God, or any other cause beyond PRESTON PIPELINES'S control; but PRESTON PIPELINES will cooperate with SUBCONTRACTOR to enforce any just claim against OWNER, its architects and/or engineers for delay.
- (c) Should SUBCONTRACTOR be delayed in its work by PRESTON PIPELINES, then PRESTON PIPELINES shall owe SUBCONTRACTOR therefore only an extension of time for completion equal to the delay caused and then only if a written claim for delay is made to PRESTON PIPELINES within forty-eight (48) hours from the time of the beginning of the delay.
- (d) In the event that PRESTON PIPELINES in its sole discretion shall seek compensation from OWNER, as a result of any delay, SUBCONTRACTOR shall be entitled to an equitable portion of any amount recovered by PRESTON PIPELINES less an equitable share of the cost of pursuing said claim. This provision shall not be construed to require PRESTON PIPELINES to pursue any claim against OWNER or any other party.
- (e) To the greatest extent permitted by law, the remedies set forth at paragraphs (a) (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 ("DELAY AND DISRUPTION CLAIMS"), regardless of cause; notwithstanding the foregoing, however, to the extent that the CONTRACT DOCUMENTS expressly authorizes PRESTON PIPELINES to recover from OWNER for DELAY AND DISRUPTION CLAIMS, then SUBCONTRACTOR shall have the same rights and ability, but only to the same extent and no greater, to recover from PRESTON PIPELINES for such DELAY AND DISRUPTION CLAIMS.

## **VIII. INDEMNITY**

- (a) To the greatest extent permitted by law, SUBCONTRACTOR shall defend, indemnify and hold harmless PRESTON PIPELINES, OWNER, and their architect and engineer, 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, fines, actions by governmental authorities, 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 actual or alleged actions or omissions by SUBCONTRACTOR or any of its subcontractors, suppliers, vendors, employees, or persons for whom it is responsible, or (iii) to the project(s) to which the

**Subcontractor: Subcontractor Name**

**Job Number:**

AGREEMENT relates (all collectively referred to as "LIABILITIES").

Notwithstanding the foregoing, if the "Contract Documents" imposes 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 PRESTON PIPELINES as PRESTON PIPELINES owes to OWNER.

The obligations of this Section VIII shall apply notwithstanding the passive or active negligence or other fault of the Indemnitees; however, obligations specified above shall not extend to any LIABILITIES arising out of the sole negligence or willful misconduct of the person to be indemnified, defended, or held harmless. The obligations of this Section VIII are in no way limited or relieved by SUBCONTRACTOR having obtained insurance, by the provisions of Section IX and/or to the extent permitted by law by the provisions of any workers compensation law, regulation, or arrangement.

**IX. INSURANCE**

Before performing work or conducting any activities at the site of the Project, SUBCONTRACTOR shall comply with all of the insurance provisions set forth below. Commencing to perform work constitutes a representation by SUBCONTRACTOR that it is in compliance with this Section IX.

(a) **Liability Insurance.** SUBCONTRACTOR shall carry primary Commercial General Liability insurance covering all operations by or on behalf of SUBCONTRACTOR, and actions or omissions by SUBCONTRACTOR, providing insurance for bodily injury and property damage liability for the limits of liability indicated below and including but not limited to coverage for:

- (1) premises and operations
- (2) products and completed operations
- (3) contractual liability insuring tort obligations assumed by SUBCONTRACTOR in this AGREEMENT
- (4) broad form property damage (including completed operations)
- (5) explosion, collapse and underground hazards (including subsidence and any other earth movement)
- (6) personal injury liability

The limits of liability shall be not less than the amounts required of PRESTON PIPELINES under the CONTRACT DOCUMENTS, but in no event less than:

- \$1,000,000 each occurrence (combined single limit for bodily injury and property damage)
- \$2,000,000 for personal injury liability
- \$2,000,000 aggregate for products-completed operations
- \$2,000,000 general aggregate
- \$1,000,000 professional liability

The general aggregate limit shall apply separately to SUBCONTRACTOR'S work under this AGREEMENT. For subcontracts in excess of \$1,000,000 an additional \$5,000,000 Excess Liability Insurance policy shall be maintained over the General Liability coverage shall, at a minimum, include coverage for the exposures set forth in items 1-6 above. In addition, SUBCONTRACTOR shall maintain primary and excess products liability and completed operations coverage through the expiration of the period for filing actions based on patent deficiencies as set forth in Section 337.1 of the California Code of Civil Procedure.

PRESTON PIPELINES, its officers, directors and employees, OWNER shall be named as additional insureds under the Commercial General Liability policy and Excess Liability policy and such insurance afforded the additional insureds shall apply as primary insurance. Any other insurance maintained by PRESTON PIPELINES and OWNER shall not be called upon to contribute with this insurance. Coverage for PRESTON PIPELINES, its officers, directors and employees and OWNER as additional insureds shall be provided by an endorsement providing coverage at least as broad as Additional Insured (Form B) endorsement form **CG 2010 1185** (1985 version) as published by the Insurance Services Office (ISO) (or equivalent). Additional insured endorsements shall be provided for three years following project completion.

**Subcontractor: Subcontractor Name**

**Job Number:**

General liability insurance shall be written on a form at least as broad as ISO occurrence form CG 0001. PRESTON PIPELINES reserves the right, in its sole and subjective discretion, to reject an insurer and require SUBCONTRACTOR to obtain policies from another insurer.

- (b) **Workers Compensation and Employer's Liability Insurance.** Workers Compensation insurance shall be provided as required by any applicable law or regulation. Employer's Liability insurance shall be provided in amounts not less than:

\$1,000,000 each accident for bodily injury by accident  
\$1,000,000 policy limit for bodily injury by disease  
\$1,000,000 each employee for bodily injury by disease

If there is an exposure of injury to SUBCONTRACTOR'S employees under the U.S. Longshoreman and Harbor Workers' Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims. SUBCONTRACTOR, on its own behalf and on behalf of its insurers and other providers of coverage, waives any and all right of recovery and right to subrogation in connection with matters to which such insurance applies.

- (c) **Claims Made/Self Insurance Provisions.** SUBCONTRACTOR shall not provide general liability insurance under any Claims Made General Liability form without the express prior written consent of PRESTON PIPELINES. Any self-insurance program providing coverage in excess of \$25,000 per occurrence requires the prior written consent of PRESTON PIPELINES.
- (d) **Automobile Liability Insurance.** SUBCONTRACTOR shall carry automobile liability insurance, including coverage for all owned hired and non-owned automobiles. The limits of liability shall be not less than \$5,000,000 combined single limit each accident for bodily injury and property damage. Automobile Liability Insurance shall be provided pursuant to a coverage form at least as broad as ISO form CA 0001
- (e) **Evidence of Coverage, Certificates, and Insurers.** Certificates of insurance shall set forth deductible amounts applicable to each policy and all exclusions or limitations not set forth in ISO Commercial General Liability Form CG 0001. PRESTON PIPELINES may allow deductible provisions if SUBCONTRACTOR is willing to increase retentions accordingly. Standard ISO Form CG 0001 exclusions will also be allowed. Allowance of any additional exclusions or coverage limiting endorsements is at the discretion of PRESTON PIPELINES, and SUBCONTRACTOR'S bid shall be subject to adjustment to compensate for the existence of such exclusions.

Regardless of the allowance of exclusions, coverage limitations or deductibles by PRESTON PIPELINES, SUBCONTRACTOR shall be responsible for any deductible amount or any loss arising out of coverage denials by its insurance carrier(s). The certificates of insurance shall provide that there will be no cancellation or reduction of coverage without thirty (30) day's prior written notice to PRESTON PIPELINES.

Any acceptance of insurance certificates by PRESTON PIPELINES shall in no way limit or relieve SUBCONTRACTOR of its duties and responsibilities under this AGREEMENT including the duty to indemnify and hold harmless PRESTON PIPELINES under other provisions hereof. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve SUBCONTRACTOR for liability in excess of such coverage nor shall it preclude PRESTON PIPELINES from taking such other actions as is available to it under any other provision of this AGREEMENT or law. If higher limits or other forms of insurance are required in the CONTRACT DOCUMENTS, SUBCONTRACTOR will comply with such requirements.

SUBCONTRACTOR shall provide, as evidence of coverage, actual additional insured endorsements. SUBCONTRACTOR shall take such steps as are necessary to assure SUBCONTRACTOR'S compliance with its obligations. Should any insurance policy lapse or be canceled during the contract period, SUBCONTRACTOR shall, prior to the effective expiration or cancellation date, furnish PRESTON PIPELINES with evidence of renewal

**Subcontractor: Subcontractor Name**

**Job Number:**

or replacement of the policy. Failure to continuously satisfy insurance requirements as herein provided is a material breach of contract. In the event SUBCONTRACTOR fails to maintain any insurance coverage required, PRESTON PIPELINES may, but is not required to, maintain such coverage and charge the expense to SUBCONTRACTOR or terminate this contract.

All insurance (including, but not limited to general liability, automobile liability, and workers' compensation and employer's liability insurance) shall be provided by a California admitted carrier with an A.M. Best's Rating of A- or better, financial capacity VII or greater (except for State Fund of California for workers' compensation coverage); however, in PRESTON PIPELINES'S sole subjective discretion, PRESTON PIPELINES may consider accepting coverage from a non-California admitted carrier with an A.M. Best rating of A or better, financial capacity of XII or better. Additional insured endorsements shall be maintained and furnished to PRESTON PIPELINES for three years following completion of the Project.

SUBCONTRACTOR shall not provide any liability coverage under a "wasting" policy or other form of policy that reduces the amount of coverage, in whole or in part, by amounts expended on defense of claims.

- (f) **Hazardous Materials.** If SUBCONTRACTOR and/or its subcontractors or suppliers, regardless of tier, perform remediation of hazardous materials or if their operations create an exposure to hazardous materials as those terms are defined in federal, state or local law, SUBCONTRACTOR and its subcontractors and suppliers must obtain a "Contractors Pollution Liability" policy with limits not less than \$1,000,000 per occurrence and not less than \$2,000,000 aggregate for Bodily Injury, Personal Injury and Property Damage, naming PRESTON PIPELINES as an additional insured. If SUBCONTRACTOR or its subcontractors or suppliers haul hazardous material (including, without limitation, waste), the policy must extend pollution coverage to the transportation of hazardous materials or pollutants by waste hauling vehicles. If SUBCONTRACTOR is subject to the Motor Carrier Act of 1980, the Motor Carrier Act endorsement MCS-90 must be obtained and attached to the policy.
- (g) **Professional Liability.** Any SUBCONTRACTOR performing work that includes any design/build, land survey, architect, engineer, general manager, and consultant work or services shall obtain a Professional Liability Insurance Policy. Design/build work includes, without limitation, design/build work with respect to mechanical, electrical, structural, plumbing and fire sprinkler systems. Evidence of coverage in the form of a Certificate of Insurance shall be provided prior to the start of the project. SUBCONTRACTOR shall obtain coverage for a minimum of three years following completion of the project, either through continued purchase of policies for such years or through purchase of an extended reporting period. If OWNER or PRESTON PIPELINES elects to purchase a project design policy, SUBCONTRACTOR'S policy shall be endorsed to indicate that SUBCONTRACTOR'S policy shall provide coverage once the project design policy has been exhausted.
- (h) **Riggers Liability.** Should SUBCONTRACTOR'S work involve the moving, lifting, lowering, rigging or hoisting of property or equipment, SUBCONTRACTOR shall carry Rigger's Liability Insurance to insure against physical loss or damage to the property or equipment.
- (i) **Aircraft Liability.** If SUBCONTRACTOR (or its subcontractors or suppliers, regardless of tier) use any owned, leased, chartered or hired aircraft of any type in the performance of this contract, they shall maintain aircraft liability insurance in an amount of not less than \$10,000,000 per occurrence, including Passenger Liability. Evidence of coverage in the form of a certificate of insurance shall be provided prior to the start of the Project.
- (j) **Waiver of Subrogation.** PRESTON PIPELINES and SUBCONTRACTOR waive all rights against each other for loss or damage to the extent reimbursed by any property or equipment insurance applicable to the work, except such rights as they may have to the proceeds of such insurance. If any applicable policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.
- (k) **Work Near Railroads.** If SUBCONTRACTOR (including any lower tier subcontractor or supplier) performs any work or conducts any operations within fifty feet of any railroad (including any light rail, fixed rail or other rail system), SUBCONTRACTOR shall obtain an endorsement of its Commercial General Liability Policy to delete any

**Subcontractor: Subcontractor Name**

**Job Number:**

exclusion, including the "Contractual Liability" exclusion, for work performed within fifty feet of a railroad.

- a. A copy of such endorsement shall be provided to PRESTON PIPELINES prior to any work or operations by SUBCONTRACTOR within fifty feet of any railroad.

- (l) **Requirements for Sub-subcontractors, Vendors, and Suppliers.** SUBCONTRACTOR shall ensure that all tiers of its subcontractors, vendors and suppliers shall maintain insurance in like form and amounts, shall comply with the additional insured requirements as set forth above, and shall provide PRESTON PIPELINES with evidence of insurance prior to commencing work.

- (m) **No Waiver.** Failure of PRESTON PIPELINES to enforce in a timely manner any of the provisions of this Article IX shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of this AGREEMENT.

## **X. 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 PRESTON PIPELINES and OWNER from all claims, encumbrances, and liens growing out of the performance of this AGREEMENT, and 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, OWNER or PRESTON PIPELINES, 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 OWNER and PRESTON PIPELINES adequate security to insure compliance with this provision.

## **XI. BONDS**

SUBCONTRACTOR, upon request, shall furnish to PRESTON PIPELINES a performance bond and a labor and a materials payment bond in amount, form and substance and with a surety or sureties satisfactory to PRESTON PIPELINES. PRESTON PIPELINES will pay the cost of such bond, up to one percent (1%) of the total AGREEMENT amount.

## **XII. TERMINATION**

- (a) Should SUBCONTRACTOR 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, PRESTON PIPELINES 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 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 PRESTON PIPELINES in finishing the work.

- (b) If the amount expended by PRESTON PIPELINES under (a)(1) above or the cost of completing the work under (a)(3) above exceeds the unpaid balance of the AGREEMENT price herein stated, SUBCONTRACTOR shall pay PRESTON PIPELINES 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, PRESTON PIPELINES 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 default in any of the provisions of this AGREEMENT and should PRESTON PIPELINES 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 XI above, SUBCONTRACTOR and its surety agree

**Subcontractor: Subcontractor Name**

**Job Number:**

to pay PRESTON PIPELINES 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, PRESTON PIPELINES 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 PRESTON PIPELINES. 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 III(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 PRESTON PIPELINES 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 PRESTON PIPELINES under this Section XII 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 PRESTON PIPELINES may have against SUBCONTRACTOR for breach of this AGREEMENT or default hereunder, afforded by state or federal law.

### **XIII. 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, applicable local, disadvantaged or minority preference or hiring programs, and with the requirements of the American Insurance Association whether or not provided for by the plans, specifications, general conditions or other contract documents without additional charge or expense to PRESTON PIPELINES. SUBCONTRACTOR agrees to hold harmless and indemnify PRESTON PIPELINES from and against any and all fees, including attorneys' fees, 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 shall comply with all provisions of "Proposition 65" (California State Drinking Water Act of 1986, California statutes) which shall include, but not be limited to, posting with the prior written submission to, at the time submittals are made and with the written permission of PRESTON PIPELINES, any required notices. SUBCONTRACTOR shall not use or bring on to the project any of the chemicals or compounds listed by the California State Attorney General from time to time under the provisions of Proposition 65 (the List) without delivering a clear written notice, at the time submittals are written, to PRESTON PIPELINES 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 such list without specific advanced written notice having first been delivered to PRESTON PIPELINES prior to SUBCONTRACTOR becoming actually contractually obligated to purchase or take delivery thereof from its suppliers, and then only to the extent PRESTON PIPELINES 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 PRESTON PIPELINES and OWNER 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 PRESTON PIPELINES, whether such program is a stand-alone program or is a program modified to conform to OWNER'S safety program. All personnel of SUBCONTRACTOR, its subcontractors and suppliers are required when appropriate to wear hard hats, safety vests, and any other necessary safety garments or devices, while visiting or

**Subcontractor: Subcontractor Name**

**Job Number:**

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 PRESTON PIPELINES, 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 PRESTON PIPELINES'S prior record or history. The foregoing defense and indemnity obligation shall apply notwithstanding negligence or fault on the part of the persons to be indemnified, to the greatest extent permitted by Section 2782 of the Civil Code. Failure to comply with safety requirements may result in termination under Section XII of this AGREEMENT.

#### **XIV. CLAIMS**

- (a) If any dispute arises between PRESTON PIPELINES 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 ten (10) days after commencement of the disputed work. SUBCONTRACTOR'S failure to give written notice within ten (10) days constitutes an agreement by SUBCONTRACTOR that it will receive no extra compensation for the disputed work.
- (b) Notwithstanding the foregoing, if the CONTRACT DOCUMENTS contains notice provisions that are more stringent than those contained in this AGREEMENT, then SUBCONTRACTOR shall comply with the provisions of the CONTRACT DOCUMENTS and, in addition, shall give PRESTON PIPELINES sufficient notice to comply with the provisions of the CONTRACT 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 PRESTON PIPELINES, SUBCONTRACTOR'S sole and exclusive remedy shall be a claim for that portion of the additional compensation received by PRESTON PIPELINES from OWNER on account of such matters as is equitable under all of the circumstances. SUBCONTRACTOR agrees to be bound by OWNERS determination and by the determination in any proceeding in which PRESTON PIPELINES and OWNER are involved, regardless of whether SUBCONTRACTOR was a party to such proceeding. SUBCONTRACTOR and PRESTON PIPELINES 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 PRESTON PIPELINES on behalf of SUBCONTRACTOR. Nothing herein shall require PRESTON PIPELINES to pursue such a claim on behalf of SUBCONTRACTOR. Payment of any and all claims shall be subject to the terms of Section IV of this AGREEMENT.

#### **XV. DISPUTE RESOLUTION**

- (a) SUBCONTRACTOR and PRESTON PIPELINES agree that in the event that PRESTON PIPELINES and SUBCONTRACTOR 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. The option to arbitrate or use other alternative dispute resolution procedures is in the sole discretion of PRESTON PIPELINES.

#### **XVI. LABOR RELATIONS**

- (a) SUBCONTRACTOR acknowledges that PRESTON PIPELINES is a signatory to one or more collective bargaining agreement(s). Prior to the start of any WORK, SUBCONTRACTOR shall contact PRESTON PIPELINES and verify the collective bargaining agreements that will be applicable to the PROJECT. SUBCONTRACTOR and all lower tier subcontractors shall perform all work covered by PRESTON PIPELINES'S collective bargaining agreement(s) applicable to the PROJECT under the terms of said agreement(s) and shall become signatory to the applicable agreement(s) as a condition of performing work. PRESTON PIPELINES is signatory to the Laborer's Union and the Operating Engineers Union. In addition, SUBCONTRACTOR and its subcontractors, suppliers, vendors, and employees shall comply with the terms of any Project Labor Agreement that may apply to the Project. Should PRESTON PIPELINES at its sole discretion establish a reserve gate system on the project, SUBCONTRACTOR warrants that its employees and suppliers will use the reserve gate(s) designated for their use by PRESTON PIPELINES. SUBCONTRACTOR further agrees to perform notwithstanding the presence of pickets at gate(s) reserved for SUBCONTRACTOR'S employees and suppliers. Failure to perform in accordance with this provision shall constitute a material breach of contract. The price set forth herein shall be deemed full compensation for compliance with this Section XVI, and no further compensation shall be afforded for such compliance.

#### **XVII. MISCELLANEOUS PROVISIONS**

- (a) SUBCONTRACTOR shall not sublet, assign or transfer this AGREEMENT, or any part thereof, without the prior

**Subcontractor: Subcontractor Name**

**Job Number:**

written consent of PRESTON PIPELINES.

(b) This AGREEMENT contains the entire AGREEMENT between the parties and supersedes all prior or contemporaneous written or oral communications between the parties. Any additions thereto or changes thereafter shall be in writing and shall not be binding unless the same are in writing.

(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's terms shall remain in full force and effect and shall not be affected.

*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.**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name & Title: \_\_\_\_\_

Print Name & Title: **Josh Young, Area Mgr.**

Address:

Address: **133 Bothelo Ave**

City:

City: **Milpitas, CA 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. **00037746.DOC**

**LABOR CODE SECTIONS 1735, 1771, 1775, 1776, 1777.5, 1777.6, 1813 AND 1815**

1735. A contractor shall not discriminate in the employment of persons upon public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code. Every contractor for public works who violates this section is subject to all the penalties imposed for a violation of this chapter.

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) The contractor and any subcontractor under him or her 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 him or her or, except as provided in subdivision (b), by any subcontractor under him or her. The amount of this penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

(1) 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 upon being brought to the attention of the contractor or subcontractor.

(2) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations. The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion. 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 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 shall 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 (Section 175a of Title 29 of the United States Code) 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 fee 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 shall have 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), Division 7, Title 1, Government Code) and the Information Practices Act of 1977, (Title 1.8 (commencing with Section 1798), Part 4, Division 3, 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 (1) the apprenticeship standards and apprentice agreements under which he or she is training or (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 will 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 each fiscal year, 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 administering this subdivision.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which fund 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 in administering this subdivision.

**Subcontractor: Subcontractor Name**

**Job Number:**

(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.

1777.6. An employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of this code and Section 12940 of the Government Code.

1813. The contractor 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 workman employed in the execution of the contract by the contractor or by any subcontractor for each calendar day during which the workman 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 therein 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 officer of the state or political subdivision who is authorized to pay the contractor money due him or her under the contract.

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 ½ times the basic rate of pay.

**Subcontractor: Subcontractor Name**

**Job Number:**