



# STANDARD FORM OF AGREEMENT BETWEEN GENERAL CONTRACTOR AND SUBCONTRACTOR

*Amended February 2019*

Preston Pipelines, Inc.  
General Engineering Contractor

**Job #**      **Job Name:**

## I. PROJECT DESCRIPTION

### 20 Day Preliminary Notice Information

**Project Name:**

**Job Location:**

**Owner:**

**General Contractor:**

**Contractor:** Preston Pipelines, Inc.  
133 Bothelo Avenue  
Milpitas, CA 95035  
Phone: (408) 262-1418, Fax: (408) 262-1870

**Subcontractor:**

**Lender:**

**Bonding Co.:**

**Cost Code:**

**Commitment:**

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This Standard Form Of Agreement (the "AGREEMENT") is entered into this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, between Preston Pipelines, Inc. ("PRESTON PIPELINES"), whose address is 133 Bothelo Avenue, Milpitas, CA 95035, and \_\_\_\_\_, hereinafter called SUBCONTRACTOR, whose address is \_\_\_\_\_.

**II. CONTRACT DOCUMENTS**

- (a) The "Contract Documents" include, without limitation, the plans, specifications, all general and special conditions, drawings, specifications, addenda, bulletins, amendments, modifications, and all other documents forming or by reference made a part of the contract between the project owner ("OWNER") and the GENERAL CONTRACTOR, as well as between PRESTON PIPELINES and the person or entity that hired it in connection with the project referred to above (collectively, the "PRIME CONTRACT").
- (b) The CONTRACT DOCUMENTS are fully incorporated into this AGREEMENT by reference. SUBCONTRACTOR agrees to be bound to PRESTON PIPELINES in the same manner and to the same extent as PRESTON PIPELINES is bound under the CONTRACT DOCUMENTS. In no event shall SUBCONTRACTOR have any less of an obligation to Preston Pipelines with respect to SUBCONTRACTOR's work than PRESTON PIPELINES owes under the CONTRACT DOCUMENTS to the person or entity that hired it in connection with the PROJECT. In addition to any other rights and privileges that it may have pursuant to this AGREEMENT or under applicable law, PRESTON PIPELINES shall enjoy the rights and privileges against SUBCONTRACTOR that person or entity that hired PRESTON PIPELINES in connection with the project referred to above (the "PROJECT") has against PRESTON PIPELINES.
- (c) The parties intend that all terms of this AGREEMENT be considered as complementary. However, in the event of a conflict between or among the terms of this AGREEMENT or the CONTRACT DOCUMENTS, the higher standard or greater responsibility owed by SUBCONTRACTOR shall prevail.

**III. SCOPE OF WORK**

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:

Enter Scope:

all in strict accordance with the terms and conditions of this AGREEMENT and the CONTRACT DOCUMENTS.

**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 monthly progress payments for SUBCONTRACTOR's work actually and satisfactorily completed, subject to additions and deductions as herein provided, payable as work progresses, in sums equal to ninety (90) percent of the labor, materials, equipment and

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services that have been placed in position, as reflected in PRESTON PIPELINES' application for payment and as approved by OWNER. Payment shall be made within seven (7) days after PRESTON PIPELINES actually receives payment from OWNER or General Contractor on account of SUBCONTRACTOR's work, provided all other conditions hereof have been satisfied and there are no grounds for withholding. SUBCONTRACTOR as a condition to payment agrees to provide waivers and releases for itself and its subcontractors and suppliers regardless of tier, as well as other evidence of payment to such persons, in a form satisfactory to PRESTON PIPELINES, including without limitation, payroll affidavits, receipts, vouchers or other documentation(see section V., Subcontractor Obligations), demonstrating that SUBCONTRACTOR has paid for all labor, equipment, materials, services, taxes or other charges in any way relating to SUBCONTRACTOR's work and obligations in connection with the PROJECT. PRESTON PIPELINES shall be entitled to withhold at its option ten percent (10%) of each estimate until final payment, or the maximum permitted by law, whichever is less, 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 General Contractor and or OWNER, and receipt of Conditional/Unconditional Waivers and Releases from SUBCONTRACTOR and its subcontractors and suppliers, regardless of tier. Final payment to SUBCONTRACTOR shall be made ten (10) days after the entire work required by the CONTRACT DOCUMENTS has been fully completed, with funds received by PRESTON PIPELINES from General Contractor or OWNER in final payment for work under the prime contract. PRESTON PIPELINES, at its option, may make payments by joint check. Payment shall not constitute acceptance or acknowledgement of completion with regard to any part of SUBCONTRACTOR's work. Unless otherwise stated, prices include all taxes, including without limitation, any amounts owed as a result of increase or changes in taxes that take effect during the course of the PROJECT.

- (c) As a cumulative remedy, PRESTON PIPELINES may in addition withhold from any payment or retention up to 150% of the amount of any disputed item, and/or retroactively nullify all or part of any payment, including without limitation, amounts PRESTON PIPELINES believes may be necessary to protect PRESTON PIPELINES from: (1) loss from defective work not remedied; (2) claims that have been asserted or are reasonably likely to be asserted; (3) failure of SUBCONTRACTOR to make payments to creditors; (4) damage to PRESTON PIPELINES or another person; (5) penalties assessed against PRESTON PIPELINES, General Contractor, or SUBCONTRACTOR to comply with laws or requirements; and (6) any other ground for withholding payment allowed by law, this AGREEMENT or the CONTRACT DOCUMENTS, including, without limitation, 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' contract with General Contractor, OWNER, or other

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party. 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 and or General Contractor 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, General Contractor, insurers, other subcontractors, or any other party responsible for payment.

**V. SUBCONTRACTOR'S OBLIGATIONS**

- (a) SUBCONTRACTOR certifies and agrees that it is has read and is fully familiar with all of the terms of the CONTRACT DOCUMENTS, all of which SUBCONTRACTOR acknowledges have been made available to it, is familiar with the location of the job site, and the conditions under which the work is to be performed, and enters into this AGREEMENT based upon its investigation of all such matters and is not relying on any opinions or representations of PRESTON PIPELINES.
- (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 submittal copies 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 CONTRACT DOCUMENTS, whichever is earlier.
- (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

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requirements of the Davis-Bacon Act and that it has not relied upon any statements or representations by PRESTON PIPELINES 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 1735, 1771, 1775, 1776, 1777.5, 1777.6, 1813 and 1815 are attached hereto as Exhibit C 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 and be bound to all applicable laws, regulations or other requirements including without limitation, laws concerning payment of wages and conditions of employment, California Civil Code 2750.5 and 2180.4 concerning classification of employees and contractors, including but not limited to Subcontractor's lower-tier subcontractors, suppliers, truckers, or any other party for whom Subcontractor is responsible, 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.

- (g) Labor Discrimination - SUBCONTRACTOR's attention is directed to Section 1735 of the California Labor Code. 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

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Section 3077, of such employee.”

- (h) SUBCONTRACTOR, as a part of the obligations assumed by it in this AGREEMENT, and as an independent contractor, 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, including, without limitation, any attorney’s fees, consultant fees, or other costs incurred by PRESTON PIPELINES.
- (i) 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.
- (j) SUBCONTRACTOR shall provide safe and sufficient facilities to OWNER, General Contractor, Engineer, PRESTON PIPELINES, or their duly authorized representatives for inspection of the work by SUBCONTRACTOR.
- (k) SUBCONTRACTOR shall provide safe and sufficient facilities for SUBCONTRACTOR’s own workmen, suppliers, and any other individuals for whom SUBCONTRACTOR is responsible.
- (l) 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.
- (m) SUBCONTRACTOR warrants that all materials furnished shall be new unless otherwise specified and that all work under this AGREEMENT shall be performed in a substantial, good and workmanlike manner, shall be of best quality, free from faults and defects, and in strict conformance with the CONTRACT DOCUMENTS. Any work not conforming to such requirements shall be deemed to be defective, at PRESTON PIPELINES’ election. This warranty is cumulative with any other warranty or remedy that may exist under applicable law or the CONTRACT DOCUMENTS. All warranties hereunder shall be deemed to be continuing in nature. Additionally, 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 General Contractor and or OWNER, but in no event for less than one year after notice of completion is recorded.
- (n) 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

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to efficiently and promptly prosecute said work and shall promptly pay for all materials and equipment purchased and shall pay all workers each week and obtain and furnish PRESTON PIPELINES weekly with two (2) copies of certified payroll upon request. Payments made to SUBCONTRACTOR shall be deemed to be held in trust for the benefit of PRESTON PIPELINES and of all persons who furnished labor, equipment and materials for or on behalf of SUBCONTRACTOR, as well as for the benefit of trust funds and apprenticeship programs to the extent of contributions or payments required in connection with the PROJECT.

- (o) SUBCONTRACTOR as a condition precedent to payment shall provide CONTRACTOR with a properly completed, approved "Subcontractor Payment Application." The properly completed "Subcontractor Payment Application" shall consist of, but is not limited to, properly completed and approved: 1) Schedule of Values, 2) only PRESTON PIPELINES approved/provided Conditional Waiver and Release Upon Progress Payment, 3) only PRESTON PIPELINES approved/provided Unconditional Waiver and Release Upon Progress Payment for previous payment, 4) Union Status Letters, 5) only PRESTON PIPELINES approved/provided Unconditional Waivers and Releases from all SUBCONTRACTORS' suppliers and subcontractors, 6) certified payroll (if required and pursuant to section (V)(n)), 7) any non-confidential documents requested by PRESTON PIPELINES in a form reasonably acceptable to Contractor to verify employment or contractor status of SUBCONTRACTOR or SUBCONTRACTOR's lower-tier subcontractors, truckers/haulers, suppliers, and any other party for whom SUBCONTRACTOR is responsible, and 8) any other document specifically named and required by the CONTRACT DOCUMENTS. Failure to properly complete the "Subcontractor Payment Application" will result in CONTRACTOR'S rejection of that Payment Application until SUBCONTRACTOR resubmits a properly completed application.
- (p) 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.
- (q) 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.
- (r) In the event of a dispute, SUBCONTRACTOR shall comply with PRESTON PIPELINES' written directives and shall continue performance in accordance with Section VI(e).
- (s) At all times during the course of construction, SUBCONTRACTOR at its own expense shall perform its work so as to maintain the site in a clean, safe and orderly condition. SUBCONTRACTOR shall remove, as often as directed by PRESTON PIPELINES, all rubbish and surplus material which may accumulate from the prosecution of its work, and should SUBCONTRACTOR fail to do so, PRESTON PIPELINES may, at its option, remove or remedy the same without further notice at SUBCONTRACTOR's expense. Upon completion of the work under this AGREEMENT, at its expense SUBCONTRACTOR shall remove from the

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site all hazardous materials, temporary structures, debris and waste incident to its operation and clean all surfaces, fixtures, equipment, etc., relative to the performance of this AGREEMENT.

- (t) If SUBCONTRACTOR uses PRESTON PIPELINES' equipment, materials, labor, supplies, services, or facilities, SUBCONTRACTOR shall reimburse PRESTON PIPELINES at a predetermined rate, except as otherwise provided herein. SUBCONTRACTOR shall conduct its own independent investigation and hereby assumes all responsibility for any physical damage to PRESTON PIPELINES' equipment, materials, supplies, or facilities. If SUBCONTRACTOR utilizes any of PRESTON PIPELINES' employees, SUBCONTRACTOR shall have full responsibility for all acts and omission of PRESTON PIPELINES' employees with regard to SUBCONTRACTOR's use or employment of them. SUBCONTRACTOR accepts any and all of PRESTON PIPELINES' equipment, materials, labor, supplies, services, or facilities "as is."

**VI. PERFORMANCE OF WORK**

- (a) **Time is of the essence with respect to this AGREEMENT.** SUBCONTRACTOR shall conform to PRESTON PIPELINES' progress schedule and all revisions thereto. SUBCONTRACTOR shall commence work promptly upon direction by PRESTON PIPELINES and shall prosecute its work diligently, continuously and at a speed that will not cause delay in the progress of PRESTON PIPELINES' work or the work carried on by other subcontractors, OWNER, or General Contractor. SUBCONTRACTOR shall coordinate its work with other persons involved in the PROJECT. If SUBCONTRACTOR fails to maintain its part of PRESTON PIPELINES' schedule, it shall, without additional compensation, accelerate the work as PRESTON PIPELINES may direct. PRESTON PIPELINES shall have complete control of the premises on which the work is to be performed and shall have the right to decide the sequence and priority of SUBCONTRACTOR's work and Subcontractor's employees, as compared with other work.
- (b) SUBCONTRACTOR at PRESTON PIPELINES' 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' acceptance of the schedules shall prosecute the work in accordance therewith.
- (c) 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 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.
- (d) All change orders shall constitute a contract document. Unit prices from SUBCONTRACTOR's bid will be utilized where, in PRESTON PIPELINES' sole discretion, PRESTON PIPELINES deems them to be applicable to change order work. If not covered by unit prices, a complete breakdown of the estimated costs for changed work is to be submitted to PRESTON PIPELINES for approval. If PRESTON PIPELINES does not

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agree with the additional costs submitted, PRESTON PIPELINES may, in its sole discretion, direct that the work be performed on a not-to-exceed time and material basis with SUBCONTRACTOR providing written information concerning such hours and material each day for Superintendent's review and verification. Refusal to perform directed additional or changed work on a time and material not-to-exceed basis shall constitute a material breach of contract. No change shall release or exonerate, in whole or in part, any bond or any surety on any bond, and no notice to any surety is required with regard to any change or other modification of this Agreement or the Contract Documents. Any Subcontractor or vendor generated work tickets, daily work records, delivery tickets, material tickets, trucking daily tags, dispatch tickets, or documents of every kind and nature whatsoever used to record work completed (altogether known as "Field Confirmations"), are for the sole purpose of verifying daily records of work. Notwithstanding any terms and conditions contained on Field Confirmations, Any Field Confirmations signed by a Contractor's representative shall not constitute a binding agreement, even if incorporated into a Change Order as back-up of hours or scope of work performed. Only Change Orders signed by the Contractor's Project Manager or his/her superior which specifically modify the terms and conditions shall be considered Modifications.

- (e) SUBCONTRACTOR shall protect its work and materials. SUBCONTRACTOR assumes the risk of all loss or damage to its work, materials and equipment until final completion and acceptance of the PROJECT by OWNER. If SUBCONTRACTOR installs items provided by others or performs work in areas to be constructed or prepared by others, SUBCONTRACTOR shall carefully inspect and shall accept, at the time of delivery or first access, the items so provided and the work by others. Failure to conduct an inspection or to give notice of any discrepancies or problems shall be deemed to constitute acceptance by SUBCONTRACTOR of the items or work of others. Loss or damage due to acts of SUBCONTRACTOR shall be charged to SUBCONTRACTOR. SUBCONTRACTOR is responsible for all damages or losses it causes to others or to work, equipment or property of others.
- (f) SUBCONTRACTOR at all times shall furnish to PRESTON PIPELINES, OWNER, and any representatives of them, safe and ample facilities for inspecting materials and work at the site of construction, shops, factories, yards or any other places of business of SUBCONTRACTOR, its subcontractors or suppliers, wherever materials under this AGREEMENT may be in the course of preparation, processing, manufacture, painting or treatment. SUBCONTRACTOR shall furnish to PRESTON PIPELINES, as often as PRESTON PIPELINES requires, full reports of the progress of the work at any place materials may be in the course of construction, treatment or manufacture. Such reports shall show the progress of such construction, treatment and manufacture in such detail as may be required by PRESTON PIPELINES, including but not limited to, any plans, drawings or diagrams in the course of preparation.
- (g) 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 or General Contractor withhold damages for delay, whether liquidated damages or otherwise, against PRESTON PIPELINES because of any delay arising out of or in connection with

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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.

Liquidated Damages shall be per the Prime Contract documents, specs, plans, general conditions and/or special conditions related to that project.

PRESTON PIPELINES' rights under this Section VII(a) shall not limit or impair PRESTON PIPELINES' right to recover from SUBCONTRACTOR damages or indemnity for any claims asserted by OWNER, General Contractor, or third parties for liquidated damages or delay costs.

- (b) Except as otherwise provided in this Section VII, PRESTON PIPELINES shall not be liable to SUBCONTRACTOR for delay to SUBCONTRACTOR's work by the act, neglect or default of PRESTON PIPELINES, General Contractor, 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' control; but PRESTON PIPELINES will cooperate with SUBCONTRACTOR to enforce any just claim against General Contractor and or 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) To the greatest extent permitted by law, SUBCONTRACTOR's sole remedy for delay, disruption or suspension of the work, including without limitation any delay, disruption or suspension caused by the fault or negligence of OWNER, PRESTON PIPELINES, General Contractor, or any agent or representative of the foregoing, or from any other cause whatsoever, shall be an extension of the time for performance. SUBCONTRACTOR shall not be entitled to and hereby waives any and all claims for any productivity losses, efficiency losses, increased supervisory costs, home office overhead, extended job site overhead, disruption costs, "ripple effect" costs, trade stacking, compression, acceleration, consequential damages, damages of any other type, lost profits, lost opportunity costs, or similar damages or costs, however denominated, as well as any other monetary relief, for any delay, disruption or suspension of the work (collectively, "Impact Costs and Consequential Damages"), except to the extent of sums that actually be recovered on SUBCONTRACTOR's account from OWNER or other responsible party. SUBCONTRACTOR further waives any and all claims against PRESTON PIPELINES for damages or additional compensation which is related to, caused or contributed to by delay and/or disruption of SUBCONTRACTOR's performance, or by any act, omission, or other conduct causing or contributing any Impact Costs and Consequential Damages (including negligent conduct on the part of PRESTON PIPELINES or any other person). If SUBCONTRACTOR wishes to seek compensation

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for Impact Costs and Consequential Damages of any kind, or for any other increase in the Contract Sum, it must give PRESTON PIPELINES written notice no later than ten (10) days after the beginning of the underlying cause thereof, or such shorter period of time as may be provided by this AGREEMENT. Failure to provide such written notice shall be a waiver of and a conclusive defense to any claim by SUBCONTRACTOR. The requirement to give such notice in no way shall be deemed to authorize or to furnish entitlement for recovery for Impact Costs and Consequential Damages or for any other form of relief which may be sought by SUBCONTRACTOR. Notwithstanding the foregoing provisions of this subparagraph (d), if PRESTON PIPELINES obtains additional compensation from OWNER on account of such delays, SUBCONTRACTOR shall be entitled to a reasonable portion thereof. If PRESTON PIPELINES prosecutes a claim against OWNER for delay or claims related to SUBCONTRACTOR, SUBCONTRACTOR shall cooperate fully with PRESTON PIPELINES and shall pay costs and expenses incurred in connection therewith, including actual attorney's fees, consultant costs, and other legal costs.

- (e) SUBCONTRACTOR acknowledges that it will have to perform work in areas occupied by other forces and that it will have to perform its work in a sequence or manner to accommodate and facilitate the progress of the work as a whole, rather than in the manner most efficient or desirable for SUBCONTRACTOR. SUBCONTRACTOR's price is based upon the foregoing, and on PRESTON PIPELINES exercising its rights under Sections VI(c) and (d), and VII, as well as those indicated above, and upon SUBCONTRACTOR having planned to perform its work under such circumstances. Milestone or completion dates of segments of SUBCONTRACTOR's work within the overall schedule shall be met. Failure to meet such milestone or completion dates shall be considered a breach of contract.
- (f) To the greatest extent permitted by law, if SUBCONTRACTOR should default in performance of its work or otherwise commits an act which causes delay to the PRIME CONTRACT work, SUBCONTRACTOR shall be liable for all losses, costs, expenses, liabilities and damages, including consequential damages, liquidated damages, and other costs, liabilities, losses, expenses, or damages sustained or otherwise incurred by PRESTON PIPELINES, or for which PRESTON PIPELINES may be liable to OWNER or any other party because of SUBCONTRACTOR's default, actions, or omissions, regardless of whether or not they are negligent or whether other delays, including those caused by PRESTON PIPELINES, are contributory and/or concurrent.

**VIII. INDEMNITY**

- (a) SUBCONTRACTOR agrees as follows:

(1) To the greatest extent permitted by law, SUBCONTRACTOR shall defend, indemnify and hold harmless PRESTON PIPELINES, General Contractor, OWNER, and OWNER's 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 causes of action, penalties, assessments, fines, actions by governmental authorities, demands, liabilities, claims, damages, legal proceedings, costs, losses and expenses, including but not limited to attorney's fees and costs ("Claims"), which arise out of or are in any way related (i) to this AGREEMENT; and/or (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; and/or (iii) SUBCONTRACTOR's presence at the PROJECT site and/or its work; and/or (iv) arising out of or related to an allegation or finding that PRESTON PIPELINES is a joint employer, statutory

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employer, or otherwise legally responsible for the employees of SUBCONTRACTOR or any of its lower-tier subcontractors, haulers, suppliers, or any other party for whom SUBCONTRACTOR is responsible, including without limitation, any claims by employees or by government authorities seeking to hold an indemnitee responsible for the unfair or illegal labor practices of SUBCONTRACTOR, misclassifications of independent contractors, PRESTON PIPELINE's right to direct and control SUBCONTRACTOR's employees or lower-tier contractors, failure to pay wages, failure to pay employment taxes, failure to provide insurance or benefits, failure to protect against harassment, or unsafe working conditions. Notwithstanding the foregoing, if any of the CONTRACT 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 PRESTON PIPELINES as PRESTON PIPELINES owes to OWNER. SUBCONTRACTOR's duty to defend Indemnitees shall apply, and Subcontractor shall be required to furnish a defense, notwithstanding that there has not yet been a determination, adjudication or finding of liability or fault on the part of SUBCONTRACTOR or any party or person to be indemnified.

(2) To the greatest extent permitted by law, the obligations of this Section VIII shall apply regardless of whether or not the Claims were caused in part or contributed to by Indemnitees; however, obligations specified above shall not extend to: (a) Claims that arise out of, pertain to, relate to the active negligence or willful misconduct of PRESTON PIPELINES, of a subcontractor to PRESTON PIPELINES, a construction manager who is an Indemnitee, or any of their other agents, other servants, or other independent contractors who are responsible to them (b) to defects in design furnished by the Indemnitee, or (c) to the extent Claims do not arise out of the scope of work of SUBCONTRACTOR. Items (a) through (c) in the preceding sentence shall be referred to in this provision as "Indemnity Limitations." Upon written tender by any Indemnitee, including PRESTON PIPELINES, of a Claim, SUBCONTRACTOR shall:

- (A) Defend the claim with counsel of its choice, who is reasonably qualified and experienced in such matters and does not have a conflict of interest in representing the tendering party, and the SUBCONTRACTOR shall maintain control of the defense for any claim or portion of claim to which the defense obligation applies. If SUBCONTRACTOR elects to defend under this subparagraph VIII(2)(A) SUBCONTRACTOR shall provide written notice of the election to the tendering party a reasonable time period following receipt of the written tender, and in no event later than 30 days following that receipt. Subject only to the limitations set forth above, the defense provided by SUBCONTRACTOR shall be a complete defense of tendering party of all Claims or portions thereof to the extent alleged to be caused by SUBCONTRACTOR, including any vicarious liability claims the tendering party resulting from SUBCONTRACTOR's scope of work, but not including claims resulting from the scope of work, actions, or omissions of the tendering party, or any other party. Any vicarious liability imposed upon the tendering party for Claims caused by SUBCONTRACTOR electing to defend under this paragraph shall be directly enforceable against SUBCONTRACTOR. SUBCONTRACTOR shall promptly provide the tendering party with all information, documentation, or evidence, if any, relating to any assertion by SUBCONTRACTOR that another party is responsible for the tendered Claim.
- (B) Pay, within 30 days of receipt of an invoice from the tendering party, no more than a reasonable allocated share of the tendering party's defense fees and costs, on an ongoing basis during the

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pendency of the claim, subject to reallocation consistent with the limitations set forth above, and including any amounts reallocated upon final resolution of Claim, either by settlement or judgment. The tendering party shall allocate a share to itself to the extent a Claim is alleged to be caused by its work, actions, or omissions, and a share to each subcontractor to the extent that the Claim is alleged to be caused by SUBCONTRACTOR's work, actions, or omissions, regardless of whether the party seeking a defense from the SUBCONTRACTOR actually tenders the claim to any particular subcontractor, and regardless of whether that subcontractor is participating in the defense. Any amounts not collected from any particular subcontractor may not be collected from any other subcontractor.

- (b) Notwithstanding any other provision of law, if SUBCONTRACTOR fails timely and adequately to perform its obligations under Section VIII(2)(A), the party tendering the Claim shall have the right to recover from SUBCONTRACTOR for any resulting compensatory damages, consequential damages, and reasonable attorney's fees. If SUBCONTRACTOR fails to timely perform its obligations under Section VIII(2)(B), the party tendering the Claim shall have the right to recover from SUBCONTRACTOR for any resulting compensatory damages, interest on defense and indemnity costs, from the date incurred, at the rate set forth in subdivision (g) of former Civil Code Section 3260 (now recodified at Civil Code Section 8818), consequential damages, and reasonable attorney's fees incurred to recover these amounts. The party tendering the Claim shall bear the burden of proof to establish both SUBCONTRACTOR's failure to perform under either Section VIII(2)(A) or (B), and any resulting damages. In addition to the foregoing remedies, and without limitation or derogation of them, SUBCONTRACTOR agrees to pay liquidated damages of \$100 per each day that SUBCONTRACTOR fails to perform its obligations under either Section VIII(2)(A) or (B), which are intended to compensate the tendering party for loss of reputation, administrative costs, and other losses that are difficult to quantify and that are not adequately compensated under this provision and Section 2782.05 of the Civil Code. SUBCONTRACTOR agrees that the sum of \$100 per day constitutes a reasonable estimate of such damages or losses.

The obligations under this Section VIII are in no way limited or relieved by SUBCONTRACTOR having obtained insurance, by the Insurance or other provisions of this AGREEMENT, and/or to the extent permitted by law, by the provisions of any workers compensation law, regulation or arrangement. In addition, the obligations of this Section VIII shall survive the expiration or termination of this AGREEMENT, as well as SUBCONTRACTOR's completion of its performance and other obligations.

If and only if a claim for defense or indemnity relates to a project that is governed by California Civil Code Sections 895 et seq. and PRESTON PIPELINES is determined to be a "Builder" for purposes of California Civil Code Section 2782(d), then as to claims of construction defects ("Defect Claims") only, the foregoing indemnity is modified such that SUBCONTRACTOR is not obligated to indemnify OWNER to the extent that such Defect Claims arise out of, pertain to, or relate to the negligence of the OWNER, or the OWNER's other agents, other servants, or other independent contractors who are directly responsible to OWNER, or for defects in design furnished by those persons, or to the extent the Defect Claims do not arise out of, pertain to, or relate to the scope of work covered by this AGREEMENT; however, SUBCONTRACTOR shall nevertheless be obligated to defend OWNER and PRESTON PIPELINES from any such Defect Claims, within five (5) days of obtaining knowledge of any such Defect Claims, subject to reallocation after final resolution of the claims pursuant to Civil Code Section 2782(d).

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Indemnity and defense obligations not affected or restricted by Civil Code Section 2782(d) or (e), such as for property damage not caused by construction defects or other matters not involving Defect Claims, shall not be limited, impaired or modified by the foregoing sentence, and such indemnity and defense obligations shall remain in full force and effect.

**IX. INSURANCE**

Before performing work or conducting any activities at the site of the PROJECT, SUBCONTRACTOR and its lower-tier subcontractors and suppliers shall comply with the insurance requirements and provisions of Exhibit A, which is incorporated herein.

**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, General Contractor 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 attorney's 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, General Contractor 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, General Contractor 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) If SUBCONTRACTOR fails to supply sufficient qualified workers and/or proper materials, or fails to prosecute its work diligently and properly, or fails to make prompt payment to its workers, sub-subcontractors or suppliers, or becomes delinquent with respect to contributions or payments to any benefit, apprenticeship or other employee program or trust, or fails to provide adequate assurances, or is otherwise guilty of a material breach of a provision of this AGREEMENT or the law, and fails within forty-eight (48) hours after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, and to complete the cure of such default within the time period stated in PRESTON PIPELINES' default notice, then PRESTON PIPELINES, without prejudice to any rights or remedies, shall have the right to any or all of the following remedies:

1. supply such workers and quantity of materials, equipment and other facilities as PRESTON PIPELINES deems necessary to complete SUBCONTRACTOR's work;
2. contract with other contractors to perform such part of SUBCONTRACTOR's work as PRESTON PIPELINES shall deem appropriate;
3. terminate SUBCONTRACTOR's right to perform and use any materials, equipment, or tools

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furnished by or belonging to SUBCONTRACTOR work without any further compensation to SUBCONTRACTOR for such use; and

4. withhold payment of any monies due SUBCONTRACTOR pending corrective action; provided, however, that PRESTON PIPELINES may withhold payment without giving such notice, when authorized under this AGREEMENT and/or applicable law.

In such an event, PRESTON PIPELINES shall be entitled to recover from SUBCONTRACTOR, backcharge against SUBCONTRACTOR, and/or set off against amounts owed to SUBCONTRACTOR, the actual direct and indirect costs that PRESTON PIPELINES has incurred (including attorney's fees, consultant fees, and other litigation costs) plus markup of fifteen percent (15%) for overhead and ten percent (10%) for profit. In an emergency, PRESTON PIPELINES may proceed as above without notice. In addition to any other remedies available, upon written notice PRESTON PIPELINES shall be entitled to perform using its own or other forces those cleanup duties that SUBCONTRACTOR has failed to perform, to remedy safety deficiencies, or otherwise to remedy SUBCONTRACTOR's failure to have complied with requirements of this AGREEMENT or directives by PRESTON PIPELINES.

To secure performance by SUBCONTRACTOR and the prompt payment of any funds expended by PRESTON PIPELINES, PRESTON PIPELINES shall have a lien upon all materials, tools, appliances, and equipment of SUBCONTRACTOR at the Project or used in connection with SUBCONTRACTOR's work.

- (b) If the amount expended by PRESTON PIPELINES under subparagraph (a) above or PRESTON PIPELINES' 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) On written notice, PRESTON PIPELINES may terminate all or part of this AGREEMENT or SUBCONTRACTOR's work for PRESTON PIPELINES' convenience. Upon such termination, SUBCONTRACTOR shall be entitled to: (1) the reasonable cost of the work completed in conformity with this AGREEMENT; plus, (2) such other reasonable costs actually incurred by SUBCONTRACTOR as are permitted by the PRIME CONTRACT and approved by OWNER; plus (3) fifteen percent (15%) of the cost of the work referred to in item (1) for overhead and profit. The foregoing amounts shall be reduced by a reasonable and appropriate amount if SUBCONTRACTOR would have suffered a loss on the PROJECT. There shall be deducted from the foregoing sums the amount of any payments made to SUBCONTRACTOR. SUBCONTRACTOR shall not be entitled to lost profits on work not performed or any claim or claim of lien against PRESTON PIPELINES or OWNER for any additional compensation or damages in the event of such termination. The amount recoverable under a convenience termination shall not exceed the Contract Price. In the event that any termination other than for convenience is later determined to have been without cause or improper, SUBCONTRACTOR's remedy shall be to have the

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termination converted to a termination for convenience, and SUBCONTRACTOR's recovery shall be limited in accordance with the terms of this Section XII. Upon any termination, whether for cause or convenience, PRESTON PIPELINES shall have the right to take immediate possession of, utilize for any purpose, inspect, and copy any and all of SUBCONTRACTOR's documents or information related to the PROJECT, and the obligations of SUBCONTRACTOR and rights and remedies of PRESTON PIPELINES that would continue after substantial completion in the absence of a termination, including without limitation, SUBCONTRACTOR's duties with regard to indemnity, payment of creditors, compliance with laws, insurance, warranty, and defective work, shall remain in full force and effect.

- (e) 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 attorney's 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, General 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 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

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harmless PRESTON PIPELINES, General Contractor 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 at the PROJECT.

**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 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' 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 Sections 2782 et seq. 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 SUBCONTRACTOR'S 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.
- (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. SUBCONTRACTOR's failure to timely give written notice constitutes an agreement by SUBCONTRACTOR that it will receive no extra compensation for the disputed work.
- (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 or General Contractor on account of such matters as is equitable under all of the circumstances.

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**XV. DISPUTE RESOLUTION**

- (a) SUBCONTRACTOR, and its subcontractors and suppliers (regardless of tier) agree that in the event that PRESTON PIPELINES selects a forum for the resolution of disputes, SUBCONTRACTOR, its subcontractors and suppliers agree to participate and be bound by any decision or award given in such forum, including those involving the OWNER, General Contractor, or other parties. It shall be the responsibility of SUBCONTRACTOR to prepare PRESTON PIPELINES' case at SUBCONTRACTOR's sole expense, to the extent the proceedings are related to this AGREEMENT. The option to arbitrate or use other alternative dispute resolution procedures is in the sole discretion of PRESTON PIPELINES.
- (b) Nothing herein shall require PRESTON PIPELINES to pursue a claim on behalf of SUBCONTRACTOR. Payment of any and all claims shall be subject to the terms of Section IV of this AGREEMENT.
- (c) Notwithstanding any dispute, and to the greatest extent permitted by law, SUBCONTRACTOR agrees to continue with its performance and maintain the schedule of work pending resolution of any and all disputes, including disputes regarding payment or whether work is within SUBCONTRACTOR's scope. The foregoing sentence constitutes an advance waiver by SUBCONTRACTOR of any actual or alleged right to stop work, rescind, or abandon the PROJECT.
- (d) PRESTON PIPELINES may withhold or offset amounts otherwise due under this AGREEMENT or any other contractual arrangement between the parties on any other project to compensate PRESTON PIPELINES for costs and expenses PRESTON PIPELINES has incurred, or may incur, for which SUBCONTRACTOR may be responsible.
- (e) Waiver of attorney's fees. Notwithstanding any other provision of this Agreement or applicable law, or any provisions of the Contract Documents that may be incorporated, neither Subcontractor nor Contractor shall be permitted to recover attorney's fees or costs of suit in any dispute or litigation. Subcontractor expressly waives the right to recover attorney's and consultant fees, and other legal expenses, from Owner, Contractor and any sureties and principals that have executed or furnished any bond(s) relating to the Project. This waiver of the right to fees and costs, to the greatest extent permitted by law, shall be effective as to statutory rights such as those afforded by Civil Code Sections 8558 or 9550 through 9566, but shall not apply to those statutory attorney's fees required to be paid under Civil Code Sections 2782 and/or 2782.05. This provision shall not limit, impair or waive Contractor's rights to be defended by, to be indemnified by, to be held harmless by, to receive contribution from Subcontractor, and to receive the benefits of insurance furnished by Subcontractor or any other persons, with respect to attorney's and consultant fees, costs and other legal expenses. No arbitrator or referee shall have jurisdiction to award fees, costs or expenses waived by this provision. If for any reason this waiver of fees and costs is found to be invalid or unenforceable, then Subcontractor agrees that Contractor and any surety against which a claim is asserted shall be afforded the same rights as Subcontractor with regard to attorney's and consultant fees, costs and other legal expenses.
- (f) Nothing herein shall be deemed to waive rights or remedies that by law may not be waived.

**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

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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' 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, or payments to SUBCONTRACTOR under this AGREEMENT, or any cause of action related to this AGREEMENT, without the prior written consent of PRESTON PIPELINES. SUBCONTRACTOR acknowledges and stipulates that its personal performance constitutes a unique and personal obligation. Any purported subletting, assignment, or transfer without PRESTON PIPELINES' written consent shall be void and invalid, notwithstanding any alleged knowledge or acquiescence on the part 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.

**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 CONTRACTORS 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, CONTRACTORS STATE LICENSE BOARD, P. O. BOX 26000, SACRAMENTO, CALIFORNIA 95826.**

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*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: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: **133 Bothelo Avenue**

City, State & Zip: \_\_\_\_\_

City, State & Zip: **Milpitas, CA 95035**

License No.: \_\_\_\_\_

License No.: **367660**

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

**Initials:** \_\_\_\_\_

PPI Initials: \_\_\_\_\_

**EXHIBIT A****INSURANCE REQUIREMENTS**

**Casualty Insurance.** SUBCONTRACTOR shall, at its expense, procure and maintain insurance on all of its operations, with companies acceptable to PRESTON PIPELINES, as follows:

**Worker's 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.

**General Liability Insurance.** SUBCONTRACTOR shall carry primary Commercial General Liability insurance covering all operations by or on behalf of 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 will be maintained for three years following project completion.
- (3) contractual liability insuring tort obligations assumed by SUBCONTRACTOR in this Contract
- (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 SUBCONTRACTOR under the Contract Documents, but in no event less than:

\$1,000,000 each occurrence (combined single limit for bodily injury and property damage)

\$1,000,000 for personal injury liability

\$2,000,000 aggregate for products-completed operations

\$2,000,000 general aggregate

The general aggregate limit shall apply separately to SUBCONTRACTOR's work under this Contract. For subcontracts in excess of \$250,000 an additional \$5,000,000 Excess Liability Insurance policy shall be maintained over the General Liability coverage that shall, at a minimum, include coverage for the exposures set forth in items 1-6 above.

PRESTON PIPELINES, its officers, directors and employees, and 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 or OWNER shall not be called upon to contribute with this insurance.

Coverage for the PRESTON PIPELINES, its officers, directors and employees and the 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 as published by the Insurance Services Office (ISO) (or equivalent). Additional insured endorsement will be provided for four years following project completion.

**Claims Made and 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.

**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 \$1,000,000 combined single limit each accident for bodily injury and property damage. PRESTON PIPELINES and OWNER shall be named as additional insureds.

**Additional Requirements.** All insurance under this provision (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). General liability insurance shall be written on a form at least as broad as ISO occurrence form CG 0001; Automobile Liability Insurance shall be provided pursuant to a coverage form at least as broad as ISO form CA 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.

Certificates of insurance, as evidence of the insurance required by this Contract and including the required "additional insured" endorsement(s) shall be furnished by SUBCONTRACTOR to PRESTON PIPELINES with its bid. Certificates shall set forth deductible amounts applicable to each policy and all exclusions or limitations not set forth in ISO Commercial General Liability Form CG 00 01. 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 upward adjustment to compensate for the existence of such exclusions.

SUBCONTRACTOR's insurance and additional insured coverage shall not include the following exclusions or provisions: cross-suits and/or cross-insureds exclusion of coverage, mold, water damage and/or

earth movement exclusions, requirements by the insurer that subcontractors or suppliers maintain insurance or agree to defend or indemnify PRESTON PIPELINES or OWNER, private work exclusions or limitations. SUBCONTRACTOR shall cause its policies to be amended or endorsed to remove any such exclusions, provisions or limitations.

Regardless of the allowance of exclusions, coverage limitations or deductibles by the SUBCONTRACTOR, SUBCONTRACTOR shall be responsible for any deductible amount or any loss arising out of coverage denials by his insurance carrier(s). 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 defend, indemnify and hold harmless OWNER.

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 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.

Any acceptance of insurance certificates or endorsements by PRESTON PIPELINES shall in no way limit or relieve SUBCONTRACTOR of its duties and responsibilities under this Contract including the duty to indemnify and hold harmless PRESTON PIPELINES.

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the 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 the contract or law. If higher limits or other forms of insurance are required in the Contract Documents, SUBCONTRACTOR will comply with such requirements.

SUBCONTRACTOR shall not provide any liability coverage (including auto coverage) under a claims made, "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.

SUBCONTRACTOR shall also satisfy the following additional requirements:

- (a) **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 "Contractor's 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.

- (b) **Professional Liability.** If SUBCONTRACTOR (or its subcontractors or suppliers, regardless of tier) performs any design/build work or services, it 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.
- (c) **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.
- (d) **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.
- (e) **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 exclusion, including the "Contractual Liability" exclusion, for work performed within fifty feet of a railroad. 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. SUBCONTRACTOR shall also provide any other insurance coverage required by any owner or operator of any rail system.
- (f) **Equipment and Property Coverage.** SUBCONTRACTOR shall procure and maintain at its own expense property and equipment insurance for SUBCONTRACTOR's tools, equipment, temporary structures, work in progress, work in transit and/or in temporary storage.

If builders' risk insurance is not provided by OWNER or PRESTON PIPELINES, SUBCONTRACTOR shall purchase and maintain installation floater coverage written to cover all risks of physical loss except those specifically excluded in the policy, and shall insure at least against the perils of fire and extended coverage, theft, vandalism, malicious mischief and collapse. This insurance shall be written in an amount to provide full protection for SUBCONTRACTOR's work and equipment. This insurance shall apply on a replacement cost basis. Any deductible shall be the full responsibility of SUBCONTRACTOR.

- (g) **Waiver of Subrogation.** PRESTON PIPELINES and SUBCONTRACTOR waive all rights against each other for loss or damage to the extent reimbursed by any 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.

- (h) **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, shall waive subrogation as set forth above, shall otherwise comply with all requirements of this Exhibit A, and shall provide PRESTON PIPELINES with evidence of insurance prior to commencing work
- (i) **Wrap-Up or OCIP Insurance** (1) If there is no Wrap-Up or Owner Controlled Insurance Program (“OCIP”) for the project, all provisions of this Attachment shall apply; (2) if there is Wrap-up or OCIP coverage, the provisions of this Attachment shall apply only to the extent the OCIP does not provide such coverage and thus the provisions of this Attachment shall require coverage in addition to the coverage provided by the OCIP. For example, and without limitation, if the OCIP does not cover off-site activities or workers compensation, then SUBCONTRACTOR shall furnish all required insurance with respect to offsite activities and shall also maintain workers compensation coverage, all in accordance with the provisions of this AGREEMENT, including this Section. SUBCONTRACTOR shall at no additional cost to PRESTON PIPELINES comply with all requirements and provisions of any such Wrap-up or OCIP coverage, including any applicable manual or provisions concerning the furnishing of credits, as if such requirements and provisions were incorporated herein.

**OCIP or Wrap Policy Disclosures**

[ **Check Box if applicable:**  ]

In accordance with Civil Code Section 2782.96, PRESTON PIPELINES provides the following disclosures concerning a wrap-up insurance policy or other consolidated insurance program for a public works project or any other project other than a private construction project as defined by Civil Code Section 895 et seq.:

- Total amount or method of calculation of any credit or compensation for premium required from SUBCONTRACTOR or another participant (fill in one):
  - \$ \_\_\_\_\_ or
  - Per Exhibit \_\_\_\_\_, attached hereto.
- Policy limits: \$ \_\_\_\_\_.
- Known exclusions: See Exhibit \_\_\_\_\_, attached hereto.
- Period/length of time policy is to remain in effect: \_\_\_\_\_.

Upon written request, once PRESTON PIPELINES itself obtains a copy of the Wrap-Up policy, a copy of the Wrap-Up policy may be inspected and copies by any person or company covered by the policy. If a policy is not yet available, upon written request, a person or company covered by the Wrap-Up policy shall be provided a copy of the insurance binder or declaration of coverage. Any person or company receiving a copy of the Wrap-Up policy, binder, or declaration (“participant”) agrees not to disclose it to third parties other than the participant’s insurance broker or attorney, unless required to provide or disclose it by law. Any participant who provides a copy of the Wrap-Up policy, binder or declaration to his, her or its insurance broker or attorney shall require the insurance broker or attorney not to disclose it unless required to do so by law.

**EXHIBIT B FOR PRIVATE BUILDING PROJECTS**

Notwithstanding the foregoing or any other provision of this AGREEMENT, if the “Claim” for which indemnity or defense is sought is in connection with a private building project subject to the provisions of Section 2782(c) of the Civil Code and constitutes a “claim of construction defect” as defined by Section 2782(c) of the Civil Code, then the following shall apply:

- (a) SUBCONTRACTOR shall not be required to indemnify PRESTON PIPELINES or “Builder” to the extent that the Claim of a “construction defect” arises out of, pertains to, or relates to the negligence of “Builder”, PRESTON PIPELINES, Builder’s or PRESTON PIPELINES’ respective agents or servants, or independent contractors who are directly responsible to “Builder”.
- (b) SUBCONTRACTOR shall not be required to indemnify PRESTON PIPELINES or “Builder” to the extent the Claim of a “construction defect” is for a defect in design furnished by PRESTON PIPELINES, Builder’s or PRESTON PIPELINES’ respective agents or servants, or independent contractors who are directly responsible to “Builder”.
- (c) SUBCONTRACTOR shall not be required to indemnify PRESTON PIPELINES or “Builder” to the extent that the Claim of a “construction defect” does not arise out of, pertain to, or relate to the scope of work in the written agreement between SUBCONTRACTOR and PRESTON PIPELINES, as it may be modified by the parties, such as through change orders.
- (d) SUBCONTRACTOR shall be required to provide a defense of Contractor and/or “Builder” with respect to a Claim of a “construction defect” subject to the following:
  - (i) SUBCONTRACTOR shall owe a duty of defense when PRESTON PIPELINES or Builder provides a written tender to SUBCONTRACTOR of the Claim, or portion thereof, which includes all of the information provided to PRESTON PIPELINES or Builder by the claimant or claimants, including but not limited to, information provided pursuant to subdivision (a) of Section 910 of the Civil Code, relating to Claims caused by SUBCONTRACTOR’s scope of work. This written tender shall have the same force and effect as a notice of commencement of a legal proceeding.
  - (ii) Upon such a written tender, SUBCONTRACTOR shall elect either of the following to satisfy its defense obligation to the PRESTON PIPELINES or Builder:
    - Defend the Claim with counsel of SUBCONTRACTOR’s own choice, with SUBCONTRACTOR to maintain control of the defense for any Claim or portion of the Claim to which the defense obligation shall apply. If SUBCONTRACTOR elects to defend with counsel of its own choice, it shall provide written notice of the election to PRESTON PIPELINES or Builder within a reasonable time period following receipt of the written tender, and in no event later than 90 days following receipt. Consistent with subparagraphs (a) through (c) above, SUBCONTRACTOR shall

provide a complete defense of PRESTON PIPELINES and Builder of all Claims or portions thereof to the extent alleged to be caused by SUBCONTRACTOR, including any vicarious liability Claims against PRESTON PIPELINES and/or the Builder, but not including Claims to the extent resulting from the scope of work, actions or omissions of Contractor, Builder, or any other party. Any vicarious liability imposed upon PRESTON PIPELINES or Builder for Claims caused by SUBCONTRACTOR electing to defend under this subparagraph (d)(ii) shall be directly enforceable against SUBCONTRACTOR by PRESTON PIPELINES, "Builder" or any claimant.

- Pay, within 30 days of receipt of an invoice from PRESTON PIPELINES or "Builder", no more than a reasonable allocated share of the PRESTON PIPELINES' or Builder's (as the case may be) defense fees and costs, on an ongoing basis during the pendency of the Claim, subject to reallocation in accordance with subparagraphs (a) through (c) above, and including any amounts reallocated upon final resolution of the Claim, either by settlement or judgment. PRESTON PIPELINES or "Builder" shall allocate a share to itself to the extent a Claim or Claims are alleged to be caused by its work, actions, or omissions, and a share to each subcontractor to the extent a claim or claims are alleged to be caused by that subcontractor's work, actions or omissions regardless of whether PRESTON PIPELINES or "Builder" actually tenders the Claim to any particular subcontractor, and regardless of whether that subcontractor is participating in the defense. Any amounts not collected from a particular subcontractor other than SUBCONTRACTOR shall not be collected from SUBCONTRACTOR.
  - Notwithstanding any provision of this AGREEMENT or applicable law, if SUBCONTRACTOR fails timely and adequately to perform its obligations under this subparagraph (d), PRESTON PIPELINES and Builder, in addition to any other rights that they may have, shall have the right to pursue a claim against SUBCONTRACTOR in accordance with Section 2782(e) of the Civil Code, including the right to recover compensatory damages, consequential damages, interest on defense and indemnity costs, and reasonable attorney's fees as provided by that statute.
- (iv) For purposes of this Exhibit B, "Builder", "construction defect", and "defects in design" shall have the meanings assigned to those terms in Section 2782 of the Civil Code; in particular, the term "construction defect" means a violation of the standards set forth in Sections 896 and 897 of the Civil Code. Nothing herein shall affect either the obligations of an insurance carrier under the holding of Presley Homes, Inc. v. American States Insurance Company (2001) 90 Cal.App.4th 571 or the obligations of a "Builder" or "Subcontractor" pursuant to Title 7 (commencing with Section 895) of Part 2 of Division 2 of the Civil Code. PRESTON PIPELINES, "Builder", and SUBCONTRACTOR shall be entitled to seek equitable indemnity to the extent authorized by Section 2782(g) and (h) of the Civil Code, including the right to seek equitable indemnity against any supplier,

design professional or product manufacturer.

**(v) OCIP or Wrap Policy Disclosures**

**[ Check Box if applicable:  ]**

In accordance with Civil Code Sections 2782.9 & 2782.95, PRESTON PIPELINES provides the following disclosures concerning a wrap-up insurance policy or other consolidated insurance program for a private construction project as defined by Civil Code Section 895 et seq.:

- Policy limits: \$ \_\_\_\_\_.
- Scope of policy coverage: See Exhibit \_\_\_\_\_, attached hereto.
- Period/length of time policy is to remain in effect (policy term): \_\_\_\_\_
- Basis upon which the deductible or occurrence is triggered: See Exhibit \_\_\_\_\_, attached hereto.
- If the policy covers more than one work of improvement, the number of units, if any, indicated on the application for the insurance policy: \_\_\_\_\_ units.
- Good faith estimate of the amount of available limits remaining under the policy, per the insurer as of the date indicated: \$\_\_\_\_\_ as of \_\_\_\_\_, 20\_\_.

**EXHIBIT C****LABOR CODE SECTIONS 1735, 1771, 1775, 1776, 1777.5, 1777.6, 1813 AND 1815**  
**(Applies to State and Local Public Works Projects Only Unless Otherwise Indicated)**

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.
- (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.