



MASTER TRUCKING AGREEMENT

**Preston Pipelines, Inc.
General Engineering Contractor**

TO: _____

_____ TRUCKER

Contractor and Trucker are entering into this Agreement with the intent and understanding that it will serve as a master agreement for all projects for which Contractor engages Trucker, unless the parties expressly agree to the contrary in a separate writing. Use of a master agreement will avoid the parties having to negotiate and execute a new and separate agreement for each project. Instead, for each project on which Trucker is engaged, a Work Authorization Form will be executed by both parties. The parties agree that this Agreement, without further acknowledgement, signature, or agreement, will govern all projects for which Contractor issues a Task Order, regardless of whether a Work Authorization Form is issued or the final amount payable to Trucker for the project(s) in question.

Each Work Authorization Form will contain information as to the owner, direct contractor, project location, construction lender (if any) and other information required to be included by law, as well as information concerning the specific scope and amount to be paid to Trucker.

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 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CA 95826.

Executed on this _____ day of _____, 20____, at _____, California.

CONTRACTOR:
(type name)

TRUCKER:
(type name)

By: _____
California License No.: _____

By: _____
California License No.: _____

THIS MASTER TRUCKING AGREEMENT IS SUBJECT TO ALL OF THE TERMS AND REQUIREMENTS ON THE REVERSE AND THE OTHER PAGES HEREOF. BY SIGNING ABOVE, THE PARTIES AGREE TO BE BOUND BY ALL SUCH TERMS AND REQUIREMENTS.

TERMS AND CONDITIONS

A. MASTER AGREEMENT; CONTRACT DOCUMENTS AND COMPLIANCE. Contractor and Trucker are entering into this Agreement with the intent and understanding that it will serve as a master Agreement governing all future purchases of trucking services from Trucker.

For purposes of this Agreement, the term "Work" means any and all trucking and delivery services required of Trucker by Contractor, whether such Work is completed or partially completed, and includes all other labor, materials, equipment delivery, and services provided or to be provided by Trucker to fulfill Trucker's and its subcontractors' obligations. For purposes of this Agreement, the "Project" refers to the project for which a Task Order and/or Work Authorization Form has been issued.

This Agreement does not obligate Contractor to request that Trucker perform, or require Contractor to hire Trucker to perform, Work on any specific project. Contractor may hire other Truckers even where Trucker is providing services. Should Contractor desire that Trucker perform Work on a project to which this Agreement shall be applicable, it shall furnish a Task Order and Trucker shall communicate its acceptance, as set forth below. Contractor may give a Task Order either in writing or orally. Trucker shall be deemed to have accepted the Task Order in the following situations: (1) following receipt of a Task Order, Trucker communicates acceptance either orally or in writing; (2) following receipt of a Task Order, Trucker, within 72 hours, commences performance of the Work at the project to which the Task Order relates; or (3) Trucker commences performance of the Work at the project to which the Task Order relates more than 48 hours after receipt of a Task Order, and Contractor fails to instruct Trucker to cease further performance of the Work within 48 hours of Contractor's actual knowledge that Trucker has commenced performance. Simultaneously or subsequent to the issuance of the Task Order, Contractor shall issue a Work Authorization Form for execution by the parties that memorializes the Task Order issued for the Work.

The Work Authorization Form will include terms, conditions, information and descriptions applicable to the specific project on which Trucker is to perform Work. In the event of any conflict, inconsistency or ambiguity between the terms and provisions of the Work Authorization Form, on the one hand, and the Agreement or any Contract Documents, on the other hand, the Work Authorization Form shall take precedence. However, wherever possible the documents will be construed to avoid such a conflict. Contractor and Trucker agree that Trucker shall perform the Work, as described herein, in accordance with the terms and conditions set forth herein and in the Contract Documents. In the event Contractor fails to issue a Work Authorization Form, or the Work Authorization Form is not fully executed, any Work performed by Trucker at the request of Contractor shall nonetheless be governed by this Agreement.

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

The "Contract Documents" consist of (1) this Agreement; (2) for each project for which a Task Order is issued, and as to that project only, the specifications, plans and other relevant documents for the project, including the Prime Contract, as defined below, 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 Contractor and the Owner (collectively, the "Prime Contract"); (3) other documents attached to this Agreement or incorporated into this Agreement; (4) modifications to this Agreement issued after its execution; and (5)

for the project for which it was issued only, the Work Authorization Form relating to that project. These documents are as fully a part of this Agreement as if they were attached to this Agreement or retyped herein.

In the event that Contractor's contract is with the direct contractor or a subcontractor, not Owner, then the term "Prime Contract" shall refer to and include not only all of documents comprising the agreement between the direct contractor and the Owner, as well as all of the documents comprising Contractor's own contract in connection with the Project. The Contract Documents are incorporated herein. For each project, but solely with regard to the project to which they relate, the Contract Documents are incorporated into this Agreement by reference, and Trucker and its subcontractors and suppliers shall be bound to Contractor in the same manner and to the same extent as Contractor is bound by the Contract Documents. In addition to any other rights and remedies it may have, Contractor shall have the rights and remedies with respect to Trucker that Owner has with respect to Contractor. Where, in the Contract Documents, reference is made to Contractor, and the Work or specifications therein pertain to Trucker's trade, craft, type of Work, or scope, such Work or specifications shall be interpreted to apply to Trucker instead of to Contractor.

Trucker acknowledges that it has read the Prime Contract and all plans and specifications, is familiar with them, and agrees to comply with and perform all provisions thereof in any way applicable to Trucker.

In undertaking to perform Work, or any aspect thereof, Trucker certifies that it is fully familiar with the trucking services to be provided and the type of conditions under which the Work is to be performed. Trucker shall ensure that all haul routes utilized are legal, all loads are safe and legal, and that all equipment is adequate for the Work, licensed, registered and in a safe condition. Trucker represents that it has conducted its own independent investigation with respect to such matters and is not relying upon any representation or information from Contractor.

B. PAYMENT. Trucker shall be paid at the rate specified in the Work Authorization Form for the project on which the Work is performed. As a condition precedent to payment, Trucker shall furnish on a daily basis a "truck tag", which will serve as the basic account record. Trucker shall complete the truck tag accurately, obtain all necessary signatures, and deliver the truck tag for each day's operation to Contractor no later than end of each shift on the day the Work was performed. Trucker shall in addition submit timely and accurate invoices that properly and separately track charges for each project. Invoices shall include all applicable truck tags, and shall provide the following information in a clear and understandable format: date of Work performed, truck tag number, truck number, Contractor's job number and job name, hours or tons hauled, rate of pay and total charges. A separate invoice shall be provided for each job.

Contractor agrees to pay to Trucker monthly progress payments for Work that has been actually and satisfactorily completed by Trucker, for labor, equipment, services and materials that have been placed in position, as reflected in Contractor's application for payment and as approved by Owner. The amounts to be paid shall be calculated by taking the prices for the Work for which payment is owed by a percentage that shall be identified in the Work Authorization Form, with the balance to be withheld as retention. The foregoing percentage shall be ninety percent (90%) unless otherwise stated under the Work Authorization Form or a different percentage is required by applicable law. Payment shall be made within seven (7) days after receipt of payment from the Owner by Contractor, provided all other conditions hereof have been satisfied and there are no grounds for withholding. Trucker 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 Contractor, including without limitation, payroll affidavits, receipts, vouchers or other documentation, demonstrating that Trucker has paid for all labor, equipment, materials, services, taxes or other charges in any way relating to Trucker's Work and obligations in connection with the Project.

Final payment to Trucker shall be made ten (10) days after the entire work required by the Prime Contract has been fully completed, with funds received by Contractor from Owner. Contractor, at its option, may make payments by joint check. Payment shall not constitute acceptance or acknowledgement of completion with regard to any part of Trucker's Work.

On public works projects with the State of California or any subdivision thereof, the time period for payment of amounts (if any) which Contractor is obligated by this Agreement to pay as retention shall be within seven (7) days after receipt of retention by Contractor, subject to Contractor's right to withhold for the grounds set forth in this Agreement or otherwise provided by law; 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 under the Prime Contract.

Payments made to Trucker shall be deemed to be held in trust for the benefit of Contractor and of all persons who furnished labor, equipment, and materials for or on behalf of Trucker, as well as for the benefit of trust funds and apprenticeship programs in connection with the Project. 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.

Notwithstanding any other term of this Agreement, Contractor shall be permitted a reasonable period of time to pursue remedies and collect from Owner or other persons for progress payments, final payments or other payments on account of Trucker's Work or claims, before payment shall become due to Trucker. What a "reasonable time" is shall be based upon all relevant circumstances, but shall in no event be less than the amount of time needed to pursue to conclusion (including collection) available remedies against Owner, insurers, subcontractors, or any other party responsible for payment.

As a cumulative remedy, Contractor may withhold and/or retroactively nullify all or part of any payment to the extent necessary to protect Contractor from: (1) loss from defective Work not remedied; (2) claims that have been asserted or are reasonably likely to be asserted; (3) failure of Trucker to make payments to creditors; (4) damage to Contractor or another person; (5) penalties assessed against Contractor or Trucker for failure of Trucker to comply with laws or requirements; and (6) any other ground for withholding payment allowed by law, this Agreement or the Contract Documents. Contractor may in addition withhold from any payment or retention up to 150% of the amount of any disputed item, including without limitation, amounts Contractor believes may be necessary to withhold to protect Contractor from any potential claims which may result from Trucker failing to furnish appropriate waivers and releases for itself or any lower tier subcontractors or suppliers.

Unless Trucker makes written objection within sixty (60) days after receipt of payment on an invoice, Trucker will have been deemed to have accepted the amount as full and correct payment (less any applicable retention or withholding), and Trucker shall have waived any further claim to payment for the Work that was invoiced.

C. INDEPENDENT CONTRACTOR. Trucker represents that it is fully experienced and properly qualified as an expert to perform the trucking services provided for herein and that it is properly licensed, equipped, organized and financed to render such services. Trucker warrants that it is and shall operate hereunder as an independent contractor. Trucker may, at Trucker's sole expense, engage such subhauleders or assistants ("Subhauleders") as Trucker deems necessary to perform the Work. Trucker shall verify that all Subhauleders comply with every aspect of this Agreement, including requirements concerning insurance, licensing, safety, permits, and etc.. Trucker shall continuously monitor its Subhauleders to ensure such compliance, and shall be liable to Contractor for any damages, losses, costs or liabilities that Contractor may incur, directly or indirectly, arising out of any failure by any Subhauleder to comply with the terms of this Agreement. Trucker shall maintain insurance coverage in compliance with the terms of this Agreement for all Subhauleders. Trucker shall not permit any

Subhauler to perform Work under this Agreement without first verifying that Subhauler is in compliance with this Agreement, and as part of this obligation, shall obtain certificates of insurance from each such Subhauler. Contractor, in its sole discretion, may object to use of particular Subhaulers, but is under no obligation to do so. Although it may utilize Subhaulers to the extent permitted and in accordance with the requirements of this Section C, Trucker shall not assign this Agreement or any Work without Contractor's written consent in accordance with Section O.

D. TRUCKER-ARRANGED DUMP SITES

As part of the Work, and when requested by Contractor, Trucker will seek to locate a cost-effective dumpsite for excess materials generated from one or more projects to which the Work relates ("Fill Material"). If Trucker locates a dumpsite under terms acceptable to Contractor, Trucker agrees to assume all liability that may arise from use of the dumpsite and transportation of Fill Material to that site.

By arranging for disposal of Fill Material at a location, Trucker expressly warrants that disposal of the material complies with all federal, state, and local laws, that the disposal of the material will not create a nuisance and that disposal of the Fill Material will not violate any easement, covenant or restriction. Trucker shall obtain all necessary permits for transportation and disposal of Fill Material. Trucker warrants that it and the owner of any dump site have conducted their own independent investigation regarding the Fill Material and have determined that the Fill Material may legally be disposed of at the site, will not create a nuisance by its disposal, and will not violate any easement, covenant or restriction by its disposal. To the greatest extent permitted by law, Trucker will cause all documentation to reflect that Trucker is the generator and transporter of the Fill Material. In undertaking to dispose of the Fill Material, Trucker agrees that it shall become the owner of the Fill Material for the purpose of disposing of it in a safe and legal manner. Trucker acknowledges and agrees that it will indemnify, hold harmless and defend Contractor and Owner under Section I of this Agreement against any and all claims, demands, losses, causes of action, and liabilities arising out disposal of Fill Material or breach of this Section D. Among the matters to be indemnified and defended against, without limitation, shall be any penalties or enforcement action sought in connection with an allegation that the furnishing, use or disposal of Fill Material violates applicable law or a permit.

E. ADDITIONAL OBLIGATIONS. Trucker agrees to comply with the following obligations:

- (1) **Prosecution of the Work:** Trucker shall at all times supply a sufficient number of appropriate vehicles and equipment, and a sufficient number of properly trained and experienced drivers, to prosecute the Work efficiently and promptly, and it shall timely and promptly pay for all such labor, equipment, and other expenses.
- (2) **Supervision:** Trucker shall supervise the Work competently and diligently, providing onsite supervision when necessary.
- (3) **Insurance:** Trucker and its Subhaulers and subcontractors shall comply with the insurance requirements and provisions of Exhibit A, which is incorporated herein.
- (4) **Protection of Work:** Loss or damage attributable to Trucker shall be charged to Trucker. Trucker is responsible for all damages or losses it causes to others or to work, equipment or property of others.
- (5) **Compliance with Direction And Continued Performance:** In the event of a dispute, Trucker shall comply with Contractor's written directives and shall continue its performance, in accordance with Section N.

- (6) **Scope:** Trucker shall provide all labor, equipment, materials, and services needed to perform the Work and obligations referred to in this Agreement, including anything reasonably required or inferable in order to complete the Work and comply with the law,
- (7) **Taxes and Payments Required by law:** Trucker shall pay all federal and state taxes relating to its Work, including sales, use, employment, and other taxes, insurance and contributions for social security and unemployment, etc., including without limitation, any amounts owed as a result of increase or changes in taxes that take effect during the course of the Project.
- (8) **Permits, licenses and inspections:** Trucker shall obtain and pay for all permits, licenses, and inspections necessary because of or otherwise related to its Work.

F. TIME AND SCHEDULE. *Time is of the essence.*

Trucker shall conform to Contractor's progress schedule and all revisions thereto, as well as all directives issued by Contractor. Trucker shall diligently prosecute the Work and shall not delay Contractor or other subcontractors or suppliers. Trucker shall coordinate its Work with other persons involved in the Project. If Trucker fails to maintain its part of the Contractor's schedule, it shall, without additional compensation, accelerate the Work as Contractor may direct. Contractor 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 Trucker's Work as compared with other Work. If Trucker is delayed by the negligence or breach of the Owner or Contractor, by fire or other casualty for which Trucker is not responsible, or by labor action not resulting from fault or collusion on the part of the Trucker, then Trucker may be entitled to a time extension provided that Trucker gave written notice within forty-eight (48) hours of the commencement of the delay. To the greatest extent permitted by law, a time extension is Trucker's sole remedy for delay and disruption; however, if Contractor obtains additional compensation from Owner on account of such delays, Trucker shall be entitled to a reasonable portion thereof. If Contractor prosecutes a claim against Owner for delay or claims related to Trucker, Trucker shall cooperate fully with Contractor and shall pay costs and expenses incurred in connection therewith, including actual attorney's fees.

Trucker 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 Trucker. Trucker's prices are based upon the foregoing, and on Contractor exercising the rights under Section F, as well as those indicated in Section G, and upon Trucker having planned to perform its Work under such circumstances. Milestone or completion dates of segments of Trucker's Work within the overall schedule shall be met. Failure to meet such milestone or completion dates shall be considered a breach of contract.

To the greatest extent permitted by law, if Trucker should default in performance of its Work or otherwise commits an act which causes delay to the Prime Contract, Trucker shall be liable for all losses, costs, expenses, liabilities and damages, including consequential damages and liquidated damages, sustained or otherwise incurred by Contractor, or for which Contractor may be liable to Owner or any other party because of Trucker's default, actions, or omissions, regardless of whether they are negligent or whether other delays, including those caused by Contractor, are contributory and/or concurrent.

G. CHANGES. Contractor is authorized to make changes, including deletions, additions, and other modifications to the Work or Trucker's obligations. If necessary, the Contract Price shall be adjusted by appropriate additions or deductions, including deductions of markup, profit and overhead for deleted Work, mutually agreed upon before the Trucker performs the changed Work. In no event shall such additions, deductions, profit or markups exceed those permitted under the Contract Documents.

Trucker shall supply Contractor with all documentation necessary to substantiate the amount of the addition to or deduction from the Contract Price or time for performance. If Contractor and Trucker cannot agree on the amount of the addition or deduction in the Contract Price or time for performance for a change, Trucker shall nonetheless timely perform the Work as changed by Contractor's written direction. Trucker shall not make any changes without written direction from Contractor. If Trucker makes any changes in the Work without written direction from Contractor, such change constitutes an agreement by Trucker that it will not be paid for the costs associated with the change. 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.

Trucker shall not deviate from the plans and specifications except on written order from Contractor. Trucker shall be responsible for any damage, inconvenience, or increase of costs arising directly or indirectly from failure of Trucker to observe the same.

All Change Orders shall constitute a contract document. Unit prices will be utilized where, in Contractor's sole discretion, Contractor 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 Contractor for approval. If Contractor does not agree with the additional costs submitted, Contractor may, in its sole discretion, direct that the Work be performed on force account basis with Trucker 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.

H. COMPLIANCE WITH LAWS AND SAFETY REQUIREMENTS. At its sole expense, Trucker shall investigate and comply with, and agrees to be bound by all applicable laws and regulations, including without limitation, laws regarding licensing of contractors, the Fair Labor Standards Act, the Americans with Disability Act, the federal Family and Medical Leave Act, federal, state and local family rights and medical leave laws, civil rights and fair employment laws, the California Labor Code, Proposition 65, laws concerning wages and benefits to be paid, and all other construction, environmental, workplace and safety laws. Trucker accepts exclusive liability for compliance with such laws, including the Federal Social Security Act with respect to its employees, sales and use tax laws, and any other laws and regulations.

Trucker shall also comply, at its sole expense, with all DBE, MBE, UDBE, WBE, DVBE, LBE, local hiring and similar requirements pertaining to the Project. In the event of a termination as a result of any misrepresentation of facts relating to Trucker's status as a DBE, MBE, UDBE, WBE, DVBE, and/or LBE, Trucker shall not be entitled to any compensation not already paid.

Trucker acknowledges that it has conducted its own independent investigation of the wage rates to be paid and whether its Work will be subject to prevailing wage requirements or the requirements of the Davis-Bacon Act and that it has not relied upon any statements or representations by Contractor with respect to such matters. Trucker agrees that price to be paid under any Work Authorization Form 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 Trucker in the event that Trucker is required thereunder to pay higher wages or incur additional costs that Trucker contends that it did not anticipate.

Upon request, Trucker shall submit certified payroll records to Contractor no later than three (3) working days after Contractor's request and further agrees to cooperate fully in any effort by Contractor to verify compliance with labor laws and regulations, including requirements under the Davis-Bacon Act or the California Labor Code. Such cooperation shall include, without limitation, furnishing copies and originals of records and providing access to employees or witnesses for interviews and statements. In

addition to and without derogation of any other rights that Contractor may enjoy, Contractor may withhold sufficient funds to protect Contractor against any claims related to labor requirements, including without limitation, requirements under the Davis-Bacon Act or the California Labor Code.

On all projects subject to state or local prevailing wage requirements, Trucker shall comply with any applicable California prevailing wage laws. With respect to such projects, the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 are attached and incorporated. On such projects, as a condition precedent to final payment, Trucker agrees to provide an affidavit that complies with the terms of Labor Code Section 1775(b)(4).

At its sole expense, Trucker shall institute and maintain a reasonable and adequate safety program that fully complies with the law, and shall fully cooperate with and adhere to any safety program or requirements of Contractor and/or Owner. All personnel of Trucker, its Subhaulers and subcontractors shall wear hard hats, safety vests, and any other necessary safety equipment, while visiting or working at a construction site. Trucker shall provide material data sheets and other submittals or items necessary to comply with applicable laws. Trucker agrees to obtain and pay for all permits, licenses and official inspections necessary for proper completion of its Work.

Trucker acknowledges that the EPA and California regulatory authorities, including without limitation, the State and Regional Water Quality Control Boards, have mandated certain requirements for permits under the National Pollutant Discharge Elimination System (NPDES), including Storm Water Pollution Prevention Plan (SWPPP) requirements. Trucker has undertaken its own independent and thorough investigation of all such matters, including without limitation, a thorough review of all requirements under the Contract Documents and/or that are imposed by any permits that apply to the Project, and Trucker warrants that it is not relying upon any statements or representations by Contractor or Owner with respect to such matters. Trucker agrees, at its sole cost, to conform to any and all requirements of any environmental, air and water pollution statutes, regulations and measures, and/or permits, including NPDES permits, and Trucker also shall conform to any and all SWPPP requirements applicable to the Project. For example, on projects subject to the California Standard Specifications, such as Caltrans projects, Trucker's attention is directed to **California Standard Specifications Sections 13.1.01 through 13-10.03, "Water Pollution", and Sections 14-1.01 through 14.204, "Environmental Stewardship"**, and on all projects, to any special provisions or other contract provisions concerning NPDES, Department of Fish & Game, and other permits, air and water pollution statutes, regulations, and measures, and SWPPP requirements, and Trucker at its own cost agrees to comply fully therewith.

If hazardous or toxic substances, of a type of which an employer is required by law to notify its employees, are being used on the site by Trucker, its Subhaulers, subcontractors or anyone directly or indirectly employed by them, Trucker shall, prior to exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to Contractor in sufficient detail and time to permit compliance with such laws by Contractor, other subcontractors and employers on the site.

Trucker shall comply with all provisions of "Proposition 65" (California State Drinking Water Act of 1986, California statutes), including without limitation, timely giving any required notices. Trucker 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 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, Trucker 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 Contractor prior to Trucker becoming actually contractually obligated to purchase or take delivery thereof from its Subhaulers or suppliers, and then only to the extent Contractor gives clear written

approval of the uses proposed in the notice. The notice shall contain clear descriptions of the type, amount, uses, locations and content of such items incorporated into or used in said Work.

I. INDEMNITY AND DEFENSE OBLIGATIONS.

Trucker agrees as follows:

To the greatest extent permitted by law, Trucker shall defend, indemnify and hold harmless 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, 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; (ii) to actual or alleged actions or omissions by Trucker or any of its Subhaulers, subcontractors, suppliers, vendors, employees, or persons for whom it is responsible, or (iii) Trucker's presence at the Project site and/or its Work. 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 to the greatest extent permitted by law, the more stringent provisions shall apply, and Trucker shall owe the same defense, indemnity, contribution, and hold harmless obligations to Contractor as Contractor owes to Owner. Trucker's duty to defend Indemnitees shall apply, and Trucker 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 Trucker or any party or person to be indemnified.

The duties under this Section I apply regardless of any active and/or passive negligent acts or omissions of Trucker, or of Owner or Contractor, or of any other person to be indemnified hereunder, but do not apply to Claims arising from the sole negligence or willful misconduct of Owner or Contractor, or for defects in design furnished by Contractor or Owner. The duties hereunder shall apply both before and after the Agreement is terminated or Work or a portion thereof is completed. The duties under this provision are not limited, waived or impaired by workers compensation statutes or insurance or by any other insurance coverage.

If the Work under a particular Work Authorization Form is subject to the Section 2782.05 of the Civil Code, then this Section I shall apply to the greatest extent permitted by law, but no greater, and Contractor shall be entitled to all of the rights and remedies available under Section 2782.05, by contract and/or under applicable law.

J. LIENS AND CLAIMS. Trucker shall take all necessary steps to ensure that no claims, mechanic's lien, lawsuits, stop payment notices, or other liens are asserted in connection with the Project by any of its subcontractors or suppliers (regardless of tier), its or their employees, trust funds, taxing authorities or other creditors, and pursuant to the duties set forth herein shall fully defend, hold harmless and indemnify Owner and Contractor against all such claims at Trucker's sole expense. At Trucker's sole expense, upon Contractor's request, Trucker shall within a reasonable period not to exceed ten (10) business days, bond around any stop payment notices or liens, so that the job and any funding therefor shall remain free from encumbrances and liens, and Trucker shall take such other and further steps as may be necessary to remove the effect of any liens, stop payment notices or claims from the Project or any funds for the Project.

K. LABOR. Trucker and all of its Subhaulers and subcontractors (regardless of tier) shall comply with and perform all Work covered by any collective bargaining agreement(s) to which Contractor is a party or which otherwise may be 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. In addition, Trucker and its Subhaulers and subcontractors (regardless of tier), suppliers, vendors, and employees

shall comply with the terms of any Project Labor Agreement that may apply to the Project. Should Contractor at its sole discretion establish a reserved gate system on the Project, Trucker agrees that its employees, subcontractors and suppliers will use the reserve gate(s) designated for them by Contractor.

Trucker hereby expressly agrees that all of the provisions of the applicable labor agreements are incorporated into this Agreement as if they were set forth in their entirety. Trucker agrees to comply with all of the terms and conditions of those labor agreements as if it were a party to said agreements including signatory status if required. Trucker further agrees to pay the wage rates, make the required trust fund payments into the respective labor trust funds, and observe the hours and all other terms and conditions set forth in the respective labor agreements. Trucker agrees to comply with the terms and provisions of said agreements setting forth the grievance and arbitration provisions. Furthermore, Trucker agrees to comply with the terms and provisions of said agreements setting forth the jurisdiction and scope of work therein for resolution of jurisdictional disputes. In the absence of any such procedure or if such procedure fails to promptly resolve the jurisdictional dispute, Trucker agrees, at its own cost and expense and upon request by Contractor, to take any and all lawful steps to secure a binding and final determination of said jurisdictional dispute by the National Labor Relations Board.

Trucker acknowledges that terms and conditions of the labor agreements with the unions listed herein below may require that Trucker comply with additional labor agreements.

Trucker agrees to bind and require all of its Subhaulers and subcontractors, regardless of tier, to agree to all of the requirements under this Section K.

CONTRACTOR IS SIGNATORY TO THE FOLLOWING UNIONS (*list*):

L. DEFAULT. If Trucker fails to supply sufficient qualified drivers or trucks, or fails to prosecute its Work diligently and properly, or fails to make prompt payment to its drivers, workers, Subhaulers or subcontractors, 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 Contractor's default notice, then Contractor, without prejudice to any rights or remedies, shall have the right to any or all of the following remedies:

1. supply trucks, drivers, materials, equipment and other facilities as Contractor deems necessary to complete Trucker's Work;
2. contract with other firms to perform such part of Trucker's Work as Contractor shall deem appropriate; and
3. withhold payment of any monies due Trucker pending corrective action; provided, however, that Contractor may withhold payment without giving such notice, when authorized under this Agreement and/or applicable law.

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

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

M. TERMINATION FOR CONVENIENCE. On written notice, Contractor may terminate all or part of this Agreement or Trucker's Work for Contractor's convenience. Upon such termination, Trucker shall be entitled to be paid for the Work completed as of the date of the termination. Trucker shall not be entitled to lost profits on Work not performed or any claim or claim of lien against Contractor or Owner for any additional compensation or damages in the event of such termination.

In the event that any termination other than for convenience is later determined to have been without cause or improper, Trucker's sole remedy shall be to have the termination converted to a termination for convenience, and Trucker's recovery shall be limited in accordance with the terms of this Section M. Upon any termination, whether for cause or convenience, Contractor shall have the right to take immediate possession of, utilize for any purpose, inspect, and copy any and all of Trucker's documents or information related to the Project, and the obligations of Trucker and rights and remedies of Contractor that would continue after substantial completion in the absence of a termination, including without limitation, Trucker's duties with regard to indemnity, payment of creditors, compliance with laws, insurance, warranty, and defective Work, shall remain in full force and effect.

N. DISPUTES. Any dispute resolution procedure in the Prime Contract shall be deemed incorporated in this Agreement, and shall apply to any disputes arising hereunder that involve the Owner, such as "pass through" claims. Trucker shall cooperate in such procedures and shall participate in them when requested. Any claims not involving the Owner shall be resolved, at Contractor's election and in its sole discretion, either through litigation, or through binding arbitration under JAMS rules in effect as of the date of the arbitration demand. Prior to filing an arbitration demand, the parties shall meet informally to attempt to resolve the dispute and, if requested by Contractor, shall participate in non-binding mediation, with each party to bear its own fees and costs. The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

Notwithstanding any dispute, and to the greatest extent permitted by law, Trucker 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 Trucker's scope. The foregoing sentence constitutes an advance waiver by Trucker of any actual or alleged right to stop Work, rescind, or abandon the Project.

Trucker, and its Subhaulers, subcontractors and suppliers (regardless of tier), agree upon request by Contractor to join in and be bound by proceedings involving Contractor, including those involving Owner or other parties. It shall be the responsibility of Trucker to prepare Contractor's case, to the extent the proceedings are related to this Agreement.

Nothing herein shall be deemed to waive rights or remedies that by law may not be waived.

O. ASSIGNMENT. Without first giving written notice and then obtaining Contractor's written consent, Trucker shall not assign, hypothecate, transfer or sublet: (1) any portion or part of the Work required or the obligations hereunder; (2) payments to Trucker under this Agreement; or (3) any cause of action related to this Agreement. Trucker acknowledges and stipulates that its performance constitutes a unique and personal obligation. Any assignment, hypothecation, transfer or subletting by Trucker without Contractor's written consent shall be void and invalid, notwithstanding actual or constructive knowledge by Contractor of the purported assignment, hypothecation, transfer or subletting.

P. USE OF EQUIPMENT. If Trucker uses Contractor's equipment, materials, labor, supplies, services, or facilities, Trucker shall reimburse Contractor at a predetermined rate, to be agreed by the parties, except as otherwise provided herein. Trucker shall conduct its own independent investigation and hereby assumes all responsibility for any physical damage to Contractor's equipment, materials, supplies, or facilities. If Trucker utilizes any of Contractor's employees, Trucker shall have full responsibility for all acts and omission of Contractor's employees with regard to Trucker's use or employment of them. Trucker accepts any and all of Contractor's equipment, materials, labor, supplies, services, or facilities "as is."

SAMPLE

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, residential 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 residential 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.

SAMPLE

EXHIBIT B

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.

SAMPLE