



# MASTER PURCHASE ORDER AGREEMENT

Preston Pipelines Infrastructure, LLC.  
General Engineering Contractor

PRESTON PIPELINES INFRASTRUCTURE, LLC.  
General Engineering Contractor  
133 Bothelo Avenue  
Milpitas CA 95035  
408.262.1418

## MASTER PURCHASE ORDER AGREEMENT

This Master Purchase Order Agreement ("MPO Agreement") is made and entered into in Milpitas, California, as of \_\_\_\_\_, ("Effective Date") by and between PRESTON PIPELINES INFRASTRUCTURE, LLC., a California limited liability corporation ("Buyer"), and \_\_\_\_\_ ("Vendor"), whose address is \_\_\_\_\_.

Buyer and Vendor are entering into this MPO Agreement with the intent and understanding that it will serve as a master purchase order agreement for all projects for which Buyer engages Vendor, unless the parties expressly agree to the contrary in a separate writing.

Use of a MPO Agreement will avoid the parties having to negotiate and execute separate purchase order terms for each project. Instead, for each project on which Vendor is engaged, a Purchase Order Authorization Form ("PO Authorization") will be executed by both parties. The parties agree that this MPO Agreement, without further acknowledgement, signature, or agreement, will govern all projects for a PO Authorization is executed.

Each PO Authorization will contain information as to the owner, direct contractor if not Buyer, project location, construction lender (if any) and other information required to be included by law, as well as information concerning the specific scope of the PO Authorization and amount to be paid to Vendor.

This MPO Agreement shall expire three years following the Effective Date. The term shall automatically renew for successive twelve (12) month periods unless either party gives the other party written notice of termination of this Agreement at least thirty (30) days prior to the end of the then current term. This Agreement shall remain in effect for any purchase order between Buyer and Vendor, issued under this Agreement, until completion or termination of the project described in a subsequently issued PO Authorization.

This MPO Agreement includes and incorporates this document, as well as the agreement between Buyer and its customer ("Owner"), including without limitation, all general and supplemental conditions, and all other provisions, conditions, procedures, memoranda, project manuals, drawings, plans, specifications, addenda and modifications contained therein (the "Direct Contract"), to the extent that the foregoing (a) relate to the goods or services to be provided hereunder, such drawing details or technical specifications; (b) concern procedures or administrative requirements, such requirements concerning submittal contents, that Buyer must comply with under the Direct Contract in connection with Buyer's goods or services and/or (c) are required to be incorporated herein by the Purchase Order. **THIS MPO AGREEMENT ALSO INCORPORATES AND IS SUBJECT TO THE TERMS CONTAINED ON THE OTHER PAGES OF THIS MPO AGREEMENT; VENDOR ACKNOWLEDGES RECEIPT OF ALL SUCH TERMS.** In the event of any conflict or ambiguity among any of the terms hereof, the provisions requiring the stricter and greater duty on the part of Vendor shall govern.

**BUYER: PRESTON PIPELINES INFRASTRUCTURE, LLC.**

**VENDOR:**

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

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

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

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

License No. 1059395

License No. (if applicable): \_\_\_\_\_

**SEE TERMS ON THE FOLLOWING PAGES, WHICH ARE INCORPORATED HEREIN**

## TERMS OF PURCHASE

**ACCEPTANCE:** This MPO Agreement may only be accepted by Vendor on the exact terms set forth herein. Vendor shall be deemed to have accepted the terms hereof if: (1) it orally or in writing indicates acceptance; or (2) it commences performance or makes any deliveries with regard to any of the items that are the subject of this MPO Agreement. No additional terms or modifications shall be binding on Buyer unless accepted by it in writing. All different or additional terms proposed or required by Vendor, now or in the future, are rejected unless expressly agreed to in writing by Buyer. Except as expressly provided herein, this MPO Agreement and the PO Authorization shall supersede and take precedence over any terms of any prior or subsequent agreement, proposal, or communication, and may only be modified by a writing executed by the parties.

**CHANGES:** Changes will be binding on Buyer only if made in a writing signed by Buyer. Buyer may by written change order make any change, including without limitation, increases or reductions in quantities, changes in the schedule for delivery, and/or changes in the specifications or drawings. The price for any change in quantities shall be adjusted in accordance with the unit prices specified herein. If the change is other than as to quantities of unit priced items, the price shall be reduced or increased based on the actual direct cost impact of the change. Upon written notice to the Vendor, Buyer may terminate this MPO Agreement for convenience without any liability to Vendor, except that there shall be an equitable adjustment as to any work or materials then in progress and not yet delivered; provided, however, that no adjustment shall be made in favor of Vendor as to any materials which are Vendor's standard stock. In the event of a termination for convenience, Vendor shall not be liable for lost profits or overhead costs with regard to materials or services not yet furnished. No termination for convenience shall relieve Vendor of its obligations, such as warranty or indemnity obligations, as to any materials already delivered. Any claim by Vendor for an adjustment must be asserted in writing within ten (10) days from the date the change or termination is ordered or the claim shall conclusively be deemed waived.

Any 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 or material delivered (altogether known as "Field Confirmations"), are for the sole purpose of verifying daily records of work or material delivery. Notwithstanding any terms and conditions contained on Field Confirmations, any Field Confirmation signed by a Buyer'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 Buyer's Project Manager or his/her superiors which specifically modify the terms and conditions shall be considered Modifications.

**SUBMITTALS:** Submittals shall be furnished by Vendor, complete, by the dates indicated by Buyer, and if no indication is provided, then submittals shall be provided no later than 10 days prior to when Buyer is required to furnish the submittals in question to Owner.

**PRICE AND PAYMENT:** The prices stated in this MPO Agreement Order shall include, unless expressly stated otherwise: (a) all taxes and duties of any kind levied by any governmental authority which either party is required to pay with respect to the production, sale or shipment of the goods, and (b) all charges for packing, loading and shipping. If transportation charges are separately charged, only reasonable and actual transportation costs shall be charged without markup. Sufficiently in advance so that Buyer may timely invoice and obtain payment from Owner, Vendor shall provide Buyer with all documentation, including releases and invoices, and shall perform all other acts reasonably necessary for Buyer to obtain timely payment from Owner. The time for payment of invoices or for accepting any discounts offered shall run only from the date all of the following have occurred: (1) Vendor has delivered per the terms of the MPO Agreement and PO Authorization all invoiced items and services (including any certifications and deliverables), conforming in all respects to the requirements of the purchase order; (2) Vendor has submitted correct invoices and waivers and releases as required hereunder; and (3) Owner has made payment to Buyer on account of Vendor's goods and services for which Vendor has invoiced Buyer. Quantities shown in the PO Authorization are approximate. The unit prices listed shall apply notwithstanding that the actual quantity delivered is greater or less than the quantity listed. Vendor shall take all field measurements and perform all investigation necessary to ensure that upon delivery, materials furnished will be fit for the purposes intended and will comply with the Agreement between Buyer and Owner (the "Direct Contract") and any other applicable requirements. If Owner or another responsible party delays in making any payment to Buyer from which payment to Vendor is to be made, Buyer and its sureties shall have a reasonable time to make payment to Vendor. "Reasonable time" shall be determined based on all relevant circumstances, but in no event shall be less than the time Buyer, its sureties, and Vendor require to pursue to conclusion their legal remedies against Owner or other responsible party, including (but not limited to) mechanic's lien remedies. Vendor, 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 satisfactory evidence of payment of such persons.

**DISCOUNTS:** Discount offered will be given immediate consideration regardless of payment status.

**RISK OF LOSS:** Notwithstanding the terms of shipment, the risk of loss shall pass to Buyer only after Buyer takes actual delivery. Vendor's delivery to a carrier or to an intermediate party shall not constitute delivery to Buyer.

**DELIVERY:** Unless a delivery date is otherwise specified in the PO Authorization, all deliveries shall be made to such locations and per such terms as may be specified from time to time by Buyer's representative. Vendor shall be responsible for all damages suffered as a result of Buyer's failure to adhere strictly to delivery schedules and to perform its obligations in a timely manner, including without limitation, all liquidated damages for which Buyer may be liable under the Direct Contract. Vendor may request an extension of time for delays beyond its control, and for which a time extension would be allowed under the Direct Contract, if Vendor provides written notice to Buyer within seven (7) calendar days after the commencement of any such delay; provided, however, that if Buyer's performance is delayed, Vendor shall be entitled to an extension of time only to the extent Buyer is allowed an extension of time by Owner. To the greatest extent permitted by law, Vendor's sole remedy for delay shall be an extension of time.

**DEFAULTS:** Time is of the essence. If Vendor fails to perform any of its obligations, Buyer shall be entitled to all remedies provided by law, including the right to recover all consequential and incidental damages and to be paid all replacement and repair costs, whether to Buyer's materials or to any other property. Buyer's remedies are cumulative. If Buyer questions Vendor's intention or ability to perform, it may demand in writing that the Vendor give written adequate assurances. If a written assurance is not given within three (3) working days after such a demand, Buyer may deem the failure to give such an assurance as an anticipatory repudiation. In the event of a dispute, including as to payment, Vendor shall continue to perform, and Vendor hereby waives the right to rescind or suspend its performance or deliveries or to stop deliveries in transit.

**INSPECTION:** Buyer shall have the right to inspect and test materials at Vendor's plant any time prior to shipment, and also may conduct final inspection within a reasonable time after the materials arrive at their ultimate destination. Materials shall not be deemed accepted until after final inspection and Buyer expressly determines that they are conforming. Buyer may reject nonconforming materials at any time, and may exercise all remedies for breach, notwithstanding prior payment, failure to have made inspections, and the failure to have rejected the materials at an earlier date despite the substantiality, insubstantiality, or ease of discovery of such nonconformities. Vendor shall be liable for all inspection, reshipment and return costs on nonconforming goods. Vendor shall not replace returned materials unless directed by Buyer in writing to do so.

**WARRANTIES:** Vendor warrants to Buyer and its successors that Buyer's materials and services shall be free from all defects, suitable for their intended purpose, merchantable, and conforming to and of the quality specified by this MPO Agreement and the PO Authorization. All warranties, whether express or implied, shall inure to the benefit of Buyer and of any successor in interest, including Owner and any subsequent owner of any property in which Vendor's materials and/or services are incorporated or to which they may be affixed. Vendor warrants clear and merchantable title. Vendor's warranties shall remain in effect and shall be enforceable through the later of the following: (a) one year after the expiration of the longest statute of limitation or repose applicable to claims by third parties against Buyer in connection with the items furnished by Vendor; or (b) the dates specified in the Direct Contract. The foregoing warranties, as well as any implied by law, shall govern and control notwithstanding any attempt by Vendor to disclaim warranties and/or to limit remedies or damages. Vendor's warranties are continuing in nature.

**NON - WAIVER:** Vendor shall not be released from any warranties or other obligations under this MPO Agreement or PO Authorization by Buyer's failure to insist upon strict performance of any provisions or conditions, Buyer's failure or delay in exercising any rights or remedies, Buyer's failure to notify Vendor timely or properly in the event of breach, Buyer's failure to notify Vendor of a rejection of nonconforming materials, Buyer's failure to specify with particularity any defect in nonconforming materials, the making or the acceptance of or payment for any materials hereunder, and/or the approval of design or shop drawings. Nor shall any of the foregoing constitute a waiver of Vendor's default, whether prior or subsequent, of Buyer's right to insist upon strict performance, and/or a waiver of any of Buyer's rights or remedies. No purported oral modification or rescission of this MPO Agreement or the PO Authorization by Buyer shall operate as a waiver of any of its terms.

**INFRINGEMENT:** Vendor warrants that the goods and services sold under this MPO Agreement and/or a PO Authorization shall not violate any copyright, trademark, license or other intellectual property rights (collectively, "Intellectual Property rights"). In accordance with the provisions below, Vendor shall indemnify, hold harmless and defend Buyer and its successors in interest against any claims, demands, causes of action, liabilities, or proceedings arising out of or asserting any alleged or actual violation or infringement of any Intellectual Property rights.

**COMPLIANCE:** Vendor shall perform and shall produce, furnish and deliver all materials and services in strict compliance with all applicable laws, regulations, safety orders, labor agreements, California Labor Code 2750.5 and 2810.4 concerning classification of employees and contractors, including Vendor's lower-tier subcontractors, suppliers, haulers/truckers, manufacturers, or any other party which Vendor is responsible for, and other

requirements, including without limitation and where applicable, equal employment opportunity requirements. Vendor shall further comply with all applicable requirements under the Direct Contract. Vendor shall execute and deliver to Buyer such documents as may be required to establish or to demonstrate compliance.

**INDEMNITY/DEFENSE:** With the exception that this provision shall in no event be construed to require indemnification by Vendor to a greater extent that permitted under the law, Vendor shall indemnify, defend and save harmless Owner and Buyer, and their respective officers, agents, directors, partners, members, employees, affiliates, parents and subsidiaries, and each of them, of and from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, of every kind and nature whatsoever ("Claims") arising out of or in any way relating to (i) this MPO Agreement and/or a PO Authorization; and/or (ii) actual or alleged actions or omissions by Vendor or persons for whom it is responsible; and/or (iii) Vendor's Work or presence at the project site; and/or (iv) an allegation or finding that Buyer is a joint employer, statutory employer, or otherwise legally responsible for the employees of Vendor or any of its lower-tier subcontractors, haulers/truckers, suppliers, manufacturers, or any party for whom Vendor 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 Vendor, misclassifications of independent contractors, Buyer's right to direct and control Vendor'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. The foregoing obligations shall apply notwithstanding that Vendor is not negligent or actively involved in the events that give rise to the Claims. The obligations under this paragraph and shall extend to Claims occurring after this MPO Agreement and/or the PO Authorization is terminated or completed as well as while it is in force. To the greatest extent permitted by law, the duties to indemnify, defend and hold harmless shall apply regardless of any active and/or passive negligent act or omission of Buyer, Owner or of any other person to be indemnified hereunder. Vendor, however, shall not be obligated under this Agreement to indemnify, defend and hold harmless: (a) Buyer or Owner against Claims arising from their respective sole negligence or willful misconduct; (b) any person against defects in designs that that person has furnished. The duty to defend is a separate covenant. The foregoing duties are not limited, waived or impaired by workers compensation statutes or insurance or by any other insurance coverage.

**INSURANCE AND BONDS:** (See attached Exhibit A) Vendor agrees to maintain liability insurance and to obtain and furnish certificates of insurance and additional insured endorsements without additional cost to Buyer. The certificates and endorsements shall provide that Buyer, Owner, Construction Manager, and their respective officers, directors, employees and agents, are additional insureds and shall be provided coverage with regard both to ongoing and completed operations. Such coverage shall be primary as respects the additional insureds, and any other insurance available to the additional insureds shall be excess and noncontributory. Unless expressly provided by this MPO Agreement or the PO Authorization, the limits of liability coverage shall be not less than \$2 million per occurrence/\$2 million aggregate. Vendor'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/earth movement exclusions, requirements by the insurer that lower tier subcontractors or suppliers maintain insurance or agree to defend or indemnify Buyer, Vendor, and/or Owner, residential work exclusions or limitations (if the materials or services are furnished on such a project). Vendor shall cause its policies to be amended or endorsed to remove any such exclusions, provisions or limitations. Certificates of insurance shall provide that there will be no cancellation or reduction of coverage without thirty (30) days prior written notice to Buyer. Insurance, endorsements, and insurers shall be subject to Buyer's approval. Vendor and its insurers waive the right to subrogation and all other rights against Buyer, Owner, Construction Manager, and their respective officers, directors, employees and agents, to the extent any loss, claim, damage, liability, or cause of action is covered by applicable insurance. General liability insurance shall be written on a form at least as broad as ISO occurrence form CG 0001; additional insured endorsements must provide coverage at least as broad as CG 20 10 1185. All insurance and bonds shall be provided by a California admitted carrier with an A.M. Best's Rating of A- or better, financial capacity VII or greater. Upon execution of the PO Authorization, or at any time upon 10 days written notice Vendor shall furnish a labor and material bond and a performance bond, each in an amount equal to one hundred percent (100%) of the Contract Price for the PO Authorization, both bonds to be in a form satisfactory to Buyer.

**OCIP OR WRAP POLICY DISCLOSURES**

[ **Check Box if applicable:**  ]

In accordance with Civil Code Section 2782.96, Buyer provides the following disclosures:

- Wrap Up policy limits: \$ \_\_\_\_\_.
- Known exclusions: See Exhibit \_\_\_\_\_, attached hereto.
- Period/length of time policy is to remain in effect: \_\_\_\_\_

Upon written request, once Buyer 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.

**ASSIGNMENTS, TRUST DUTIES AND SETOFF:** Any delegation, transfer, subletting or assignment, by operation of law or otherwise, of all or any portion of Vendor's obligations, or of payments to Vendor, shall be void unless made with the prior written consent of Buyer. In the event of any transfer, hypothecation or assignment by Vendor of the right to receive all or any part of any payments due or to become due hereunder, Buyer may, at any time thereafter withhold any or all monies or payments due or to become due hereunder until final payment is due and all conditions precedent to such payment have been satisfied. Buyer may set off against any amount payable under this MPO Agreement and PO Authorization any claim it may have against Vendor regardless of whether such claim arises under the foregoing agreements. Vendor as trustee agrees that money received by it is held in trust for the performance of the PO Authorization and shall be used solely for the benefit of those supplying labor, materials, supplies, tools, machines, equipment, or plant in connection with the PO Authorization. No funds held in trust shall be diverted by Vendor.

**INDEPENDENT CONTRACTOR AND LABOR COMPLIANCE:** Vendor agrees that it is, or prior to the start of the work will become, an independent contractor. Vendor acknowledges that Buyer has entered into labor agreement(s) covering work at its construction job sites with one or more unions, including the Laborers Union. To the extent required by such labor agreements, Vendor agrees to be bound to and comply with all the terms and conditions thereof, including terms regarding payments into the employee benefit trust funds, insofar as Vendor may lawfully do so. Vendor agrees to comply with the terms and provisions of said agreements setting forth the jurisdiction and scope of work claimed by each craft, and the procedure contained in such agreements for resolution of jurisdictional disputes. In the absence of any such procedure, or if such procedure fails to promptly resolve any jurisdictional dispute, Vendor agrees, at its own cost and expense, upon request of Buyer to take any and all lawful steps to secure a binding and final determination of said jurisdictional dispute by the National Labor Relations Board. Vendor acknowledges that terms and conditions of such labor agreements may require that Vendor comply with additional labor agreements with unions affiliated with such unions but not listed. When the terms and conditions of Buyer's labor agreements so require, Vendor shall perform its job site work pursuant to all terms and conditions of an appropriate labor agreement with a union affiliated with such other unions. Vendor agrees that it shall, if necessary become a signatory to a union agreement or enter into a one job agreement with unions, if necessary for Buyer to comply with its union or other legal or contractual obligations. Should there be picketing on at the job site, and Buyer establishes a reserved gate for Vendor's purpose, it shall be the obligation of Vendor to continue the proper performance of its work without interruption or delay. Vendor further promises and agrees that it will bind and require all of its subcontractors or vendors performing job site work of the type covered by any of the labor agreements specified herein to agree to all of the foregoing promises and undertakings, to the same effect as herein provided with respect to it.

**DEFINITIONS:** The term "Buyer" includes PRESTON PIPELINES INFRASTRUCTURE, LLC. and any joint venture that includes it as a member, even if not indicated on the face of the MPO Agreement or PO Authorization. If Buyer is not the ultimate consumer of the goods, then all rights, benefits and remedies available to Buyer shall also inure to and be for the express benefit of Buyer's successors in interest hereunder

**DISPUTE RESOLUTION:** Any dispute resolution procedure in the Direct 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. Vendor shall cooperate in such procedures and shall participate in them when requested. Any claims not involving the Owner shall be resolved 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 Buyer, shall participate in non-binding mediation, with each party to bear its own fees and costs. Notwithstanding any dispute, and to the greatest extent permitted by law, Vendor agrees to continue with its performance and maintain the schedule of work deliveries pending resolution of any and all dispute, including disputes regarding payment. This agreement constitutes an advance waiver by Vendor of any actual or alleged right to stop work, to suspend deliveries and/or its performance, rescind, stop goods in transit, or to abandon the Project. 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.

**STATUTORY NOTICE:** 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.

## EXHIBIT A

### INSURANCE REQUIREMENTS

**Casualty Insurance.** SUBCONTRACTOR/VENDOR 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/VENDOR'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/VENDOR shall carry primary Commercial General Liability insurance covering all operations by or on behalf of SUBCONTRACTOR/VENDOR 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/VENDOR 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/VENDOR 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/VENDOR's work under this Contract. For purchase orders 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/VENDOR 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/VENDOR 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/VENDOR 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/VENDOR 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/VENDOR 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/VENDOR'S bid shall be subject to upward adjustment to compensate for the existence of such exclusions.

SUBCONTRACTOR'S/VENDOR'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/vendors or suppliers maintain insurance or agree to defend or indemnify PRESTON PIPELINES or OWNER, residential work exclusions or limitations. SUBCONTRACTOR/VENDOR 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/VENDOR, SUBCONTRACTOR/VENDOR 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/VENDOR of its duties and responsibilities under this Agreement, including the duty to defend, indemnify and hold harmless OWNER.

SUBCONTRACTOR/VENDOR shall take such steps as are necessary to assure SUBCONTRACTOR's/VENDOR's compliance with its obligations. Should any insurance policy lapse or be canceled during the contract period, SUBCONTRACTOR/VENDOR 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/VENDOR fails to maintain any insurance coverage required, PRESTON PIPELINES may, but is not required to, maintain such coverage and charge the expense to SUBCONTRACTOR/VENDOR or terminate this contract.

Any acceptance of insurance certificates or endorsements by PRESTON PIPELINES shall in no way limit or relieve SUBCONTRACTOR/VENDOR 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/VENDOR 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/VENDOR will comply with such requirements.

SUBCONTRACTOR/VENDOR 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/VENDOR shall also satisfy the following additional requirements:

(a) **Hazardous Materials.** If SUBCONTRACTOR/VENDOR 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/VENDOR 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/VENDOR 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/VENDOR 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/VENDOR (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/VENDOR 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/VENDOR's policy shall be endorsed to indicate that SUBCONTRACTOR's/VENDOR's policy shall provide coverage once the project design policy has been exhausted.

- (c) **Riggers Liability.** Should SUBCONTRACTOR's/VENDOR's work involve the moving, lifting, lowering, rigging or hoisting of property or equipment, SUBCONTRACTOR/VENDOR shall carry Rigger's Liability Insurance to insure against physical loss or damage to the property or equipment.
- (d) **Aircraft Liability.** If SUBCONTRACTOR/VENDOR (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/VENDOR (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/VENDOR 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/VENDOR within fifty feet of any railroad. SUBCONTRACTOR/VENDOR shall also provide any other insurance coverage required by any owner or operator of any rail system.
- (f) **Equipment and Property Coverage.** SUBCONTRACTOR/VENDOR shall procure and maintain at its own expense property and equipment insurance for SUBCONTRACTOR's/VENDOR'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/VENDOR 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/VENDOR's work and equipment. This insurance shall apply on a replacement cost basis. Any deductible shall be the full responsibility of SUBCONTRACTOR/VENDOR.

- (g) **Waiver of Subrogation.** PRESTON PIPELINES and SUBCONTRACTOR/VENDOR 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/VENDOR 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/VENDOR 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/VENDOR 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/VENDOR 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.

## Vendor:

**Contractor and Vendor have previously entered into a Master Purchase Order Agreement dated **month, day, year**. This amendment to the executed agreement clarifies situations where minor work is performed at the direction of our field personnel and scheduled through our dispatch department. Under this scenario, the schedule sent to you daily, by our Dispatchers, shall act as your Work Authorization for the specific project. We will call this a Dispatch Work Authorization (“DWA”). Projects with existing Work Authorizations are not covered by this amendment. These DWAs will be subject to the following policies and requirements for both Preston, as the Contractor, and you, as our Vendor:**

### **Dispatch Work Authorizations (DWAs)**

1. The payment provisions (“Price and Payment” section), in cases where work is under a Dispatch Work Authorization (DWA), will not be subject to retention unless otherwise agreed. In addition, invoices will be paid within your normal vendor terms. Work proceeding under daily DWAs are not subject to the Vendor Payment Application requirement for each project (“Price and Payment” Section).
2. Unless otherwise agreed to, the risk of loss for deliveries and transportation of materials shall pass to Contractor only after Contractor takes actual delivery at the Project Site. Vendor’s delivery to a carrier or to an intermediate party shall not constitute delivery to Vendor.
3. Insurance certificates and additional insured endorsements continue to be required for each individual project. Lien release forms, certified payrolls and OCIP enrollment (and other compliance items required by Owner or our client) may be required for specific projects. Payments will be delayed if project Insurance and other required project compliance items are not in place.
4. All other compliance requirements and working provisions for each specific project must be adhered to by our vendors (Whether proceeding under a Work Authorization or under a Dispatch Work Authorization). It is the responsibility of each vendor to understand and verify that they have fulfilled compliance requirements. Compliance requirements include but are not limited to abiding by all local, state, and federal laws as well as project specific contract documents. If applicable to Vendor’s work, compliance requirements shall include procuring USA tickets and providing ticket copies to Contractor. Payments for work performed may be delayed in any cases where compliance items are not in order.
5. The DWA, initiated by the daily schedule emailed to your office, will contain the following wording:

**“PLEASE NOTE:**

*This dispatch is your Authorization to perform work at this project for Preston Pipelines Infrastructure, LLC. By proceeding with this work you acknowledge and agree with the Preston Pipelines Infrastructure, LLC’s Master Subcontractor Agreement, Master Trucking Agreement or Master Purchase Order Agreement, either previously executed by your firm and available from your own business records, or available by request from Preston Pipelines Infrastructure, LLC., or which is currently posted on Preston Pipeline Infrastructure, LLC’s website [www.prestonco.com](http://www.prestonco.com). You also agree, and will comply, with any and all job specific insurance, certified payroll and/or*

*other project compliance requirements as may be necessary for our timely payment from our customer. Providing you are in compliance with all job specific requirements, payments will be made as agreed under your invoice terms for this dispatched project work.”*

- 6. All other applicable Master Subcontract Agreement or Master Purchase Order provisions remain the same and apply to all work performed under a DWA. In the event Vendor is contracted to supply combinations of goods and services, including but not limited to, non-standard goods fabricated and customized to meet project-specific specifications, operated rental equipment, and services, and if such supplied services, customized goods, rental equipment form a significantly larger proportion of the work in comparison to services, and if Vendor is considered a Subcontractor by operation of law, then the Master Subcontractor Agreement provisions shall apply and take precedence over the Master Purchase Order.

**Executed** on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, California.

**CONTRACTOR:**

Preston Pipelines Infrastructure, LLC.  
133 Bothelo Ave.  
Milpitas, CA 95035

**VENDOR:**

(type name and address:)

By:

By:

California License No.: 1059395

Authorized Officer  
License No. (if applicable): \_\_\_\_\_