

1 ROBERT W. O'CONNOR, SBN 96547
 bob@otmklaw.com
 2 SEAN-THOMAS P. THOMPSON, SBN 210529
 sean@otmklaw.com
 3 JOHN W. KLOTSCHKE, SBN 257992
 john@otmklaw.com
 4 O'CONNOR THOMPSON MCDONOUGH KLOTSCHKE LLP
 2500 Venture Oaks Way, Suite 150
 5 Sacramento, CA 95833
 Telephone: 916-993-4540
 6 Facsimile: 916-993-4541

7 Attorneys for Plaintiff,
 A. Teichert & Son, Inc. dba Teichert Construction

8
 9 **IN THE UNITED STATES DISTRICT COURT**
 10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 A. TEICHERT & SON, INC. dba TEICHERT
 CONSTRUCTION, a California corporation,

12 Plaintiff,

13 v.

14 LANDMARK AMERICAN INSURANCE
 15 COMPANY, an Oklahoma corporation;
 COLONY INSURANCE COMPANY, a Virginia
 16 corporation; and RSUI INDEMNITY
 COMPANY, a New Hampshire corporation,

17 Defendants.
 18

CASE NO. 16-cv-07094-SI

**STIPULATION OF DISMISSAL, WITHOUT
 PREJUDICE, AND TOLLING AGREEMENT**

Case Management Date: June 30, 2017
 Courtroom: 1
 Trial Date: None Set

19 Pursuant to Rule 41 of the Federal Rules of Civil Procedure, Plaintiff A. Teichert & Son,
 20 Inc. dba Teichert Construction and Defendants Landmark American Insurance Company and
 21 RSUI Indemnity Company (collectively the "Parties"), by and through their respective counsel,
 22 stipulate to dismiss this action, without prejudice, with the Parties each bearing their own
 23 attorneys' fees and costs.

24 The Parties further stipulate and agree as follows:

25 1. For purposes of this Stipulation, "Applicable Claims and Defenses" means all
 26 claims and causes of action (including, without limitation, any and all causes of action for
 27 declaratory relief on a duty to defend or indemnify, breach of contract, breach of implied
 28 covenant of good faith and fair dealing, and unfair business practices, and/or other causes of

1 action under common law or under state, federal, or local laws), and any defenses, arising from
2 or related to alleged leaks in the public work of improvement known as the Nacimiento Water
3 Project, including, without limitation, claims, causes of action and defenses asserted in the
4 litigation titled *San Luis Obispo County Flood Control and Water Conservation District v. A.*
5 *Teichert & Son, Inc. et al.*, Contra Costa Superior Court, Case No. MSC15-02153, which (a)
6 have already accrued as of the Effective Date and are not barred as of the Effective Date
7 under any agreement, statutes of limitation, or otherwise, or (b) may accrue during the tolling
8 period described in paragraph 2, below.

9 2. In an attempt to avoid immediate and potentially unnecessary litigation, the
10 Parties hereby agree that the running of any and all statutes of limitations, repose, and defense
11 of laches applicable to the Applicable Claims and Defenses are suspended and tolled effective
12 October 20, 2017 (the "Effective Date") until December 1, 2018 (the "Termination Date"), unless
13 the Termination Date is extended or shortened by mutual agreement of the Parties, with such
14 mutual agreement evidenced by a written instrument signed by all of the Parties.

15 3. The execution of this Stipulation is not and shall not be deemed to constitute
16 evidence or an admission of liability for any claim or cause of action.

17 4. Furthermore, this Stipulation shall not revive any claims, causes of action or
18 defenses belonging to any Party which were barred prior to the Effective Date under the terms
19 of any agreement, statutes of limitation or otherwise.

20 **IT IS SO STIPULATED.**

21 DATED: October 31, 2017

O'CONNOR THOMPSON MCDONOUGH
KLOTSCHE LLP

22
23 By: 

24 JOHN W. KLOTSCHE
25 SEAN-THOMAS P. THOMPSON
26 Attorneys for Plaintiff, A. TEICHERT &
27 SON, INC. dba TEICHERT
28 CONSTRUCTION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: October 23, 2017

MUSICK, PEELER & GARRETT LLP

By: _____

DAVID A. TARTAGLIO
JUAN A. TORRES
Attorneys for Defendants, LANDMARK
AMERICAN INSURANCE COMPANY
and RSUI INDEMNITY COMPANY

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 11/3/17 _____

Susan Illston

THE HONORABLE SUSAN ILLSTON
UNITED STATES DISTRICT JUDGE