

# DRAFT - MASTER TRUCKING SERVICES AGREEMENT

THIS SERVICE AGREEMENT, dated January 1, 2020, is made by and between the Company and the Trucker, identified as follows:

**COMPANY:** **ABC Company, Inc.**  
P.O. Box 1111  
Anytown, USA  
Phone: (888) 88-8888 Fax: (777) 777-7777

**TRUCKER:** **XYZ Trucking, Inc.**  
P.O. Box 1111  
Anytown, USA  
Phone: (888) 88-8888 Fax: (777) 777-7777

**WHEREAS**, Company engages in construction/manufacturing work for various construction projects; and

**WHEREAS**, Trucker has expressed an interest in performing certain non-exclusive hauling/transportation services for the benefit of Company; and

**WHEREAS**, in lieu of negotiating a new trucking contract for each and every future project for which Trucker may agree to provide services, Company and Trucker desire to memorialize (i) the uniform terms and conditions that will be standard for every future trucking contract entered into between the parties and (ii) the standard protocol for entering into future trucking contracts;

**NOW THEREFORE**, Company and Trucker, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, agree as follows:

**PROJECT:** *(Identify specific project or scope of Work here – this could include a statement that the agreement applies to all services provided by Trucker for a period of 1 year from the contract date for a specific plant location.)*

1. Services and Prices. The Trucker will provide trucking service at the unit costs described in the table below for the Project at the dates, times and quantities requested by the Company.

Truck Type	UM	Quantity	Unit Cost	Total Cost
Belly Dump	HR	1.00	\$ 50.00	\$ 50.00
Side Dump	HR	1.00	\$ 50.00	\$ 50.00
Quad Axle	HR	1.00	\$ 50.00	\$ 50.00
Tri Axle	HR	1.00	\$ 50.00	\$ 50.00
Tandem Axle	HR	1.00	\$ 50.00	\$ 50.00
Single Axle	HR	1.00	\$ 50.00	\$ 50.00
<b>TOTAL FOR AGREEMENT</b>				<b>\$ 300.00</b>

2. Terms. This Agreement applies to any services provided by Trucker to Company on the Project whether supplied by Trucker or its employees as a Trucking Provider, by or through other Trucking Providers that supply such services on Trucker's behalf, or by employees, Independent Truck Operators or Trucking Firms of any such Trucking Provider providing services on Trucker's behalf.
3. Independent Contractor Status Confirmed. The Parties intend this document to confirm that Trucker qualifies as an Independent Contractor under applicable State statutes. Trucker agrees that its relationship to Company is that of an Independent Contractor or common carrier and not that of an employee or subcontractor, and further warrants and represents that: (i) Trucker maintains a separate business with its own office, equipment, materials and other facilities; (ii) Trucker holds or has applied for a federal employer identification number or has filed business or self-employment income tax returns with the federal Internal Revenue Service based on that work or service in the previous year; (iii) Trucker owns the vehicle and equipment required to perform the services (together, "the equipment"), or holds the equipment under a bona fide lease arrangement; (iv) Trucker is solely responsible for maintaining the equipment; (v) Trucker bears the principle burden of the operating costs for the equipment and the services, including fuel, repairs, supplies, vehicle insurance, and personal expenses while on the road; (vi) Trucker is responsible for supplying the necessary personal services to operate the equipment, including but not limited to all payments to and/or payroll withholding of income and Social Security Taxes for its employees, if any; (vii) Trucker generally determines the details and means of performing the services, in conformance with regulatory requirements, operating procedures of the carrier, and specifications of the shipper; (viii) Trucker may realize a profit or suffer a loss under contracts to perform work or service; and (ix) The success or failure of Trucker's business depends on the relationship of business receipts to expenditures.
4. Non-exclusivity. Trucker's relationship with Company is not exclusive, and Company reserves the right to obtain the same or similar services from others as necessary to fulfill its requirements. Other than the work Trucker has accepted under this Agreement, which Company may increase or decrease by Change Order, Trucker similarly reserves its right to accept or reject any work on other projects that Company may offer.
5. Compliance With Applicable Laws. Trucker acknowledges that it is solely responsible for performing its services under this Agreement in compliance with all laws, rules, and regulations, including but not limited to the following, as applicable:
  - A. Workers' Compensation. Trucker agrees to comply with any applicable statute or regulation pertaining to workers' compensation, including unemployment compensation;
  - B. Prevailing Wages/Trucking Rental Rates. Trucker agrees to comply with any applicable statute or regulation pertaining to prevailing wages, including without limitation the Federal Davis-Bacon Act;;
  - C. Federal Motor Carrier Regulations. Trucker agrees to comply with applicable statutes and regulations pertaining to Motor Carriers, including but not limited to 49 CFR parts 382 (Drug & Alcohol Testing), 391 (Safety) and 396 (Inspections).
  - D. Safety. Trucker will comply with OSHA, MSHA, and all Federal, State, and Local laws pertaining to safe procedures, including without limitation, drug and alcohol testing in the workplace. By way of non-exclusive example, Trucker will have back-up alarms and DOT approved beacons and wear approved hardhats and reflective vests. Any fines imposed on Trucker or Company for Trucker's failure to adhere to these requirements will be paid by Trucker.
  - E. Aggregate Tax Option. Trucker ( Will /  Will Not) pay the Aggregate Tax provided in for in applicable state statutes.
6. Payments by Company. Company agrees to pay to Trucker the prices set forth in Paragraph 1 of this Agreement. Subject to Paragraphs 6A and 6B, and unless other arrangements have been made in writing, the Company will pay Trucker within thirty (30) days of the receipt of a proper invoice for services rendered. This invoice must contain, at a minimum, Company's Project Number, the Owner's Project Number, Project Name, Date that Service was provided, Type of Material Hauled, and Total Hours by Truck, and a copy of Trucker's daily truck tickets must accompany the invoice. If any of these items are missing, Company will be entitled to delay payment to Trucker.

- A. Partial and final payments are also expressly conditioned on and may be withheld until Trucker's submittal of the certified payrolls, EEO reports, certified IC-134 forms (if requested by Company), and a completed DOT Prime Company's Month-End Trucking Report, if applicable. No payment will be made until certificates of insurance evidencing the coverage required below are received by the Company. If at any time this coverage is suspended or canceled, Trucker must immediately stop its work and its payment may be withheld until evidence is provided to the Company that the Trucker has obtained new insurance coverage.
- B. Irrespective of any term or inference to the contrary in this Agreement, Trucker and Company expressly agree that Company's receipt of progress payments, final payment and retainage from the Owner is an absolute condition precedent to Trucker's right to receive any such payment from Company. It is also a condition precedent to Trucker's right to receive progress or final payments that Trucker furnishes to Company a general release of all claims and final lien waivers of Trucker, its subcontractors and suppliers, and all others claiming directly or indirectly through Trucker. Such release and lien waivers shall be in a form acceptable to Company and Owner. Acceptance of final payment by Trucker will constitute a waiver of all claims by Trucker against Company, the Owner or Engineer. In order to protect the interest of Company, Owner or the Project, Company reserves the right to make direct payments to Trucker's laborers, suppliers and subcontractors from funds due and owing to the Trucker on this or other projects.
7. Adequate Supply of Services. The Trucker will supply all labor, materials and equipment required to furnish the trucking services identified above, and to perform all such services in a good and workmanlike manner strictly in accordance with the terms and conditions of this Agreement and of the General Contract as executed by the Company and the Owner for the Project. Trucker will provide such services to Company on the specified dates and with the required number of trucks, and if not provided, any additional costs incurred by Company will be borne and paid for by Trucker.
8. Labor Requirements. The Trucker will not use any class of workers, materials or methods which may cause strikes or labor disturbances. The Trucker acknowledges receipt of required labor provisions relating to this Agreement. The Trucker is required to follow these provisions and mail required copies of payroll, Weekly Statements of Compliance, and similar documents, to the Company at the address set forth above, as well as to the other parties who are to receive such documentation under the terms of the labor provisions.
9. Safety and Assumption of Risk. The Trucker will be solely responsible to take all necessary precautions and to perform the work in a safe and proper manner. Trucker expressly assumes all risks associated with its work under this Agreement. Regardless of the availability of insurance, the Trucker assumes entire responsibility and liability, to the fullest extent permitted by law, for all damages or injury to all persons, whether employees or otherwise, and to all property, arising out of, resulting from, or in any manner connected with the execution of the work provided for in this Agreement or occurring or resulting from the use by the Trucker, its agents or employees, of materials, equipment, or other property, whether the same be owned by the Company, the Trucker or third parties.
10. Insurance and Indemnity. The Trucker will maintain all licenses, bonds and insurance coverages as may be required by any applicable public or governmental body, as well as the following insurance coverage's required by this Agreement. In the event that Trucker enters into a subcontract with a Sub-Trucker, the Trucker will require the Sub-Trucker to procure all insurance specified in this Agreement to be carried by the Trucker, in the like form and amount, and to name the Company as an Additional Insured under the Sub-Trucker's policies on the same terms and conditions of this Agreement. Trucker will require evidence of this insurance and Additional Insured status to be provided by the Sub- Trucker prior to the Sub- Trucker commencing any work or entering onto the jobsite or project area, and copies of this evidence shall be provided to Company by the Trucker.
- A. All insurance policies as required by this Agreement shall be maintained with insurance companies licensed and admitted to do business in the state where the Project is located and shall have a rating of "A-VII" or higher in the most current Best's Key Rating Guide. The Trucker will furnish to the Company, when and as often as required, satisfactory evidence that it has complied with this requirement. The Trucker will submit to the Company, upon receipt of this Agreement, Certificates of Insurance on an ACCORD form with coverages in the amounts listed. The Certificate for each policy will provide that such policy will not be canceled except after thirty (30) days' written notice to the Company. The additional insured endorsements required by this agreement must also be

submitted along with the COI. NO WORK MAY BE PERFORMED BY THE TRUCKER ON THE PROJECT UNTIL WRITTEN EVIDENCE OF ALL NECESSARY INSURANCE COVERAGES HAS BEEN SUBMITTED TO, AND APPROVED BY, THE COMPANY. After work has commenced, any failure by the Trucker to maintain all required insurance coverages will constitute a default in performance under this Agreement and may result in the withholding of current payments due to the Trucker.

B. Indemnity - To the fullest extent permitted by law, Trucker will indemnify, defend (with counsel reasonably satisfactory to the Company), and save harmless the Company, Owner and the Project, as well as any individual and/or entity that the Company is required by contract to indemnify, defend and/or hold harmless, and each of their officers, directors, agents and employees from and against any and all suits, actions, legal or administrative proceedings, claims, debts, demands, damages, consequential damages, liquidated damages, liabilities, interest, attorney’s fees, costs and expenses of whatever kind or nature (“Claims”), whether or not the Claims arise before, during or after performance of the Trucker’s work, which are in any manner directly or indirectly caused by or arise out of, in whole or in part, any act, omission, breach of this Agreement, fault or negligence of or by the Trucker, or anyone acting under its direction, control or on its behalf or for which Trucker is legally responsible, and which arise out of or related to Trucker’s Services under this Agreement; without limitation, the same will include bodily injury or death to any person or persons (including the Trucker’s employees or independent contractors) and damage to any property, regardless of where located, including the property of the Owner and Company. The indemnification obligations set forth herein will not be limited in any way by any limitation on the amount of damages, compensation or benefits payable by or for the Trucker under workers’ compensation acts, disability benefit acts, or other employee or independent contractors engaged in performance of the work. Trucker will pay all legal fees and disbursements paid or incurred by Company to enforce the provisions of this paragraph. The Trucker ( Will /  Will Not) obtain, maintain and pay for commercial general liability coverage to fulfill these indemnity obligations.

C. Trucker’s Insurance Coverages Required by this Agreement

i. Commercial General Liability insurance on ISO CG 00 01 Form or equivalent for:

General Aggregate	\$2,000,000
Products/Completed Operations	\$2,000,000
Personal/Advertising Injury	\$1,000,000
Per Occurrence Limit	\$1,000,000
Medical Expenses	\$5,000

Coverage’s shall include without limitation: premises operations, XCU, products - completed operations, contractual, independent contract, broad form property damage and personal injury. Company, Owner, and the Project, as well as any individual and/or entity that the Company is required by contract to name as an additional insured shall be named as an additional insured on Trucker’s CGL policy per a combination of ISO CG 20 10 07/04 and ISO CG 20 37 07/04 or equivalent.

ii. Automobile Liability Policy and Certificate. Automobile coverage, including all owned, hired, non-owned and leased vehicles, shall have insurance with a combined single limit for Bodily Injury and Property Damage in the amount of at least \$1,000,000 and include the MCS-90 endorsement. Company, Owner, and the Project, as well as any individual and/or entity that the Company is required by contract to name as an additional insured shall be named as an additional insured on Trucker’s Automobile Policy per the ISO CA 20 48 endorsement.

iii. Workers’ Compensation:

Coverage A	Statutory
Coverage B	\$500,000
Bodily Injury by Accident (Each Accident)	\$500,000
Bodily Injury by Disease (Each Employee)	\$500,000
Bodily Injury by Disease (Policy Limit)	\$500,000

- iv. Umbrella Coverage: The Trucker ( Will /  Will Not) obtain umbrella coverage with limits detailed below. In Lieu of Umbrella Coverage the Trucker may provide \$3,000,000 in automobile liability coverage in accordance with paragraph 10a.

Aggregate Limit	\$2,000,000
Per Occurrence Limit	\$2,000,000

D. Additional Insurance Requirements:

- i. Trucker's insurance policies, including Trucker's Excess and/or Umbrella insurance, shall state via endorsement that these policies are primary to and non-contributing with, any other insurance carried by, or for the benefit of the Company, or any other party required to be named as Additional Insured under this agreement. Coverage shall be provided by a policy endorsement such as CG2001. Any such insurance maintained by an Additional Insured shall be excess of any such insurance maintained by the Trucker. The intent of this provision is to specifically require that the Trucker's primary and excess layers of insurance will respond first and completely, prior to any other insurance responding that is carried by, or for the benefit of the Company, or any other party required to be named as Additional Insured under this agreement.
- ii. Trucker shall provide, by policy endorsement, a waiver of subrogation in favor of the Company under its Workers Compensation and Commercial General Liability policies.
- iii. Commercial General Liability aggregate limits carried by the Trucker shall be on a per project / per location basis and shall include Bodily Injury, Property Damage, Products/Completed Operations, Personal Injury and Advertising Injury

11. Bond. Trucker ( Will /  Will Not) obtain and furnish to the Company and maintain in effect during the term of this Agreement, an acceptable performance and payment bond in the amount of the Agreement written by a surety company that appears in the most current U.S. Treasury Circular No. 570. If required, no work may start until such bond has been furnished to Company.
12. Payments by Trucker. Trucker will pay for all labor, materials and equipment used in the performance of this Agreement when and as bills or claims for them become due, and will protect and save the Company harmless from all claims, demands, liabilities and liens on account thereof, and will furnish satisfactory evidence of payment to the Company upon request. The Trucker specifically agrees to pay all state, federal and local taxes or contributions required with respect to the Trucker's employees or Trucking Providers engaged in performance of the work.
13. Flow Down. Trucker assumes and will perform for Company all the obligations and responsibilities that Company is obligated to provide the Owner pursuant to the Contract between Owner and Company insofar as they are applicable to Trucker's services under this Agreement. The Trucker further agrees that if any portion of the work covered hereby is further subcontracted, such further subcontractor will be bound by and observe the provisions of this Agreement to the same extent as herein required of the Trucker, and a copy of this Agreement will be included in any further subcontract.
14. Warranty. Trucker warrants that its work will be free from any and all defects and faulty materials or workmanship. Trucker, upon receipt of written notice from Company, will immediately replace and make good, without expense to the Company, any faulty work or damage caused by reason of same for the period required by the terms of the General Contract.
15. Documentation. Trucker's start time listed on the haul sheets will be the same as the time listed on the material ticket for the first load of the day. Haul sheets and material tickets must be received and approved by Company daily. Payment will not be made on late haul sheets or tickets.
16. Overweight Tickets. Trucker is responsible for overweight tickets for all weighed material.

- 17. Duration. This Agreement is enforce for the duration of the project as identified on the title page. This agreement covers all work performed by the Trucker on this project.
- 18. Use of Company Equipment. In the event that Trucker or any of Trucker's agents, employees, suppliers, or lower-tier truckers utilize any machinery, equipment, tools, ladders, scaffolding, hoists, lifts or similar items belonging to or under the control of any of the Indemnified Parties, Trucker agrees to indemnify, defend and save harmless the Indemnified Parties from and against any and all claims, demands, suits, actions, expenses, judgments, losses and liabilities, including fines and penalties, costs and attorneys', consultants' and experts' fees, arising out of such use, except to the extent such loss or damage shall be caused by the negligence of any of the Indemnified Parties' employees operating any of the Indemnified Party-owned or Indemnified Party-leased equipment. Trucker is obligated to ensure that only properly trained and/or certified personnel utilize these items in full compliance with the manufacturer's instructions, recommendations and applicable limitations. Trucker is responsible for all inspections and maintenance as required of the manufacturer or by regulatory authorities having jurisdiction.
- 18. Miscellaneous. This Agreement contains the entire understanding of the parties and supersedes any prior proposals, representations or agreements. Neither party may assign this Agreement or any part hereof without first obtaining the written consent of the other party. It will be governed by and construed in accordance with the laws of the State of Texas.

IN WITNESS WEHREOF, the parties have executed this Agreement as of the dates indicated below.

**TRUCKER:**

**COMPANY:**

Company: \_\_\_\_\_

Company: ABC Company, Inc. \_\_\_\_\_

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

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

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

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

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

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

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

**IMPORTANT NOTE:** *This document contains sample contract language for illustrative purposes only. This is sample language only and should not be used without appropriate review and approval by your own insurance advisor and legal counsel. We highly encourage complete legal review for any and all revisions or modifications to your existing contract agreements, or the addition of Exhibits that will become part of your Subcontract Agreement.*

**DISCLAIMER** - The statements and opinions expressed in these materials are for general information purposes only and do not reflect the positions or policies of Arch Insurance Group, Inc. and its affiliated Companies (collectively, "Arch"). The author(s) and Arch disclaim all warranties whether implied, express or statutory. Implementation or use of the content is at your sole discretion, and the author(s) and Arch will have no legal responsibility or liability to any party for any damages including, but not limited to, direct, indirect, special or consequential damages, arising out of or in connection with the content.