



SUBHAUL AGREEMENT
JT Martin Trucking Inc.

This SUBHAUL AGREEMENT (Agreement) is entered into as of _____

by and between JT MARTIN TRUCKING INC. (Prime Carrier), with its principal place of business

located in Winters, CA, and

_____ (Subhauler)

with his or her principal place of business located at:

Street Address: _____

City: _____

State, ZIP: _____

- A. Prime Carrier desires to contract with Subhauler as an independent contractor to assist Prime Carrier in the transportation of rock, sand, gravel, earth, asphalt, concrete and other similar construction, construction-related and industrial or other materials capable of being transported in dump truck equipment (collectively, Materials).
- B. Subhauler desires to transport Materials at the request of Prime Carrier from time to time as an independent contractor.

In consideration of the mutual promises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Prime Carrier and Subhauler agree as follows:

1. **Term of Agreement.** This Agreement will become effective as of the date set forth above. This Agreement will remain in effect for an unspecified term until terminated by either party as set forth in paragraph 6, below.

2. **Independent Contractor Status of Subhauler.** It is the express intention of the parties that Subhauler is an independent contractor and not an employee, agent, joint venturer or partner of Prime Carrier. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Prime Carrier and Subhauler or any employee or agent of Subhauler. Both parties acknowledge that Subhauler and any employees or agents of Subhauler are not employees of the Prime Carrier for any purpose whatsoever, including, without limitation, (a) state or federal tax purposes; or (b) eligibility for (i) inclusion in any retirement benefit or stock option or participation plan for the employees of the Prime Carrier; (ii) sick pay; (iii) paid non-working holidays; (iv) paid vacations or leave days; (v) participation in any plan or program offering life, accident, and/or health insurance for the employees of the Prime Carrier; or (vi) participation in any insurance, medical reimbursement plan or other fringe benefit plan for the employees of the Prime Carrier (including, but not limited to, workers' compensation and unemployment benefits). Except as expressly stated herein, nothing herein shall be construed as prohibiting Subhauler from performing services on behalf of any third party.

3. **Services to be Performed by Subhauler**. Subhauler will perform all of the services set forth herein in a professional and businesslike fashion and in full compliance with all applicable laws, rules and regulations.

Prime Carrier's Request for Subhauler Services. The Prime Carrier, in its sole discretion, will tender Materials for bulk transportation by Subhauler under authorities maintained by Subhauler. Subhauler agrees, as an independent contractor, to provide such services. At such times as Subhauler's services may be desired, the Prime Carrier will request Subhauler to provide such service and will furnish Subhauler with a description of the reported Material to be transported, together with the time and location of the place of loading (the Load Site) and the destination for unloading (the Dump Site), within a reasonable time prior to the anticipated loading and delivery of such Material. In the event that Subhauler agrees to transport the Materials tendered by Prime Carrier, Subhauler will, without delay, cause said Material to be picked up at the Load Site and transported to the Dump Site as designated by the Prime Carrier or the Prime Carrier's agent or representative. Prime Carrier has no control over the persons or operation of any of the equipment used by Subhauler in providing the services covered by this Agreement. Subhauler will use its best efforts to give Prime Carrier preferential access to its motor vehicles, equipment, labor, drivers and other facilities for the transportation of Materials tendered by Prime Carrier. Notwithstanding, Subhauler shall not be required to furnish any specific number of vehicles or to haul any specific amount of Materials. Nothing in this Agreement shall preclude Prime Carrier from using the services of other subhaulers or from performing the services itself.

Subhauler's Method of Performing Services. Subhauler will determine the method, details, and means of performing the services covered by this Agreement, and shall bear all expenses for such operations. The Prime Carrier has no right to, and will not, control the manner or determine the method of accomplishing Subhauler's services.

Subhauler's Employment of Assistants. Subhauler may, at Subhauler's sole expense, employ fully qualified and responsible assistants, employees, independent contractors or other persons (collectively, "Assistants") as Subhauler deems necessary to perform the services required of Subhauler under this Agreement. Subhauler assumes full and sole responsibility for the payment of all compensation and expenses of any Assistants and for all state and federal income tax, unemployment insurance, workers' compensation insurance, Social Security, disability insurance, and any other applicable charge, tax, withholding or expense. Upon reasonable request by Prime Carrier, Subhauler will provide Prime Carrier with a current report from the California Department of Motor Vehicles of Driver Record Information covering Subhauler and any Assistants.

Subhaulers Operation and Maintenance of Equipment, Instruments and Implements and Charges Incidental Thereto. Subhauler will operate and maintain Subhauler's equipment, instruments and implements at Subhauler's sole expense and shall pay any and all charges, levies, taxes, bonds and expenses arising therefrom, including, without limitation, labor, fuel and repair expenses, and any and all insurance, permits, taxes and licenses levied or assessed. Subhauler shall not incur at any time any indebtedness in the name of, or inuring against, the Prime Carrier unless authorized to do so in writing. If, however, Prime Carrier pays any such expense on behalf of Subhauler, Prime Carrier may charge Subhauler and deduct the amount of each such expense, together with a 10% administrative charge, from any amount owed at that time, or at any future time, by Prime Carrier to Subhauler. Subhauler will pay all fees, charges, licenses, permit fees, taxes, bonds and fines necessary or incidental to the performance of the services covered by this Agreement. Subhauler agrees that Prime Carrier may withhold from Subhauler such mandated fees and charges as may be imposed on the transportation and required to be paid by Prime Carrier to a governmental agency and, in such event, the Prime Carrier shall pay said fees directly to such governmental agency. Subhauler will conduct regular inspections of his or her equipment, instruments and implements to determine that the same are in safe operating condition and to ensure safe working conditions and that all services under this Agreement are performed in a safe, responsible and lawful manner. Subhauler agrees that its equipment, instruments and implements will be operated and maintained in accordance with all applicable laws and regulations including, but not limited to, all provisions of the California Vehicle Code (including the BIT program and the Pull Notice program) as well as the regulations set forth in Title 13 of the California Code of Regulations and Federal Department of Transportation Regulations related to motor carrier safety. Subhauler agrees to accept full responsibility for any violation of law or regulation by Subhauler or Subhauler's Assistants.

(ii.) Charges for fuel, including all applicable fuel taxes, purchased from the Prime Carrier by Subhauler, plus a 10% administrative and handling charge.

(iii.) Trailer or other equipment rental charges if Subhauler rents trailers or other equipment from the Prime Carrier. The terms and conditions for such trailer or equipment rental shall be set forth in a separate Rental Agreement between the parties.

(iv.) Cash advances made by the Prime Carrier to Subhauler or at Subhauler's request, plus a 10% administrative and handling charge thereon, unless such charge is expressly waived in writing by the Prime Carrier or prohibited by law.

(v.) Amounts for which the Prime Carrier may be held liable by failure of the Subhauler to properly perform or otherwise conform to the terms and conditions of this Agreement, including, without limitation, moneys withheld from the Prime Carrier by the Customer due to loss or damage caused by Subhauler or by Subhauler's failure to complete or perform the transportation services (e.g., back charges) or obtain proper, fully signed and complete Load Documentation.

(vi.) Claimed losses arising from or related to any shortages, damages or contamination of cargo transported by Subhauler.

(vii.) Any other charges or fees imposed by Prime Carrier as a result of services rendered, benefits conferred or penalties imposed in accordance with any written notice furnished by Prime Carrier to Subhauler.

5. **Representations, Warranties and Additional Obligations of Subhauler.**

A. **Qualifications and Authorizations of Subhauler.** Subhauler represents and warrants that he or she holds all state, federal, county, city, local or regulatory certificates, permits, registrations, authorizations and licenses which are required or necessary for the conduct of Subhauler's business and for the performance of Subhauler's services and obligations under this Agreement (collectively, the "Authorizations"). Subhauler agrees to continue to hold the Authorizations in full force and effect at all times while performing services under this Agreement. Subhauler further represents and warrants he or she has the expertise and experience necessary to perform the obligations of this Agreement.

B. **Drug and Alcohol Provisions and Compliance.** Subhauler represents and warrants that Subhauler and his or her Assistants have no addiction to, and otherwise do not currently use, and will not use at any time services are performed under this Agreement, any drug or controlled substance that could detrimentally affect Subhauler's or his or her Assistants' performance hereunder. During the term of this Agreement and, specifically, at all times Subhauler or Subhauler's Assistants are performing services hereunder, Subhauler represents, warrants and agrees, as the context requires, as follows:

(i) Subhauler understands, has implemented and will comply with all State and Federal laws, rules and regulations applicable to drug and alcohol testing and compliance for motor carriers, including, without limitation, 49 CFR Parts 40 *et seq.*, and 382, *et seq.*, and California Vehicle Code, ' 34520, *et seq.*

(ii) Subhauler is enrolled in a credible drug and alcohol consortium which has fulfilled the Preemployment Testing Qualifications as defined in 49CFR ' ' 382.301 and 382.413 and randomly tests to required percentages for drugs (50%) and alcohol (10%) as defined in 49 CFR ' 382.305.

(iii) In the event Subhauler or any of Subhauler's Assistants tests positive for drugs or alcohol, Subhauler will immediately remove himself, herself or his or her Assistant out of service and notify Prime Carrier of such test and action.

(iv) In the event Subhauler or any of his or her Assistants refuse to test or otherwise fails to comply fully with the laws, rules and regulations applicable to drug and alcohol testing and compliance, Subhauler will immediately remove himself, herself or his or her Assistant out of service and notify Prime Carrier of such non-compliance and action.

(v) Subhauler agrees to furnish Prime Carrier with appropriate documentation, within 48 hours after obtaining the same, of all necessary and proper drug- and alcohol-related information for CHP CSAT inspection purposes, such as quarterly reports as defined in 49 CFR ' ' 40.29 and 382.401 and year-end summaries as defined in 49 CFR ' 382.403.

(vi) In the event Subhauler or any of its Assistants is involved in any accident or other incident and is required to participate in or perform Post Accident Testing as defined in 49 CFR ' 382.601, Subhauler will ensure full and complete compliance with such testing and advise Prime carrier of the results thereof.

(vii) Subhauler maintains a written drug and alcohol company policy as defined in 49 CFR ' 382.601, and actively enforces such policy on Subhauler and Subhauler's Assistants.

C. Subhauler's Equipment, Instruments and Implements. Subhauler represents and warrants that he or she is lawfully engaged in the trucking and transportation business and that he or she uses equipment, instruments, tools and implements specifically designed for the transport of Material in the normal course and conduct of Subhauler's business. Subhauler agrees to maintain, operate and use all such equipment, instruments and implements in compliance with the requirements of all applicable regulatory and governmental agencies at all times while providing services under this Agreement. Subhauler will supply all equipment, instruments and implements required to perform all services under this Agreement. Subhauler is not required to purchase or rent any equipment, products, services, instruments or implements from Prime Carrier.

D. Workers' Compensation Insurance. Subhauler represents and warrants he or she has Workers' Compensation Insurance coverage as required by law for all Subhauler's employees, agents or Assistants. Subhauler agrees to maintain and continue such coverage in effect while providing services under this Agreement. Subhauler understands and agrees that Subhauler and Subhauler's employees, agents and Assistants (i) are not eligible for coverage under the workers' compensation policy of Prime Carrier and (ii) are not entitled to make claim under the Prime Carrier's policy. Subhauler will furnish evidence of his or her Workers' Compensation insurance coverage to Prime Carrier together with a list of all employees, agents or Assistants covered by Subhauler's Workers' Compensation insurance policy.

E. Independent Contractor. Subhauler represents and warrants he or she is an independent contractor and will provide all services under this Agreement as such and not as an employee of Prime Carrier.

F. No Assignment of or Breach Resulting from Agreement. Subhauler represents and warrants that Subhauler has made no assignment, grant, license, encumbrance, obligation or agreement, either written, oral or implied, that is in any way inconsistent with this Agreement. Subhauler also represents and warrants that Subhauler has no other agreement of any nature with any person or entity, which would prevent Subhauler from entering into this Agreement. Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Subhauler without the prior written consent of the Prime Carrier.

G. Insurance. Subhauler represents and warrants that it has and maintains policies of Public Liability including property damage insurance and Commercial Auto Liability Insurance, in the coverage amount required by law, covering all operations and activities of the Subhauler, including, without limitation, Subhauler's obligations under this Agreement and any other contract, and **including all vehicles, equipment, instruments and implements operated by Subhauler, whether owned, rented or borrowed.** The limits for said coverage will be no less than the minimum coverages required by law for

the services performed under this Agreement, with an additional Combined Single Limit per accident or occurrence of \$1,000,000 (one million dollars). Subhauler will pay all premiums on such coverage, and Subhauler will name the Prime Carrier as an additional insured under this agreement. Subhauler's auto liability insurer will issue the certificate of insurance on form DMV 65 MCP, and include Prime Carrier as additional insured on form CA 2312 (or its equivalent). Subhauler will furnish the Prime Carrier with a certificate evidencing such insurance together with a list of all equipment, instruments, and implements covered by said insurance. CA 2312 must be attached to the certificate of insurance when delivered to Prime Carrier. Subhauler agrees to utilize only the equipment insured and that it meets the insurance requirements stated herein. Should the Subhauler be involved in an incident in doing work for the Prime Carrier whereby the insurance coverage does not meet these standards, the Subhauler agrees to pay for any and all damages and indemnify the Prime Carrier should any claims occur.

H. Indemnity. To the fullest extent permitted by law, Subhauler shall indemnify and hold the Prime Carrier together with its agents, employees, officers and representatives harmless, and defend Prime Carrier with the legal counsel of Prime Carrier's choice, against any and all liability imposed or claimed, including attorney fees and other legal expenses, arising directly or indirectly from any act, failure to act, error or omission of Subhauler or Subhauler's Assistants, including, without limitation, (i) all claims relating to the death or injury of any person or damage to any property; (ii) all claims relating to Subhauler's failure to pay all of the taxes or other levies, fees or charges, whether as an independent contractor or otherwise, set forth in paragraph 5(I), below; (iii) all claims arising out of any injury, disability, or death of any of Subhauler's Assistants; (iv) all claims or damages resulting from any breach by Subhauler of the terms, conditions, representations, warranties or other provisions of this Agreement; and (v) all claims against the Prime Carrier which Subhauler's insurance carrier fails to defend or settle. Subhauler understands and agrees that this indemnity is intended, and shall be interpreted, in the broadest possible manner so as to afford defense and indemnity of the Prime Carrier in all circumstances permitted by law. Such duty to defend and indemnify includes and applies without limitation to any liability imposed by law and to injury and damage to the Prime Carrier, Subhauler or third parties, and their respective property, employees, agents and representatives, regardless of how any such injury or damage may have been caused or suffered by reason of concurrent or contributory negligence, whether affirmative or passive, of the Prime Carrier, its agents, employees, representatives or independent contractors. Subhauler's duty to defend and indemnify constitutes a separate and distinct agreement and will not be limited by the provisions of any insurance policy held by or for Subhauler.

I. State and Federal Taxes and Other Withholdings. Subhauler understands and agrees that Subhauler is solely responsible for the payment of any taxes, assessments, levies or other charges imposed on account of payments made to Subhauler under this Agreement, including, without limitation, unemployment insurance tax; federal, state and foreign income taxes; Social Security and Medicare payments, disability insurance taxes and any workers' compensation insurance. Subhauler understands and agrees that Prime Carrier will not withhold from Subhauler, or pay on behalf of Subhauler, any of the foregoing charges.

J. Non-Solicitation. Subhauler agrees that it will not accept traffic from any shipper, consignor, consignee or Customer of Prime Carrier where (1) the availability of such traffic first became known to Subhauler as a result of Prime Carrier's efforts, or (2) the traffic of the shipper, consignor, consignee or Customer of Prime Carrier was first tendered to Subhauler by Prime Carrier. If Subhauler breaches this Agreement and moves shipments obtained directly from customers of Prime Carrier during the term of this Agreement or for twelve (12) months thereafter without utilizing the services of Prime Carrier, Subhauler shall be obligated to pay Prime Carrier, for a period of fifteen (15) months thereafter, commission in the amount of thirty-five percent (35%) of the transportation revenue resulting from traffic transported for the Customer, and Subhauler shall provide Prime Carrier with all documentation requested by Prime Carrier to verify such transportation revenue. Subhauler shall not utilize Prime Carrier' or the Customer's name or identity in any advertising or promotional communications without written confirmation of Prime Carrier's consent.

K. Subcontract Prohibition. Subhauler specifically agrees that all freight tendered to it by Prime Carrier shall be transported on equipment operated only under the authority of Subhauler, and that

Subhauler shall not in any manner sub-contract, broker, or in any other form arrange for the freight to be transported by a third party without the prior written consent of Prime Carrier.

6. **Termination.**

A. **Termination With or Without Cause on Ten Days' Notice.** Either party to this Agreement may terminate it at any time with or without cause upon ten (10) calendar days' written notice to the other party.

B. **Immediate Termination by Prime Carrier.** This Agreement may be terminated immediately by the Prime Carrier upon written notice to Subhauler upon the occurrence of any of the following:

- (i) The occurrence of circumstances that make it impossible, impracticable or undesirable, in the sole and absolute discretion of the Prime Carrier, for the business of the Prime Carrier or the engagement of Subhauler to be continued.
- (ii) The involuntary or voluntary dissolution, liquidation or bankruptcy of either party.
- (iii) Any breach of Subhauler's obligations, representations or warranties under this Agreement.
- (iv) The sale of all or any portion of Prime Carrier's business.

C. **Automatic Termination Without Notice.** This Agreement will terminate automatically and without notice upon:

- (i) The death of Subhauler;
- (ii) The cancellation, non-renewal or non-obtainment of any license, permit, certification, application or insurance policy which Subhauler is required to procure and maintain under this Agreement; or
- (iii) Subhauler's failure to comply with any drug and alcohol testing and compliance laws, rules and regulations or failure to advise Prime Carrier of any information required by paragraph 5(B), above.

D. **General Provisions Applicable to Any Termination.** Upon termination of this Agreement for any reason, nothing herein will be construed to release Subhauler from his or her continuing obligations to the Prime Carrier under this Agreement or of any obligation matured prior to the effective date of such termination, including, without limitation, the timely and complete procurement and delivery to Prime Carrier of the Load Documentation.

7. **General Provisions.**

A. **Review, Comprehension and Interpretation of Agreement.** Subhauler acknowledges careful review of this Agreement and represents and warrants that he or she understands its terms. This Agreement supersedes any prior agreement and sets forth the entire agreement and understanding of the parties relating to the subject matter discussed or described in this Agreement. Subhauler acknowledges, represents and warrants that Subhauler has entered into this Agreement voluntarily, and that Prime Carrier and its agents, officers and representatives have made no representation or promise whatsoever upon which Subhauler has relied, in whole or in part, other than any representation or promise contained in this Agreement. Each party agrees that this Agreement shall not be construed or interpreted for or against the party drafting it. This Agreement will be governed by and construed in accordance with the laws of the State of California.

