

## HAULING AGREEMENT

THIS AGREEMENT is entered into between Union Concrete and Construction Corp., a New York State corporation with its principal place of business located at 435 Meyer Rd., West Seneca, New York, 14224, and a mailing address of PO Box 410, West Seneca, NY 14224 (hereinafter called “Corporation”), and \_\_\_\_\_ with a principal address of \_\_\_\_\_ (hereinafter called “Trucker”).

WHEREAS, the Corporation from time to time desires Trucker to haul materials on its behalf, In consideration of such premises and other good and valuable consideration, Corporation and Trucker enter into this agreement and agree to be legally bound by the following covenants:

### **Article I: Recitals**

- A. Corporation is a contractor engaged in the construction and rehabilitation of highways, roads, and bridges. Throughout its construction activities, Corporation has the routine need for building materials, including aggregates, asphalts and soils amongst many others.
- B. Trucker is the owner of motor vehicles suitable for the transportation of the mentioned materials and desires to contract with Corporation for the hauling and delivery of such materials.
- C. Trucker represents that it is capable and experienced in the hauling and delivering of such material. Trucker additionally represents that it employs qualified drivers who are experienced in making deliveries to construction sites and operates vehicles in sound working order.

### **Article II: Tender of Materials**

- A. Corporation agrees that, from time to time, it will tender to Trucker loads of construction materials (called “materials”), for delivery by Trucker. This tendering of loads will be done by verbal or written instruction of the Corporation’s employees or agents. After the materials are loaded onto Trucker’s vehicle, Trucker accepts full responsibility for their delivery, and in the event said load is not delivered as specified, then Corporation may charge to account of Trucker the value of said load.
- B. On the tender of a load or loads by Corporation, Trucker shall be free to accept or reject the load or loads. In the event Trucker elects to accept for hauling any load or loads tendered by Corporation (“Work”), then it is mutually agreed by and between the parties that the hauling or delivery of such load or loads as shall be accepted from Corporation by Trucker shall be performed under, and in accordance with the terms and provisions specified, in this Agreement.

- C. Any and all hauling done for Corporation by Trucker during the term of this agreement shall be subject to all terms and conditions of this agreement.
- D. This contract shall not be construed to obligate or require Corporation to tender to Trucker any specified amount of materials or number of loads for hauling during any given period. The contract also shall not be construed to obligate or require Trucker to accept any amount of material or specified number of loads during any given period.

### **Article III: Performance of Contract**

- A. Corporation agrees to designate to Trucker the place at which the vehicle or vehicles of Trucker shall be loaded and to furnish all labor and equipment for the purpose of loading such vehicles, and further agrees to pay Trucker for delivering or hauling such load or loads in accordance with the provisions with respect to payment set forth in this Agreement.
- B. During the performance of its work Trucker agrees to operate with all due speed and efficiency. Trucker shall strive to minimize any wait time that it may incur during its hauling. Trucker shall accurately document the tonnage and hauling time for all loads.
- C. Trucker shall operate in accordance with industry standard safety practices. It shall comply with all rules and regulations of OSHA, Department of Labor, Federal Motor Carrier Safety Administration and any other regulatory agency with jurisdiction over Trucker. Trucker shall follow Corporation's Safety Program and comply with directions from Corporation's safety staff.

### **Article IV: Furnishing of Vehicles**

- A. Trucker agrees to furnish a vehicle or vehicles in good and safe operating condition, suitable for the hauling of the materials tendered, and to furnish drivers, who are qualified to operate Trucker's vehicles on the public highways and construction sites, and all gasoline, oil, lubricants, tires, and other accessories to such vehicle or vehicles and to perform all repairs and maintenance. It is expressly understood and agreed that Corporation shall not be responsible or liable to Trucker for any of the expense or cost of operation, maintenance, or repairs of such vehicle or vehicles.
- B. It is expressly understood and agreed that the Corporation shall have no control over the selection of drivers of Trucker's vehicles. The full cost and responsibility for recruiting, hiring, firing, terminating and compensating employees and drivers of the Trucker's vehicles shall be borne by the Trucker. Corporation shall have no control over the selection of drivers or employees of Trucker.

**Article V: Billing**

- A. Proof of work completed will be in the form of a Delivery Ticket, Work Ticket, or Time Ticket for each day of work. It shall contain identification of the Trucker name, address, and telephone number. An authorized Corporation representative must sign each daily time, work or delivery ticket to certify the hours worked. NO PAYMENT WILL BE MADE without a Corporation authorized signature verification of hours worked or tonnage hauled. Trucker shall provide additional copies of said tickets to Corporation upon request.
- B. Any waiting time incurred or work performed on site other than loading/unloading will require an authorized Corporation representative verification and signature each time, prior to departure from the job site. NO PAYMENT WILL BE MADE without a Corporation authorized signature verification.
- C. Trucker shall send Corporation periodic invoices detailing all of the hauls made during the period of the invoice. Trucker shall furnish such an invoice to Corporation no later than 45 days after the haul.
- D. If Trucker is a Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Disadvantaged Business Enterprise (DBE) or any other certified business for which the Corporation has an obligation to utilize such certified businesses on its contracts, Trucker shall clearly distinguish on its invoices loads hauled by trucks the Trucker owns versus loads hauled by hired trucks. Additionally, if the Trucker is a certified business it will be required to complete additional paperwork to assist Corporation in complying with all laws and regulations governing certified business firms. Such additional paperwork requirements will be communicated by Corporation and completed paperwork must be received by Corporation prior to it making payment to Trucker.

**Article V: Compensation for Hauling**

- A. When Trucker receives a ticket for the tendered load, it shall deliver one copy to the party receiving the load, and one copy of the ticket Trucker agrees to have signed by the party receiving the load, as evidence of receipt, and to return it to Corporation.
- B. Corporation will make payment to Trucker for the amount due with respect to such load at the rate specified by the Corporation. On public works projects, said payment to be made within 45 days of the Corporation's receipt of Trucker's invoice, or within 15 days after receipt of funds from the Owner, whichever is earlier, provided that Trucker has submitted all necessary documentation as requested by the Corporation to verify the invoice and the Trucker's compliance with this Agreement. On private projects, said payment to be made within 45 days of the Corporation's receipt of Trucker's invoice or within 7 days after receipt of funds from the Owner, whichever is earlier, provided that Trucker has submitted all necessary documentation as requested by the Corporation to verify the invoice and the Trucker's compliance with this Agreement. Failure of the

Trucker to provide requested documentation shall be grounds for Corporation to hold payment until such documentation is received.

- C. Corporation reserves the right to set-off any amount owing to Corporation from Trucker's payment.

**Article VI: Relationship of Parties**

- A. It is declared to be the express intention of each of the parties that the relationship created between them by this Agreement to be an independent contractor retained by Corporation to provide the services called for herein.
- B. An agent or employee of Trucker shall never be deemed to be the employee or agent of Corporation. In this connection, Trucker shall have the sole right to hire and fire all drivers, and shall exercise all control, direction, and supervision over them with respect to the physical details of the work to be performed and the manner in which the work is performed.
- C. Corporation shall not have the right to exercise any control, direction, or supervision over the hauling of the materials except as to insistence on the ultimate completed delivery of the materials hauled or to be hauled by the Trucker.
- D. Trucker further agrees not to allow drivers to transfer passengers or persons who are not employed by Trucker in connection with the operation of the trucks onto property where Corporation is carrying on its operations.

**Article VII: Indemnity**

- E. To the fullest extent permitted by law, Trucker shall defend, indemnify and hold harmless Corporation and its shareholders, agents, partners, officers, employees, successors and assigns (hereinafter collectively "Indemnities") from any and all allegations, investigations, claims, actions, demands, damages, losses, liabilities or expenses, including reasonable attorneys' fees, caused in whole or in part by Trucker, or its agents, servants, employees, or any other person for whose acts Trucker is liable. This indemnification includes any (i) claims for breach of this Agreement; or (ii) claims for damages for bodily injury, sickness, disease, or death; or (iii) negligent act, omission, breach of statutory duty or obligation, on the part of Trucker or any other person; or (iv) claims for, or damages to, or the loss of use of, tangible property, of any nature whatsoever; any of which arise out of or are connected with, or are claimed to arise out of or be connected with, the Trucker's work, or any accident or occurrence involving Trucker. This indemnity does not extend to that part of any claims, damages, loss, liability or expenses arising from the negligent acts or omissions of the Corporation. Trucker agrees to purchase and maintain such insurance as will protect it and Corporation, including contractual coverage.

- A. The foregoing indemnification includes, but is not limited to, any all allegations, investigations, claims, actions, demands, damages, losses, liabilities or expenses of any kind, including reasonable attorneys' fees, which is in any way connected with the Trucker's Work and which is based upon a breach of statutory duty or obligation on the part of the Corporation where the Corporation is not found to have committed a negligent act or omission.
- B. If the foregoing indemnity is made void or otherwise impaired by any law controlling the construction thereof, such indemnity shall be deemed to conform to the fullest indemnity permitted by law.
- C. In claims against the Corporation by an employee of Trucker, or anyone indirectly employed by Trucker or anyone for whose acts the Trucker may be liable, the indemnification provisions hereunder shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Trucker under workers' compensation acts, disability benefits acts, or other employee benefit acts.
- D. The foregoing indemnification shall not be construed to negate, abridge or reduce other rights or obligations of indemnity which would otherwise exist. Corporation may retain any money due or to become due to Trucker a sum which is sufficient, in Corporation's discretion, to pay all such claims and expenses incurred or to be incurred.
- E. Trucker is hereby notified that damage to Corporation's construction projects could cause significant damages to corporation arising from delayed schedules, liquidated damages amongst other causes. If the work of the Corporation under any of its construction contracts is delayed, disrupted, interfered with, suspended, or otherwise adversely affected by negligent actions of the Trucker, Trucker shall be liable to Corporation for any resulting damages. This liability of the Trucker shall extend to indirect damages.
- F. Trucker shall pay the Corporation for any and all costs, expenses and attorneys' fees which Corporation may suffer, incur or become liable for by reason of the Trucker's failure to carry out the provisions of this Agreement or as a result of the Corporation enforcing, or attempting to enforce, the terms and provisions of this Agreement.
- G. All provisions in this article shall survive termination of Trucker's Work or this Agreement.

**Article VIII: Insurance Provisions**

- A. Trucker further agrees to secure and maintain, during all times it is engaged in work under this contract, the following insurance in a form acceptable to Corporation:
  - a. Commercial General Liability Insurance with coverage limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. Such insurance

shall include a project aggregate endorsement. Trucker's Commercial General Liability shall include contractual liability insurance applicable to its operations under this Agreement written on an occurrence basis. Such insurance shall also insure Corporation, to the full extent of the foregoing limits, in respect of personal injuries suffered by workers while employed in the prosecution of the Work.

- b. Commercial Auto Insurance, providing coverage for both damage to property and injury to persons, expressly insuring Trucker’s indemnity obligations referenced in Article VII, in an amount not less than \$1,000,000 combined single limit. Such Commercial Auto Insurance must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.
- c. Excess Insurance, providing coverage for both damage to property and injury to persons, over and above the coverages provided in paragraphs “a” and “b” of this article, in an amount not less than \$5,000,000.00 each occurrence or accident, and in the aggregate.
- d. Workers Compensation and Employers Liability with limits of at least \$500,000 each accident for bodily injury by accident and \$500,000 each employee for injury by disease. If you are an individual owner operator and you “do not” elect to obtain Workers Compensation coverage, you are required to sign the certificate below:

**I declare that I am an individual owner operator and agree that I will not hold the Corporation, Union Concrete and Construction Corp. responsible for providing Workers Compensation Insurance.**

\_\_\_\_\_  
**Individual Owner Operator Signature**

\_\_\_\_\_  
**Date**

- B. Trucker agrees to name the Corporation as an additional insured under each policy except Workers Compensation, on a primary and non-contributory basis, without restriction as to fault or liability. Trucker agrees to furnish the Corporation with Certificates of Insurance, and other requested documents, identifying each insurance carrier, evidencing Trucker’s compliance with the obligations as set forth herein and which states that the coverages afforded under the policies will not be canceled or terminated unless at least 30 days written notice is given to Corporation.
- C. Trucker shall provide a waiver of subrogation in favor of the Corporation, its parents, subsidiaries, associated or affiliated companies, their officers, directors, stockholders, agents and employees, for any claim which might arise by reason of any payment under policies required by this Article

- D. It is understood and agreed that the insurance coverage and limits, required by this Article, shall not limit the extent of the Trucker's responsibilities and liabilities to Corporation arising by indemnity (under Article VII of this agreement), law or otherwise.

**Article IX: Compliance with Laws and Regulations**

- A. Trucker agrees to comply with all rules, ordinances, statutes, regulations, orders, or decrees, that may be issued under any State or Federal statute that are effective or applicable to the execution of this agreement, including but not limited to the New York State Motor Carrier Safety Regulations and the Federal Motor Carrier Safety Regulations, where applicable.
- B. Trucker agrees to make all deductions from payments to employees or agents of Trucker, for all Social Security, Unemployment or other taxes and deductions. Trucker shall make and render, in Trucker's name, all applicable reports and payments of such sums so deducted as shall be required by any and all applicable federal and state laws.
- C. Trucker further agrees to report and pay any and all license and transportation or other privilege taxes due or to become due with respect to performance under the terms of this Agreement.
- D. Trucker represents and warrants to Corporation that the motor vehicle or vehicles used to haul loads under this Agreement are registered with the appropriate state and/or local authorities for the maximum weight permitted by law for said vehicle or vehicles. Trucker will indemnify Corporation for any damages suffered by Corporation as a result of the failure of the Trucker to register said vehicle or vehicles for the maximum weight permitted by law.

**Article IX: Sub Truckers Hired by Trucker**

- A. If Trucker contracts with any third parties (Hereinafter called Sub-Trucker) to perform any whole or part of its obligations under this agreement, specifically including making delivery of the goods ordered herein, Trucker shall cause such Sub-Trucker to be bound by all of the terms and conditions of this agreement. The Trucker shall cause each Sub-Trucker to (1) procure and maintain insurance with the limits and coverage outlined in Article VIII of this agreement, written by companies authorized to do business in New York state and (2) cause the issuers of those insurance policies to name the Corporation as Additional Insureds under each Sub-Trucker's comprehensive general automobile, and excess/umbrella liability policies. The additional insured endorsement included in each such Sub-Trucker's policies must state that coverage is afforded to all Additional Insureds with respect to any and all claims arising out of operations performed by or on behalf of Trucker. If the Additional Insureds have other insurance applicable to the loss, such other insurance shall only apply, if at all, on an excess or contingent basis. The

amount of each Sub-Trucker's insurers' liability under such insurance policy will not be reduced by the existence of such other insurance.

- B. Trucker shall warrant to Corporation that all vehicles of any Sub-Trucker are properly maintained in working condition, operated in accordance with all laws and regulations and are operated by competent individuals.
- C. Trucker accepts complete responsibility for making payment to any Sub-Truckers it hires. Corporation will only pay the Trucker for any work performed by Sub-Trucker and will NOT make payment directly to the Sub-Trucker. Trucker warrants that it will make payment to Sub-Trucker within seven days of receiving payment from Corporation. Trucker shall furnish proof of payment made to Sub-Trucker to Corporation upon Request.

#### **Article X: Miscellaneous Provisions**

- A. This Agreement shall remain in effect unless and until: (1) either party gives written notice to terminate on thirty (30) days' advance notice; or, (2) this Agreement is amended and/or superseded by written notice. Notwithstanding the foregoing, any notice of termination shall not be effective as to any open work absent written agreement signed by both parties to this Agreement. In addition, notwithstanding the foregoing, the provisions of Article VII shall survive the termination of this Agreement.
- B. This Agreement shall be executed by both parties in duplicate; one copy shall be kept by the Trucker and one copy shall be kept on file by the Corporation.
- C. Neither this Agreement nor any interest herein nor claim hereunder, nor any part of any of the foregoing, shall be assigned, subletted or transferred by Trucker except as expressly authorized in writing by Corporation. Any attempt at unauthorized assignment, subletting, or transfer, by Trucker shall constitute a material breach of this Agreement.
- D. This Agreement constitutes the entire agreement between the parties hereto and shall not be amended or modified except as provided herein. There are no agreements or understandings, verbal or otherwise, between the parties concerning the work which are not set forth herein. No provision of this Agreement may be waived except by written instrument signed by both parties hereto.
- E. Except as otherwise provided herein, no provision of this Agreement shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person a third-party beneficiary of this Agreement or of any one or more of the terms hereof or otherwise give rise to any cause of action in any person not a party hereto.
- F. The illegality, unenforceability, or non-applicability of any provision hereof shall not affect the remaining provisions of this Agreement, but such remaining provisions shall be construed as though such illegal, unenforceable or non-applicable provisions had not been included herein.



- G. Trucker shall indemnify Corporation and reimburse Corporation for all fees, costs and disbursements incurred by Corporation in the enforcement of this Agreement, including Corporation's reasonable legal fees and disbursements through all trial and appellate proceedings.
- H. The exchange of copies of this Agreement and of signature pages by electronic means intended to preserve the original graphic and pictorial appearance of a document shall constitute effective execution and delivery of this Agreement as to the parties hereto and may be used in lieu of the original Agreement for all purposes. Signatures of the parties hereto transmitted by electronic means shall be deemed to be their original signatures for all purposes.
- I. The parties each represent that the person executing this document on behalf of such party has the power and authority to enter into this Agreement and such entity has the authority to consummate the transactions herein contemplated. The execution and delivery hereof and the performance by each party of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or other instrument to which it is a party or by which it is bound. All proceedings required to be taken by or on behalf of each party to authorize it to make, deliver and carry out the terms of this Agreement have been or will be duly and properly taken by each party and this Agreement is the legal, valid and binding obligation of the parties and is enforceable in accordance with its terms.
- J. The headings of Sections and paragraphs are for convenience only and shall not modify rights and obligations created by this Agreement.
- K. The failure of Corporation to insist upon strict compliance by Trucker shall not be deemed a waiver of Corporation's right to do so in the future.
- L. This Agreement shall be construed and interpreted in accordance with the Laws of the State of New York.

The parties have executed this Agreement in duplicate and affixed their seals below on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**UNION CONCRETE AND CONSTRUCTION CORP.**

By: \_\_\_\_\_ Seal:  
Title: \_\_\_\_\_

Witnessed By: \_\_\_\_\_  
Witness Name: \_\_\_\_\_  
Witness Address: \_\_\_\_\_

**Trucker**

By: \_\_\_\_\_ Seal:  
Title: \_\_\_\_\_

Witnessed By: \_\_\_\_\_  
Witness Name: \_\_\_\_\_  
Witness Address: \_\_\_\_\_