



529 N 10th Street, San Jose, CA 95112 (408) 971-3744, Fax (408) 418-3679

Transportation Service Agreement

UNDERLYING CARRIER: _____.

IN ORDER TO UPDATE YOUR FILE, THE FOLLOWING ITEMS ARE NEEDED ASAP!

____ UNDERLYING CARRIER AGREEMENT (**SIGNED AND INITIALED**)

____ COPY OF YOUR MOTOR CARRIER PERMIT (**PERMIT, NOT RECEIPT**)

____ MOTOR CARRIER OF PROPERTY CERTIFICATE OF COMPLIANCE

(FORM CHP 809, PLEASE FILL OUT COMPLETELY)

____ CERTIFICATE OF INSURANCE, (**WITH A SEPARATE ENDORSEMENT NAMING "DOMINGUEZ & SONS TRUCKING, INC.", AS ADDITIONAL INSURED**) WITH 30 DAYS NOTICE OF CANCELLATION

____ CERTIFICATE OF WORKERS COMPENSATION

____ OWNER OF OPERATOR CERTIFICATION

____ DECLARATION OF COMPLIANCE WITH LABOR CODE SECTION 250.3 (AB 5) CONSTRUCTION

TRUCKING SERVICES

____ CHOICE OF STATUS

____ FORM W-9

____ CURRENT COPY OF DRUG POOL PROGRAM CERTIFICATION

____ INDEPENDENT CONTRACTORS - DMV DRIVER REPORT

(MINIMUM 3 MOST CURRENT YEARS)

THESE ITEMS NEED TO BE IN OUR OFFICE IN ORDER FOR YOU TO BE PAID ON TIME. THANK

YOU FOR YOUR COOPERATION!

THANKS!



TRANSPORTATION SERVICES AGREEMENT

This Transportation Services Agreement ("**Agreement**") is made and entered into as of this ____ day of _____ 20 ____ by and between Dominguez & Sons Trucking, Inc., a California corporation ("**BROKER**"), located at 529 North 10th Street, San Jose, California 95112, and the undersigned motor carrier ("**CARRIER**"), with a business location at _____. Broker and Contractor are sometimes referred to herein collectively as the "parties" or individually as a "party."

1. Transportation Services. (A) BROKER operates as a property broker in California arranging for the movement of Materials on behalf of shippers, consignees, carriers and other third parties ("**Broker Customers**"). Carrier, as an independent contractor, agrees to furnish all equipment and perform all services ("**Transportation Services**") required to transport certain materials consisting of rock, sand, gravel, earth, asphalt, concrete metals, and other materials (the "**Materials**"), many of which are in the course of being transported interstate or internationally for Broker Customers referred by BROKER to CARRIER under the terms of this Agreement.

(B) CARRIER agrees to provide Transportation Services it agrees to accept at such time, and to such destinations as may, from time to time, be designated by BROKER subject to the provisions of this Agreement. CARRIER shall transport the Materials, load, and unload shipments, and perform such other transportation and related services as may be necessary to serve Broker's Customer and to protect the Materials against loss and damage. CARRIER shall provide the Transportation Services without delay. Any occurrences which may cause delay shall be immediately communicated by CARRIER to BROKER. CARRIER shall inform BROKER of the delivery of the Materials. When providing Transportation Services under this Agreement CARRIER agrees to communicate directly with BROKER and not with the Customer.

(C) CARRIER shall provide BROKER with such other billing documentation as required by Brokers Customer to authorize payment for the provided Transportation Services Within thirty (30) days of receipt by BROKER of all required documentation, BROKER shall pay CARRIER all compensation due for the performed Transportation Services, as outlined Sections 13 of this Agreement.

2. Authorizations and Licenses. At all times while this Agreement is in effect, CARRIER shall hold all State, Federal, County and/or City certificates, permits, registrations, authorizations, and licenses which are required or necessary for the performance of Transportation Services. Specifically, and without limitation, BROKER requires that CARRIER hold a current member certificate with ADTS (**Alcohol & Drug Testing Services**) Motor Carrier Drug Testing Program.



3. Independent Contractor Relationship. It is expressly understood and agreed that CARRIER desires to be and is an independent contractor, and under no circumstance will CARRIER be construed to be an employee of BROKER. CARRIER acknowledges that BROKER is not a motor carrier but is rather an intermediary that arranges the Transportation Services to be performed by authorized motor carriers. CARRIER represents and warrants that it operates as an authorized motor carrier and CARRIER shall provide Transportation Services under its name and authority. CARRIER shall not hold itself or any its employees out as an employee of BROKER, and shall ensure that all business cards, stationary or other methods of communication with Broker's Customers and/or the general public do not state or imply that CONTRACTOR or any of CONTRACTOR'S employees is an employee of BROKER. It is the intent of the parties that CARRIER be classified as an independent contractor and not an employee of BROKER. The parties have created their relationship to qualify for the Business-to-Business exemption set forth in Labor Code section 2776. CARRIER maintains a separate business location as set forth above which is separate from the business or work location of BROKER. It is agreed that when performing services under this Agreement that CARRIER is providing said services directly to BROKER rather than to the customers of BROKER. When providing Transportation Services under this Agreement CARRIER agrees whenever reasonably possible to communicate directly with BROKER and not with the Brokers Customer. CARRIER is engaged in an independently established business separate from that of BROKER. CARRIER is free to and does provide transportation services to other parties and advertises itself to the public to provide such services.

4. Equipment. CARRIER shall, at his sole cost and expense: (a) furnish labor, materials and all equipment necessary or required for the performance of his obligations hereunder (**the "Equipment"**): (b) pay all expenses related, in any way, with the use and operation of the Equipment: (c) maintain the Equipment in good repair, mechanical condition and appearance; and (d) utilize only competent, able and legally licensed personnel to operate the Equipment and perform any additional services necessary to provide the Transportation Services required. Carrier warrants that the Equipment supplied for the performance of Transportation Services is fully licensed for operation: (1) in the United States, and complies with all regulations issued by the United States (**including but not limited to regulations issued by the Federal Motor Carrier Safety Administration and by the Department of Transportation**), (2) in the State of California and complies with all licensing conditions, safety and legal requirements imposed by the State of California, and (3) in all other States in which Transportation Services will be provided. Upon delivery of each shipment made hereunder, or termination of the Agreement for any reason, CARRIER shall promptly return any equipment rented from or belonging to BROKER or any related entity, including any trailer used to complete said delivery, to BROKER'S terminal located at 529 N. 10th Street, San Jose, California, unless instructed by BROKER to deliver its equipment to another specified location.



5. CONTRACTOR's Employees or Workers. CARRIER shall furnish at its own discretion, selection, and expense any labor required to operate the Equipment and perform the Transportation Services, including the pickup, transportation, parking, loading, unloading, assembling, disassembling, and delivery of the Materials as required by BROKER's Customer. CARRIER shall be solely responsible for the direction and control of CARRIER's employees, agents, and servants, if any, in the performance of the Transportation Services, including their selection, hiring, firing, supervision, assignments and direction, the setting of wages, hours and working conditions, and the adjustment of their grievances. CARRIER assumes full and sole responsibility for the payment of all wages (including, without limitation, prevailing wages), benefits and expenses of CARRIER's employees, if any, and for all state and federal income tax withholdings, unemployment and disability insurance and Social Security taxes, as to all persons employed by CARRIER in the performance of Transportation Services. BROKER shall not be responsible for the wages (including, without limitation, prevailing wages), benefits or expenses due CARRIER's employees, agents, or servants nor for income tax withholdings, Social Security, unemployment, or other payroll taxes of CARRIER's employees, agents or servants. All pay, benefits and working conditions of CARRIER's employees are a matter of agreement solely between CARRIER and CARRIER's employees, and CARRIER shall accept sole responsibility for any alleged violations of such laws by CARRIER or its employees. CARRIER shall defend, indemnify, and hold harmless the BROKER from any and all liability the BROKER may incur, or is alleged to have incurred, by the CONTRACTOR's failure to comply with this paragraph.

6. Non-Exclusive Agreement/Other Services. BROKER shall have the right to use the services of any other motor carriers of its choice to provide Transportation Services. CARRIER shall have the right to refuse to perform specific requests by BROKER to provide Transportation Services. CARRIER shall have the right to and will perform Transportation Services for parties other than BROKER. BROKER acknowledges that CARRIER is free to provide and does provide similar transportation services for other shippers, carriers, and brokers. This Agreement does not restrict CARRIER from providing transportation services to others or from maintaining a clientele of customers of its own. BROKER acknowledges that CARRIER has an established business of providing transportation services for other carriers, shippers and brokers, and that CARRIER is free to provide such other transportation as it chooses. This Agreement does not grant CARRIER an exclusive right to perform Transportation Services for BROKER who shall not be committed to provide any volume of shipments to CARRIER.

7. Insurance. CARRIER shall procure and maintain, at its sole cost and expense, and at all times during the term of this Agreement, the following insurance coverages:

A) General Liability Insurance. Commercial General Liability coverage for property damage and bodily injury in amounts no less than One Million Dollars (\$1,000,000.00) (annual aggregate), with a deductible no greater than Twenty-Five Thousand Dollars (\$25,000.00), with companies with an A.M. Best rating of B+ or better as evidenced by the attached Certificate of Insurance. CARRIER shall deliver



to BROKER a Certificate of insurance and an Additional Insured Endorsement prior to the commencement of any Transportation Services. Such policy shall contain a provision that the BROKER will be given at least thirty (30) days' written notice prior to the termination of such insurance.

B) Automobile or Truckers Liability. Automobile or Truckers Liability (owned, hired and non-owned) Insurance with an A.M. Best rating of B+ or better covering the Equipment used in the performance of this Agreement in the following minimum coverage amounts: Public Liability covering property damage and bodily injury with coverage amounts not less than One Million Dollars (\$1,000,000), a deductible of no more than Twenty-Five Thousand Dollars (\$25,000.00) combined single limit, and unidentified trailer and Interchange coverage.

C) Additional Requirements for coverages listed in A) and B) above. The coverages listed above shall be increased or modified to comply with any such increased amounts as required by the United States and/or the State of California. CARRIER agrees to name the BROKER as an additional insured in CARRIER'S policies and to deliver to BROKER copies of the insurance endorsements and certificates of insurance of CARRIER. It is also agreed that all such insurance policies and insurance coverage shall be primary insurance and any other insurance protection extended to BROKER shall be excess over such insurance. Such insurance policies shall provide that they shall not be canceled by CARRIER or its insurance company without at least thirty (30) days prior written notice thereof served on BROKER by said insurance company. No Transportation Services shall be performed under this Agreement until such certificates of insurance and proof of additional insured status have been received by BROKER. CARRIER shall have sole responsibility for selecting the insurance company to provide such insurance coverage.

D) Workers' Compensation. CARRIER shall carry Workers Compensation and Employee Liability Insurance covering its employees and pay all applicable premiums and taxes. CARRIER shall deliver to BROKER a Certificate of Workers Compensation Insurance. No payment for Transportation Services will be made until a Certificate of Insurance and this Agreement have been executed by CARRIER and received by BROKER. CARRIER agrees that neither CARRIER nor CONTRACTOR'S employees are eligible for coverage under the Workers Compensation policy held by BROKER.

E) Occupational Accident. If CARRIER does not utilize or employ other persons, CARRIER shall be responsible for and carry Workers Compensation Insurance or Occupational Accident Insurance in the minimum amount of One Million Dollars (\$1,000,000) covering CARRIER for the Transportation Services performed under this Agreement.

F) Each insurance coverage described herein, by endorsement to the policy, shall (1) provide primary coverage for all claims and losses covered thereby, (2) include BROKER as an additional insured insofar as Transportation Services are performed hereunder, (3) be noncontributory, (4) not seek



contribution from any other insurance available to BROKER, (5) contain a severability of interest clause, (6) provide that BROKER shall not by reason of its inclusion as an additional insured incur liability to the insurance carrier for payment of premiums for such insurance, and (7) provide for thirty (30) days prior written notice to BROKER prior to cancellation, termination, alteration, or material change of such insurance.

8. Indemnification. CARRIER shall indemnify, defend (with counsel reasonably acceptable to BROKER), and hold harmless the BROKER, its officers, directors, shareholders, agents and representatives (the “Broker Parties”) from and against any and all claims, damages and losses, including but not limited to losses related to employment or labor matters, Environmental Laws, Hazardous Materials (such as oil or fuel spills or leakage), property damage (such as damage to dock doors from trailer collisions), or injuries suffered by persons incurred or suffered by, or claimed against, any of the BROKER Parties (which shall include claims by any of the CARRIER Parties) that arise from, directly or indirectly, in whole or in part, out of, by reason of or in connection with any act or omission in the performance of the Transportation Services. Notwithstanding the foregoing, CARRIER shall not be required to indemnify, defend, or hold harmless a particular BROKER Party from and against any claims, damages, or losses to the extent they arise from the gross negligence or willful misconduct of a BROKER Party. CARRIER's obligations under this Section shall survive the expiration or termination of this Agreement. This indemnity and hold harmless agreement shall apply as a separate and distinct agreement and shall not be limited by the provisions of any insurance policy held by or for CARRIER. All indemnity obligations of the Parties under this Agreement shall survive the expiration or termination of this Agreement indefinitely and shall only terminate to the extent the indemnified Party provides an express written release and termination in favor of indemnifying Party.

9. LIMITATION OF LIABILITY NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, EXCEPT WITH RESPECT TO A PARTY'S FRAUD OR WILLFUL MISCONDUCT, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR THAT PARTY'S LOST REVENUES, LOST PROFITS, CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR MUTUAL CONSEQUENTIAL DAMAGES. EACH PARTY WILL LOOK ONLY TO THE OTHER PARTY AND NOT TO ANY DIRECTOR, OFFICER, EMPLOYEE OR AGENT (OTHER THAN A THIRD-PARTY CARRIER) OF THE OTHER PARTY FOR SATISFACTION OF ANY CLAIM, DEMAND OR CAUSE OF ACTION FOR DAMAGES, INJURIES OR LOSSES SUSTAINED BY THE PARTY AS A RESULT OF THE OTHER PARTY'S ACTION OR INACTION.

10. Costs. In performing the Transportation Services under this Agreement, the CARRIER shall, except as otherwise agreed upon in writing, be responsible for paying any costs and expenses incident to the performance of the Transportation services. In this regard, the CARRIER shall be responsible for paying its own vehicle license fees, property taxes, tolls, fees, highway use and other taxes, fines,



infractions, penalties, and labor costs, and for paying for its own insurance, fuel, oil, lubrication, tires and Equipment, repairs and maintenance, and all other costs related to the operation of its Equipment. CARRIER authorizes BROKER to deduct from CARRIER'S compensation any and all advances by BROKER for fuel, oil, labor, parts and supplies, and any cash advances to CARRIER. Further, CARRIER may elect and authorize BROKER in writing to deduct from CARRIER'S compensation other costs and expenses (such as interchange charges and damage claims) and remit the funds thereof to designated parties.

11. Control of Work. BROKER is interested only in the results achieved by CARRIER and shall have no right to control the manner and/or means by which CARRIER achieves those results. CARRIER shall have the exclusive authority to control, and direct the performance of the Transportation Services. Without limiting the foregoing, the CONTRACTOR shall direct the operation of his Equipment in all respects and shall determine the method, means and manner of performance, including but not limited to such matters as:

- a) When a load is to be picked up (within Brokers Customer's requirements)
- b) Who is to load the vehicle in the event the driver is required to do so.
- c) How the vehicle is to be loaded, tied down and unloaded.
- d) Rest stops and meal stops.
- e) Selection of routes.
- f) Where the vehicle is to be repaired.
- g) Selection of oil and gas stops.
- h) If and when his own credit cards should be used.
- i) Time of delivery (within Prime Carrier's requirements).
- j) If CARRIER or its employees should hire additional labor to load or unload the goods at pickup and destination points.
- k) CARRIER's employees' or workers working hours, compensation, and conditions of employment.
- l) Which insurance company will provide insurance coverage.
- m) The method of financing vehicle or vehicles



12. Responsibility for Violations. BROKER shall have no obligation or responsibility to the CARRIER or its employees, agents or servants for any fine, cost, or expense incurred by the CARRIER or its employees by reason of CARRIER's failure to have proper markings on its equipment, or by reason of any violation by the CARRIER or its employees, of any law, ordinance or regulation in any jurisdiction in which CARRIER or its employees may be operating in the performance of this Agreement.

13. Compensation. CARRIER shall be paid seventy-six percent (76%) of the fee paid by BROKER's Customer to BROKER for the Transportation Services provided by CARRIER for each load hauled.

(A) CARRIER is always free to negotiate rates with BROKER. In such event, the Parties will meet and discuss any proposed rate changes. In the event the BROKER and CARRIER cannot agree on a proposed rate change, then either party may terminate this Agreement or cease to provide or accept any Transportation Service where they have not been able to agree on revised rates. If the Parties reach agreement on a revised rate or a rate adjustment, then such adjusted rate will be effective prospectively for the remainder of the Term beginning on the date that the Parties agreed on such adjustment in writing.

(B) Notwithstanding anything in this Agreement to the contrary, CARRIER shall bear, and shall not invoice or charge BROKER for, any costs and expenses associated with (a) maintaining the Transportation Equipment in good repair and mechanical condition, including, without limitation, furnishing all fuel, oil, tires, (b) using and operating the Transportation Equipment, including, without limitation, road service and repair, insurance premiums, highway/road use taxes, and fuel taxes and surcharges, and (c) obtaining any and all other parts, supplies, services and equipment necessary or required for the safe use, operation and maintenance of the Transportation Equipment.

14. Changes to Services. During the Term of this Agreement either Party may desire to modify the scope, terms, rates, or conditions of CARRIER's performance or BROKER conditions for any Transportation Service (a "**Change**"). Either Party may request a Change to this Agreement or a Transportation Service by delivering a written description of the Change requested (a "**Change Request**") to the other Party. Unless the Party receiving the Change Request agrees to implement the Change Request as proposed, the Parties will meet in person or by telephone to discuss the Change Request no later than seven (7) days after delivery of such Change Request. If the Parties agree to a Change Request, the applicable section(s) of this Agreement will be amended to reflect the implementation of the Change Request as well as any conditions or other terms agreed upon, such amendments to be effective on the date executed and dated by the Parties. If the Parties cannot agree to a Change Request, any applicable section of this Agreement will not be amended, and the Change Request will not be implemented.



15. Invoicing and Supporting Documentation.

A) The BROKER shall furnish to the CARRIER a “Truck Tag” which shall serve as the basic accounting record with respect to each load transported. It shall be the CARRIER’s responsibility to complete the Truck Tag accurately, procure the necessary signatures, and deliver or mail Truck Tags for each day of operations to the BROKER’s office at the end of each day Transportation Services are performed. All Truck Tags turned in are to be 100% completed or the BROKER will not accept them for payment. Truck tags for the first day of the month must be received by BROKER no later than the first day of the month following the month in which the Transportation Services are performed. Truck Tags received after that date will be processed for payment the following month.

B) CARRIER shall furnish BROKER with a monthly summary statement. The CARRIER shall include the following information on the statement: Date work was performed, truck tag number, truck number, name of Broker’s Customer, job name, hours or tons hauled, rate of pay and total charges BROKER must receive this statement no later than the first day of the month following the month in which the work was performed. Payment for services will be made by the BROKER by the 30th day of the month following the month in which the Transportation Service was performed.

16. Liabilities. Nothing in this Agreement shall be construed to authorize the CARRIER to incur, and CARRIER shall be expressly prohibited from incurring, any financial liability in the name of, for, or on behalf of the BROKER and/or Broker’s Customer. The CARRIER shall be responsible for any financial liabilities incurred by it in contravention of the foregoing. In the event equipment owned by BROKER or an affiliate is damaged while used by CARRIER, the CARRIER shall reimburse BROKER for all such damages, losses, costs, or expenses, including attorney’s fees, to the extent not covered by the CARRIER’s insurance. In the event of such a claim, loss or damage, BROKER shall have the right to offset such sums from any sums due the CARRIER, provided, however, any sums offset shall be paid CARRIER in the event BROKER is reimbursed said sums by CARRIER or its insurer.

17. Cargo Claims. CARRIER assumes all liability for cargo damage claims and hereby agrees to defend, indemnify, and hold BROKER harmless from all claims arising out of its performance of the Transportation Services, negligence, relations with its employees and workers, and all third-party claims for cargo damage arising out of the Transportation Services. If the BROKER shall become involved in any way in a cargo damage claim, the CARRIER shall pay, and the BROKER may withhold from monies due the CARRIER, all expenses, including reasonable attorneys’ fees, incurred by the BROKER therein.

18. Labor Costs. In the event that any tribunal of competent jurisdiction enforces any judgment against the BROKER for any labor costs resulting from any employment relationship of employees, agents or contractors of the CARRIER, the CARRIER agrees to indemnify and hold harmless the



BROKER for all such costs. As stated herein, labor costs include, but are not limited to, all wages and salaries (including, without limitation, for prevailing wage), penalties, state and federal employment income taxes, social security taxes, workers' compensation, unemployment, disability, and any fringe benefit payments, and any other employer contributions as required by law. Moreover, the CARRIER agrees that the BROKER shall have no responsibility whatsoever to the CARRIER, its drivers, helpers, or any other of its employees for payment of any wages, benefits, fines, penalties, or subsistence or for any resulting expenses of any nature incurred in the performance of this Agreement.

19. Tax Matters. CARRIER will: (i) assume full responsibility for the payment to the proper Governmental Entity of all federal and state income or other taxes related to any remuneration received by CARRIER under this Agreement, including all required withholdings including contributions for unemployment insurance, state disability insurance, or social security payments that are measured by the wages, salaries or other remuneration paid to CARRIER or its employees, Temporary Staff, including all income tax withholdings, and all other taxes or charges applicable to such parties and/or their wages; and (ii) reimburse and indemnify BROKER for any such taxes or contributions or penalties that BROKER may be compelled to pay. In addition, CARRIER shall defend, indemnify, and hold BROKER harmless from any of the foregoing taxes or contributions or penalties to the extent they relate to CARRIER or its employees, agents, or contractors. CARRIER's obligations under this Section shall survive the expiration or termination of this Agreement. In addition, CARRIER shall be solely responsible for all matters relating to the payment of itself and its employees, including, without limitation, state and federal taxes, Social Security taxes, employment taxes, withholdings, workers' compensation insurance, disability insurance, and all other laws and regulations governing compensation and benefits.

20. PROTECTION OF TRADE SECRETS/CONFIDENTIAL INFORMATION. The Parties acknowledge that during the term of this Agreement CARRIER is expected to have access to and become acquainted with confidential and proprietary information of BROKER that derives independent economic value from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use. It is understood that this information has been developed at considerable expense to BROKER and any and all uses or duplication outside the scope of this Agreement is prohibited. CARRIER agrees that the following represents confidential and proprietary information of BROKER and as such is entitled to be protected as the trade secrets of BROKER: (1) All information relative to customers of BROKER served during or prior to the term of this Agreement, (2) all information relative to customers developed by CARRIER while performing service hereunder during the term of this Agreement, (3) all information relative to all prospective customers called upon by CARRIER while performing service hereunder during the term hereof, (4) all information relative to sales leads, names, addresses and other contact information for BROKER customers served by CARRIER during the term of this Agreement, (5) all information relative to customers developed by CARRIER or prospective customers called upon by CARRIER while performing service hereunder during the term hereof, (6) all plans, reports, specifications, processes, and other information or items produced by CARRIER while



performing services under this Agreement, (7) any written, printed, graphic, or electronically or magnetically recorded information furnished by BROKER for CARRIER'S use, (8) All billing rates, methods of billing, formulas, services, special methods of service, and other service related processes or techniques employed by BROKER, (9) all customer requirements, customer lists, marketing information, customer rates, vendor lists, payables files, financial statements, and information concerning BROKER'S employees, products, services, prices, operations, and subsidiaries; and (10) BROKER'S client list and client information, business plans, rates and charges, customer service programs, and other similar information that belongs to BROKER, relates to its affairs or is regularly used in the operation of BROKER'S business; and that this information constitutes BROKER'S trade secrets. CARRIER agrees that it, he or she shall not disclose any such trade secrets, directly or indirectly, to any other person or use them in any way, either during the term of this Agreement or at any other time thereafter, except as is required in the course of this Agreement with BROKER. CARRIER further agrees that all files, records, documents, manuals, software, client lists, rate information, or other data relating to BROKER'S business, whether prepared by BROKER or others, are and shall remain exclusively the property of BROKER and that they shall be removed from the premises of BROKER only with the express prior written consent of Genaro Dominguez.

21. SOLICITATION OF CUSTOMERS IS PROHIBITED CARRIER further agrees that without BROKER'S written consent CARRIER will not, at any time during the term of this Agreement, or for a period of two (2) years thereafter, directly or indirectly (i) solicit, divert or take away, or (ii) attempt to solicit, divert or take away any "Customer of Company" or the accounts of BROKER with respect to whom CARRIER became acquainted, performed services for or gained knowledge of while performing under this Agreement. CARRIER further agrees that without BROKER'S written consent CARRIER will not, for a period of two (2) years after the termination of this Agreement, provide to any customer of BROKER any transportation services of the type provided by BROKER to any such customer. For purposes of this provision only, the term "Customer of Company" shall mean anyone who was a customer of BROKER during the term of this Agreement. In this regard, any customers developed by CARRIER for BROKER during the term of this Agreement shall be considered customers of BROKER for all purposes herein.

22. SOLICITATION OF DRIVERS OR EMPLOYEES PROHIBITED During the term of the Agreement and for a period of two (2) years following the termination of this Agreement, CARRIER agrees that it will not solicit or hire away any of BROKER'S employees or subcontractors that CARRIER has become aware of as a result of performing services under this Agreement.

23. SPECIFIC ENFORCEMENT. The parties hereto agree that consideration has been given to the nature and scope of the business of BROKER and CARRIER and the covenants contained in these trade secret protection sections 20, 21 and 22 of this Agreement are in all respects fair and reasonable. The parties further agree that CARRIER or CONTRACTOR would be seriously and irreparably damaged in the event



of a breach of any of the covenants set forth in these sections 17, 18 and 19 of this Agreement. Accordingly, BROKER and CARRIER agree that such covenants shall be specifically enforceable and that, in addition to any other rights or remedies which BROKER or CARRIER may possess, BROKER and/or CARRIER shall be entitled to injunctive and other equitable relief to remedy any breach or threatened breach of these provisions by BROKER or CARRIER.

24. FORCE MAJEURE Neither Party will be liable for delay in or failure of performance of an obligation (other than a payment obligation) caused by any event reasonably beyond the control of such Party, including war, act of terrorism, riot, embargo, new government restrictions that are not reasonably subject to anticipation, or road closures caused by storm, flood, fire, earthquake, or other natural disaster, or any other act of God ("**Force Majeure**"); provided that the Party claiming Force Majeure must promptly (no later than five (5) days after knowledge of such Force Majeure event) give notice to the other Party of the Force Majeure event, the claiming Party's mitigation plans (which the Party shall implement) and the anticipated delay. If the Agreement is not previously terminated pursuant to Section 29, the Party so affected will resume performance of its obligations as promptly as possible after the cause for delay ends. Delay or failure under this Section 13 will not extend the Term.

25. Severability. In the event any provision of this Agreement shall be held to be invalid, and/or that the operation of any portion of this Agreement would result in a violation of any law, the parties agree that such portion shall be severed from the Agreement, and that the remaining provisions of this Agreement shall continue in full force and effect.

26. Prohibition of Sub-Contracts. CARRIER's rights and obligations under this Agreement are personal to the CARRIER, and CARRIER shall not subcontract or assign any part of the Transportation Services to any third party without the express written consent of BROKER. Any assignment or delegation which has not been approved by BROKER shall be void and shall constitute a default by the CARRIER. In the event subcontracting is approved by BROKER, CARRIER shall procure the written agreement of the subcontractor to be obligated to the same extent as CARRIER under the terms of this Agreement. In addition, CARRIER shall remain obligated under this Agreement for any claims, losses, damages, or expenses incurred by or threatened against BROKER which result in any manner whatsoever from the Transportation Services provided by the subcontractor.

27. Complete Agreement. This Agreement contains the entire understanding between the parties and supersedes, replaces, and takes precedence over any prior understanding or oral or written agreement between the parties respecting the subject matter of this Agreement. This Agreement may only be amended by the written consent of both parties. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Jurisdiction and venue shall rest in the Superior Court of California, Santa Clara County and/or in the United States District Court for the Northern District of California.



28. Notices. Any notices to be given by either the CARRIER or BROKER to the other may be affected either by personal delivery in writing or by mail, certified postage prepaid with return receipt requested. Mailed notices shall be addressed to the CARRIER and BROKER at the addresses appearing after the parties' signatures, below, but each may change that address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as, of the actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing.

29. Arbitration. A) Any dispute, claim or controversy arising out of or relating in any manner to this Agreement shall be subject to mediation before an agreed upon mediator on the JAMS panel of mediators in San Jose, California, and if mediation does not resolve the dispute, then the dispute shall be determined by arbitration before an agreed upon arbitrator on the JAMS panel in San Jose, California. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules or its Streamlined Arbitration Rules and Procedures, as the parties may agree. Judgment on the Award may be entered in any court having jurisdiction, and for this purpose the parties agree that the Superior Court of California, for Santa Clara County, shall have jurisdiction of the parties. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate Jurisdiction. The parties agree that they are waiving any and all rights to a Jury or court trial but all remedies and relief available in court shall be available in arbitration.

The parties understand that they are waiving their rights to have a claim adjudicated by court or jury.

The parties further understand and agree that they are waiving their right to be a party or class member in any Supported class, collective, or representative proceeding alleging any claims.

30. Execution in Counterparts. This Agreement may be executed in two or more Identical counterparts each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute this Agreement when a duly authorized representative of each party has signed a counterpart. The parties may sign and deliver this Agreement and any amendment by facsimile or email transmission. Each party agrees that the delivery of this Agreement and amendments by facsimile or email transmission shall have the same force and effect as delivery of original signatures, and that each party may use such facsimile or email signatures as evidence of the execution and delivery of this Agreement or amendment by all parties to the same extent that an original signature could be used.

31. Electronic Imaging. The parties intend to allow for the electronic imaging and storage of this Agreement, and the admissibility into evidence of such an image in lieu of the original paper-version of this Agreement. The parties stipulate that any computer printout of-any such image of this Agreement shall be considered to be an "original" under the applicable court or arbitral rules of evidence when maintained in the normal course of business and shall be admissible as between the parties to the same



extent and under the same conditions, as other business records maintained in paper or hard copy form. The parties agree not to contest, in any proceeding involving the parties in any judicial or other forum, the admissibility, validity, or enforceability of any image of this Agreement because of the fact that such image was stored or handled in electronic form.

32. Term/Termination. This Agreement shall continue in force until terminated by either party by giving the other party written notice of termination at least thirty (30) days before the effective date of the termination. A failure by the CARRIER to provide such advance notice to BROKER may result in a back-charge fee charged to CARRIER for the BROKER'S costs and expenses, including attorney's fees, resulting from insufficient notice. This Agreement can be terminated on less than thirty-days, notice by the BROKER if, in the opinion of BROKER, CARRIER has failed to perform Transportation Services (A) to the very best of its ability, (B) in good faith, (C) in a reasonable manner consistent with good industry standards, or (D) consistent with the terms of this Agreement. In those cases, BROKER may terminate this Agreement on five (5) days prior verbal notice of termination of this Agreement.



33. CONTRACTOR's Acknowledgement. CARRIER acknowledges it has read, fully understands, and agrees to all provisions of this Agreement, and that it is signing this Agreement freely and voluntarily; intending to be bound by its terms and conditions.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this _____ day of _____ 2023. This agreement will expire in one calendar year from this date.

CONTRACTOR:

_____.

NAME

PHONE

_____.

_ADDRESS

BROKER: GENARO DOMINGUEZ, PRESIDENT

BUSINESS: DOMINGUEZ & SONS TRUCKING, INC.

MCP NUMBER 0022975

DOT NUMBER 1532125

I HAVE READ AND UNDERSTOOD ALL THE PAGES

SIGNATURE: _____

CA NUMBER: _____

TRUCK LICENSE: _____



Dominguez & Sons TRUCKING INC



I, the undersigned, certify that _____ (Contracted Motor Carrier's Name) Holds a Motor carrier of Property Permit, Number _____, which valid _____ (CA Number) (Date)_____.

A COPY OF WHICH IS ATTACHED

I further certify that I, or a company officer, will immediately notify users of this company's services if the permit is suspended, revoked, or are otherwise rendered invalid.

Signature

Printed Name

Date

Title

California Driver's License Number

One copy of this certificate shall be provided to the person for whom services are provide (the contracting motor carrier); one copy shall be retained by the motor carrier of property (the contracted motor carrier) Copies shall be retained by both parties for the duration of the contract of period of service plus two years and shall be presented for inspection upon the request of an authorized employee of the California Highway Patrol or the Department of Motor Vehicles.

BIT Statement of Compliance

As a Contracting Motor Carrier, I certify that the company listed below is in full compliance with the BIT Program as mandated by the CHP. I further certify that I, or a company office, will immediately notify the Prime Carrier, Dominguez and Sons Trucking Inc. if our company is no longer in compliance with the BIT Program Regulations.

Name

Company Name

Signature

Date



2023 CARB TRUCK FLEET REPORTING COMPLIANCE AGREEMENT

Anyone who fails to comply with the CARB-ON road truck and bus rule regulation requirements, or who fails to report as required, or knowingly submits false information, is subject to civil and/or criminal penalties under numerous sections of the health and safety codes. Section violations carry penalties of up to \$100,000.00 Truck Brokers and/or earners that engage or work any companies. Or individuals. that have not reported to CARB and/or are otherwise out of CARB compliance are subject to a \$10,000.00 fine for each occurrence.

Recognized legal definition of Construction Transportation Broker: A person or entity that agrees to haul or transport intrastate construction materials for another person or entity and as part of the performance of the {transportation or hauling agreement dispatches, hires, employees or engages the services, of another motor carrier.to perform an or part of that agreement. The term “Construction Transportation Broker,” also includes any motor carrier who dispatches, hires, employs, or engages another motor carrier to; perform all or part of file construction transportation services that the motor carrier has agreed to render for construction transportation broker.

Dominguez & Sons Trucking Inc. will not work with anyone that has not, will not or cannot comply with the mandates set forth by the California State Air Resources Board. CARB compliance rules change yearly, based upon engine age, fleet size and such. Due to the CARB rules progressive compliance mandates, compliant record keeping must rely upon yearly reporting methodology. Until such time as CARB generates their own accepted liability release document, yearly reporting currently is the best available method to maintain a CARB compliant record keeping system.

Please Complete, Sign and date the statement below:

(Print) Your Legal Name

Title

Company Name



I do hereby certify under penalty of perjury that:

I will provide to **Dominguez & Sons Trucking Inc.** on an annual basis a copy of my annually updated and reviewed CARB Fleet summary report for my in-house company power units to substantiate my company's annual continuous compliance with CARB rules. To comply, I will maintain and demonstrate continuous compliance by renewing my fleet CARB reporting between January 1st and January 31st of each year with submission of my company _____ CARBS fleet summary report to the **Dominguez & Sons Trucking Inc.** office between January 1st and January 31st of each year, prior to any work being performed.

I further agree if and when prior to and during any act on my part which may broadly be conceived as an act of brokering, I will have secured a CARB fleet summary report update and reviewed on an annual basis within January 1st and January 31st of each year forward for any services of a company or individual I use for brokering purposes.

Date

Signature and Title

Company Name



Addendum to I.C.B Agreement:

Hours of Service

I, _____ owner of _____ shall give Dominguez & Sons Trucking Inc. **1 to 2 days' notice** of the intent to drive my truck in a matter that may impact hours of operation under record or duty status required by the United States Department of Transportation in Part 395.5.

(Print) Your Legal Name

Date

Addendum to I.C.B. Agreement:

CARB Requirement

I, _____ certify that I have complied with all CARB diesel emissions requirements and therefore accept full responsibility for all compliance requirements.

I further hold Dominguez & Sons trucking, Inc. exempt and take full responsibility for any and all claims resulting from my non-compliance with the CARB diesel emissions requirement.

(Print) Your Legal Name

Date



DECLARATION OF COMPLIANCE WITH LABOR CODE SECTION 250.3 (AB 5)
CONSTRUCTION TRUCKING SERVICES

1. I am authorized to make this declaration on behalf of _____
_____ (the “Company.”) I have personal knowledge of the matters
set forth herein.

2. The Company is a business entity formed as a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation.

3. The Company is in full compliance with Section 250.3(f) of the California Labor Code. I have read the copy of Section 250.3(f) which is included at the end of this declaration.

4. The Company has registered as a Public Works Contractor with the Department of Industrial Relations (“DIR”). Our DIR registration number is _____

5. The Company complies with the requirement to utilize our own employees as follows (*check one and complete*):

- The Company utilizes its own bona fide employees to perform construction trucking services. The following are the names of our current employees who operate trucks and vehicles (*attach list or printout of so more space needed.*)

- The Company is a sole proprietorship. The Company’s owner (sole proprietor) operates his or her own truck to perform all the services covered by this declaration and has a current valid motor carrier permit issued by the Department of Motor Vehicles. (*Attach copy of motor vehicle permit.*)

6. The Company negotiated its contract with the customer _____
Dominguez & Sons Trucking, Inc (*Insert name of the contractor receiving trucking services, i.e., your company.*) _____

7. The Company is being compensated directly by the Contractor and not through a broker or other third parties.



8. The Company has a direct written contract with the Contractor. The Company has assumed financial responsibility for errors and omissions in labor and services it is providing, as evidenced by the fact that the Company's written contract requires that it provide additional insured endorsements/certificates and indemnity in certain specified instances.

9. The Company has valid business licenses and tax registrations for the jurisdiction where the Company's business is located (*domiciled*) if the jurisdiction has a requirement for such licenses and registrations. (*Attach Copies*)

10. Our business location is separate from the Contractor's business and work locations.

11. The Company has the authority to hire and fire other persons to provide or assist in providing services.

12. The Company customarily engages in an independently established business of the same nature as the work of the Company will be performing for the Contractor. Examples of similar work performed by the Company for other include (*list*) :

Signature and Verifications

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature

Printed Name

Date



Labor Code Section 250.3, subparagraph (f), enacted by AB 5, provides:

(f) Subdivision (a) and the holding in *Dynamex* do not apply to the relationship between a contractor and an individual performing work pursuant to a subcontract in the construction industry, and instead the determination of whether the individual is an employee of the contractor shall be governed by Section 2750.5 and by *Borello*, if the contractor demonstrates that all the following criteria are satisfied:

- (1) The subcontract is in writing.
- (2) The subcontractor is licensed by the Contractors State License Board and the work is within the scope of that license.
- (3) If the subcontractor is domiciled in a jurisdiction that requires the subcontractor to have a business license or business tax registration, the subcontractor has the required business license or business tax registration.
- (4) The subcontractor maintains a business location that is separate from the business or work location of the contractor.
- (5) The subcontractor has the authority to hire and to fire other persons to provide or to assist in providing the services.
- (6) The subcontractor assumes financial responsibility for errors or omissions in labor or services as evidenced by insurance, legally authorized indemnity obligations, performance bonds, or warranties relating to the labor or services being provided.
- (7) The subcontractor is customarily engaged in an independently established business of the same nature as that involved in the work performed.
- (8) (A) Paragraph (2) shall not apply to a subcontractor providing construction trucking services for which a contractor's license is not required by Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, provided that all of the following criteria are satisfied:
 - (i) The subcontractor is a business entity formed as a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation.
 - (ii) For work performed after January 1, 2020, the subcontractor is registered with the Department of Industrial Relations as a public works contractor pursuant to Section 1725.5, regardless of whether the subcontract involves public work.
 - (iii) The subcontractor utilizes its own employees to perform the construction trucking services, unless the subcontractor is a sole proprietor who operates their own truck to perform the entire subcontract and holds a valid motor carrier permit issued by the Department of Motor Vehicles.
 - (iv) The subcontractor negotiates and contracts with, and is compensated directly by, the licensed contractor.



Labor Code Section 250.3, subparagraph (f), continued:

(B) For work performed after January 1, 2020, any business entity that provides construction trucking services to a licensed contractor utilizing more than one truck shall be deemed the employer for all drivers of those trucks.

(C) For purposes of this paragraph, “construction trucking services” mean hauling and trucking services provided in the construction industry pursuant to a contract with a licensed contractor utilizing vehicles that require a commercial driver’s license to operate or have a gross vehicle weight rating of 26,001 or more pounds.

(D) This paragraph shall only apply to work performed before January 1, 2022.

(E) Nothing in this paragraph prohibits an individual who owns their truck from working as an employee of a trucking company and utilizing that truck in the scope of that employment. An individual employee providing their own truck for use by an employer trucking company shall be reimbursed by the trucking company for the reasonable expense incurred for the use of the employee-owned truck.



OWNER OPERATOR CERTIFICATION

This is to certify that I, _____ am an independent contractor and operate my business as an owner operator firm. I do not employ any drivers for my truck(s). I am not required to carry Workers Compensation Insurance myself. I understand that I am not insured for Workers Compensation Benefits under the policy of Dominguez & Sons Trucking, Inc., or under the policies of any of the contractors whose job sites I may enter while performing Sub-Haul/Puller services for Dominguez & Sons Trucking, Inc. Should I hire employees in the future, I will obtain Workers Compensation Insurance to cover these employees, and I will furnish a Certificate on Insurance to Dominguez & Sons Trucking, Inc, prior to assigning any drivers to any vehicle(s) under the Sub-Haul/Puller Contract with myself and Dominguez & Sons Trucking, Inc.

Company Name: _____

Address: _____

CA Drivers Lic. #: _____

Medical Card Exp: _____.

Signature

Printed Name

Date



Contact Information

Company Name: _____

Billing Address: _____

City: _____ State: _____ Zip: _____

Contact Person: _____

Dispatch Number: _____

Office Number: _____

Fax Number: _____

Mobile Number: _____

Email Address: _____

Equipment

Bottom Dumps: _____

Semi B/D: _____

Transfers: _____

Ten Wheelers: _____

End Dumps: _____

Other Equipment Available for Hire: _____

Owner Operators, please provide license numbers for truck(s) and trailer(s) you will be using while Sub-Haul/Pulling for Dominguez & Sons Trucking, Inc.



**DO YOU WANT TO WORK AT DOMINGUEZ & SONS TRUCKING, INC.
AS AN EMPLOYEE-DRIVER OR DO YOU WANT TO WORK AS AN
INDEPENDENT CONTRACTOR**

You have the choice to apply for a position as an employee-driver of Dominguez & Sons Trucking, Inc. (“Dominguez”), with all the statutory benefits, paid vacations, paid sick leave, and retirement plan, or work as a contract driver, as an independent contractor, self-employed with no benefits provided by Dominguez. Your decision as to which status you choose is an important one, and the decision is yours alone.

SUMMARY OF DIFFERENCES

INDEPENDENT CONTRACTOR V. EMPLOYEE DRIVER

Owner-Operator:

As a contract driver, you will be required to execute a Master Services Agreement with Dominguez which will identify you as an independent contractor and set forth the nature of your relationship with Dominguez. Before making this election, you will be given a copy of Dominguez’s Master Services Agreement and be provided with a summary of its terms and requirements by our Human Resources Department.

As an Independent contractor, you will decide when and where to work, and how much you earn. You pay for your tractor, equipment and all fuel, bridge tolls, and maps. You will be an independent contractor. You will be responsible for paying all your taxes, procuring medical insurance and workers compensation insurance benefits, paying all parking and traffic tickets. You will need to form an entity (a corporation or limited liability company are preferred), have your own business location, procure any licenses required to operate and provide transportation for Dominguez or other parties, market your business to the public on a website or other form of marketing, be responsible for filing your own tax and other business returns.

Employee-Driver:

If you choose to be an employee-driver of Dominguez, you will be carried on the company payroll. You will be assigned a shift to work, based on working 5 days a week. Salaries for employee-drivers start at \$_____ per hour. You will be required to execute several agreements with Dominguez that are required for new employees. We will provide those agreements for your review so that you can make an informed choice to be an employee.

From your gross weekly wages as an employee-driver, Dominguez will withhold Federal and State Income Taxes, FICA and State Disability insurance taxes. Dominguez will issue a weekly payroll check to you for the net wages.



BENEFITS

Owner-Operator:

If you choose to be an owner-operator you are an independent contractor. You are not an employee of Dominguez for purposes of workers' compensation, unemployment insurance, state employee disability insurance or for any other purpose, and that you are giving up those benefits. By choosing the status of owner-operator, you will be deemed to be ineligible for those statutory benefits, unless you purchase these policies yourself.

Employee-Driver:

If you choose to be an employee-driver, you will receive the statutory benefits to which employees are entitled including workers' compensation benefits, unemployment insurance and state disability benefits.

FRINGE BENEFITS

Owner-Operator:

If you choose to be an owner-operator, you will receive no fringe benefits: no vacation, no sick leave, no health insurance, and no 401(K) retirement benefits.

Employee-Driver:

If you choose to be an employee-driver of Dominguez, your benefits will be as follows:

- 1) Paid vacation. After your first year of work, you will receive one-week paid vacation. After 3 years of work, you will receive two weeks paid vacation.
- 2) Paid sick leave. You will receive 3 days paid sick leave for every year worked. Sick leave may accrue from year to year.
- 3) All employee-drivers will be eligible for our company 401(K) retirement plan.
- 4) All employee-drivers will receive 8 paid holidays a year.
- 5) All employee-drivers will receive company paid health insurance benefits.



CHOICE OF STATUS

Before selecting your preferred status, please feel free to speak with us at Dominguez regarding any questions or concerns you may have. We want you to make a fully informed decision as to whether you wish to be an employee of Dominguez or a contractor.

If you choose to work as a Contractor, on the next page sign and date under the first paragraph below titled "I WANT TO WORK AS AN INDEPENDENT CONTRACTOR." If you choose to work as an Employee-Driver of Dominguez, go directly to the second paragraph below that is titled "I WANT TO WORK AS AN EMPLOYEE-DRIVER OF DOMINGUEZ" and sign and date where indicated. Before making your choice, you may wish to consult with an attorney, a family member or friend, and our company encourages you to do so. Also, if you have any questions, feel free to contact us.

I.

I WANT TO WORK AS AN INDEPENDENT CONTRACTOR

I hereby voluntarily request to work as an Independent Contractor who is self-employed, and who will not be treated as an employee of Dominguez for any purpose. I understand and agree that the terms and conditions of my relationship with the company shall be governed by the Agreement signed between Dominguez and myself.

Contractors Signature

Date

II.

I WANT TO WORK AS AN EMPLOYEE-DRIVER OF DOMINGUEZ

I hereby voluntarily request to work as an employee-driver of Dominguez.

Contractors Signature

Date