

**SUBHAULER AGREEMENT
BETWEEN PRIME CARRIER, LSJ TRUCKING, INC.
AND SUBHAULER, _____**

Prime Carrier: LSJ Trucking, Inc.
TX DOT No. 006168018C
US DOT No. 803218

THIS SUBHAULER AGREEMENT (the "Subcontract") is executed by and between Prime Carrier, LSJ Trucking, Inc. ("Prime Carrier") and Subhauler, _____ ("Subhauler"), whose information is provided below:

PRIME CARRIER:

Name: LSJ Trucking Inc.
Address: 5020 Fannett Road
Beaumont, Texas 77705
ATTN: Lesley S. Juman
Telephone: (917) 709-7160
Facsimile: _____
Email: lsjtrucking@att.net

SUBHAULER:

Name: _____
Address: _____
ATTN: _____
Telephone: _____
Facsimile: _____
Email: _____
DOT No.: _____

NUMBER OF TRUCKS BY TYPE

Tandem: _____
Tri-Axle: _____
Quad-Axle: _____
End Dumb: _____
Belly: _____
Total: _____

Prime Carrier and Subhauler are sometimes collectively referred to herein as the "Parties" or individually as a "Party." The Sub-Work described in Article I, below, shall be performed in accordance with the Subcontract Documents attached hereto as ***Exhibits A, B, and C*** (the "Subcontract Documents"), which are incorporated herein by reference.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, including the mutual agreements, understandings, stipulations, warranties and representations set forth herein, the sufficiency of such consideration being hereby acknowledged and confessed by each of the Parties hereto, the Parties agree as follows:

ARTICLE I: SCOPE OF SUB-WORK

Subhauler agrees to furnish all labor, materials, equipment, property insurance, casualty insurance, and liability insurance, and/or other facilities required to complete the Sub-Work described in *Exhibit A* in accordance with the General Terms and Conditions (*Exhibit B*) and the Specific Working Conditions and Rules (*Exhibit C*).

ARTICLE II: THE "SUB-CONTRACT SUM"

Prime Carrier agrees to pay Subhauler for the strict performance of the Sub-Work in accordance with and subject to the General Terms and Conditions set forth in *Exhibit B*.

ARTICLE III: TIME OF PERFORMANCE

DATE OF COMMENCEMENT: _____, 20____.

SUBSTANTIAL COMPLETION DATE: _____, 20____.

These dates are subject to the General Terms and Conditions (*Exhibit B*) regarding changes in the Sub-Work and/or termination of this Subcontract.

ARTICLE IV: THE SERVICE AGREEMENT

Subhauler is made aware that Prime Carrier has entered into a Service Agreement ("Service Agreement") with the following General Contractor ("General Contractor") for the benefit of the following Owner ("Owner") to provide transportation services for the Project known as _____ ("Project"):

GENERAL CONTRACTOR:

Name: _____

Address: _____

ATTN: _____

Telephone: _____

Facsimile: _____

Email: _____

OWNER:

Name: _____

Address: _____

ATTN: _____

Telephone: _____

Facsimile: _____

Email: _____

In consideration of the mutual covenants set forth herein, Prime Carrier and Subhauler have signed this Subcontract, which becomes binding and effective immediately, and shall be interpreted and construed according to the laws of the State of Texas and performable in Beaumont, Jefferson County, Texas.

[The remainder of this page is intentionally left blank with signature page to follow.]

SIGNED AND EXECUTED THIS _____ DAY OF _____, 20____ (the "Effective Date").

PRIME CARRIER:

LSJ TRUCKING, INC.

SUBHAULER:

BY: _____
Signature

BY: _____
Signature

Printed Name

BY: _____
Printed Name

Title

Title

ATTACHED: ***Exhibit A*** (Sub-Work), ***Exhibit B*** (General Terms and Conditions), and ***Exhibit C*** (Specific Working Conditions and Rules).

EXHIBIT B

GENERAL TERMS AND CONDITIONS

By executing this Subhauler Agreement, including all Subcontract Documents attached hereto, (collectively referred to herein as the "Subcontract"), _____ ("Subhauler") and LSJ Trucking Inc. ("Prime Carrier") hereby agree, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, that the following "General Terms and Conditions" of this Subcontract shall apply to all Sub-Work performed by Subhauler for Prime Carrier in relation to this Subcontract:

1. **Statement of Sub-Work** – The term "Sub-Work" is construed herein to mean the transport services provided by the Subhauler to and from the Project to fulfill the Subhauler's obligations to Prime Carrier arising from this Subcontract and related to the Service Agreement between Prime Carrier and General Contractor for the benefit of Owner.
2. **Clarifications & Descriptions** – Subhauler agrees that it is an independent contractor under this Subcontract. Subhauler is solely responsible for, and has control over, all transportation means, methods, techniques, sequences, procedures, and coordination of all portions of the Sub-Work—unless Prime Carrier shall give specific written instructions concerning these matters. Further, Subhauler is fully responsible for all transportation means, methods, techniques, sequences, procedures, and coordination of the Sub-Work related to the safety of Subhauler's employees, sub-subhaulers, and any other persons performing the Sub-Work (*see* Section 15 of this Agreement).

Prime Carrier shall have no control over Subhauler's vehicles, employees, sub-subhaulers, or others used or employed by Subhauler. However, Subhauler agrees to employ capable and responsible employees and/or sub-subhaulers to operate its vehicles safely and expeditiously—in accordance with this Subcontract—and to maintain its vehicles so as to efficiently perform the Sub-Work. Subhauler is, and hereby declares, to be an independent contractor and any and all employees/sub-subhaulers are its employees/sub-subhaulers and separate from Prime Carrier.

3. **Time of Performance** – Time is of the essence. Subhauler will begin all Sub-Work by the date designated in the Subcontract (the "Date of Commencement"). If no date is designated, Subhauler will begin all Sub-Work within two (2) days after being notified orally or in writing by Prime Carrier to proceed. The Subhauler's Sub-Work shall be completed no later than the "Substantial Completion Date" designated in this Subcontract.
4. **Delay** – SUBHAULER WILL PROCEED WITH THE SUB-WORK IN A PROMPT AND DILIGENT MANNER IN ACCORDANCE WITH THE SUBCONTRACT. IN THE EVENT THAT THE SUBHAULER'S PERFORMANCE OF THE SUB-WORK IS DELAYED OR INTERFERED WITH FOR ANY REASON (INCLUDING WEATHER DELAYS OR DISRUPTIONS) OR FOR ANY PERIOD OF TIME BY ACTS OR OMISSIONS OF THE OWNER, GENERAL CONTRACTOR, PRIME CARRIER, OR OTHER SUBHAULER, EXCLUDING SUBHAULER AND ANY EMPLOYEES AND/OR SUB-SUBHAULERS OF SUBHAULER, SUBHAULER MAY REQUEST AN EXTENSION OF TIME FOR THE PERFORMANCE OF THE SUB-WORK, BUT SHALL NOT BE ENTITLED TO ANY INCREASE IN THE CONTRACT PRICE OR TO DAMAGES AS A CONSEQUENCE OF SUCH DELAYS OR INTERFERENCE EXCEPT TO THE EXTENT THAT ANY CONTRACT DOCUMENTS RELATED TO THE SUBCONTRACT ENTITLE PRIME CARRIER TO COMPENSATION FOR SUCH DELAYS, BUT ONLY TO THE EXTENT THAT THE PRIME CARRIER MAY ON BEHALF OF SUBHAULER ACTUALLY RECEIVE FROM THE OWNER MONIES FOR SUCH DELAYS. THE ACTUAL RECEIPT OF SAID MONIES BY PRIME CARRIER SHALL BE A CONDITION PRECEDENT TO ANY OBLIGATION TO SUBHAULER THAT ARISES OUT OF THIS SUBCONTRACT.

NO EXTENSION OF TIME WILL BE VALID WITHOUT THE PRIME CARRIER'S WRITTEN CONSENT. SHOULD THE SUBHAULER EXCEED ITS SUBSTANTIAL COMPLETION DATE WITHOUT WRITTEN CONSENT OF THE PRIME CARRIER, OR DUE TO FAULT OF THE SUBHAULER, PRIME CARRIER WILL CHARGE SUBHAULER A DAILY RATE OF \$ _____, HEREINAFTER REFERRED

TO AS "LIQUIDATED DAMAGES," RELATING TO THE FAILURE OF SUBHAULER TO TIMELY COMPLETE ITS SUB-WORK.

5. **Subcontract Sum** – The Subcontract Sum designated in the Subcontract includes all taxes, duties, fees, and permits that are applicable and required with respect to the Subhauler's Sub-Work. Further, the Subcontract Sum includes all charges for all freight, packing, loading, and unloading of materials and supplies that are applicable and required with respect to the Subhauler's Sub-Work.
6. **Billing / Payment** – Prime Carrier will perform all billing and collecting.

Prime Carrier agrees to pay Subhauler an amount equal to the daily freight rate, less commissions and fees as set forth in Section 7, below. The daily freight rate is based on various factors (depending on the Sub-Work being performed), including fuel cost, mileage traveled, time spent transporting, tonnage transported, and/or cubic yardage transported. As a condition of payment, Subhauler shall be responsible for the freight during its transportation. Subhauler must complete the Sub-Work—evidenced by delivery of the signed, clear, and legible receipted bill of lading, hand tag, manifest, weight certificate, and/or other such written documents as required to the office of the Prime Carrier no later than 2:00 PM the Sunday following the last day of Sub-Work performed for the Project. Any paperwork submitted AFTER 2:00 PM Sunday will be subject to an administrative fee of 5% from the Prime Carrier.
7. **Prime Carrier's Commission / Administrative Fees** – Prime Carrier shall subtract from payments to Subhauler a 5% to 10% commission fee based on project freight rates from each truck ticket submitted by the Subhauler. Truck tickets turned into Prime Carrier's office with incomplete or illegible information will be subject to an additional 5% administration fee.
8. **Condition Precedent to Payment** – IN ADDITION TO ANY OTHER REQUIREMENT OF THE SUBCONTRACT, FINAL PAYMENT SHALL NOT BECOME DUE UNLESS AND UNTIL THE FOLLOWING CONDITIONS PRECEDENT TO FINAL PAYMENT HAVE BEEN SATISFIED: (A) APPROVAL AND ACCEPTANCE OF SUBHAULER'S WORK BY OWNER, GENERAL CONTRACTOR, AND PRIME CARRIER; (B) RECEIPT OF FINAL PAYMENT FOR SUBHAULER'S WORK BY PRIME CARRIER FROM GENERAL CONTRACTOR; AND (C) FURNISHING TO PRIME CARRIER SATISFACTORY EVIDENCE BY SUBHAULER THAT ALL LABOR AND MATERIAL ACCOUNTS INCURRED BY SUBHAULER IN CONNECTION WITH HIS OR HER SUB-WORK HAVE BEEN PAID IN FULL. SUBHAULER EXPRESSLY ASSUMES THE RISK OF NON-PAYMENT BY THE GENERAL CONTRACTOR TO PRIME CARRIER.
9. **Modification** – Prime Carrier may make changes, by written change order, in the Subhauler's Sub-Work. Conversely, Subhauler may, upon Subhauler's written request and Prime Carrier's approval via Prime Carrier's written change order, make changes in its Sub-Work. If such change affects the Subcontract Sum, whether as an increase or decrease, it shall be equitably adjusted. Changes which affect the time of performance shall modify the Substantial Completion Date, as applicable. Subhauler is liable and responsible for change orders or modifications not made in accordance with this Section.
10. **Warranties and Guarantees** – Subhauler warrants that the services provided in its Sub-Work shall conform in all respects to the terms of this Subcontract, shall be performed satisfactorily for the purposes and the conditions made known by this Subcontract or that can be reasonably to be inferred, and shall be at least equal to nationally recognized standards or codes of the best quality, if no quality is specified. This Section is in addition to any warranty or service guarantee offered by Subhauler or implied or provided by law. Subhauler's liability hereunder shall extend to all damages proximately caused by the breach of any of these warranties or guarantees.

Subhauler also warrants and represents that it is the holder of all necessary and valid federal, state, county, or city certificates, permits, licenses, and registrations, which are required to perform the Sub-Work and, specifically, conduct the business of transportation and trucking for hire. It shall never use Prime Carrier's name or address on any truck registration document. Subhauler will immediately notify Prime Carrier if any permits, certificates, licenses, or registrations lapse or are suspended or revoked.

Subhauler also warrants and represents that it is familiar with and will conform to all federal, state, and local laws and regulations governing the transportation of hazardous and non-hazardous wastes.

11. **Insurance and Bond** – Subhauler represents that it is fully protected by worker's compensation, property damage, casualty, and auto vehicle liability insurance and will continue in effect said coverage while acting as a Subhauler hereunder and will furnish to Prime Carrier satisfactory evidence of such coverage at any time requested to do so by Prime Carrier and further agrees to indemnify and hold harmless Prime Carrier from any and all claims or demands of any kind except the payment of compensation due to the Subhauler for hauling and transportation. Subhauler shall name and list Prime Carrier as an additional insured under said Subhauler's property damage, casualty, and auto vehicle liability insurance policy. If any claims are made against Prime Carrier arising out of the hiring of Subhauler, Prime Carrier is authorized to withhold any monies due Subhauler until such claims are adjusted or paid by Subhauler to the satisfaction of Prime Carrier.

The Subhauler, at its own expense, shall obtain and maintain in full force and effect, without interruption, the following minimum levels of insurance:

- a. Workers' Compensation insurance covering the legal liability of the Prime Carrier and its subhaulers, including Subhauler, under the applicable workers' compensation or occupational disease laws for claims for personal injuries and death resulting therefrom to the Prime Carrier, Subhauler, and any of Prime Carrier's and Subhauler's respective employees and sub-subhaulers. The Subhauler shall also obtain a minimum of \$500,000 of Employers' Liability insurance. Certificates of insurance must include a waiver of subrogation in favor of Prime Carrier.
- b. Commercial General Liability insurance covering the legal liability (including liability assumed contractually, whether incidental or not) of Subhauler for claims for personal injuries (including death) and property damage resulting therefrom arising out of the services to be performed by Subhauler, in an amount not less than \$500,000 for any one occurrence, with a \$1,000,000 general aggregate (per Subcontract) and a \$1,000,000 Products/Completed Operations aggregate limit. Commercial General Liability insurance shall be obtained and shall include broad form contractual liability coverage, products/completed operations, cross liability, severability of interest and broad form property damage (if required), and Prime Carrier, as well as its directors, officers and employees, shall be named as an additional insured on such Commercial General Liability policy regarding liability arising out of operations performed under this Subcontract. Form CG 20 10 07 04 and CG 20 37 07 04 must be shown on the certificate of insurance or its equivalent.
- c. Auto Vehicle Liability insurance covering the legal liability (including liability assumed contractually, whether incidental or not) of Subhauler for claims for property damage, personal injuries, and death resulting therefrom and caused by highway licensed vehicles of or used by Subhauler in an amount not less than: (i) \$500,000 for any one person; (ii) \$500,000 for bodily injury for any one occurrence; and (iii) \$500,000 for property damage for any one occurrence. Auto Vehicle Liability insurance shall provide coverage for owned, hired, or non-owned auto vehicle or other automotive equipment, and Prime Carrier shall be named as an additional insured on such policy.

Subhauler's insurance coverage shall be primary insurance in respect to Sub-Work. Any insurance or self-insurance maintained by Prime Carrier shall be in excess of Subhauler's insurance. Subhauler, in its agreements with its sub-subhaulers or its employees, shall require said sub-subhaulers and employees to obtain insurance meeting the minimum limits and incorporating the contractual requirements that are prescribed by this Section. Subhauler hereby waives and relinquishes any right of subrogation against Prime Carrier and its agents, representatives, employees, and affiliates they might possess for any policy of insurance provided under this Section or under any State or Federal Workers' Compensation or Employer's Liability Act. To the extent that the Subhauler utilizes deductibles in conjunction with the insurance required by this Subcontract, all deductible expenses will be assumed by Subhauler. Insurance shall be placed with insurers with a Best rating of not less than A-.

SUBHAULER SHALL REQUIRE ITS INSURER TO NOTIFY PRIME CARRIER THIRTY (30) DAYS PRIOR TO THE EFFECTIVE DATE OF ANY CANCELLATION OR MATERIAL CHANGE IN ANY OF THE REQUIRED POLICIES.

12. **INDEMNITY AND DUTY TO DEFEND – SUBHAULER SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, GENERAL CONTRACTOR, PRIME CARRIER, AND ALL THEIR RESPECTIVE AGENTS AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING ATTORNEY'S FEES, ARISING OUT OF OR RESULTING FROM SUBHAULER'S PERFORMANCE OF THE SUB-WORK, EVEN IF IT IS CAUSED IN PART BY THE NEGLIGENCE OF OWNER, GENERAL CONTRACTOR, AND/OR PRIME CARRIER. IN ANY AND ALL CLAIMS AGAINST THE OWNER, GENERAL CONTRACTOR, PRIME CARRIER, OR ANY OF THEIR RESPECTIVE AGENTS AND EMPLOYEES, BY AN EMPLOYEE OF SUBHAULER, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY SUBHAULER, OR ANYONE FOR WHOSE ACTS SUBHAULER MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER THIS PARAGRAPH SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR PRIME CARRIER UNDER WORKER'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS. THIS CLAUSE IS NOT INTENDED TO INDEMNIFY PRIME CARRIER FOR CLAIMS, DAMAGES, LOSSES, AND EXPENSES CAUSED BY THE SOLE NEGLIGENCE OF PRIME CARRIER.**
13. **Dispute Resolution** – Regarding any and all disputes or claims arising out of or relating to this Subcontract, or the breach thereof, and prior to filing a lawsuit, Subhauler and Prime Carrier agree to first try to resolve the dispute through mediation in accordance with the legally accepted mediation rules of the State of Texas currently in effect.
14. **Consequential / Punitive Damages** – Neither Subhauler nor Prime Carrier shall be liable to the other for loss of profits or revenue; loss of use of opportunity; loss of goodwill; cost of substitute facilities, goods, or services; cost of capital; or for any special, indirect, or consequential damages. Further, except as expressly provided herein, neither Subhauler nor Prime Carrier shall be liable to the other for punitive or exemplary damages.
15. **Safety** – With respect to the Sub-Work, Subhauler shall take all reasonable safety precautions, shall comply with all safety measures initiated by Prime Carrier and with all applicable laws, ordinances, rules, regulations, and orders of any government agency or political subdivision for the safety of any persons or property. Subhauler shall submit to Prime Carrier, within three (3) days of any and all incidents, all reports arising out of any injuries to Subhauler's employees or those of any firm or individual to whom Subhauler may have sublet work or any property damage arising or alleged to have arisen on account of any Sub-Work performed by Subhauler.

Subhauler agrees that, prior to performing any Sub-Work, it will evaluate the safety of the work in place and the working conditions in the area in which Subhauler's employees and sub-subhaulers will work and will notify Prime

Carrier in writing of any unsafe conditions or defective work in place and will further prevent its personnel and sub-subhaulers from entering into any such area or performing any Sub-Work in or around any such defective work area. Failure of Subhauler to notify Prime Carrier of any unsafe condition or defective work area prior to beginning Sub-Work shall conclusively establish Subhauler's acceptance of the work area and safety of the working conditions related to Subhauler's Sub-Work.

16. **Cleanup** – Subhauler shall at all times and on a daily basis keep the premises of any Sub-Work free from accumulations of waste material, debris, or rubbish caused by his or her employees or sub-subhaulers in performing Sub-Work, and at the direction of Prime Carrier, Subhauler shall remove all the waste material, debris, and rubbish from and about the Sub-Work premises, including all tools, equipment, waste, and surplus materials and shall leave his or her Sub-Work area clean. In case of dispute, Prime Carrier may remove the rubbish and deduct the cost from Subhauler's payment.
17. **Use of Contractor's Equipment** – In the event Subhauler shall use Prime Carrier's equipment, materials, labor, supplies, or facilities, Subhauler shall reimburse Prime Carrier at a predetermined rate. Further, Subhauler assumes all liabilities connected therewith and responsibility for physical damage to such equipment, materials, labor, supplies, or facilities used by Subhauler or its agents, employees, or sub-subhaulers. In the event that Prime Carrier's employees are used by Subhauler, Subhauler shall have full responsibility for all acts or omissions of Prime Carrier's employees with regard to the Subhauler's use or employment of them in performing Sub-Work. Subhauler shall accept any and all of Prime Carrier's equipment, materials, labor, supplies, or facilities as furnished. The use by Subhauler of Prime Carrier's equipment or employees must be approved by Prime Carrier in writing.
18. **Subhauler's Default** - If Subhauler or any of Subhauler's employees, sub-subhaulers, suppliers, materialmen, or laborers at any time commit any of the acts or omissions below in connection with any part of this Subcontract, or otherwise, it shall constitute an Event of Default under this Subcontract:
 - (i) abandon Sub-Work or fail in any respect to promptly and diligently prosecute Sub-Work;
 - (ii) fail to promptly pay employees, sub-subhaulers, suppliers, materialmen, rental companies, or laborers;
 - (iii) fail to accelerate Sub-Work as may be required by Prime Carrier;
 - (iv) give Prime Carrier a reasonable basis to doubt that Subhauler's Sub-Work can be completed for the unpaid portion of the Subcontract Sum or within the required time for this Subcontract;
 - (v) declare bankruptcy or make a general assignment for the benefit of creditors or files for bankruptcy, assigns assets for the benefit of creditors, becomes insolvent or be unable to pay its obligations as they mature;
 - (vi) otherwise fail to perform any of the terms, conditions, agreements and obligations set forth in this Subcontract; or
 - (vii) a failure in the performance of this Subcontract.
19. **Prime Carrier's Remedies on Subhauler's Default** – In the event of a Default, Prime Carrier may pursue any remedies available by common law or statute, including but not limited to one or more of the following:
 - (i) withhold any sums due or thereafter to become due to Subhauler under this Subcontract;

- (ii) provide and/or supplement any labor and materials as Prime Carrier shall determine to cure such default and deduct the cost thereof from any money then due or thereafter to become due to Subhauler under this Subcontract;
- (iii) upon the appointment of a receiver for Subhauler or upon Subhauler making an assignment for the benefit of creditors or if Subhauler seeks protection under the Bankruptcy Code or commits any other act of insolvency, Prime Carrier may terminate this Subcontract upon giving written notice, by certified mail, to Subhauler and its surety, if any. If an order for relief is entered under the Bankruptcy Code with respect to Subhauler, Prime Carrier may terminate this Subcontract by giving written notice, by certified mail, to Subhauler, its trustee, and its surety, if any, unless Subhauler, the surety, or the trustee:
 - (a) promptly cures all defaults;
 - (b) provides adequate assurance of future performance;
 - (c) compensates Prime Carrier for actual pecuniary loss resulting from such defaults;
and
 - (d) assumes the obligations of Subhauler within the statutory time limits.
- (iv) terminate this Subcontract for default, in which case Subhauler assigns, conveys, and transfers to Prime Carrier all rights, title, and interests in the following: (1) all contracts, whether written or oral, between Subhauler and persons or entities providing labor, material, or equipment pertaining to the Sub-Work, and (2) all equipment, tools, materials, or personal property of any kind located on the Sub-Work site at the time of termination. Upon the effective date of termination, Subhauler shall be deemed to irrevocably constitute, appoint, and designate Prime Carrier as its attorney-in-fact with the right, but not the obligation, to exercise all rights of Subhauler assigned or granted to Prime Carrier, and to execute and deliver any other assignments, documents, instruments or agreements deemed necessary by Prime Carrier to exercise its rights under this Subcontract in the name of Subhauler.
- (v) take possession of all the materials, tools, equipment and appliances belonging to Subhauler at the Sub-Work site without any further compensation to Subhauler, and either complete the Sub-Work or contract with any other person or persons to complete the Sub-Work and provide the material therefore; in which case if the unpaid portion of the amount to be paid under the Subcontract exceeds the charges, expenses, and damages sustained by Prime Carrier in completing the work or as a result of such defaults, such excess shall be paid by Prime Carrier to Subhauler, but if such charges, expenses, and damages exceed said unpaid portion, Subhauler shall pay the difference to Prime Carrier immediately upon demand; or
- (vi) offset and apply any amounts due Prime Carrier as a result of such default against any earned but unpaid amounts owing to Subhauler by Prime Carrier under the Subcontract, including retainage (if applicable).

Prior to exercising the remedies in this Section, Prime Carrier shall provide Subhauler written notice of default with not less than two (2) working days to cure such default.

Prime Carrier's remedies are cumulative, and the exercise of one remedy shall not restrict Prime Carrier, at the same time or thereafter, from exercising any other remedy set forth in this Subcontract, or any right or remedy provided

by equity or applicable law. Unless prohibited by Law, Prime Carrier may set-off against the Subcontract Sum the amounts owing from Subhauler to Prime Carrier.

In the event a termination for default issued pursuant to this Section is found not to have been warranted under this Subcontract, the total compensation and damages that Subhauler is entitled to recover on account of such termination shall be limited to the compensation that would have been payable to Subhauler as if this Subcontract had been terminated for Prime Carrier's convenience pursuant to Section 20, below.

20. **Termination at Prime Carrier's Convenience** – Prime Carrier may, at its option, at any time, terminate the whole or part of this Subcontract for the convenience of Prime Carrier. Subhauler agrees that upon any such termination, the Subhauler's sole remedy shall be payment for work properly performed and completed or materials delivered, less all payments Subhauler has previously received on account of such Sub-Work performed. Subhauler agrees to waive all claims for damages, including lost or anticipated profits arising from or related to any such termination by Prime Carrier.
21. **Miscellaneous Provisions** – This Subcontract also incorporates the following provisions:
- a. Subhauler shall secure and pay for necessary fees, permits, approvals, deliveries, and other charges applicable to completion of its Sub-Work.
 - b. Subhauler shall not transfer, assign, or subcontract any Sub-Work, or any amounts due or to become due under this Subcontract, to any third party without prior written consent of Prime Carrier.
 - c. Subhauler and Prime Carrier, respectively, each binds itself, its partners, employees, subcontractors, agents, successors, assigns, and legal representatives to the other party hereto, its partners, employees, subcontractors, agents, successors, assigns, and legal representatives in respect of all covenants, agreements, and obligations contained in this Subcontract.
 - d. Subhauler's operation and maintenance of its trucks and equipment shall be at its sole expense. Subhauler shall bear all expenses in connection with any hauling done for Prime Carrier in performing the Sub-Work, including but not limited to fuel, oil, supplies, maintenance and parts; and it shall pay all taxes, fines or penalties incurred from or during the performance of this Subcontract.
 - e. Subhauler shall never use Prime Carrier's name or address on any truck registration document.
 - f. Subhauler acknowledges its requirement, and the requirement of its employees and sub-subhaulers, to participate in an alcohol and controlled substances testing program that meets the requirements of the U.S. Department of Transportation. Accordingly, Subhauler agrees as follows:
 - (i) Subhauler shall participate and shall require the participation of its employees and sub-subhaulers, if any, in a drug and alcohol program that meets state and federal requirements; and
 - (ii) Subhauler shall provide Prime Carrier with written evidence of its participation and a written release granting Prime Carrier the right to receive annual proof of such compliance in addition to written results of any drug or alcohol tests.
 - g. Subhauler, including its employees and sub-subhaulers, are required to have a proper CB Radios installed in all equipment. Subhauler will be required to operate on the proper channel as specified

by Prime Carrier. Transportation Worked Identification Cards, TWIC shall be required to receive dispatch from Prime Carrier.

- h. Subhauler will be required to provide Prime Carrier an active wireless phone number that can receive text messages in order to receive daily dispatch from Prime Carrier. Subhauler will be solely responsible for contacting Prime Carrier if dispatch is not received nightly by 6:00 pm. Subhauler shall respond to all dispatch text with a “thumbs down” emoji 👎 if Subhauler will not be accepting dispatch or “thumbs up” emoji 👍 as confirmation Subhauler has accepted dispatch.
- i. Nothing contained in this Subcontract shall be deemed or construed by the Parties hereto or by any third person to create the relationship of principal and agent or of partnership or of a joint venture between Prime Carrier and Subhauler.

22. **NON-COMPETE / CONFIDENTIALITY** – During the term of this Subcontract, Subhauler agrees not to, directly or indirectly, engage or participate in any business that is in competition in any manner whatsoever with the business of the Prime Carrier—only as it relates to the Project and the Sub-Work. Furthermore, on the termination of this Subcontract, Subhauler agrees not to engage in or participate, directly or indirectly, in any business operating within fifty (50) miles of Port Arthur, Texas, that is in competition with the Prime Carrier, for a period of ninety (90) days.

In the event of a breach by Subhauler of the obligation not to compete contained in the above paragraph of this Subcontract, Subhauler shall pay to Prime Carrier \$ _____ per day as liquidated damages for the period during which the Subhauler continues to be in breach of the obligation not to compete.

Furthermore, by virtue of this Subcontract, Subhauler will learn critical information about Prime Carrier’s business operation, which is the trade secret of Prime Carrier. On the termination of this Subcontract, Subhauler expressly agrees not to disclose or make use of any trade secrets of Prime Carrier to which Subhauler had access during the performance of the Sub-Work. As used herein, the term “trade secrets” shall include lists of customers, pricing, and techniques of performing the Sub-Work for which Subhauler has been subcontracted to perform.

23. **NON-SOLICITATION** – During the term of Subcontract and continuing for ninety (90) days following the termination of such Subcontract, Subhauler shall not: (a) employ or attempt to hire away any then-current employee of Prime Carrier or its affiliates or subsidiaries, or attempt to persuade any such employee to leave employment with Prime Carrier or its affiliates or subsidiaries; or (b) solicit, divert, or take away, or attempt to solicit, divert or take away the business and/or customer relationships that Prime Carrier, or any of its affiliates or subsidiaries, has established or is actively seeking to establish.
24. **NON-DISPARAGEMENT** – Effective upon the expiration of this Subcontract, Subhauler shall not make, verbally or in writing, any statement to any person or entity that is disparaging of Prime Carrier, or its affiliates or subsidiaries, including any statement that could (i) reasonably be interpreted by such person or entity as being critical of the business condition, business standards, or conduct of Prime Carrier or its affiliates or subsidiaries, or (ii) cause a reasonable person or entity to hesitate prior to doing business with Prime Carrier or its affiliates or subsidiaries.
25. **Licensing** – Subhauler shall maintain any and all licenses, certifications, permits, and registrations it is required by law to have to perform the Sub-Work under this Subcontract. Failure to maintain such licenses, certifications, permits, and registrations shall be a material breach of this Subcontract.

26. **Governing Law** – This Subcontract shall be governed by the Laws of the State of Texas.
27. **Attorney's Fees** – IN THE EVENT SUBHAULER DEFAULTS IN THE PERFORMANCE OF ANY OF THE TERMS, COVENANTS, AGREEMENTS, OR CONDITIONS OF THIS SUBCONTRACT AND PRIME CARRIER SEEKS TO ENFORCE ALL OR ANY PART OF THIS SUBCONTRACT, SUBHAULER AGREES TO PAY PRIME CARRIER'S REASONABLE ATTORNEY'S FEES AND EXPENSES ASSOCIATED THEREWITH, WHETHER SUIT IS ACTUALLY FILED OR NOT.
28. **Interpretation** – These General Terms and Conditions shall not be construed as though drafted by either Prime Carrier or Subhauler, and the Parties specifically covenant that the rule of *contra proferentum*, or construction of an agreement against its drafter, shall be inapplicable in the interpretation of this Subcontract.
29. **Severability** – If any part of this Subcontract, to any extent, is invalid or unenforceable, the remainder of this Subcontract shall not be affected thereby and shall be valid and be enforced to the fullest extent permitted by law.
30. **Entire Agreement** – This Subcontract, including all Subcontract Documents, represents the entire agreement between Prime Carrier and Subhauler, superseding any prior written or oral representations. Subhauler, including its sub-subhaulers, employees, agents, suppliers, and/or materialmen, is bound by this Subcontract and all other agreements insofar as they relate in any way, directly or indirectly, to the Sub-Work covered by this Subcontract.

ATTENTION: THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES. CONSULTATION WITH AN ATTORNEY PRIOR TO EXECUTION OF THIS DOCUMENT IS ENCOURAGED.

BY SIGNING BELOW, PRIME CARRIER AND SUBHAULER AGREE TO THE GENERAL TERMS AND CONDITIONS EXPRESSED HEREIN AS THEY RELATE TO THE SUBCONTRACT AND SUBHAULER'S SUB-WORK.

SIGNED THIS _____ DAY OF _____, 20____.

PRIME CARRIER:

SUBHAULER:

LSJ TRUCKING, INC.

BY: _____
Signature

BY: _____
Signature

Printed Name

Printed Name

Title

Title

EXHIBIT A

SUBHAULER'S SUB-WORK

The Subhauler shall perform its portion of the Sub-Work on the Project as described below and in accordance with the Subcontract Documents, including all labor, materials, equipment, services, and other items required to complete such portion of the Sub-Work on the Project, except to the extent specifically indicated in the Subcontract Documents or this Subcontract to be the responsibility of others. The Sub-Work of Subhauler, including any of its employees, sub-subhaulers, and sub-tier entities, is as follow:

Subhauler shall transport freight (including, but not limited to, aggregate, soil, liquid, rock, construction material, non-hazardous and hazardous waste and materials, and/or anything that can be legally transported) to and from the Project and in accordance with this Subcontract.

Prime Carrier shall notify Subhauler of material to be transported and of the time and location to load, all within a reasonable time prior to the required delivery time and thereafter Subhauler will, without delay, cause said material to be transported to the place designated by Prime Carrier or its representative.

Subhauler acknowledges that certain asphalt products are perishable, and that time is of the essence in making proper and timely delivery of all materials to be delivered hereunder. As such, Subhauler shall use all reasonable diligence to deliver such materials promptly, expeditiously, and safely to the proper locations and by the proper delivery dates and times as specified by Prime Carrier. Prime Carrier shall have no responsibility to engage Subhauler at all or for any minimum number of deliveries during the term of this Subcontract.

BY SIGNING BELOW, PRIME CARRIER AND SUBHAULER AGREE TO THE SUBHAULER'S SUB-WORK EXPRESSED HEREIN AS IT RELATES TO THE SUBCONTRACT.

SIGNED THIS _____ DAY OF _____, 20____.

PRIME CARRIER:

LSJ TRUCKING, INC.

SUBHAULER:

BY: _____
Signature

Printed Name

Title

BY: _____
Signature

Printed Name

Title

EXHIBIT C

SPECIFIC WORKING CONDITIONS AND RULES

Safety, consideration for others while performing the Subcontract Sub-Work, and proper behavior while performing the Subcontract Sub-Work at, to, and/or from the Project, is an obligation of the Prime Carrier to the General Contractor and Owner under the Service Agreement. Thus, the Subhauler, including its sub-tier entities, employees, and sub-subhaulers, will abide by the following Specific Working Conditions and Rules for the Project:

- Drugs, alcohol, or weapons are not permitted at the Project site and/or while performing the Sub-Work. Any individual determined to be under the influence of drugs or alcohol, or having weapons, will be immediately dismissed, removed from the Project site, and may be turned in to law enforcement officials;
- If a Subhauler's Sub-Work requires personal protective equipment, such as clothing, eye protection, hearing protection, head protection, back braces, harnesses, gloves, special footwear, etc., it must be used at all times while performing such Sub-Work activities;
- All accidents and injuries of any type must be reported immediately to the Prime Carrier;
- Safety rules and precautions must be abided by all individuals performing the Sub-Work. Subhauler, including its sub-tier entities, employees, and sub-subhaulers, are responsible for the safety of their own personnel while performing the Sub-Work. Subhauler, including its sub-tier entities, employees, and sub-subhaulers, shall make their personnel aware of his or her appropriate safety precautions, including safety rules for the Sub-Work, and shall provide their personnel with the appropriate personal protection gear;
- While performing the Sub-Work, all individuals will deal with each other in a courteous and respectful manner. Physical encounters, foul language, and verbal abuse are prohibited. Failure to comply with this request shall be cause for immediate dismissal and removal from the Project;
- Subhauler shall operate and maintain its trucks and related equipment in compliance with the requirements of all applicable state and/or federal statutes, laws, ordinances, regulations, and rules;
- Subhauler shall ensure that all vehicles are to receive preventive maintenance in a timely manner. It shall be the responsibility of Subhauler to see that vehicles are serviced on schedule. Daily pre-trip and post trip inspections should be performed, ensuring there are no leaks or mechanical defects before beginning dispatch;
- Subhauler shall keep all haul loads free of contamination, including bottles, cans and other trash. Subhauler shall be responsible for payment of any load that is refused by the General Contractor or the Owner due to contamination; and
- Subhauler shall use only environmentally safe release agents in and around the bed of its haul trucks. The use of diesel as a release agent is strictly prohibited.

BY SIGNING BELOW, PRIME CARRIER AND SUBHAULER AGREE TO THE SPECIFIC WORKING CONDITIONS AND RULES EXPRESSED HEREIN AS THEY RELATE TO THE SUBCONTRACT.

SIGNED THIS _____ DAY OF _____, 20____.

PRIME CARRIER:

SUBHAULER:

LSJ TRUCKING, INC.

BY: _____
Signature

BY: _____
Signature

Printed Name

Printed Name

Title

Title