

Sand Materials & Aggregate Sales, Inc.

A MBE/DBE/WBE/SBE Company

17524 Sierra Hwy

Santa Clarita, CA 91351



CONTRACT FOR HAULING

THIS CONTRACT (The “Contract”) is made this _____ day of _____, 20____, by and between **Sand Materials & Aggregate Sales, Inc.**, (hereinafter referred to as “Company”), and _____ (hereinafter referred to as “Trucking Contractor” and/or “Trucking Carrier”).

RECITALS

A. **WHEREAS**, the parties wish to enter into an agreement to govern all hauling that may be done by the Trucking Contractor for the Company, leaving only for future determination the products or equipment to be hauled, the location or locations from and to which such products or equipment are to be hauled, and the price to be paid to the Trucking Contractor; and

B. **WHEREAS**, Company agrees to retain the services of Trucking Contractor, and Trucking Contractor agrees to perform transportation services for Company on and subject to the following terms and conditions.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. **Independent Contractor**, The Trucking Contractor is an independent contractor engaged by the Company to provide hauling and transportation services according to the terms of this Contract. Consistent with the terms herein described, Trucking Contractor has the discretion to choose which jobs to take that are offered by Company and to determine, within the reasonable bounds that may be required by Company and its clients, the manner of completing performance. Trucking Contractor recognizes and agrees that hauling and transport of materials to third parties is outside the scope of Company’s usual business activities, which gives rise to Company’s need to contract with Trucking Contractor to provide hauling services. All hauling that Trucking Contractor does for the Company and all terms and conditions of the Agreement shall be interpreted in light of that relationship.

Tel. 661.252.4735

Fax 661.299.1547

2. **Trucking Contractor's Representations.** Trucking Contractor represents and warrants that it is independently engaged in the trucking business and that, throughout the term of this Contract:

- It shall operate and maintain its truck(s) and related equipment in compliance with the requirements of all applicable state and/or federal statutes, laws, ordinances, and rules, including, but not limited to, all Department of Transportation and Department of Motor Vehicles regulations as well as maintaining all required licenses, certifications, and registrations necessary to provide hauling services;
- Its operation and maintenance of its truck(s) and equipment shall be at its sole expense; it shall bear all expenses in connection with any hauling done for the Company, including but not limited to fuel, oil, supplies, utilities, repairs, maintenance and parts; and it shall pay all taxes, fines or penalties arising from the performance of this Contract; and;
- It shall never use Company's name, address, or marks in any manner, including on a truck registration document, unless specifically authorized in writing by the Company after disclosure of the specific use.

3. **Sub haulers.** Trucking Contractor may use sub haulers to act and perform under this Contract, provided each such sub hauler shall, in its sub hauler's contract with Trucking Contractor, agree to, and incorporate, each and all of the terms and provisions of this Contract for the performance of any work by such sub hauler for Trucking Contractor under this Contract, including all warranties and representations of Trucking Contractor. Trucking Contractor understands and agrees that Company shall have no liability nor responsibility of any nature whatsoever to any sub hauler used by Trucking Contractor to perform obligations under this Contract.

4. **Certificates, Permits, & Licenses.** Trucking Contractor represents and warrants to Company that:

- It is holder of all local, state and federal certificates, permits, and licenses which are required or necessary for it to conduct its business as a hauling contractor and to perform services under this Contract;
- It will continue to hold such certificates, permits, and licenses during the term of this Contract;
- It is currently in compliance, and will maintain such compliance throughout the term of this Agreement, with all local, state and federal safety, health and environmental laws required of its business, and;

- Without limiting the foregoing, Trucking Contractor has registered as required by law with the appropriate Collector of Internal Revenue and has received authorization therefrom to operate under the Federal Transportation Excise Tax Law.

5. **Drug and Alcohol Testing.** Trucking Contractor acknowledges the requirement, and the requirement of its sub haulers, if any, to participate in an alcohol and controlled substance testing program that meets the requirements of the U.S. Department of Transportation. Accordingly, Trucking Contractor agrees as follows:

It shall participate and shall require the participation of its sub haulers, if any, in a drug and alcohol consortium that meets local, state and federal requirements; and

It shall provide Company with written evidence of its participation and a written release granting Company the right to receive annual proof of such compliance in addition to written results of any drug or alcohol test performed by the consortium.

6. **Insurance Requirements.** Trucking Contractor and each sub hauler shall keep and maintain in force at all times the following types of insurance:

- Comprehensive automobile liability insurance covering all Owned, Leased and Hired Autos and Trucks and Non-Owned Autos and Trucks, and with limits of One Million Dollars combined single limit per accident for Bodily Injury and Property Damage, and
- Workers' compensation and employer's liability insurance covering all of Trucking Contractor's employees, with limits for workers' compensations as required by law and limits for employer's liability of not less than One Million Dollars per occurrence and be endorsed by a waiver of subrogation as to Company and its parents, subsidiaries, affiliates and contractors, and their respective officers, directors, attorneys, agents, and employees.

Each automobile liability insurance policy shall: (1) be endorsed to provide coverage as additional insured, to Company and its parents, subsidiaries, affiliates, and contractors, and their respective officers, directors, attorneys, agents and employees, with respect to all liability arising out of the operations of Trucking Contractor; (2) contain a severability of interest provision allowing Company and the other additional insureds to recover on a claim covered by the policy, notwithstanding that they are additional insureds; and (3) provide that, subject to the coverage limitations of the additional insured endorsement, the insurance afforded to the additional insureds under the policy shall be primary insurance and shall not be contributory in any way with insurance of self-insurance maintained by the additional insureds.

The insurance policies described in the preceding paragraph shall be issued by companies approved to do business in California and that have a current A.M. Best Company rating of at least B+/V. In respect to workers' compensations, Trucking Contractor may be insured by the State Compensation Fund or by a qualified self-insurer. Trucking Contractor shall at all times provide Company with certificates of insurance, including copies of the required endorsements evidencing that the foregoing insurance is in effect. Each certificate will provide for at least thirty (30) days' prior written notice to Company of cancellation, termination or material change.

7. **Indemnification.** Trucking Contractor shall release, defend, indemnify and hold harmless Company and its parents, subsidiaries, affiliates and contractors, and each of its and their respective officers, directors, attorneys, agents, representatives, and employees (each an "Indemnatee"), from and against any and all claims, actions, damages, demands, losses, liabilities, costs and expenses, of every nature and character, including but not limited to, reasonable attorneys' fees (all collectively "Claims"), arising in whole or in part from, or out of any act or omission of Trucking Contractor, its agents, invitees, employees, contractors, and/or sub haulers, except Claims that are caused solely and exclusively by the active negligence, gross negligence or willful misconduct of the Indemnitees. In the event the Indemnities, or any of them, are party to any litigation arising from a Claim for which Trucking Contractor is obligated to defend the Indemnities under the terms hereof, Trucking Contractor shall defend the Indemnities and pay all reasonable costs, expenses and attorneys' fees incurred by the Indemnities in connection therewith. Indemnitees shall not be liable to Trucking Contractor or its sub haulers for any damage to Trucking Contractor or its sub haulers or their respective property unless caused solely and exclusively by the active negligence, gross negligence, or willful misconduct of the Indemnitees. The provisions of this paragraph shall survive the term of this Contract.

8. **Materials, Loading, Delivery.** Company shall notify Trucking Contractor of material to be transported and of time and location of the place to load same, all within a reasonable time prior to the required delivery time, and thereafter Trucking Contractor will promptly cause said property to be loaded, transported, and delivered to the place designated by Company or its representative by the applicable delivery time. Trucking Contractor acknowledges that certain asphalt products of Company are perishable, and that time is of essence in making properly and timely delivery of all materials delivered hereunder. As such, Trucking Contractor shall use 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 Company. Company shall have no responsibility to engage Trucking Contractor at all or for any minimum number of deliveries during the term of this Contract. Trucking Contractor has no obligation to accept any specific assignment, except that if Trucking Contractor rejects an excessive number of assignments, then Company may terminate this Contract upon 30 days' written notice to Trucking Contractor.

9. **Control Over Trucking Contractor's Trucks, Agents, Employees, and Subcontractors.** With the exception of the minimum requirements specified in this Contract, Trucking Contractor shall have full and complete control of and responsibility for Trucking Contractor's trucks and all agents, employees, and subcontractors, if any and including sub haulers, employed by Trucking Contractor. Trucking Contractor shall also have full control over the route, method of hauling or transportation, and the detail of management thereof. Trucking Contractor shall also be fully responsible for the conduct of the Trucking Contractor's business and none of said agents, employees or subcontractors shall be, or shall be deemed to be, the agent, employee or subcontractor of the Company for any purpose whatsoever, and the Company shall have no duty, liability or responsibility, of any kind, to or for the acts or omissions of the Trucking Contractor or such agents, employees or subcontractors, or any of them. The Trucking Contractor agrees to defend, indemnify, and hold the Company harmless from and with respect to any and all claims of any kind based on any act or omission of the Trucking Contractor or the Trucking Contractor's agents, employees or subcontractors.

10. **Rates and Fees.** Company agrees to pay Trucking Contractor for services performed as agreed on a job-by-job basis at the haul rate evidenced by the Order Form sent to Trucking Contractor in advance of each hauling job. Company will retain a brokerage fee of eight percent (8%) from the total contract value of each hauling job, with the remaining percentage to be paid to Trucking Contractor pursuant to the terms of this Contract. If Trucking Contractor performs services under this Contract without first entering a written agreement as to the payment therefor and no written agreement is thereafter entered as to the payment owed from Company to Trucking Contractor for the services rendered, Company shall pay Trucking Contractor according to the last written agreement for payment entered between them for providing the same specified service or, if the service has not been performed before, as similar a service as possible. Even in the absence of a written agreement, if Company proposed a written agreement to Trucking Contractor for the performance of a service and Trucking Contractor subsequently performs the requested service without entering the written agreement, the written agreement proposed by Company shall constitute Company and Trucking Contractor's agreement as to the compensation due to Trucking Contractor for the service performed. If all terms of this Contract are met, Company will pay Trucking Contractor monies due for a hauling job by the last day of the calendar month following the month in which the applicable hauling job was performed.

11. **Term.** This Contract shall commence on _____ and may be terminated at any time by either party, upon at least thirty (30) days' prior written notice to the other party, for any reason.

12. **Additional Requirements for Brokers.** If Trucking Contractor is a broker, Company may require a payment bond that shall provide continuous coverage until cancelled. Notification shall be given by the Trucking Contractor to the Company thirty (30) days prior to the cancellation or termination of the bond.

13. **Notices.** If a party hereto desires to provide a written notice, demand, or request under this Contract to the other party, the same shall be hand delivered or sent by express overnight courier or U.S. mail, postage prepaid, and addressed as follows:

“Company”

***S M Sales
17524 Sierra Hwy
Santa Clarita, CA 91351***

“Trucking Contractor”

Notices, demands, and requests served in the above manner shall be considered sufficiently given or served for all purposes at the time notice, demand, or request is delivered to the address shown above. The foregoing shall not be construed to require written notice where this Contract does not otherwise require it.

14. **Waivers.** No omission or delay by either party at any time to enforce any right or remedy reserved to that party, or to require at any time designated therefore the performance of any terms, covenants, or provisions hereof to be performed by the other party, shall be a waiver of any such right or remedy to which that party is entitled, nor shall it in any way affect the right of that party to enforce such provisions thereafter.

15. **Severance.** In the event any portion of the Contract shall be declared by any court or arbitrator of competent jurisdiction to be invalid, illegal or unenforceable, such portion shall be severed from this Contract and the remaining parts hereof shall remain in full force and effect as fully as though such invalid, illegal, or unenforceable portion had never been a part of this Contract; provided the remaining Contract can be reasonably and equitably enforced. If a court or arbitrator of competent jurisdiction assesses that any invalid, illegal, or unenforceable provision cannot be severed without invalidating the Contract as a whole, such court or arbitrator shall modify the invalid, illegal, or unenforceable provision to the minimum degree necessary to

make such provision valid, legal, and enforceable so that the Contract may be enforced according to the original intent of the Contract.

16. **Attorneys' Fees.** If either party is compelled to incur any expenses in connection with any action or proceeding instituted by either party by reason of any default or alleged default of the other party hereunder, the party prevailing in such action or proceeding shall be entitled to recover its reasonable expenses, including reasonable attorneys' fees, from the other party.

17. **Relationship of the Parties.** Nothing contained in this Contract 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 joint venture between Company and Trucking Contractor.

18. **Governing Law.** This Contract shall be governed by and construed for the purposes under and in accordance with the laws of the State of California.

19. **Entire Agreement.** This Contract contains the entire agreement of the parties hereto with respect to the matters covered hereby and no other agreement, statement, or promises made by any party hereto or to any employee or agent of any party hereto that are not contained herein shall be binding or valid.

20. **Miscellaneous.** Unless the context of this agreement clearly requires otherwise, (a) the plural and singular names shall each be deemed to include the other; (b) the masculine, feminine, and neuter gender shall be deemed to include the others; and (c) "or" is not exclusive. Trucking Contractor acknowledges that valuable consideration has been given for Trucking Contractor's agreement herein.

21. **Confidential and Trade Secret Information.** Trucking Contractor agrees that during the course of providing services to Company, Trucking Contractor may have access to Company's confidential, trade secret, and proprietary information. Trucking Contractor understands that all such information is considered to be secret and proprietary to Company and is a valuable commercial asset of Company. Trucking Contractor agrees not to make use whatsoever, directly or indirectly, of Company's confidential information for Trucking Contractor's personal or commercial benefit or for any other person, firm, corporation, or entity. Trucking Contractor agrees not to remove such information from Company premises, devices, and physical or digital storage without the express written consent of Company's President. Trucking Contractor agrees not to reveal, disclose, identify, or otherwise provide this confidential information to any other person, firm, corporation, or other entity, including the general public, directly or indirectly, except as required or expressly permitted under applicable law. Upon the conclusion of the term of this Contract or upon request by Company, Trucking Contractor agrees

to immediately return all Company property and confidential information in Trucking Contractor's possession, custody, or control to Company.

Trucking Contractor Initials _____

22. **No Interference with Economic Relations.** During the term of this Contract and for the 12 months after such term ends, Trucking Contractor will not perform the services contemplated by this Contract ("Traffic"), either directly or indirectly, for any shipper, consignor, consignee, or customer of Company if: (1) Trucking Contractor is not accepting the Traffic as part of its services under this Contract and Company has not otherwise agreed in writing to Trucking Contractor's acceptance of the Traffic separate from this Contract; and either (2) the availability of such Traffic became known to Trucking Contractor as a result of Company or Company's efforts; or (3) the Traffic of the shipper, consignor, consignee, or customer of Company was first tendered to Trucking Contractor by Company. If Trucking Contractor breaches this Paragraph 22 by accepting Traffic under the above conditions, Trucking Contractor shall pay Company a thirty-five percent (35%) origination fee on all revenue received by Trucking Contractor for Traffic in violation of this Paragraph 22 as well as all of Trucking Contractor's related Traffic for the applicable shipper, consignor, consignee, or customer for a period of fifteen (15) months after the applicable breach occurs. Should a breach occur, Trucking Contractor shall provide Company with all reasonably necessary documentation to allow Company to verify the existence of the breaching Traffic and the origination fees due hereunder.

Trucking Contractor Initials _____

23. **Arbitration.**

23.1 Any controversy, dispute or claim between Trucking Contractor or its officers, agents, employees, or contractors, including sub haulers, on the one hand, and Company, or its officers, agents, employees, or contractors, on the other hand, (in this Paragraph 23, "Claims") shall be settled by binding arbitration at the request of either party. Claims shall be submitted to and determined exclusively by binding arbitration under the Federal Arbitration Act ("FAA"), in conformity with the procedures of the California Arbitration Act to the extent such procedures do not conflict with the FAA. Arbitration shall be the exclusive method for resolving any dispute; provided, however, that either party may request equitable relief, including but not limited to injunctive relief, from a court of competent jurisdiction, as provided in California Code of Civil Procedure section 1281.8. Company and Trucking Contractor expressly agree to waive any right to bring or participate in a class, collective, or representative action, including PAGA, based on Claims arising from this Agreement, including any claims of employee misclassification, unpaid wages, and any other violations of the California Labor Code, unless such class, collective, or representative claims cannot be waived according to applicable law. Any state law preempted by the FAA shall have no force nor effect as to the terms contained within this Paragraph 23.

23.2 The Claims covered by this arbitration agreement include, but are not limited to, the determination of the scope or applicability of this agreement to arbitrate, claims for compensation, claims for breach of contract (express or implied), claims for violation of public policy, tort claims, and claims for discrimination (including, but not limited to, race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age, pregnancy, sex, gender, gender identity, or sexual orientation) to the extent allowed by law, and claims for violation of any federal, state, or other government law, statute, regulation, or ordinance, except where prohibited by law. This Agreement does not preclude any party hereto from filing an administrative charge before the National Labor Relations Board or making a claim for workers' compensation benefits, to the extent provided by law.

23.3 Trucking Contractor and Company will select an arbitrator by mutual agreement. If Trucking Contractor and Company are unable to agree on a neutral arbitrator, either party may elect to obtain a list of arbitrators from the Judicial Arbitration and Mediation Service ("JAMS"), or the Alternative Dispute Resolution ("ADR"), or any other reputable dispute resolution organization the Parties hereto agree to use. Trucking Contractor and Company will alternately strike names from the list, with Trucking Contractor striking the first name, until only one name remains. The remaining person shall be the arbitrator. The rules for both JAMS and ADR can be found online at <http://www.jamsadr.com/> and <http://www.adrservices.org/>.

23.4 The demand for arbitration must be in writing and must be made by the aggrieved party within the statute of limitations period provided under applicable state law for the particular claim. Failure to make a written demand within the applicable statutory period constitutes a waiver to raise that claim in any forum. The arbitration shall take place in the State and County in which the dispute arose.

23.5 The arbitrator shall apply applicable California and/or Federal substantive law and the California Evidence Code to the proceeding. The parties shall be entitled to conduct reasonable discovery, including conducting depositions, requesting documents and requesting responses to interrogatories. The arbitrator shall have the authority to determine what constitutes reasonable discovery. The arbitrator shall hear motions for summary disposition as provided in the California Code of Civil Procedure.

23.6 Within thirty days following the arbitration hearing and the submission of the matter to the arbitrator, the arbitrator shall issue a written opinion and award that shall be signed and dated. The arbitrator's opinion shall decide all issues submitted by the Parties, and the arbitrator may not decide any issue not submitted.

23.7 The arbitrator shall prepare in writing and provide to the Parties a decision and award that includes factual findings and the reasons upon which the decision is based. The arbitrator shall be permitted to award only those remedies in law or equity that are requested by

the Parties and allowed by law. The decision of the arbitrator shall be binding and conclusive on the Parties and cannot be reviewed for error of law or legal reasoning of any kind. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

23.8 The cost of the arbitrator and other incidental costs of arbitration shall be borne equally by the Parties, unless otherwise required by law. The Parties shall each bear their own costs and attorneys' fees in any arbitration proceeding, provided however, that the arbitrator shall have the authority to require either party to pay the costs and attorneys' fees of the other party, as is permitted under federal or state law, as a part of any remedy that may be ordered. In the event a party to this Agreement makes a claim for misclassification due to his/her/its status as an independent contractor herein, or any claim arising from such alleged misclassification, Company shall pay the costs of arbitration that are in excess of what the complaining party would pay to file his/her/its claim in court; provided, however, that if the Company is not found by the arbitrator to have misclassified the complaining party as an independent contractor, the arbitrator shall award half the fees and costs of the arbitration to the Company in addition to any other relief awarded.

23.9 BOTH COMPANY AND TRUCKING CONTRACTOR UNDERSTAND THAT BY USING ARBITRATION TO RESOLVE DISPUTES THEY ARE GIVING UP ANY RIGHT THAT THEY MAY HAVE TO A JUDGE OR JURY TRIAL WITH REGARD TO ALL ISSUES CONCERNING THEIR CONTRACTUAL RELATIONSHIP.

23.10 Except as provided herein, if either party to this arbitration agreement files a lawsuit against the other in a court or administrative agency instead of requesting arbitration of the dispute, the party seeking to enforce this arbitration agreement can serve the suit-filing party with written notice of this arbitration agreement. If the party seeking to enforce the arbitration agreement provides this written notice, the party filing suit has five (5) days from the date of service (not extended for any time period, regardless of the manner of service) to personally serve a writing on the party seeking to enforce the arbitration agreement, agreeing to arbitrate the dispute. If the suit-filing party does not timely serve its agreement to arbitrate and the party seeking to enforce the arbitration agreement successfully compels the suit-filing party to arbitration, the party seeking to enforce this arbitration agreement shall be entitled to the reasonable attorneys' fees it incurred in enforcing this arbitration agreement.

Trucking Contractor Initials _____

Sand Materials & Aggregate Sales, Inc.
dba
S M Sales / 75th Street Quarry & Recycling

CONTRACT FOR HAULING

Executed in duplicate this _____ day of _____, 20____.

Company: **Sand Materials & Aggregate Sales, Inc.**

By _____

Title: _____

[Print title]

Trucking Contractor:

[Print name of Trucking Contractor]

By: _____

[Sign full name]

Title: _____

[Print title]

Address: _____

Telephone: _____

Email: _____

Federal EIN.: _____

DOT Number.: _____

MCP Number: _____