

## TRUCKING AGREEMENT

This will confirm that East Texas Asphalt Co., Ltd. (“ETA”) and \_\_\_\_\_ (“Carrier”) have reached an agreement whereby Carrier will deliver by truck hot mix products and aggregate materials for ETA.

### TERM

1. The AGREEMENT is to become effective this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and shall remain in effect for a period of one year from such date, and from year to year thereafter, subject to the right of either party hereto cancel or terminate the AGREEMENT at any time upon not less than thirty (30) days written notice of one party to the other.

### PAYMENT AND SETTLEMENT

2. The price shall be on a negotiated pay scale. Settlement will be made within two (2) weeks following the delivery of materials and receipt of Carrier’s invoice. In the event of a billing dispute, payment will be made within one (1) week of resolution.

### REPRESENTATIONS AND WARRANTIES

3. It is understood and agreed, as a condition of Carrier hauling products for Contractor, that:
  - (a) **Independent Contractor.** Carrier is an independent contractor and is not an agent or employee of ETA, that ETA exercises no control over Carrier’s operations and ETA has no authority to hire or fire Carrier’s employees. Under no circumstances shall the employees or agents of Carrier be deemed employees or agents of ETA nor shall ETA be liable for any wages, fees, payroll taxes, assessments, or other expenses relating to employees or agents of Carrier;
  - (b) **TXDOT Authority.** Possess current Texas Department of Transportation Authority to conduct the activities covered by this Contract;
  - (c) **USDOT and TXDOT Requirements.** Carrier agrees it will use operating equipment that is in compliance with the United States Department of Transportation requirements and in compliance with the Texas Department of Transportation requirements, and shall have responsibility with respect of cargo and operations as are established by

Federal and State laws including but not limited to security regulations, owner/operator lease regulations; loading and securement of freight regulations, implementation and maintenance of driver safety regulations, qualification, licensing and training of drivers, monitoring driver compliance with hours of service regulations, conducting, reporting and acting on drug and alcohol tests and implementation and maintenance of equipment safety regulations. **The parties agree and understand that ETA shall be under no obligation to nor will ETA monitor Carrier's compliance with Federal and State laws or the provision of this paragraph.**

#### **INDEMNIFICATION**

4. CARRIER AGREES TO INDEMNIFY, REIMBURSE AND HOLD ETA HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DEMANDS, LIENS, CAUSES OF ACTION, JUDGEMENTS, LIABILITIES, DAMAGES OR INJURIES OF WHATEVER KIND OR NATURE, ARISING OUT OF, ON ACCOUNT OF, OR AS A RESULT OF, DIRECTLY OR INDIRECTLY, CARRIER, HIS AGENTS, EMPLOYEES, OR SUBCONTRACTORS' ACTS OR OMISSIONS, PERFORMANCE OR NONPERFORMANCE UNDER THIS CONTRACT, WHETHER OR NOT OCCURRING ON ETA'S PROPERTY. CARRIER HEREBY WAIVES AS AGAINST ETA ANY IMMUNITY FROM SUIT AFFORDED BY APPLICABLE WORKER'S COMPENSATION LAWS. WITH RESPECT TO ANY INDEMNIFICATION OR CLAIM DESCRIBED ABOVE, CARRIER SHALL PROVIDE ETA AT CARRIER'S EXPENSE A COMPLETE DEFENSE OF ANY CLAIM, DEMAND, CAUSE OF ACTION AND SHALL BEAR ALL ATTORNEY'S FEES AND COSTS OF DEFENSE SO THAT ETA SHALL INCUR NO COST WHATSOEVER.

#### **INSURANCE**

5. Carrier shall carry and maintain in full force and effect during the term hereon, Comprehensive Vehicle Liability Insurance, including owned, hired, and non-owned vehicles.
  - (a) Further Carrier agrees to procure and maintain, at its sole cost and expense, trucker's liability insurance with limits not less than One Million Dollars (\$1,000,000.00) per occurrence.
  - (b) Carrier shall name ETA as an additional insured on all policies of insurance.

- (c) Carrier shall cause its insurance carriers to forward forthwith to ETA a standard certificate of insurance such certificate shall require the insurance carrier to give ETA written thirty (30) days prior notice of the cancellation of such liability and cargo insurance.
- (d) Carrier shall not make a delivery under the Contract until a Certificate of Insurance has been delivered to ETA.
- (e) If Carrier fails to furnish current evidence upon demand of any insurance required hereunder, or if any insurance is cancelled or materially changed, ETA may suspend or terminate this Contract until insurance is obtained.

### **WAIVER OF SUBROGATION**

6. CARRIER HEREBY WAIVES ANY RIGHT OF SUBROGATION THAT IT, OR ANYONE CLAIMING THROUGH OR UNDER IT, MAY HAVE AGAINST ETA, ITS AGENTS, EMPLOYEES, OR ANYONE FOR WHOM ETA MAY BE RESPONSIBLE, FOR ANY LOSS OR DAMAGE SHALL HAVE BEEN CAUSED BY THE FAULT OR NEGLIGENCE OF ETA. HOWEVER, THIS WAIVER SHALL NOT ADVERSELY OR IMPAIR ANY POLICIES OF INSURANCE OR PREJUDICE THE RIGHT OF EITHER PARTY TO RECOVER THEREUNDER. CARRIER SHALL PROVIDE AN ENDORSEMENT FROM CARRIER'S CARRIER OR CARRIERS THAT ANY RIGHT OF SUBROGATION IS WAIVED AS AGAINST ETA AND THAT SUCH WAIVER WILL NOT IMPAIR YOUR POLICIES OF INSURANCE. ANY FAILURE OR DELAY BY ETA TO REQUIRE SUCH AN ENDORSEMENT SHALL NOT CONSTITUTE A WAIVER, NOR SHALL IT OTHERWISE AFFECT THIS MUTUAL WAIVER OF SUBROGATION.

### **TERMINATION**

The AGREEMENT is to become effective this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and shall remain in effect for a period of one year from such date, and from year to year thereafter, subject to the right of either party hereto cancel or terminate the AGREEMENT at any time upon not less that thirty (30) days written notice of one party to the other.

**BREACH OF AGREEMENT**

If Carrier breaches any of the terms of this agreement, then ETA has the option, at its sole and absolute discretion, to terminate this agreement immediately, without written notice. Failure of ETA to insist upon Carrier's performance under this AGREEMENT or to exercise any right or privilege shall not be a waiver of any of ETA's rights or privileges contained herein.

**PRIOR AND CONTEMPRANEOUS AGREEMENTS**

**SUPERSEDED**

This agreement specifically supersedes any and all other prior or contemporaneous agreements. In the event that the operation of any portion of this AGREEMENT results in a violation of any law, the parties agree that such portion shall be severable and that the remaining provisions of this AGREEMENT shall continue in full force and effect. This agreement is to be governed by and construed under the laws of the State of Texas. The parties agree that venue for enforcement of this contract is to be in Angelina County, Texas.

**ACCEPTED AND AGREED TO:**

East Texas Asphalt Co., Ltd.

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Carrier:

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_