



Capital Hauling  
PO Box 105392  
Jefferson City, MO 65110

## **Hauler Agreement Updates**

February 18, 2019

For the 2019 season, we are updating the hauling agreement to include our new company, Capital Hauling. Enclosed is a Master Hauling Agreement for Jefferson Hauling and Distributing Company, LLC, d/b/a/ Capital Hauling Company.

- You will continue to work with the same people you have in the past.
- Phone numbers will not change.
- The Federal Tax Identification number for Capital Hauling is 43-1014295.
- Payment will continue to be remitted via ACH weekly. If you are not set up for ACH payments currently, please fill out the included form and send back with the hauling agreement.

Please sign this agreement and return to my attention along with the following paperwork for our files:

1. Current Certificate of Insurance:
  - See included sample certificate for reference.
  - Certificate Holder: Jefferson Hauling and Distributing Company, LLC, d/b/a Capital Hauling will need to be listed as additional insured
2. W9
3. Your Company email address
4. Attachment "A" – Equipment List. Please list all vehicles in your fleet.

If you have any questions, please contact (573) 635-6229. We look forward to working with you!

Sincerely,

Capital Hauling

**MASTER TRANSPORTATION SERVICES AGREEMENT**

Company: **Jefferson Hauling and Distributing Company, LLC, d/b/a Capital Hauling ("Capital Hauling")**  
Address: **117 Commerce Drive**  
**Jefferson City, MO 65109**

Carrier: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email: \_\_\_\_\_  
Phone: \_\_\_\_\_  
FMCSA MC- \_\_\_\_\_

**THIS MASTER TRANSPORTATION SERVICES AGREEMENT ("Agreement")** is entered into the \_\_\_\_ day of \_\_\_\_\_, 2019 ("**Effective Date**") by and between Capital Hauling and Carrier is a master agreement between Capital Hauling and Carrier, which terms and conditions will control the services described herein. This Agreement shall apply to all transportation and related services Carrier performs for Capital Hauling pursuant to the terms of such job as communicated from Capital Hauling to Carrier, which terms may be communicated from Capital Hauling to Carrier orally ("**Job Terms**").

**W I T N E S S E T H:**

**WHEREAS**, Carrier is in the business of performing transportation and related services and holds the authority and registrations from all applicable federal and state regulatory agencies to perform such services in intrastate and interstate commerce, including motor carrier operating authority from the Federal Motor Carrier Safety Administration ("**FMCSA**") under the motor carrier number listed above;

**WHEREAS**, in order to enhance the efficiency of the contracting process and standardize terms and conditions applicable to work performed by Carrier for Capital Hauling and any current or future division, subsidiary or affiliate thereof, the parties hereto desire to establish this Agreement pursuant to and under which Capital Hauling or any current or future division, subsidiary or affiliate thereof ("**Capital Affiliate**") can procure services or materials related thereto that are performed by Carrier; and

**WHEREAS**, Capital Hauling desires to engage Carrier to provide transportation and related services to meet the needs of Capital Hauling and the Capital Affiliate's as more fully set forth herein;

**NOW, THEREFORE**, in consideration of the mutual promises, agreements and conditions herein contained, the parties hereby agree as follows:

**1. SCOPE OF AGREEMENT AND TERM**

1.1 **Scope of Agreement.** This Agreement applies to the performance of all inbound and outbound transportation and related services by Carrier for a Capital Entity of such property ("**Commodities**") as the Capital Entity may require to be transported from time to time during the term of this Agreement. Commodities transported by Carrier for a Capital Entity during the Term (as defined in Section 1.2 below) of this Agreement shall be subject to the terms and conditions of this Agreement. In the event a Capital Entity tenders to Carrier any Commodities which may otherwise be classified as exempt from the jurisdiction of the Surface Transportation Board or any State regulatory agency, the parties' rights and obligations with respect to such exempt Commodities shall be governed by this Agreement. It is expressly agreed that this Agreement shall constitute the contract of transportation between the parties.

1.2 **Term.** The term of this Agreement shall be for a period of one year commencing on the Effective Date ("**Initial Term**") and shall automatically renew for additional one year periods (each a "**Renewal Term**"), unless written notice of an intent not to renew is given by either party at least 90 days prior to the expiration date of the Initial Term or any Renewal Term. For purposes of this Agreement, the Initial Term and any Renewal Term(s) shall collectively be referred to as the "**Term.**" Nothing in this Section shall be construed as limiting, abridging or superseding any right of cancellation or termination of this Agreement as may be specified in any other provision of this Agreement.

1.3 **Survival of Certain Provisions.** Any duty or obligation which has been incurred under this Agreement and which has not been fully observed, performed or discharged, and any right which has been created under this Agreement and which has not been fully enjoyed, enforced or satisfied, shall survive notwithstanding the termination or expiration of this Agreement, until such duty or obligation has been fully observed, performed or discharged and such right has been fully enjoyed, enforced or satisfied.

1.4 **Capital Entity.** At any time a Capital Affiliate issues Job Terms to Carrier, the Capital Affiliate shall be deemed to have agreed to and accepted the terms of this Agreement solely for the job associated with the issued Job Terms; and therefore, for purposes of this Agreement, "**Capital Entity**" shall mean the entity that issued the Job Terms for the applicable job.

## 2. TRANSPORTATION SERVICES

### 2.1 Carrier's Services, Operations and Employees.

(a) Carrier agrees to provide transportation and related services on a project basis. The Capital Entity has agreed to provide services to the owner ("**Owner**") of the construction site applicable to the Job Term(s) performed by Carrier, and retains Carrier to provide certain services as part of the agreement between the Capital Entity and Owner. Carrier certifies that it is fully familiar with the type of transportation services to be provided and the type of conditions under which the services is to be performed. The Capital Entity is only interested in the results of this work and not the means by which Carrier accomplishes the work.

(b) During the Term of this Agreement, Carrier shall promptly and efficiently receive, transport and deliver the Commodities from and to the points requested by The Capital Entity with reasonable dispatch and without delay and shall safely deliver the Commodities in good order and condition to the consignee at destination. Carrier agrees to comply with all of the Capital Entity security, safety and other policies while present at the Capital Entity location.

(c) Carrier shall furnish all facilities, equipment, labor, fuel and other parts and supplies as necessary or required for the safe and efficient performance of Carrier's obligations under this Agreement. Carrier shall pay all costs and expenses of every kind and nature in connection with the performance of Carrier's obligations under this Agreement.

(d) Carrier may, at Carrier's own expense, engage such subcontractors ("**Subcontractors**") as Carrier deems necessary to perform the services required of Carrier by this Agreement, except to the extent the Capital Entity specifically prohibits or limits Carrier's ability to perform services through a particular Subcontractor. The Capital Entity may not control, direct or supervise Subcontractors in the performance of those services. All Subcontractors shall be obliged to perform services in accordance with this Agreement. It is Carrier's sole obligation to verify proper wage rates are applied and paid, the qualifications, license, permitting, compliance with any drug or alcohol testing which is required by any federal, state or local agency, and any required bonding and insurance status of each Subcontractor. Any loss or damage that is the fault of Subcontractors, or others, performing services for Carrier is the sole responsibility of Carrier and shall be charged to the account of Carrier and deducted from monies otherwise due under this Agreement. Such charges and deductions must not exceed the reasonable costs or damages incurred.

(e) Carrier shall engage, and shall ensure that any Subcontractors engage, in the operation of equipment only physically able and legally licensed personnel and drivers fully qualified under applicable federal and state regulations to transport and handle the Commodities tendered to Carrier under this Agreement.

(f) Carrier shall be responsible for payment of all state and federal taxes, licenses, assessments and operating permits or authorities required of motor carriers arising out of the transportation of Commodities.

(g) Carrier shall furnish all trucks, tractors, trailers, containers and related material handling equipment ("**Equipment**") used in connection with this Agreement. All Equipment must be maintained in good repair, mechanical condition and appearance. Carrier shall operate the Equipment at all times in an efficient, economical and lawful manner. Carrier shall provide Equipment suitable for the transportation of the Capital Entity's Commodities. Carrier shall make available a sufficient and adequate amount of Equipment to furnish prompt and efficient transportation services to the Capital Entity, including the type and size of Equipment necessary to transport the Commodities.

(h) Carrier shall inspect the Equipment prior to loading of the Capital Entity's Commodities to ensure the Equipment is clean and free of contaminants. The Capital Entity shall have the right to reject, at no cost, any of Carrier's Equipment which fails to meet the Capital Entity's determination of acceptability for the Commodities to be transported under this Agreement.

(i) Prior to the movement of any Equipment, Carrier shall be responsible to confirm the Commodities have been properly loaded, distributed and adequately secured. Carrier shall fully comply with the safe loading and operational requirements as required by applicable law.

(j) Carrier shall prepare and issue weight certificates and all other documentation as may be required by this Agreement, or by federal, state or local laws, rules or regulations governing the services to be performed under this Agreement. Carrier shall provide copies of such documentation at no cost as may be requested by the Capital Entity upon written request.

(k) If the Capital Entity tenders a shipment of Commodities which is classified as a "**hazardous material**" or "**hazardous substance**" under applicable law and Carrier is not duly qualified under applicable law to transport such shipments, Carrier shall notify the Capital Entity and decline the shipment. If Carrier accepts a shipment containing any hazardous material or hazardous substance, Carrier shall meet the additional terms and conditions set forth in the Hazardous Materials Addendum, which will be executed and incorporated by reference and made a part of this Agreement.

## 2.2 Shipment Receipts, Truck Tags and Delivery Receipts.

(a) Each shipment tendered to Carrier under this Agreement shall be evidenced by a written receipt or bill of lading (“**Shipment Receipt**”), in a form specified or approved by the Capital Entity, which shall be signed by Carrier or Carrier’s driver. The Shipment Receipt shall contain: (i) names of the consignor and consignee; (ii) origin and destination points; (iii) quantity; (iv) description of the Commodities; (v) weight, volume or measurement of Commodities (if applicable to the rating of the freight); and (vi) the name and address of the party responsible for payment of the transportation charges for the shipment. The absence or loss of any such Shipment Receipt shall not relieve Carrier of its obligations and responsibilities under this Agreement.

(b) The Shipment Receipt shall be evidence of the receipt of the Commodities by Carrier in good order and condition, unless the contents or condition of the Commodities is unknown or not readily observable, except as otherwise clearly noted and described on the face of such Shipment Receipt. Any terms or conditions of such Shipment Receipt shall be subject and subordinate to the terms or conditions of this Agreement. In the event of any conflict between the terms and conditions of such Shipment Receipt and this Agreement, the terms and conditions of this Agreement shall govern.

(c) At the end of each day, Carrier shall furnish to the Capital Entity a truck tag, which shall serve as the basic account record for services performed that day (“**Truck Tag**”). Carrier shall accurately complete the Truck Tag, procure the necessary signatures and deliver the Truck Tag to the Capital Entity at the end of each shift for each day’s operation.

(d) Upon delivery of each shipment under this Agreement, Carrier shall obtain a receipt (“**Delivery Receipt**”), in a form specified or approved by the Capital Entity, showing the kind, quantity and condition of Commodities delivered to the consignee of such shipment at the point of destination specified by the Capital Entity. Carrier shall cause such Delivery Receipt to be signed by the consignee at such destination. Any terms or conditions of a Delivery Receipt shall be subject and subordinate to the terms and conditions of this Agreement. In the event of any conflict between the terms and conditions of such Delivery Receipt and this Agreement, the terms and conditions of this Agreement shall govern.

(e) Except to the extent a longer period is required by law, all Delivery Receipts shall be retained by Carrier for at least three years from the date of delivery and shall be available for the Capital Entity’s inspection and use at any time immediately upon the request of the Capital Entity. Copies of such Delivery Receipts shall be promptly furnished to the Capital Entity at no cost as the Capital Entity may request.

## 2.3 Operating Authority.

(a) Carrier represents and warrants that it is duly qualified and authorized by all applicable federal and state regulatory authorities to lawfully transport Commodities in intrastate and interstate commerce. Carrier and Capital Hauling agree that all Commodities shipped to or received by the Capital Entity and transported by Carrier during the Term of this Agreement shall be deemed to have been transported by Carrier subject only to the terms and conditions of this Agreement. Carrier, Capital Hauling and the Capital Entity expressly waive any and all rights and remedies under the ICC Termination Act of 1995, in accordance with 49 U.S.C. § 14101(b) for the transportation covered under this Agreement, except to the extent otherwise stated herein. In the event all or any portion of Carrier’s motor carrier authority required by this Agreement shall be revoked, canceled, suspended or discontinued for any reason, Carrier agrees to immediately notify Capital Hauling in writing and to terminate the handling of Capital Hauling’s Commodities and to relinquish control over all Commodities in its possession and control on such date. Carrier and Capital Hauling further agree there are no filed or unfiled tariffs or tariff supplements whatsoever applicable to the transportation services provided by Carrier to the Capital Entity.

(b) Throughout the Term of this Agreement, Carrier shall maintain a safety rating from the FMCSA that is either “Satisfactory/Continue to Operate” or “Unrated” safety fitness rating. Carrier further agrees to give Capital Hauling written notice immediately of any change in its safety fitness rating.

2.4 Non-Exclusive Dealing. This Agreement does not grant Carrier an exclusive right to perform the transportation and related services for Capital Hauling or any Capital Affiliates. Carrier shall be free to accept freight for transportation from other companies and Capital Hauling and the Capital Affiliates shall be free to tender freight for transportation to other carriers. Capital Hauling does not guarantee any specific number of shipments or amount of tonnage or revenue to Carrier. Capital Hauling’s anticipated requirements are projections only and not firm commitments.

## 3. RATES AND PAYMENT

3.1 Rates and Charges. The Capital Entity agrees to pay Carrier the rate specified in the project specific Job Terms. If no rate is specified, the rate is \$1.00 per ton.

### 3.2 **Billing and Payment.**

(a) Carrier shall send a weekly invoice to the Capital Entity for all shipments delivered in the prior week. No invoice shall be submitted to the Capital Entity prior to the completion of delivery of the Commodities covered by such invoice. Carrier shall submit invoices to the address as specified by the Capital Entity. A signed Delivery Receipt need not accompany the invoice, but shall be provided by Carrier upon request of the Capital Entity if needed to process the invoice for payment. Each freight invoice shall contain at least the following information:

- Job Name and Number
- Shipment Receipt Number
- Rate per hour/ton
- Total hours/weight/mileage
- Truck Number(s)
- the Capital Entity name, city, state, & zip code
- Owner name, city, state and zip code
- Pick-up date and delivery date
- Truck Tag number(s)
- Total charges

(b) The Capital Entity's payment procedures is to pay Carrier no later than 20 days of the Capital Entity's receipt of a properly submitted invoice, and in no event will it be paid later than 30 days after receipt, so long as Carrier has complied with all requirements of this Agreement. If an invoice must be re-billed due to inadvertent clerical error or the Capital Entity requests a copy of the signed Delivery Receipt, the Capital Entity will have 30 additional days to pay after receipt of a new invoice or the requested Delivery Receipt. Carrier shall not attempt to recover payment for services from the consignee under any circumstances. Carrier agrees that no penalties or interest will be assessed against the Capital Entity for past due amounts billed to the Capital Entity.

(c) Carrier shall promptly refund to the Capital Entity any overcharges, duplicate or unidentified payments or any other amounts improperly paid by the Capital Entity to Carrier. Any other amounts owing from Carrier to the Capital Entity pursuant to this Agreement shall be paid as and when required by the terms of this Agreement.

3.3 **Reductions And Allowances.** Carrier shall fully comply with 49 U.S.C. § 13708 which generally requires disclosure of the actual rates, charges and allowances on freight bills and prohibits false and misleading information on documents. Carrier agrees any reduction or allowance granted to the Capital Entity for the Capital Entity's performance of a transportation related service in lieu of Carrier's performance of that service is reasonably related to Carrier's cost for performance of that service.

3.4 **Right to Offset.** The Capital Entity may withhold from any payment up to 150% of the amount of any disputed item, including without limitation, amounts the Capital Entity believes may be necessary to withhold to protect the Capital Entity from any potential claims, including but not limited to, those which may result from Carrier failing to furnish appropriate waivers and releases, and or pay proper wages. If Carrier is subject to prevailing wage requirements, Carrier agrees to fully comply with all provisions of applicable law. In addition, as a condition precedent to final payment, Carrier agrees to furnish an affidavit signed under penalty of perjury certifying that Carrier has paid the specified prevailing wage rate of per diem wages to Carrier's employees on the project, as well as any and all amounts due pursuant to applicable law. Carrier acknowledges that no final payment shall be made to Carrier until Carrier has complied with this requirement. The amounts the Capital Entity has agreed to pay reflect Carrier's strict compliance with any applicable state and federal law, and no further adjustment shall be allowed. Carrier has conducted its own thorough investigation as to all matters relevant to the Agreement, including applicable laws, and represents that it has not relied upon any statement, representation or promise of the Capital Entity.

## 4. **DELAYS**

4.1 **Notice Of Delay.** In the event of any delay at the point of origin, in transit or any accident which may interfere with the timely delivery of the Commodities, Carrier shall promptly notify the Capital Entity by telephone or electronic mail to an email designated by the Capital Entity of the occurrence of such delay. Carrier shall confer in good faith with the Capital Entity concerning the disposition of any delayed shipment and follow the Capital Entity's reasonable instructions to deliver the delayed shipment. In the event that the Capital Entity's project is being delayed by Carrier's nonperformance, the Capital Entity shall have the right to immediately engage the services of other trucking companies to perform the work as scheduled.

## 5. **INSURANCE, INDEMNIFICATION AND COMMODITIES LOSS**

5.1 **Insurance Requirements.** Before performing services or conducting any activities at the site of a project, Carrier shall comply with all of the insurance provisions set forth below. Commencing the services constitutes an acknowledgment and representation by Carrier that it is in compliance with this Section 5.

- (a) **Liability Insurance.** Carrier shall carry primary Commercial General Liability insurance covering all operations by or on behalf of Carrier, and actions or omissions by Carrier, providing insurance for bodily injury and property damage liability for the limits of liability indicated below and including but not limited to coverage for premises and operations; products and completed operations; contractual liability insuring tort obligations assumed by

Carrier in this Agreement; commercial general liability (including completed operations); explosion, collapse and underground hazards (including subsidence and any other earth movement; and personal injury liability.

The limits of liability shall be the greater of (i) the amounts required of the Capital Entity under its agreement with Owner, or (ii) \$1,000,000 each occurrence (combined single limit for bodily injury and property damage), \$1,000,000 for personal and advertising injury liability, \$2,000,000 aggregate for products-completed operations, and \$2,000,000 general aggregate.

Capital Hauling, its officers, directors, employees, and affiliates, the Capital Affiliates designated by Capital Hauling (and their officers, directors, employees and affiliates), and Owner (“**Additional Insured Parties**”) shall be named as additional insureds under the Commercial General Liability policy and such insurance afforded the additional insureds shall apply as primary and non-contributory insurance. Coverage for Capital Hauling, its officers, directors and employees, the Capital Affiliates and Owner as additional insureds shall be provided by an endorsement providing coverage at least as broad as: (a) Additional Insured (Form B) endorsement form CG 2010 0704 (2004 versions) as published by the Insurance Services Office (ISO) (or equivalent). Additional insured endorsements shall be provided for three years following project completion.

General liability insurance shall be written on form at least as broad as ISO occurrence form CG 0001. Capital Hauling reserves the right, in its sole and subjective discretion, to reject an insurer and require Carrier to obtain policies from another insurer.

- (b) **Workers’ Compensation and Employer’s Liability Insurance.** Workers Compensation insurance shall be provided as required by any applicable law or regulation. Employer’s Liability insurance shall be provided in amounts not less than:
  - (a) \$1,000,000 each accident for bodily injury by accident
  - (b) \$1,000,000 policy limit for bodily injury by disease
  - (c) \$1,000,000 each employee for bodily injury by disease.
- (c) **Cargo Liability Insurance.** All risk cargo liability insurance with minimum limits of not less than \$100,000 per occurrence. The Additional Insured Parties shall be named as additional insureds under the all-risk cargo liability insurance.
- (d) **Claims Made/Risk Retention Group.** Carrier shall not provide cargo liability insurance under any Claims Made or Risk Retention Group General Liability form without the express prior written consent of Capital Hauling. Any self-insurance program providing coverage was in excess of \$25,000 per occurrence requires prior written consent of Capital Hauling.
- (e) **Automobile Liability Insurance.** Carrier shall carry automobile liability insurance, including coverage for all owned, hired and non-owned automobiles. The limits of liability shall be not less than \$1,000,000 combined single limit each accident for bodily injury and property damage. Automobile Liability Insurance shall be provided pursuant to a coverage form at least as broad as ISO form CA 0001. Such coverage shall include the Additional Insured parties on a primary and non-contributory basis.
- (f) **Evidence of Coverage, Certificates, and Insurers.** Certificates of insurance shall set forth deductible amounts applicable to each policy and all exclusions or limitations not set forth in ISO Commercial General Liability Form CG 00 01. Standard ISO Form CG 001 exclusions will also be allowed. Allowance of any additional exclusions or coverage limiting endorsements is at the discretions of Capital Hauling and Carrier’s bid shall be subject to adjustment to compensate for the existence of such exclusions.

Regardless of the allowance of exclusions, coverage limitations or deductibles by Capital Hauling, Carrier shall be responsible for any deductible amount or any loss arising out of coverage denials by its insurance carrier(s). The certificates of insurance shall provide that there will be no cancellation or reduction of coverage without thirty (30) day’s prior written notice to Capital Hauling.

Any acceptance of insurance certificates by Capital Hauling shall in no way limit or relieve Carrier of its duties and responsibilities under this Agreement including the duty to indemnify and hold harmless Capital Hauling and/or the Capital Affiliates under other provisions hereof. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Carrier for liability in excess of such coverage nor shall it preclude Capital Hauling and/or the Capital Affiliates from taking such other actions as is available to it under any other provision

of this Agreement or law. If higher limits or other forms of insurance are required in the contract with Owner, Carrier will comply with such requirements.

Carrier shall provide, as evidence of coverage, actual additional insured endorsements. Carrier shall take such steps as are necessary to assure Carrier's compliance with its obligations. Should any insurance policy lapse or be canceled during the Term of this Agreement, Carrier shall, prior to the effective expiration or cancellation date, furnish Capital Hauling with evidence of renewal or replacement of the policy. Failure to continuously satisfy insurance requirements as herein provided is a material breach of this Agreement. In the event Carrier fails to maintain any insurance coverage required, Capital Hauling may, but is not required to, maintain such coverage and charge the expense to Carrier or terminate this Agreement.

All insurance (including, but not limited to general liability, automobile liability, and workers' compensation and employer's liability insurance) shall be provided by a carrier authorized and admitted in all states for which services will be performed with an A.M. Best's Rating of A- or better, financial capacity VII or greater. Additional insured endorsements shall be maintained and furnished to Capital Hauling for three years following completion of each project.

Carrier shall not provide any liability coverage under a "wasting" policy or other form of policy that reduces the amount of coverage, in whole or in part, by amounts expended on defense of claims.

- (g) **Hazardous Materials.** If Carrier and its Subcontractors, or suppliers, regardless of tier, perform remediation of hazardous materials or if their operations create an exposure to hazardous materials as those terms are defined in federal, state or local law, Carrier and its Subcontractors and suppliers must obtain a "Pollution Liability" policy with limits not less than \$1,000,000 per occurrence and not less than \$5,000,000 aggregate for Bodily Injury, Personal Injury, and Property Damage (or such greater amounts or other insurance required by any applicable law), naming Capital Hauling and its designated Capital Affiliates as an additional insured. If Carrier or its Subcontractors or suppliers haul hazardous material (including, without limitation, waste), the policy must extend pollution coverage to the transportation of hazardous materials or pollutants by waste hauling vehicles, if applicable.
- (h) **Riggers Liability.** Should Carrier's work involve the moving, lifting, lowering, rigging or hoisting of property or equipment, Carrier shall carry Rigger's Liability Insurance to insure against physical loss or damage to the property or equipment at a limit, at least, equal to the value of the property or equipment being moved, lifted, lowered, rigged or hoisted, if applicable.
- (i) **Waiver of Subrogation.** Carrier waives all rights against Capital Hauling and the Capital Affiliates for any loss or damage caused in whole or in part by Capital Hauling and/or the Capital Affiliates, and releases Capital Hauling and the Capital Affiliates from any such claims, to the extent covered by Carrier's insurance. If any applicable policies of insurance referred to in this Section XII require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

5.2 **Indemnification.** Except to the extent of the Capital Entity's negligence or willful misconduct, Carrier shall indemnify, defend and hold Capital Hauling and the Capital Affiliates (including their officers, directors, employees, contractors and agents) harmless from and against any and all loss, liability, damage, fine, cost, demand, expense, action, claim, or cause of action (including costs of defense, settlement and reasonable attorneys' fees) of whatever type or nature, including damage or destruction of property, or injury (including death) to any person, in any way arising out of, resulting from or relating to this Agreement, including (i) any act or omission of Carrier, its agents, employees or subcontractors; (ii) any inaccurate representation or warranty by or on behalf of Carrier or the failure of Carrier, its agents, employees or subcontractors to comply with any term or condition of this Agreement; (iii) the failure of Carrier, or agents, employees or subcontractors, to comply with any law, ordinance, rule, order or regulation which may directly or indirectly regulate or affect the obligations of Carrier under this Agreement; or (iv) any claims or actions by Carrier's agents, employees or subcontractors. The obligations of Carrier under this Section shall survive the cancellation, termination or expiration of this Agreement.

### 5.3 **Liability For Loss and Damage to Commodities.**

(a) In accordance with 49 U.S.C. § 14706 (Carmack liability), Carrier assumes liability for loss, theft, damage, delay or destruction of any and all Commodities while said Commodities are under the Carrier's care, custody or control. Carrier's liability shall begin at the time the shipment is received by Carrier (or Carrier begins the loading process) and shall continue until said shipment is delivered to the consignee and the Delivery Receipt is signed by the consignee.

(b) If a shipment of Commodities is refused by the consignee or if Carrier is unable to complete delivery in a timely fashion for any reason, Carrier shall provide the Capital Entity with notice of delay in accordance with Section 4.1 above. Carrier shall be liable to the Capital Entity or the consignee for all reasonable transportation costs incurred for a delayed shipment caused by the act or default of the Carrier. Carrier shall also provide the Capital Entity with written notice and request additional instructions regarding delivery or storage of the refused Commodities. The written notice shall state the amount, date and time that storage charges will begin to accrue, if any. Carrier's liability as a warehouseman shall not begin until Carrier has placed the Commodities in a public warehouse or other storage facility under security.

(c) All claims for loss, theft, damage, delay or destruction of the Commodities will be administered in accordance with Title 49 C.F.R. Part 370.

## **6. RELATIONSHIP OF THE PARTIES AND CONFIDENTIALITY**

6.1 **Relationship of the Parties.** It is agreed and understood that Carrier is entering into this Agreement as an independent contractor. Neither Carrier nor any personnel engaged by Carrier to perform work under this Agreement shall be considered as an employee or agent of Capital Hauling or any Capital Affiliate at any time or for any purpose whatsoever. Nothing contained in this Agreement shall be deemed to constitute a relationship of agency, joint venture, partnership or any relationship other than that of an independent contractor. Carrier certifies it is fully familiar with the type of transportation services to be provided and the type of conditions under which the work is to be performed. Neither Capital Hauling nor any Capital Affiliate has any control whatsoever over the means or manner of performance of Carrier's obligations hereunder. The Capital Entity is only interested in the results of the services and not the means by which Carrier performs the services under this Agreement. Carrier agrees to indemnify, defend and hold Capital Hauling and the Capital Affiliates harmless in accordance with Section 5.2 from any claim, demand, finding, determination or adjudication that Carrier is not an independent contractor of Capital Hauling or any Capital Affiliate for any purpose whatsoever.

6.2 **Carrier's Subcontractors, Employees and Agents.** Carrier shall be solely responsible for the hiring, discipline, discharge and payment of its Subcontractors, agents and employees. In the event Carrier uses any Subcontractor in its performance of services, Carrier shall remain fully liable to the Capital Entity as though Carrier performed the services directly itself. Carrier shall secure all necessary permits and licenses related to such contracting and employment and shall, when applicable, provide for payment of all workers' compensation, all local, state and federal payroll and other taxes, and all employee benefit contributions, required in the performance by Carrier of its obligations under this Agreement. Carrier shall indemnify, defend and hold the Capital Entity harmless in accordance with Section 5.2 from and against any and all demands or claims for such payments, taxes or contributions.

6.3 **Prevailing Wages.** If the job for which the Commodities are being supplied is subject to prevailing wage requirements, Carrier agrees to fully comply with all provisions of applicable law. As a condition precedent to payment, Carrier agrees to furnish Capital Hauling an affidavit signed under penalty of perjury certifying that Carrier has paid the specified prevailing wage rate or per diem wages to Carrier's employees working on the Capital Entity's project, as well as any and all other amounts required pursuant to applicable law. Carrier acknowledges that no final payment shall be made to Carrier until Carrier has complied with this requirement. The amounts the Capital Entity has agreed to pay Carrier under this Agreement reflect Carrier's strict compliance with any applicable state or federal law, including but not limited to, the federal Davis-Bacon Act, to the extent applicable, and no further adjustment shall be allowed.

6.4 **Labor Relations.** Carrier acknowledges that Capital Hauling and/or the Capital Affiliates may have entered into labor agreements covering work at one or more of its construction jobsites. Certain transportation services may be required to comply with all of the terms and conditions of these labor agreements, including trust fund payments, prevailing wages and union membership requirements. Carrier agrees to perform its services under this Agreement in accordance with the terms and conditions of any labor agreement covering work at the Capital Entity's jobsites. If Carrier chooses not to comply with the terms and conditions of any applicable labor agreement, the Capital Entity has the right to immediately replace Carrier for covered work. In addition, Carrier will comply with all applicable equal opportunity and affirmative action requirements promulgated by any governmental authority and all applicable federal, state and local labor laws and regulations covering the work. If required, Carrier shall submit certified payroll reports to Capital Hauling.

6.5 **Confidentiality.** The existence of this Agreement, as well as its terms and conditions, rates, charges and all other information pertaining to any shipment of Commodities under this Agreement, are confidential. With the performance of its obligations under this Agreement, either party may learn of certain trade secrets and other proprietary information concerning the other party's business. Except to the extent disclosure is required by law or court order, each party agrees it will safeguard and not disclose to third persons any such confidential information without the other party's prior written consent. Without limiting the foregoing, Carrier expressly acknowledges and agrees that information relating to Capital Hauling's and the Capital Affiliate's traffic (such as origins, destinations, strategies, volumes, rates and customer identities) and operations (such as marketing strategies, research and development, manufacturing processes, cost data, expansion or purchasing plans and sources of supply) shall be treated as confidential information and subject to nondisclosure under this Agreement. Notwithstanding the foregoing, Carrier may use and



disclose such confidential information as required to perform services under this Agreement (e.g. name, locations, shipment documentation).

6.6 **Use of Capital Hauling' Name.** Carrier shall not display the name of Capital Hauling or the name of any Capital Affiliate upon or about any of Carrier's Equipment or otherwise use, advertise or exploit the name of Capital Hauling or the name of any Capital Affiliate without Capital Hauling's prior written consent, which Capital Hauling may grant or withhold in its sole discretion.

6.7 **Audit Rights.** Carrier shall allow Capital Hauling and Capital Hauling's designated representatives to audit, review and copy all records and books of account, invoices and other documentation relating to the performance of services under this Agreement (collectively, "Audit") at all reasonable times during the business week (Monday through Friday, excluding legal holidays) upon receipt of one week prior written notice; provided, this right will survive the termination or expiration of this Agreement. The costs of an Audit will be borne by Capital Hauling; provided, Carrier shall provide reasonable assistance, including facilities, without cost to assist in the conduct thereof. If an Audit discloses information that requires further review and investigation, Carrier shall reimburse Capital Hauling for all reasonable costs and expenses associated with the follow-up Audit.

## 7. **TERMINATION AND REMEDIES**

### 7.1 **Termination and Remedies.**

(a) This Agreement may be terminated by either party for cause following an event of default. Any one of the following shall constitute an event of default by either party under this Agreement:

- (i) A party's failure to pay the other party any undisputed payment required to be made under the terms of this Agreement after five days written notice;
- (ii) A party's failure to perform, keep or observe any covenant, term or condition contained in this Agreement, including any revocation or suspension of Carrier's operating authority under Section 2.4;
- (iii) Any inaccurate representation or warranty made by or on behalf of a party in or pursuant to the provisions of this Agreement;
- (iv) A party becoming insolvent, or making a transfer in fraud of creditors, or filing a petition in bankruptcy, or has an involuntary bankruptcy petition filed against it, or making an assignment for the benefit of creditors or has a proceeding filed against it seeking to appoint a receiver, or admits in writing an inability to pay, or generally fails to pay, its debts as they become due; or
- (v) Carrier's failure to provide transportation services consistent with a performance requirement set forth in Section 2.2.

(b) After the occurrence of any event of default, the non-defaulting party shall be entitled to pursue any and all rights and remedies available at law or in equity against the other party, including but not limited to, the right to immediately terminate this Agreement. Upon any such termination of this Agreement, neither Capital Hauling nor any of the Capital Affiliates shall have any continuing liability to Carrier, except for payment of any amounts owed to Carrier with respect to shipments delivered prior to any event of default by Carrier. Termination of this Agreement shall not affect Carrier's liability to Capital Hauling or the Capital Affiliates by reason of any act, default or occurrence prior to such termination or any liabilities or obligations of Carrier which survive the termination of this Agreement as provided in Section 1.3.

(c) If any dispute shall arise between the Capital Entity and Carrier regarding performance of the services, or any alleged changes in the scope of services, Carrier shall continue to perform the disputed services in a timely manner, and shall give written notice of any claim for additional compensation within ten days after commencement of the disputed services. Written documentation of the extent of said claim must be provided within 30 days of the completion of the event or events causing the claim, or earlier if requested, in writing, by the other party. Carrier's failure to meet the notice and filing requirements of this paragraph shall constitute a waiver of Carrier's claim.

(d) If either party institutes any action or proceeding based upon or arising out of this Agreement, the prevailing party in any such action or proceeding, whether or not such proceeding proceeds to final judgment or determination, shall be entitled to receive from the non-prevailing party as a cost of suit, and not as damages, all costs and expenses of prosecuting or defending the action or proceeding, including reasonable attorneys' fees and expenses.

7.2 **Limitations.** Any action at law or in equity (including, but not limited to, bankruptcy) by Carrier to recover undercharges or transportation charges alleged to be due by the Capital Entity under this Agreement shall be commenced not more

than 12 months after the receipt by Carrier of the shipment with respect to which such charges are claimed. Any action at law or in equity by the Capital Entity to recover overcharges to be due by Carrier under this Agreement shall be commenced not more than 12 months after the claim accrues. To the extent permitted by law, the expiration of such 12 month period shall be a complete and absolute defense to any such action, without regard to any mitigating or extenuating circumstances or excuse whatsoever.

**8. MISCELLANEOUS**

8.1 **Compliance With Law.** Carrier agrees to fully comply with all applicable federal, state and local laws, ordinances, orders, rules and regulations relating to the transportation services to be performed under this Agreement. Without limiting the foregoing, Carrier, at its sole cost and expense, shall procure and maintain at all times during the Term of this Agreement, any and all licenses, permits, registrations, consents, approvals and other authorizations required by local, state or federal authorities with respect to the performance of Carrier's obligations and performance of motor carrier transportation and related services under this Agreement. Carrier shall furnish to Capital Hauling a copy of any such licenses, permits, registrations or other operating authority utilized by Carrier in performing this Agreement immediately upon request of Capital Hauling.

8.2 **Amendment and Waiver.** This Agreement may not be amended or modified except by written agreement between Carrier and Capital Hauling signed by a duly authorized representative of both parties. No provision of this Agreement shall be waived by either party except by a writing signed by a duly authorized representative of the party to be charged. The waiver by either party of any breach of any provision of this Agreement shall not be deemed to be a waiver of such provision or of any subsequent breach of the same or any other provision of this Agreement.

8.3 **Notices.** All notices and other communications required or permitted to be given hereunder, or which are given with respect to this Agreement, shall be in writing and shall be delivered in person or sent by United States certified mail (return receipt requested) postage prepaid and addressed to the other party at the addresses set forth as follows:

Capital Hauling:  
Capital Hauling  
Attention: Legal Department  
221 Bolivar Street, Suite 400  
Jefferson City, MO 65101

Carrier: to the address set forth on the top of the first page of this Agreement.

Any such notice or other communication is effective upon receipt by the addressee. Such addresses may be changed by either party upon written notice to the other party as provided in this Section.

8.4 **Severability.** This Agreement shall at all times be in compliance with all laws, rules and regulations applicable to the provision of motor carrier transportation services. Carrier shall at all times comply with all laws, ordinances and regulations of federal, state and local government relating to the provision of motor carrier transportation services and this Agreement as they become effective. In the event any statute, ordinance or regulation shall be determined to invalidate or supersede any of the terms and conditions of this Agreement, the remaining portions of this Agreement shall to the extent possible remain in full force and effect.

8.5 **No Liens.** Carrier shall not possess and expressly waives, disclaims and releases any right to any lien, whether statutory or otherwise, security interest or encumbrance of any kind or nature whatsoever with respect to any shipment of Commodities, or any portion thereof, under this Agreement.

8.6 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with the laws of the State of Missouri regardless of the laws that might otherwise govern under applicable Minnesota principles of conflicts of law, unless specifically superseded by applicable federal laws and regulations and subject to any applicable federal, state or local laws binding upon Carrier with respect to motor vehicle safety matters. It is mutually agreed that either Carrier or Capital Hauling shall exercise any right or remedy hereunder in the State of Missouri, County of Cole, or the United States District Court for the Western District of Missouri. Notwithstanding the foregoing, Capital Hauling may, at its option, exercise its rights or remedies under this Agreement in a court of competent jurisdiction wherever the Commodities under the control of Carrier may be stored or otherwise located. Each party knowingly and purposefully consents to waive any right to trial by jury.

8.7 **Entire Agreement.** This Agreement, including the Exhibits hereto, states the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior written and oral negotiations, agreements and understandings with respect thereto. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party which are not embodied herein, and any such agreement, statement or promise not contained in this Agreement shall not be binding. As of the date of this Agreement, all previous agreements concerning the same subject matter between the parties shall be canceled.

8.8 **Exhibits.** Any additional agreements of the parties not contained in the foregoing provisions of this Agreement are

set forth on the Exhibits attached hereto and made a part hereof for all purposes, as the same may be amended from time to time.

8.9 **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one single agreement.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be duly executed as of the Effective Date.

**CAPITAL HAULING:**

**CARRIER:**

**CAPITAL HAULING LLC**

[Name of Carrier] \_\_\_\_\_

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**SIGNATURE PAGE FOR MASTER TRANSPORTATION SERVICES AGREEMENT**

**CERTIFICATE OF SOLO PROPRIETER**

The undersigned hereby certifies to Jefferson Hauling and Distributing Company LLC, a Missouri limited liability company (d/b/a Capital Hauling), and its affiliates, successors and assigns, as follows:

1. I either operate personally under my given name, or I operate under the following business name: \_\_\_\_\_ . *[Insert n/a if not applicable.]* If I operate under a business name, I hereby certify that I am the sole owner/sole member of the business and that I do not have any employees.
2. I am not required under Missouri law to carry Workers Compensation Insurance, as set forth in 287.010 et. Seq. RSMo ("Workers Compensation Law").
3. I am not in the construction industry, as defined in the Workers Compensation Law, and I do not erect, demolish, alter or repair improvements.
4. I understand and agree that I will not be covered under any workers compensation insurance or employer's liability insurance carried by Capital Hauling or its affiliates.

CERTIFIED BY:

\_\_\_\_\_  
Print Name:

**WAIVER BY JEFFERSON HAULING AND DISTRIBUTING COMPANY LLC**

In consideration of the foregoing Certificate, Jefferson Hauling and Distributing Company LLC, on behalf of itself and its affiliates ("Capital Hauling"), hereby waives the requirements in the Master Transportation Services Agreement ("Agreement") with the foregoing ("Carrier") to carry Workers Compensation Insurance and Employer's Liability Insurance. The foregoing waiver shall immediately become null and void in the event the Carrier hires any employees, or otherwise becomes obligated to carry such insurance under Missouri law. Capital Hauling has not given any advice as to whether Carrier is or is not required to carry Workers Compensation Insurance under Missouri law.

Nothing in this waiver shall negate the Carrier's release and indemnification contained in the Agreement. Further, nothing in this waiver shall cause Carrier to be deemed an employee of Capital Hauling.

JEFFERSON HAULING AND  
DISTRIBUTING COMPANY LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



# Request for Taxpayer Identification Number and Certification

**Give Form to the  
 requester. Do not  
 send to the IRS.**

Print or type See Specific Instructions on page 2.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.		
	2 Business name/disregarded entity name, if different from above		
	3 Check appropriate box for federal tax classification; check only <b>one</b> of the following seven boxes: <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner. <input type="checkbox"/> Other (see instructions) ▶		4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <small>(Applies to accounts maintained outside the U.S.)</small>
	5 Address (number, street, and apt. or suite no.)		Requester's name and address (optional)
	6 City, state, and ZIP code		
	7 List account number(s) here (optional)		

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

<b>Social security number</b>												
						-			-			
<b>or</b>												
<b>Employer identification number</b>												
						-						

**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
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**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at [www.irs.gov/fw9](http://www.irs.gov/fw9).

**Purpose of Form**

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding? on page 2.*

By signing the filled-out form, you:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
- Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

## ACH Authorization

Your company name must appear on the account designated below and the voided check that will be included with this completed form.

Financial Institution\* Name: \_\_\_\_\_

Deposit Account Number: \_\_\_\_\_

Routing Number: \_\_\_\_\_

Type of Account:    Checking       Savings

*\*Financial institutions include banks, savings and loans, credit unions, and investment accounts.*

I hereby authorize the deposit of funds into the financial institution listed above and to initiate adjustments if necessary for any entries made in error. Any changes must be in writing on the Direct Deposit Authorization Form.

*Company Name (required):* \_\_\_\_\_

*Email Address (required):* \_\_\_\_\_

*Signature (required):* \_\_\_\_\_ *Date:* \_\_\_\_\_

*A voided check or a copy of a check MUST be included along with this completed form.*

**Note: Incomplete or unacceptable information will delay the start of your direct deposit(s).**