

HAULER AGREEMENT

**BETWEEN PRESTON PIPELINES, INC. (“PRESTON PIPELINES, INC.”)
AND “NAME**

NAME OF TRUCKER: _____

DOING BUSINESS AS: _____

DMV PERMIT NO. (CA. #) _____

ID OR SS NO. _____

TELEPHONE NO.: _____

ADDRESS: _____

CITY: _____

ZIP CODE: _____

INSURANCE LOSS PAYEE: **PRESTON PIPELINES, INC.CONSTRUCTION, INC.**

INSURANCE AGENT NAME & ADDRESS: _____

TEL. NO. _____

In consideration of the mutual promises herein, it is agreed as follows:

1. **NAME**, an independent contractor duly permitted by and registered with the California DMV, agrees to transport freight for **PRESTON PIPELINES, INC.** as hereinafter specified and to furnish and maintain the necessary equipment and perform all services required for transportation of said freight. Notwithstanding this agreement, **PRESTON PIPELINES, INC.** shall have the right to use the services of any other hauler or haulers of its choice and **“NAME”** shall have the right to perform transportation services for parties other than **PRESTON PIPELINES, INC.**. **“NAME”** will render services and lease equipment in accordance with the terms and conditions set forth herein shall be responsible to **PRESTON PIPELINES, INC.** for the results of its efforts herein. **“NAME”** may, at its own expense, use employees or sub haulers to perform the services under this Agreement, subject, however, to the prior written approval of **PRESTON PIPELINES, INC.**, which shall not be unreasonably withheld.
2. **“NAME”** is in the business of hauling construction materials (including without limitation quarry materials). As an integral part of **PRESTON PIPELINES, INC.’S** business in order to ensure that an adequate supply of vehicles are available for the conduct of its business, it is necessary for **PRESTON PIPELINES, INC.** to obtain hauling services from **D V B E TRUCKING**. **“NAME”** will complete the Hauler Agreement work for the compensation stated in this Hauler Agreement and assumes full and complete responsibility for completion of the Hauler Agreement work. The contract documents are incorporated into this Agreement by reference and **“NAME”** and its sub haulers will be and are bound by the contract documents insofar as they relate in any way, directly or indirectly, to the work covered by this Agreement.

“*NAME*” agrees to be bound to *PRESTON PIPELINES, INC.* in the same manner and to the same extent as *PRESTON PIPELINES, INC.* is bound to Owner under the contract documents. “*NAME*” will be provided with appropriate documents pertaining to this section.

3. “*NAME*” shall pay all costs and expenses incidental to equipment used in the performance of such transportation services and shall defend, hold harmless and indemnify *PRESTON PIPELINES, INC.* against any and all liability, loss, damage or expense in connection with the performance of the Hauler Agreement work and the use or operation of trucking equipment in connection with this Agreement.
4. “*NAME*” shall pay all drivers’ salaries, benefits, worker’ compensation, insurance premiums, and all applicable Social Security taxes and such other taxes and/or deductions as from time to time may be required by any applicable governmental agency.
5. “*NAME*” covenants and warrants: (a) that its drivers will be competent and qualified to operate motor vehicle equipment and meet all of the requirements of all applicable laws, rules and regulations of the United States and the State of California (including without limitation, maintenance of a proper California Driver’s License); and (b) that the trucking equipment to be furnished by “*NAME*” will be in a good state of repair and meet all safety and other requirements of all applicable laws, rules and regulations of the United States and the State of California; and (c) that *D V B E TRUCKING*, its agents and employees (if any), have the qualifications and ability to perform the trucking services called for herein, without the advice, control or supervision of *PRESTON PIPELINES, INC.*; and (d) that all drivers operating trucks pursuant to this Hauler Agreement will be satisfactory to *PRESTON PIPELINES, INC.* and Owner and will be drug-free and alcohol-free at all times while performing any Hauler Agreement work.
6. “*NAME*” shall be responsible for the freight during the course of its transportation and shall obtain and deliver to *PRESTON PIPELINES, INC.* a receipted shipping document covering each shipment transported.
7. Time is of the essence of this Agreement. “*NAME*” shall commence and prosecute the Hauler Agreement work in a prompt and diligent manner in accordance with *PRESTON PIPELINES, INC.’S* schedule. “*NAME*” shall coordinate the Hauler Agreement work with that of all other contractors, sub haulers, truckers, and material men and suppliers of the *PRESTON PIPELINES, INC.*, in a manner that will facilitate the efficient completion of the project. “*NAME*” shall conform to *PRESTON PIPELINES, INC.’S* progress schedule and all revisions or changes made thereto, at no cost to *PRESTON PIPELINES, INC.*

8. **"NAME"** at its own expense, will keep and maintain in good operating condition, all equipment (including but not limited to tractors and trailers) provided and used by **"NAME"** in connection with **"NAME"** services hereunder. **"NAME"** shall notify **PRESTON PIPELINES, INC.** immediately of any traffic or other accidents occurring in connection with the services provided by **"NAME"** hereunder, and shall provide promptly to **PRESTON PIPELINES, INC.** a written report concerning all such accidents.
- 9.A. Unless otherwise agreed in writing, **"NAME"** will obtain and maintain at its own expense during the term of this agreement the following insurance coverage's:
(See Also Exhibit B)
- (1) Comprehensive General Liability Insurance covering all operations by or on behalf of **"NAME"** and covering personal injuries (including death) and property damage in the amount of at least \$2,000,000.00 per person (including, pollution, fines, penalties, or other uninsurable incidents) **"NAME"** and his employees and sub haulers) and per occurrence;
 - (2) Automobile Liability Insurance covering all vehicles, whether owned, hired or non-owned, including unidentified trailers, used in providing services hereunder and covering bodily injuries (including death) and property damage in the amount of \$750,000.00 per person (including, pollution, fines, penalties, or other uninsurable incidents), **"NAME"** and his employees and sub haulers) and per occurrence;
 - (3) Comprehensive All-Risk Loss and Physical Damage coverage in the face amount of at least \$100,000.00 covering materials and equipment, including loss of use;
 - (4) Worker's Compensation coverage as required by law. Employer's Liability Insurance with limits or \$1,000,000.00 covering **"NAME"** and any sub haulers or employees of **"Name"**
- 9.B. All such insurance shall provide coverage on an "occurrence" basis and shall be primary coverage. Any other coverage and other insurance shall be excess coverage and insurance for any loss arising out of the operations of **"NAME"** under this agreement. All insurance policies providing such coverages shall name **PRESTON PIPELINES, INC.** and Owner as additional named insured with proceeds payable to or on behalf of **PRESTON PIPELINES, INC.** and **"NAME"** as their respective interests appear. All insurance policies shall provide coverage for all legal liability of **"NAME"** including any contractual liability assumed pursuant to the terms of this Hauler Agreement, particularly paragraphs 8 and 11 hereof. **"NAME"** will supply **PRESTON PIPELINES, INC.** with endorsements and certificates for all policies

providing the coverage's herein above required; said certificates shall require that issuing companies provide thirty (30) days advance written notice of cancellation to **PRESTON PIPELINES, INC.**. Such certificates shall be substantially in accordance with those attached as an exhibit to this agreement.

- 9.C. If any coverage provided **PRESTON PIPELINES, INC.** hereunder is subject to deductibles, according to its terms, **PRESTON PIPELINES, INC.** shall have the right to recover amounts of such deductibles from amounts owed to "**NAME**" hereunder. **PRESTON PIPELINES, INC.** is authorized to withhold all monies due "**NAME**" until any claims are adjusted to the satisfaction of **PRESTON PIPELINES, INC.**. In the event "**NAME**" does not furnish to the **PRESTON PIPELINES, INC.** the necessary insurance certificates, together with the additional insured endorsement, within ten (10) days following the signing of this agreement, the **PRESTON PIPELINES, INC.** may, but is not required to, procure such insurance and collect from "**NAME**" all amounts paid to obtain such insurance and withhold any and all payments as necessary to protect **PRESTON PIPELINES, INC.**'S interests hereunder. The insurance requirements set forth in this paragraph shall not be limited by, nor shall they limit, the indemnity requirements set forth elsewhere in this agreement.
10. **PRESTON PIPELINES, INC.** agrees to pay "**NAME**" for the strict performance of the Hauler Agreement work, the amount set forth in Exhibit "A" (the "Hauler Agreement Price"), subject to additions and deductions for changes in the Hauler Agreement work as may be directed in writing by **PRESTON PIPELINES, INC.**, and to make payment in accordance with the payment schedule. **PRESTON PIPELINES, INC.** agrees to pay "**NAME**" the Hauler Agreement Price in monthly payments for Hauler Agreement work performed by "**NAME**" and billed by "**NAME**" to **PRESTON PIPELINES, INC.** in invoices in form satisfactory to **PRESTON PIPELINES, INC.**. **PRESTON PIPELINES, INC.** and "**NAME**" execute this Agreement in sole reliance on the credit and financial resources of the Owner. "**NAME**" agrees to furnish, if and when required by **PRESTON PIPELINES, INC.**, payroll affidavits, documentation of required insurance, invoices, receipts, vouchers, releases of claims for labor and material, from its sub haulers performing work or furnishing materials under this Agreement and all other lien, stop notice or bond claimants or other claimants, all in form satisfactory to **PRESTON PIPELINES, INC.**, and it is agreed that no payment hereunder shall be made, except at **PRESTON PIPELINES, INC.**'S option, until and unless all such documents have been furnished. **PRESTON PIPELINES, INC.**, at its option, may make any payment due hereunder by check made payable jointly to "**NAME**" and/or any of its sub haulers, suppliers and material men or other claimants.
11. "**NAME**" assumes all risk in furnishing the equipment, labor and services ordered hereunder, and will indemnify, hold, harmless and defend **PRESTON PIPELINES, INC.** and Owner against any and all losses, damages (including any liquidated damages assessed against **PRESTON PIPELINES, INC.**, liabilities, fines, fees,

penalties and claims of any kind whatsoever which arise directly or indirectly out of the performance or nonperformance of this Hauler Agreement, or which are related in any manner to this Hauler Agreement (“Claims”), including but not limited to loss of any materials ordered hereunder and injuries to property and/or to persons (including without limitation “*NAME*” and any of its employees and sub haulers), including death. This indemnity applies regardless of any active and/or passive negligent act or omission of PRESTON PIPELINES, INC. or its agents or employees. “*NAME*” however, shall not be obligated under this agreement to indemnify **PRESTON PIPELINES, INC.** or Owner from the sole negligence or willful misconduct of **PRESTON PIPELINES, INC.** or Owner, and their agents and employees, nor shall this section be construed to require indemnification by “*NAME*” greater than that permitted by the public policy of the State of California. The indemnities set forth in this section shall not be limited by, nor shall they limit, the insurance requirements set forth elsewhere in this agreement. The indemnification provisions set forth above shall extend to Claims occurring after this Agreement is terminated as well as while it is in forced.

12. “*NAME*” will carry a valid DMV (CA) Permit, the numbers of which appear above this agreement.
13. “*NAME*” warrants that, if required by law or by the terms of the **PRESTON PIPELINES, INC./Owner** contract or any other agreement binding on **PRESTON PIPELINES, INC.**, directly or indirectly, it will pay all persons operating vehicles in connection with this Agreement at least the rate as set forth in the contract and specifications governing the Project on which the “*NAME*” equipment is operating.
14. PRESTON PIPELINES, INC. reserves the right to terminate this agreement immediately and without prior notice for any of the following causes:
 - A. Failure to obey lawful and proper orders of **PRESTON PIPELINES, INC** in carrying out work assignments;
 - B. Failure to maintain the insurance required under this Hauler Agreement;
 - C. Failure to meet **PRESTON PIPELINES, INC.’S** schedule for the work; or
 - D. Any other material breach of this agreement by “*Name*”
 - E.
15. If “*NAME*” at any time refuses or neglects to supply enough properly skilled drivers and proper equipment, or fails to properly and diligently prosecute the Hauler Agreement work, or fails to make prompt payment to its workers, sub haulers or suppliers or other claimants, or becomes delinquent with respect to contributions or payments required to be made to any health and welfare, pension, vacation,

apprenticeship or other employee benefit program or trust, or is otherwise guilty of a material breach of a provision of this Hauler Agreement or any other agreement between “*NAME*” and *PRESTON PIPELINES, INC.*, and fails, within twenty-four (24) hours after receipt of written notice from *PRESTON PIPELINES, INC.*, to cure such default, then *PRESTON PIPELINES, INC.*, without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:

- A. Supply such number of other drivers and quantity of equipment and other facilities as *PRESTON PIPELINES, INC.* deems necessary for the completion of Hauler Agreement work, or any part thereof, which “*NAME*” has failed to complete or perform in timely manner;
- B. Contract with one or more additional truckers to perform such part of this Hauler Agreement work as *PRESTON PIPELINES, INC.* shall determine will provide the most expeditious completion of the Project; and
- C. Withhold payment of any monies due “*NAME*” under this Hauler Agreement or any other agreement between “*NAME*” and *PRESTON PIPELINES, INC.* until resolution of any disputes as it pertains to item 15 above.

In the event of an emergency affecting the safety of persons or property, *PRESTON PIPELINES, INC.* may proceed as above without notice.

If “*NAME*” commits a material breach of this Hauler Agreement or fails to cure a default within twenty-four (24) hours after receipt by “*NAME*” of the notice issued under this section 15, then *PRESTON PIPELINES, INC.* may terminate “*NAME*” right to perform under this Agreement. *PRESTON PIPELINES, INC.* also may furnish equipment, and/or employ such workers, as *PRESTON PIPELINES, INC.* deems necessary to maintain the orderly progress of the Hauler Agreement work.

16. Notwithstanding that this Agreement has been prepared by *PRESTON PIPELINES, INC.*, language herein shall be construed as if drafted jointly by the parties, and not strictly for or against either party. This Agreement contains the entire agreement between *PRESTON PIPELINES, INC.* and “*NAME*” and it may be amended only by written agreement signed by both of the parties. If one or more provisions of this Agreement are determined to be invalid, the other provisions shall remain valid.
17. “*NAME*” is an independent contractor and shall, at its sole cost and expense, and without increase in the Hauler Agreement price, comply with all laws, rules, ordinances and regulations of all governing bodies having jurisdiction over the Hauler Agreement work; obtain all necessary trucking permits and licenses therefore, pay all manufacturers’ taxes, (not route permits), sales taxes, use taxes, processing taxes, and all federal and state taxes, insurance and contributions for social security and

unemployment which are measured by wages, salaries, or other remuneration's paid to "NAME" employees, whether levied under existing or subsequently enacted laws, rules or regulations. "NAME" upon request, shall furnish evidence satisfactory to PRESTON PIPELINES, INC. that any or all of the foregoing obligations have been fulfilled.

18. "NAME" shall, if required by **PRESTON PIPELINES, INC.**, furnish a labor and material bond and a performance bond, in an amount equal to one hundred percent (100%) of the Hauler Agreement Price. Said bonds shall be executed by a corporate surety acceptable to **PRESTON PIPELINES, INC.** and shall be in a form satisfactory to **PRESTON PIPELINES, INC.** Unless otherwise agreed in writing, **PRESTON PIPELINES, INC.** shall reimburse "NAME" for the premium for said bonds, not to exceed two percent (2%) of the bond amount.
19. "NAME" acknowledges that **PRESTON PIPELINES, INC.** has entered into labor agreements covering work at the Project site with certain labor unions. "NAME" agrees to comply with all the terms and conditions of such labor agreements, including payments into the employee benefit trust funds set forth in such labor agreements, insofar as "NAME" may be required to do so. "NAME" agrees to comply with the terms and provisions of said labor agreements setting forth the jurisdiction and scope of work claimed by each craft, and the procedure contained in such labor agreements for resolution of jurisdictional disputes. **PRESTON PIPELINES, INC.** will furnish agreements as may be applicable. "NAME" further promises and agrees that it will bind and require all of its sub haulers performing Project site work of the type covered by any labor agreements to agree to all of the foregoing promises and undertakings to the same effect as herein provided with respect to it.

In the absence of any such procedure, or if such procedure fails to promptly resolve any jurisdictional dispute, "NAME" agrees, at its own cost and expense, upon request of **PRESTON PIPELINES, INC.**, to take any and all lawful steps to secure a binding and final determination of said jurisdictional dispute by the National Labor Relations Board. "NAME" acknowledges that terms and conditions of the labor agreements **PRESTON PIPELINES, INC.** has with unions may require that "NAME" comply with additional labor agreements with other unions. When the terms and conditions of **PRESTON PIPELINES, INC.**'S labor agreements so require, "NAME" shall perform its Project site work pursuant to all terms and conditions of an appropriate labor agreement with such other unions.

Should there be picketing on **PRESTON PIPELINES, INC.**'S Project site, and **PRESTON PIPELINES, INC.** establishes a reserved gate for "NAME" purpose, it shall be the obligation of "NAME" to attempt to continue the proper performance of the Hauler Agreement work without interruption or delay.

20. “**NAME**” hereby acknowledges that it is thoroughly familiar with all DBE/MBE/WBE/DVBE/LBE or other preference requirements pertaining to the Project, as available and verified by “**NAME**” documentations. If the “**NAME**” claims status as a DBE/MBE/WBE/DVBE/LBE or other preference, than “**NAME**”
21. shall take all steps necessary and shall make all necessary records available to **PRESTON PIPELINES, INC.** and the Owner to assure that “**NAME**” is in compliance with such requirements. In the event that any subhauler or supplier, of any tier, of the “**NAME**” is designated as or is required to be a DBE/MBE/WBE/DVBE/LBE or other preference, “**NAME**” agrees to be responsible for insuring that each said subhauler or supplier meets all applicable requirements. “**NAME**” acknowledges that **PRESTON PIPELINES, INC.** is relying upon “**NAME**” representations regarding the validity of “**NAME**” status, and the status of any of its sub haulers or suppliers, of any tier, if any, as a DBE/MBE/WBE/DVBE/LBE or other preference, and that misrepresentation of the status of “**NAME**” or any of its sub haulers or suppliers, of any tier, is a material breach of this Hauler Agreement and grounds for immediate termination of the Agreement. In the event of termination of the Hauler Agreement as the result of misrepresentation of the status of “**NAME**” or any of its sub haulers or suppliers, of any tier, as a DEB/MBE/WBE/DVBE/LBE or other preference, “**NAME**” shall not be entitled to any compensation hereunder.
22. “**NAME**” shall comply with and agrees to be bound by all applicable federal, state and local laws and regulations, including but not limited to, all provisions of all equal opportunity and affirmative action laws and regulations, the Fair Labor Standards Act, the Americans-With Disabilities Act, the Federal Family and Medical Leave Act, the California Labor Code, the California Fair Employment and Housing Act, and the California Family Rights Act.

“**NAME**” represents that it is an Equal Opportunity Employer, and acknowledges that it is bound by the clauses and conditions identified in Executive Order 11246 as amended, the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 and Section 503 of the Rehabilitation Act of 1973, as amended and their implementing regulations, all of which are incorporated herein.

“**NAME**” shall submit certified payroll records and owner-operator payroll records to **PRESTON PIPELINES, INC.** no later than three (3) working days after payment has been made by “**NAME**” insofar as “**NAME**” may be required to do so.

23. “**NAME**” at no cost to **PRESTON PIPELINES, INC.**, shall comply with all laws, orders, citations, rules, regulations, standards and statutes affecting or relating in any manner to this Hauler Agreement or its performance, including but not limited to those with respect to occupational health and safety, the handling an storage of hazardous materials, accident prevention, safety equipment and practices, including the accident prevention and safety program and **PRESTON PIPELINES, INC.’S** Code of Safe Practices, **PRESTON PIPELINES, INC.’S** Injury and Illness Prevention Plan (and any revisions as they become instituted – see exhibit “B”), the

Project site rules and regulations (including any drug, alcohol or related rules and regulations) of Owner or **PRESTON PIPELINES, INC.**

“**NAME**” shall conduct Project site inspections to determine that safe working conditions and equipment exist at the Project and accepts sole responsibility for providing a safe place to work for its employees and for employees of its’ sub haulers and suppliers of material and equipment, for adequacy of and required use of all safety equipment and for full compliance with the aforesaid laws, orders, citations, rules, regulations, standards and statutes. At **PRESTON PIPELINES, INC.’S** request, “**NAME**” shall provide to **PRESTON PIPELINES, INC.** copies of all safety programs and procedures of “**NAME**” including without limitation, its’ Injury and Illness Prevention Program document.

24. Miscellaneous

- A. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by facsimile transmission or by first class mail, postage prepaid addressed to **PRESTON PIPELINES, INC.** or “**NAME**” at the addresses noted in this Agreement. Notices shall be effective on the earlier of (i) receipt or (ii) one (1) day after deposit is in the mail.
- B. The laws of the State of California shall govern the interpretation and performance of this Hauler Agreement.
- C. Any general rule of construction to the contrary notwithstanding, this Hauler Agreement shall be liberally construed in favor of the grant to effect the purpose of this Hauler Agreement. If any provision in this instrument is found to be ambiguous, and interpretation consistent with the purposes of this agreement that would render the provision valid shall be favored over an interpretation that would render it invalid.
- D. If any provision of this Hauler Agreement or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions of this Hauler Agreement or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
- E. This instrument sets forth the entire agreement of the parties with respect to the Hauler Agreement and supersedes all Prior discussions, negotiations, understandings, or agreements relating to the Hauler Agreement, all of which are merged herein.
- F. The covenants, terms, conditions, and restrictions of this Hauler Agreement shall be binding upon, and insures to the benefit of, the parties hereto and there respective personal representatives, heirs, permitted successors, and assigns.

- G. The captions in this instrument have been inserted solely for the convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- H. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- I. Time is of the essence as to this Hauler Agreement and all its terms and conditions.
- J. Failure of **PRESTON PIPELINES, INC.** to insist in any one or more cases upon strict performance or satisfaction of any of the terms, covenants or conditions of the Hauler Agreement or of the other Hauler Agreement Documents shall not constitute a waiver for the failure of any such term, covenant or condition. Any express waiver by **PRESTON PIPELINES, INC.** of a failure of "**NAME**" to perform or satisfy any term, covenant or condition of this Hauler Agreement or of any of the other hauler Agreement documents shall apply only to the particular matter waived and shall not constitute a waiver of the same (or any other) term, covenant or condition in the future.

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES. IT IS RECOMMENDED THAT YOU HAVE YOUR ATTORNEY REVIEW THIS DOCUMENT.

WHEREFORE, the parties make this Hauler Agreement effective this _____ Day of _____, 20_____.

PRESTON PIPELINES, INC.CONSTRUCTION, INC. "**NAME**"& **CONSTRUCTION COMPANY**

By: _____ By: _____

Its: _____ Its: _____

DMV (CA) Permit No. _____