

## CONTRACTOR OPERATING AGREEMENT AND LEASE

This **CONTRACTOR OPERATING AGREEMENT AND LEASE** (the "AGREEMENT"), made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between LAWRENCE TRANSPORTATION CO., located at 1515 Industrial Dr. NW, Rochester, Minnesota 55901 (the "**CARRIER**") and \_\_\_\_\_, located at \_\_\_\_\_, (the "**CONTRACTOR**"), Federal I.D. #: \_\_\_\_\_.

WITNESSETH THAT,

WHEREAS, **CARRIER** is an interstate motor carrier and/or intrastate motor carrier performing transportation and wishes to furnish transportation, with equipment it does not own and drivers it does not employ, through an agreement with **CONTRACTOR**; and

WHEREAS, **CONTRACTOR** is engaged in the business of transporting freight by motor vehicle on behalf of, and pursuant to operating agreements with contract or common carriers and wishes to transport freight for **CARRIER**; and

WHEREAS, **CARRIER** and **CONTRACTOR** desire to enter into an agreement to carry out the foregoing objectives;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties mutually agree as follows:

### **1. RELATIONSHIP OF THE PARTIES.**

The parties intend to create by this AGREEMENT the relationship of **CARRIER** and INDEPENDENT **CONTRACTOR** and not that of an EMPLOYER-EMPLOYEE. **CONTRACTOR** and its drivers and helpers are fully trained and qualified to provide the particular service and require no supervision of their performance. Neither **CONTRACTOR** nor its employees are to be considered employees of **CARRIER** at any time under any circumstances or for any purpose. Neither party is the agent of the other and neither party shall have the right to bind the other by contract or otherwise except as herein specifically provided.

It is understood that as an INDEPENDENT **CONTRACTOR**, the **CONTRACTOR** owns equipment or holds it under a bona fide lease arrangement; the **CONTRACTOR** is responsible for the maintenance of the equipment; the **CONTRACTOR** is responsible for the operating costs, including fuel, repairs, supplies, vehicle insurance, and personal expenses; the **CONTRACTOR** may be paid the **CARRIER'S** fuel surcharge and incidental costs, including, but not limited to, tolls, permits, and lumper fees; the **CONTRACTOR** is responsible for supplying the necessary personal services to operate the equipment; the **CONTRACTOR'S** compensation is based on factors related to the work performed, such as a percentage of any schedule of rates, and not on the basis of the hours or time expended; the **CONTRACTOR** substantially controls the means and manner of performing the services, in conformance with regulatory requirements and specifications of the shipper; and, the **CONTRACTOR** has entered into a written contract that specifies the relationship to be that of an independent contractor and not that of an employee.

### **2. EQUIPMENT.**

(a) Description. **CONTRACTOR** agrees to provide equipment specifically described in Exhibit "A", (the "Equipment") together with drivers and all other necessary labor, to transport, load and unload, on behalf of **CARRIER**, or to operate under sublease as **CARRIER** may designate such commodities as **CARRIER** may from time to time make available to **CONTRACTOR**. **CONTRACTOR** may substitute different equipment for that shown on Exhibit A if (1) said equipment complies with all state and federal safety regulations; (2) said equipment is of a like kind; (3) and said equipment complies with the requirements of this AGREEMENT.

(b) Identification. **CARRIER** will designate all identification and color schemes required to be affixed to the Equipment, and **CONTRACTOR** agrees that said identification will be affixed upon execution of this AGREEMENT. Identification will comply with applicable law including 49 C.F.R. §§ 390.401 - 390.407 and/or Minnesota Rules 7800.2700. It will be removed upon termination of this AGREEMENT or when the Equipment is being used other than in service for **CARRIER**. The cost of such painting and identification and the cost of removal will be the responsibility of **CONTRACTOR**.

(c) Receipt. Attached as Appendices A-1 and A-2 are receipts for the Equipment, as required by 49 C.F.R. § 376.11(b). **CARRIER/Lessee** shall execute a receipt for the Equipment upon execution of this AGREEMENT and **CONTRACTOR/Lessor** shall execute a receipt for the return of equipment from **CARRIER** at the termination of this AGREEMENT as a prerequisite to final

settlement. Should **CONTRACTOR** terminate or abandon this AGREEMENT without notice, making it impossible for **CARRIER** to obtain a receipt, such action on the part of **CONTRACTOR** shall be deemed as giving constructive receipt for the Equipment.

(d) Safe Condition. **CONTRACTOR** agrees to maintain the Equipment in safe operating condition and to insure that at all times it will be in compliance with all safety requirements mandated by all state, local and federal regulatory bodies having jurisdiction, including but not limited to 49 C.F.R. Parts 393 and 396 and/or Minnesota Statutes Chapter 221.

(e) Registration. Because it may be necessary for permitting purposes to have the Equipment registered under **CARRIER'S** name, **CONTRACTOR** agrees to execute an assignment to **CARRIER** on the state registration for each vehicle listed in Exhibit A at **CARRIER'S** request. Upon termination, **CARRIER** shall execute an assignment back to **CONTRACTOR**. It is the intent of the parties that **CONTRACTOR** shall retain all rights, liabilities, and benefits incident to ownership of the Equipment and said assignment shall not be construed to the contrary.

### 3. TERM

This agreement shall continue in effect for a period of twelve (12) months from the date shown at the beginning of this AGREEMENT and shall thereafter automatically renew for successive twelve (12) month periods unless terminated by either party by giving ten (10) days written notice. In the event of a material breach of any term of this AGREEMENT by the other party, either party may terminate this AGREEMENT after providing twenty-four (24) hours notice unless the other party cures the breach within that time. **CARRIER** may immediately terminate this AGREEMENT without prior notice, if it has reason to believe that **CONTRACTOR'S** actions are endangering the public's safety or public property or that **CONTRACTOR** is operating unlawfully.

### 4. COMPENSATION/PAYMENT BY CARRIER

(a) Compensation For Service and Use of Equipment. For the full and proper performance of transportation services performed by **CONTRACTOR** under the terms of this AGREEMENT, including the loading and unloading of property onto and from the Equipment, **CARRIER** agrees to pay **CONTRACTOR** amounts set forth in Exhibit B attached hereto and made a part hereof by reference. Payments, if any, for loading, unloading, detention, accessorial charges and empty mileage shall be specified in Exhibit B. All payments shall be made at regular settlements as described in paragraph 6.

(b) Calculation of Net Revenues. All percentages established in Exhibit B shall be applied to **CARRIER'S** net revenue received from the transportation unless otherwise indicated on Exhibit B. For this purpose, net revenue is defined as the amount received by **CARRIER** after any rate discounts, if allowable, are applied and **CARRIER'S** Principal, if any, has deducted its share of revenue. **CONTRACTOR** acknowledges that discounts, if allowable, are at times necessary to secure business for **CARRIER** and will result in reduction of tariff and/or rate schedule charges.

(c) Trailer Expenses. If **CONTRACTOR** is using a **CARRIER** owned trailer in performing the services under this AGREEMENT, **CARRIER** shall reimburse **CONTRACTOR** at each settlement for any expenses incurred in operating said trailer if, and only if, (1) authorization by **CARRIER** for expenditures is received in advance; and (2) a receipt is given to **CARRIER** with the other trip documents as set forth in paragraph 6(a).

(d) Advances. **CARRIER** may provide advances of compensation from time to time to **CONTRACTOR** to provide operating funds to **CONTRACTOR** or its drivers. Such advances will be made only if **CONTRACTOR** has at that time earned but not yet been paid an amount that equals or exceeds the requested advance.

(e) Benefits. None of the benefits, if any, that **CARRIER** provides its employees shall be available to **CONTRACTOR**, its agents, or employees; and to the extent **CONTRACTOR**, its agents, or employees may now or hereafter become eligible for any benefit program maintained by **CARRIER** for its employees, **CONTRACTOR** hereby waives its rights (and the rights of its agents and employees, if any) to participate in such programs. Notwithstanding the above, **CARRIER** may, at its sole option, establish and maintain separate benefit programs for which **CONTRACTOR**, its agents, or employees may participate. If **CARRIER** establishes such benefit programs, and **CONTRACTOR**, its agents, or employees elect to participate in such programs, **CARRIER** is authorized to deduct the associated premiums from the settlements of **CONTRACTOR**.

### 5. PAY PERIOD - SETTLEMENT

(a) Conditions. **CARRIER** shall settle with **CONTRACTOR** as soon as practicable after the completion of each trip, but in any event not later than 15 days after completion of the trip and submittal by the **CONTRACTOR** of the documentation described below. All settlements shall be made at **CARRIER'S** offices at 1515 Industrial Dr. NW, Rochester, MN 55901. **CONTRACTOR** shall have the option of either personally appearing at the settlement or of having the payment and supporting documentation mailed to them. **CARRIER** shall not be obligated to make payment until and unless **CONTRACTOR** submits the following documentation to **CARRIER**:

- i) Delivery receipt signed by consignee;
- ii) Original copy of the shipper's bill of lading, weight tickets and inventory;
- iii) original and one copy of driver logs or acceptable electronic download, as required by federal and state regulations, including but not limited to 49 C.F.R. Part 395;;
- iv) Remittance on C.O.D. shipments.

(b) Authorized Deductions by CARRIER. The **CARRIER** shall be authorized to deduct the following amounts in settling with the **CONTRACTOR**, which amounts shall at all times be the obligation and responsibility of **CONTRACTOR**:

- i) Any advances made by **CARRIER** to **CONTRACTOR** including charges incurred by **CARRIER** for wiring advances and charges imposed by **CARRIER** in making advances.
- ii) Payments for any fuel supplied by **CARRIER** to **CONTRACTOR** (**CARRIER** is not obligated to sell fuel nor is **CONTRACTOR** obligated to buy it from **CARRIER**);
- iii) Payment for any parts or supplies supplied by **CARRIER** and for repairs and maintenance to **CONTRACTOR'S** equipment performed by **CARRIER** at its shop facilities (**CARRIER** is not obligated to sell such goods or service and **CONTRACTOR** is not obligated to buy them from **CARRIER**);
- iv) Any payments to outside fuel, repair facilities or parts suppliers, state toll and Pre-pass charges, paid by **CARRIER** on behalf of **CONTRACTOR**;
- v) Any penalties or fines whatsoever, paid by **CARRIER**, which are caused by the acts or omissions of the **CONTRACTOR** or **CONTRACTOR'S** driver;
- vi) Any amounts due to **CARRIER** for damage to, loss of, or injury to third persons or property, as provided for in paragraphs 7, 8(a) or 9 of this AGREEMENT;
- vii) Any losses or costs incurred by **CARRIER** as a result of loss of or damage to its equipment, as set forth in paragraph 8(c) of this AGREEMENT;
- viii) Any payments made by **CARRIER** on behalf of **CONTRACTOR** for bobtail, deadhead, comprehensive, collision, theft or hospitalization insurance, or any other insurance which is **CONTRACTOR'S** responsibility but which **CARRIER** obtained for **CONTRACTOR** at the request of **CONTRACTOR**;
- ix) Any payments made by **CARRIER** for base plate or prorata licenses obtained for **CONTRACTOR** by **CARRIER**. (If **CARRIER** is not billed separately for such licenses, the cost shall be computed as the charge to **CARRIER** for all vehicles of this class in **CARRIER'S** fleet divided by the number of such vehicles in **CARRIER'S** fleet.);
- x) Any payments for any fuel taxes assessed to **CARRIER** instead of collected from **CONTRACTOR** at the pump (Such deductions shall be computed on a monthly basis by **CARRIER** for each state with regard to each piece of tractor equipment and shall be charged to **CONTRACTOR** according to the following formula: the miles traveled in the state by **CONTRACTOR** shall be divided by **CONTRACTOR'S** average miles-per-gallon to derive a number of gallons of fuel that should have been purchased in that state. The actual gallons purchased will be subtracted from this amount and the deficit multiplied by the applicable state tax rate to derive the deduction. If this calculation results in a negative deduction, and **CARRIER** is able to use all or any part of it to reduce its tax payment on a fleet basis, **CONTRACTOR** shall receive a credit for that portion of its surplus payment.);
- xi) Any payments into the Escrow Fund set forth in paragraph 23 of this AGREEMENT;
- xii) Any other payments by **CARRIER** on behalf of **CONTRACTOR** which **CONTRACTOR** has specifically authorized in advance of payment; and
- xiii) In the event **CONTRACTOR** has a deficit settlement balance, **CARRIER** may charge interest to be deducted from future settlement at one percent (1%) of deficit per month.

- (c) Explanation of Deduction. Before making any deductions from the amounts due **CONTRACTOR** not specified in Paragraph 5(b), **CARRIER** shall provide **CONTRACTOR** with a written explanation and itemization of such deductions.
- (d) Copies of Bills. At each settlement, upon request, **CONTRACTOR** shall be supplied with a rated copy of the freight bill or bills, a computer-generated document containing the same information, or (if **CARRIER** is a contract carrier) other forms of documentation actually used for a shipment containing the same information that would appear on a rated freight bill, on which **CONTRACTOR'S** compensation is based. When a computer-generated document is provided, **CONTRACTOR** may view, during normal business hours, a copy of any actual document underlying the computer-generated document. **CONTRACTOR** shall have the right to examine **CARRIER'S** applicable tariffs, rate schedules, and discount schedules or (if **CARRIER** is a contract carrier) other documents from which rates and charges are computed. This right to a copy of freight bills is, however, subject to **CARRIER'S** right to delete the names of shippers and consignees and other confidential business information which may be used to the detriment or prejudice of **CARRIER'S** customers. **CONTRACTOR** agrees that any information obtained as a result of examining these freight bills or as a result of performing the transportation itself, concerning the nature, kind, quality, destination or consignee of any shipment tendered or delivered to **CARRIER**, which information may be used to the detriment of **CARRIER'S** customers, shall not be disclosed to any person by **CONTRACTOR** except in the legitimate performance of duties under this AGREEMENT.
- (e) Disputes. **CONTRACTOR** agrees that all settlements shall be final when funds are accepted by **CONTRACTOR**; provided, however, that **CONTRACTOR** shall have the right to file a written notice of objection within fifteen (15) days of the settlement stating what he disputes and demanding further action or explanation by **CARRIER**. If no such notice is filed **CONTRACTOR** shall be deemed to have stipulated that the settlement is true and correct in all respects and waives any further rights or claims he may have against **CARRIER** for the period covered by the settlement.
- (f) Termination - Final Settlement. Final settlement after termination of this AGREEMENT (not including the escrow account) shall be made upon the following conditions:
- i) **CONTRACTOR** has removed all identification, including documents from the equipment and returned them to **CARRIER** (If the identification device(s) have been lost or stolen, a letter certifying its removal will satisfy this requirement.);
  - ii) **CONTRACTOR** has submitted all documents for payment as set forth above,
  - iii) **CONTRACTOR** has executed a receipt for the equipment and returned all licenses, permits and other property of **CARRIER**.
- (g) Partnership Settlements. If **CONTRACTOR** is a partnership, each partner hereby agrees to hold **CARRIER** harmless as to disbursement of settlements or partial settlements to any one or more of the partners.

## 6. USE OF EQUIPMENT.

Pursuant to 49 CFR Part 376.12(c), **CARRIER** shall have the exclusive possession of the Equipment for the duration of this AGREEMENT and shall assume complete responsibility for the Equipment for the duration of this AGREEMENT Nothing in this AGREEMENT shall be construed to:

- (a) ;
- i) Obligate **CONTRACTOR** to accept each shipment tendered by **CARRIER**;
  - ii) Obligate **CARRIER** to use **CONTRACTOR'S** service or tender any minimum volume of shipments to **CONTRACTOR**; or
  - iii) Subject to Paragraph 24 below, deny **CONTRACTOR** the right to provide service for any other carrier, including **CARRIER'S** competitors, during the term of this AGREEMENT provided, however, that at such times that **CONTRACTOR** provides service for another carrier, **CONTRACTOR** agrees that it will remove from its vehicle any and all identification and documentation pertaining to **CARRIER** and/or any motor carrier for which **CARRIER** is an agent.
- (b) This agreement shall not establish in **CARRIER** any right to direct and control the method and means by which **CONTRACTOR** performs the services requested by **CARRIER**. **CONTRACTOR** agrees, however, to accept only those shipments for which it can reasonably meet scheduled pick-up and delivery dates established by shippers and at his/her expense to employ sufficient drivers and helpers as well as equipment to meet such commitments.

- (c) **CONTRACTOR** will complete transportation of all shipments tendered and accepted. If **CONTRACTOR** abandons a shipment or otherwise terminates this agreement without completion of a shipment in its possession, **CONTRACTOR** expressly agrees that **CARRIER** shall have the right to complete the transportation and hold **CONTRACTOR** liable for the cost thereof and for any other damages for which **CARRIER** may be liable to a shipper arising out of such acts of **CONTRACTOR** which costs, expenses and damages are hereby authorized to be deducted from settlements or from **CONTRACTOR'S** escrow account and/or any/final settlement(s).
- (d) Upon termination of this agreement, **CONTRACTOR** will immediately return **CARRIER'S** trailer to **CARRIER'S** home terminal identified in the first paragraph of this AGREEMENT or to such other location as authorized and directed by **CARRIER**. **CONTRACTOR** agrees that for each day said trailer is not returned to **CARRIER** after termination of the use of said trailer for **CARRIER**, **CONTRACTOR** will pay **CARRIER** the sum of fifty dollars (\$50) per day regardless of whether the trailer is used in other business plus ten cents (\$0.10) per mile for mileage occurred on other than **CARRIER'S** business. **CONTRACTOR** agrees it will not place any claim or cause of action against said trailer. **CARRIER'S** trailer shall mean any trailer furnished to **CONTRACTOR** by **CARRIER** (or any of **CARRIER'S** customers, agents or affiliates) for use of transporting its traffic.
- (e) The term "Principal" when used herein shall refer to the motor carrier for whom **CARRIER** acts as an agent and to whom both **CARRIER** and **CONTRACTOR** will be responsible for certain obligations. To the extent required, **CONTRACTOR** authorizes **CARRIER** to assign **CONTRACTOR'S** obligations under this AGREEMENT in whole or in part to Principal in order to carry out the business of both Principal and **CARRIER**.

#### 7. CARGO LOSSES AND DAMAGE

**CONTRACTOR** shall be liable for and shall indemnify and hold harmless **CARRIER** up to the amount of \$3,000.00 for any claim for pilferage, shortage or other loss or damage to cargo transported by **CONTRACTOR**. **CONTRACTOR** shall also be liable for and shall indemnify and hold harmless **CARRIER** up to the amount of \$\_\_\_\_\_ for any claim for damage to the non-cargo property of **CARRIER'S** customers or other third parties (e.g. damage to walls, flooring, or fixtures) arising out of the negligent acts or omissions of **CONTRACTOR**, its agents or employees. **CARRIER** will provide the **CONTRACTOR** with all documentation regarding the payment of claims with respect to such loss or damage caused by **CONTRACTOR**. **CONTRACTOR** authorizes the deduction of the amount for which it is liable from settlements or from its escrow account. Such deductions will take place after **CONTRACTOR** has been provided with all documents supporting the payments and deduction.

#### 8. INSURANCE

- (a) Liability. The **CARRIER** is obligated to maintain public liability, property damage and cargo insurance coverage for the protection of the public pursuant to law under 49 U.S.C. § 13906 and regulations under 49 C.F.R. Part 387. However, in the case of an accident, **CONTRACTOR** shall indemnify and hold harmless **CARRIER** for the first \$1,000.00 of any loss or damage to third persons or property (except cargo) which losses or damages result from or are contributed to by the negligent acts or omissions of **CONTRACTOR** its agents or employees. **CONTRACTOR** acknowledges that said insurance is for the benefit and protection of third parties and does not cover **CONTRACTOR** or its employees or agents.
- (b) Bobtail. The **CONTRACTOR** agrees at its cost to carry bobtail and deadhead insurance coverage with respect to public liability and property damage in the limits of \$500,000 for any person, \$500,000 for any accident and \$500,000 for property damage in any accident as concerns all Equipment hereunder and agrees to furnish evidence of such coverage to **CARRIER** and to arrange for **CARRIER** to be named as additional insured under such policy. If **CONTRACTOR** desires **CARRIER** to obtain either bobtail and deadhead or comprehensive, collision and theft insurance for him rather than obtaining it himself, the premium will be charged back against **CONTRACTOR**. If this option is elected, Exhibit C shall be attached to this lease which will be a certificate of insurance showing the name of the insurer, the policy number, effective dates, amounts and type of coverage, the cost of the policy which is hereby authorized by **CONTRACTOR** to be deducted from settlements and the deductible amount for which **CONTRACTOR** may be liable. Upon request **CONTRACTOR** will be provided with a copy of the policy.
- (c) Comprehensive-Collision. Comprehensive and/or collision insurance on the **CONTRACTOR'S** vehicle or vehicles is not required by this AGREEMENT. However, **CONTRACTOR** is responsible and will indemnify **CARRIER** for any loss or damage to the trailer equipment of \$3,000.00 of **CARRIER** arising out of the negligent operations by **CONTRACTOR** or his/her employees. The decision as to whether insurance shall be purchased and its cost shall be the sole responsibility of **CONTRACTOR**. Should **CONTRACTOR** desire to purchase comprehensive or collision or theft insurance on its vehicle or vehicles through **CARRIER**, deductions from the settlements or escrow of **CONTRACTOR** by **CARRIER** are hereby authorized for purchase of such insurance. **CONTRACTOR** shall be provided with a certificate of insurance for each policy describing the name of the insurer, policy number, effective dates, amount and type of coverage and the cost of each type of coverage, and the deductible amount for which

**CONTRACTOR** may be liable. This certificate shall be attached to this AGREEMENT as Exhibit D. Termination of this AGREEMENT by either party automatically cancels insurance provided through **CARRIER** to **CONTRACTOR**.

9. HOLD HARMLESS

**CONTRACTOR** agrees to indemnify and hold harmless **CARRIER** against all claims damages, losses and expenses, including reasonable attorneys' fees which might arise out of the performance of any work to be performed here-under by **CONTRACTOR** including all damages for bodily injury, illness, death, property damage, and cargo loss, caused in whole or in part by **CONTRACTOR** including all damages for bodily injury, illness, death, property damage, and cargo loss, caused in whole or in part by **CONTRACTOR'S** negligent act or omission, or that of anyone employed, contracted or engaged by **CONTRACTOR** or for whose acts **CONTRACTOR** may be liable.

10. WORKMEN'S COMPENSATION INSURANCE

**CONTRACTOR** shall require and/or maintain in force at all times Workers' Compensation/Occupational Accident insurance to the extent required by law covering all of its personnel, workers or agents utilized by **CONTRACTOR** in performing its obligations under this AGREEMENT and shall furnish **CARRIER** with a certificate evidencing such coverage. **CONTRACTOR** shall retain sole financial and/or legal responsibility and liability for any and all injuries or damages sustained by **CONTRACTOR**, **CONTRACTOR** driver(s), personnel and agents engaged by **CONTRACTOR** to perform **CONTRACTOR** obligations pursuant to this AGREEMENT. **CONTRACTOR** **CONTRACTOR** **CARRIER** **CONTRACTOR**

11. UNEMPLOYMENT INSURANCE AND SOCIAL SECURITY

**CONTRACTOR** is responsible for, and shall pay immediately when due, all estimated social security taxes and state and federal taxes. The social security tax **CONTRACTOR** must pay may be higher than the social security tax **CONTRACTOR** would pay if **CONTRACTOR** were an employee and the work performed by **CONTRACTOR** is not covered by the Unemployment compensation laws of the State of Minnesota or any applicable state.

12. GENERAL RIGHTS AND DUTIES OF CONTRACTOR

The **CONTRACTOR** shall determine the means and methods of the performance of all transportation services undertaken by the **CONTRACTOR** under the terms of this AGREEMENT. In addition to the specific rights and duties set forth in this AGREEMENT, **CONTRACTOR** has and shall retain all responsibility for:

- (a) Selecting, hiring, training, supervising, assigning, disciplining, paying and adjusting grievances of all drivers and helpers necessary for the performance of the **CONTRACTOR'S** obligations under the terms of this AGREEMENT, which drivers and helpers shall be the employees of **CONTRACTOR**;
- (b) Providing and maintaining the Equipment (**CONTRACTOR** is NOT required to purchase or rent any products, equipment, or services from **CARRIER** as a condition of entering this AGREEMENT) that meets **CARRIER'S** requirements for transporting shipments tendered by **CARRIER**;
- (c) Paying all operating expenses including but not limited to fuel, oil and repairs to the Equipment, reefer fuel, Federal Highway Use Taxes, fuel taxes, road taxes, 3rd structure taxes, tolls and ferry charges, permits and other taxes of all types arising out of the conduct of operations under this AGREEMENT, any fines for parking, moving or weight violations attributable to the acts or omissions of **CONTRACTOR**;
- (d) **CONTRACTOR** is required to scale and measure loads to assure that equipment and load are within legal limits. If overweight or over dimensions permits are required, **CONTRACTOR** will notify **CARRIER**. **CONTRACTOR** will pay fines for parking, moving or weight/over dimension violations attributable to his/her acts or omissions;
- (e) The cost of license plates, tags and stickers issued by federal or state agencies (If, upon termination **CARRIER** is authorized to receive a refund or a credit for such licenses or is able to transfer these licenses to another **CONTRACTOR** or its own equipment, **CARRIER** shall refund to **CONTRACTOR** the amount of the refund or credit obtainable for the unused portion of such licenses.);
- (f) retaining sole financial responsibility for all Workers' Compensation insurance payments and responsibility for all injuries sustained by drivers and helpers hired to perform services for **CONTRACTOR** pursuant to this AGREEMENT. **CONTRACTOR** will maintain in force at all times proper Workers' Compensation insurance coverage covering all drivers and other workers utilized by **CONTRACTOR** in performance of its duties under this AGREEMENT. **CONTRACTOR** shall provide **CARRIER** with a certificate of insurance showing the name of the insurer, policy number, effective dates, amounts and kind of coverage and will arrange with its insurance carrier for 30-day notice to be provided to **CARRIER** of any cancellation or lapse in the policy. If **CARRIER** requests, **CONTRACTOR** will have **CARRIER** named as an additional insured on said policy.;

- (g) Withhold and pay all employment taxes due to federal, state or local governments on account of drivers and other workers necessary for the performance of the **CONTRACTOR** agrees to save and hold harmless the **CARRIER** from any claim by any federal, state or local government agency on account of tax withholding or other employment taxes, or any other actions arising from the **CONTRACTOR'S** relationship with its employees;
- (h) Maintaining the Equipment in the state of repair mandated by all applicable federal and state regulations (see CFR Part 396);
- (i) Operating the Equipment in accord with all applicable federal and state regulations;
- (j) Providing **CARRIER** with proof, as required by 49 CFR Parts 383,391, and 392, that all of **CONTRACTOR'S** drivers have met the criteria of federal and state regulations dealing with driver qualifications. Proof shall be in the form of a copy of: (1) the driver's license and an abstract of violations; (2) physical examination report including Drug Test results if taken; (3) certificate of road test and written test; and (4) driver's qualification and identification certificate. This required information shall be updated when any change occurs such as violations or loss of license subsequent to this agreement;
- (k) Exercising all diligent efforts to conduct the operations under this AGREEMENT in such a manner as to assure continued customer satisfaction and specifically by (1) completing deliveries on time, (2) loading and unloading at times requested by the shipper, (3) delivering at the correct location, (4) being courteous to shipper and consignee;
- (l) Qualify equipment and drivers under **CARRIER'S** insurance requirements,
- (m) Keeping a certificate in **CONTRACTOR'S** equipment, which identifies this agreement for the purpose of state or federal enforcement agencies.
- (n) Directing in all aspects the operation of the Equipment and exercising full discretion and judgment as an independent contractor in determining the means and manner of performance under this AGREEMENT, subject only to requirements imposed by law, specific requirements of customers, and as provided elsewhere in this AGREEMENT. In this regard, **CONTRACTOR** shall determine, among other things: (1) who is to operate the Equipment; (2) when a load is to be picked up; (3) who is to load the Equipment; (4) how the Equipment is to be loaded, tied down, and unloaded; (5) selection of routes (within the scope of **CARRIER'S** operating authority); (6) rest stops; (7) where the Equipment is to be repaired; (8) selection of gas and oil stops; (9) time of delivery; (10) if **CONTRACTOR** should hire additional labor to load or unload the goods at pickup and destination points; (11) **CONTRACTOR'S** own working hours; (12) the working hours, compensation, and conditions of employment of **CONTRACTOR'S** employees; (13) which insurance company will provide insurance coverage required by this AGREEMENT or elected by **CONTRACTOR**; and (14) the method of financing **CONTRACTOR'S** vehicle or vehicles.

### 13. OTHER EXPENSES

**CONTRACTOR** agrees to bear all expenses not otherwise provided for in this AGREEMENT, including, but not limited to, empty mileage, permits of all types, base plates and licenses and any unused portions of such items.

### 14. CONTRACTOR/CARRIER RELATIONSHIP

**CONTRACTOR**, and all agents, employees, and servants of **CONTRACTOR** shall be deemed for all purposes to be Independent Contractors and not employees of **CARRIER**, including purposes of withholding federal income taxes and social security taxes.

### 15. DRIVERS AND SAFETY REGULATIONS

The driver owner or any driver utilized by the vehicle owner shall meet all federal and state requirements, physical and otherwise, to operate equipment used under this AGREEMENT. Any driver who does not meet federal or state safety regulations is not qualified to drive. **CONTRACTOR** is liable for fines or any other expenses incurred by reason of any violation of such driver(s) of any rule, order or regulation of any regulatory bodies and agrees to fully defend and indemnify **CARRIER** from any and all claims or causes of action which may result from a violation of this paragraph.

### 16. LAWFUL CHARGES, AND C.O.D.

The parties agree that all monies received by **CONTRACTOR** or any person engaged by **CONTRACTOR** in the performance of this AGREEMENT for C.O.D. charges or freight charges are the property of **CARRIER**, and that **CONTRACTOR** and other persons engaged by **CONTRACTOR** in the performance of the AGREEMENT shall hold such monies as trustee for

**CARRIER** and shall remit the same immediately upon receipt thereof. **CONTRACTOR** further agrees that neither he, nor any person engaged by **CONTRACTOR** in the performance of this AGREEMENT, has any authority to execute or endorse any negotiable instrument for or on behalf of **CARRIER**.

17. PRIOR AGREEMENTS, LAW CONTROLLING, AND AMENDMENTS

**CONTRACTOR** and **CARRIER** agree that no oral agreement or understanding of any kind or character has been, or is entered into, other than as set forth herein, and that all representations, agreements, and understandings between the parties hereto are incorporated into this AGREEMENT, and that no operating plan, method or custom shall in any way or manner vary or change the terms hereof. The provisions contained herein shall be interpreted under the laws of the State of Minnesota. Any modification or amendment to this AGREEMENT shall be effected only by way of an instrument in writing signed by the parties hereto.

18. INSPECTION OF EQUIPMENT

Prior to the issuance of a receipt for said equipment, **CARRIER** shall inspect said equipment. Such inspection shall be for the purpose of determining whether said equipment complies with any and all applicable safety and maintenance standards which may be prescribed by governmental law or regulation.

19. TERMINATION

This AGREEMENT shall be terminated by:

- (a) Mutual consent of the parties in writing, but not earlier than thirty (30) days from the date hereof, or
- (b) Written notice of termination as provided in Paragraph 2. hereof, or
- (c) Default by either party of any of the obligations to be performed hereunder.

Further, if the vehicle(s) herein provided to **CARRIER** from **CONTRACTOR**, shall be rendered inoperable or otherwise mechanically unfit for use by **CARRIER** to any extent which, in **CARRIER'S** sole judgment, would not meet **CARRIER'S** requirements, and **CONTRACTOR** finds it impractical or is unwilling to repair said vehicle and put it in proper operating condition, then this AGREEMENT shall terminate.

20. SOLICITATION

During the term of this AGREEMENT and for a period of eighteen (18) months after the termination of this AGREEMENT (for any reason), **CONTRACTOR** shall not directly or indirectly solicit, attempt to solicit or become a party to solicitation of any shippers, receivers, customer or other parties which the **CONTRACTOR** worked with or became aware of during its engagement with **CARRIER** under this AGREEMENT, whether such customer, shipper, receiver or other party was or is a customer of **CARRIER**.

21. ESCROW

(a) **CONTRACTOR** agrees to pay into an Escrow Fund the sum of One Thousand Dollars (\$1,000.00) and to contribute, through automatic settlement deductions, Fifty Dollars (\$50.00) per week, per tractor until a balance of One Thousand Dollars (\$1,000.00) is reached. This sum shall be maintained for the duration of this AGREEMENT. Following withdrawals as specified herein, additional Fifty Dollar (\$50.00) deductions will be made in subsequent settlements until the minimum balance is restored. **CARRIER** may pay out the monies held in this Escrow Fund for the following purposes:

- (i) To pay Advances back to **CARRIER**;
- (ii) To reimburse **CARRIER** for amounts due pursuant to paragraph 8 of this AGREEMENT;
- (iii) To pay for licenses, permits, taxes levies or assessments necessary for operations under this AGREEMENT;
- (iv) To pay insurance premiums on equipment leased to **CARRIER**;
- (v) To pay for repairs or maintenance of the Equipment necessary for operations under this AGREEMENT and/or to comply with applicable governmental rules and regulations; and
- (vi) To reimburse **CARRIER** for costs incurred in completing transportation under paragraph 6(c).



(b) Said Escrow Fund shall be drawn on to pay (i) and (ii) expenses automatically. It shall be used to pay (iii), (iv) and (v) expenses only if the **CONTRACTOR** requests **CARRIER** to make such payments and **CARRIER** agrees or if **CARRIER** deems it necessary to make such payments to keep **CONTRACTOR** in a position to perform its obligations under this AGREEMENT. **CARRIER** shall inform **CONTRACTOR** at each settlement of any payments to be made out of the Escrow Fund. The settlement sheets will clearly indicate all additions and deductions to the Escrow Fund. **CONTRACTOR** shall have the right to demand an accounting for transactions involving the Escrow Fund at anytime. During the time **CARRIER** holds this Escrow Fund it shall pay interest quarterly on the balance in the Escrow Fund (less a sum equal to the average advance balance during the quarter) at a rate equal to the average yield or equivalent coupon issue yield on 91-day, 13-week Treasury bills as established in the weekly auction by the Department of Treasury. Within 45 days after termination of this AGREEMENT, **CARRIER** shall return to **CONTRACTOR** all monies in the Escrow Fund, which have been paid out and provide a final account, upon the following conditions:

- (i) That all materials and equipment (including signs) of **CARRIER** entrusted to **CONTRACTOR** during the lease term be returned to **CARRIER**;
- (ii) That all designations pertaining to **CARRIER** affixed to equipment of **CONTRACTOR** be removed;
- (iii) That reports on all accidents or incidents involving injury to other persons or property during the term of this lease in which **CONTRACTOR** or its employees were involved be completed and filed with **CARRIER**; and
- (iv) That all reports of damage to property transported by **CONTRACTOR** for **CARRIER** be completed and filed with **CARRIER**.

#### 22. DRUG/ALCOHOL TESTING

All drivers must be subjected to U.S. Department of Transportation drug testing to qualify to operate the vehicles. Testing shall include random, post accident, reasonable suspicion, new hire and periodic. **CONTRACTOR** shall be responsible to assure that each driver is qualified through the U.S. Drug Testing requirements as administered by the **CARRIER**. Costs for drug testing incurred by the **CARRIER** may be assessed to **CONTRACTOR**. Any driver who is disqualified due to failure or refusal to drug test must be replaced by **CONTRACTOR** with qualified driver.

#### 23. REPORTING OF ACCIDENT.

In the event an accident occurs during the term of this AGREEMENT, the **CONTRACTOR** and/or **CONTRACTOR'S** personnel shall immediately notify **CARRIER** personnel and prepare and mail or deliver to **CARRIER** personnel all accident report information as directed.

#### 24. OVERWEIGHT

**CARRIER** will be responsible for the risks and costs of fines for overweight and oversize trailers when the trailers are preloaded, sealed or the load is containerized, or when the trailer or lading is otherwise outside of the **CONTRACTOR'S** control, except when the violation results from the acts or omissions of **CONTRACTOR**.

#### 25. ENTIRE AGREEMENT.

This AGREEMENT constitutes the entire agreement and understanding between the parties regarding its subject matter, shall supersede any and all prior agreements in effect between the parties regarding its subject matter, and shall not be modified, altered, changed or amended in any respect unless in writing and signed by both parties.

#### 26. MULTIPLE COPIES

This AGREEMENT shall be executed in at least three copies. One copy shall be retained by **CARRIER**, one copy shall be retained by **CONTRACTOR**, and one copy shall be carried in the Equipment at all times during the terms of this AGREEMENT.

#### 27. GOVERNING LAW.

This AGREEMENT shall be governed by the Laws of the State of Minnesota and 49 C.F.R. Part 376 both as to interpretation and performance. **CONTRACTOR** acknowledges that this AGREEMENT has been negotiated and entered into within the boundaries of the State of Minnesota, and that a substantial amount of performance by **CONTRACTOR** and **CARRIER** shall take place in the State of Minnesota. Therefore, **CONTRACTOR** acknowledges that in the event of any litigation between **CARRIER** and **CONTRACTOR** as to this AGREEMENT, such action may be brought in Olmsted County within the State of Minnesota and, for that purpose, **CONTRACTOR** designates as its agent for receipt of service of process, the Secretary of State of Minnesota.

#### 28. ENFORCEMENT AND ADVICE OF COUNSEL.

Both **CONTRACTOR** and **CARRIER** acknowledge having had the opportunity to be represented and/or advised by independent legal counsel of their own choice throughout all negotiations preceding execution of this AGREEMENT and its appendices; therefore, the terms of this AGREEMENT shall be given a neutral interpretation, and any ambiguities or uncertainties in this AGREEMENT shall not be construed against any party.

**29. CONFIDENTIAL INFORMATION.**

**CONTRACTOR**, and **CONTRACTOR** on behalf of **CONTRACTOR'S** personnel, recognizes and acknowledges that **CONTRACTOR** and **CONTRACTOR'S** personnel will be dealing with, and have access to, confidential information relating to **CARRIER'S** business, which is exclusively and shall remain **CARRIER'S** property. Such information (hereafter "Confidential Information") may, without limitation, concern specialized business methods, techniques, plans, know-how and devices relating to the business of **CARRIER**; office products, material and concepts; customer information; **CARRIER'S** method of developing and maintaining business relationships with clients and prospects, and lists of customer and prospects; procedural manuals, list of prices and costs; review programs and techniques; and all ideas, inventions, trademarks, proprietary information, know-how, processes and other developments or improvements conceived by **CONTRACTOR**, alone or with others, during the term of **CONTRACTOR'S** AGREEMENT with **CARRIER**, whether or not during work hours, that are within the scope of **CARRIER'S** business operations or that relate to any of **CARRIER'S** work or projects.

**CONTRACTOR** recognizes and stipulates that this Confidential Information is not publicly or privately available from any source and is strictly confidential and constitutes a valuable and unique asset of **CARRIER'S** business, developed and perfected over considerable time and at substantial expense to **CARRIER**. **CONTRACTOR** agrees that **CONTRACTOR** shall not divulge, disclose, or communicate to anyone, directly or indirectly, either during the term of **CONTRACTOR'S** AGREEMENT or for a period of three (3) years after termination, whether voluntary or involuntary, any information of any kind, nature, or description concerning any matter affecting or relating to the business of **CARRIER**, including, but not limited to, the items of Confidential Information stated herein. The parties hereto acknowledge that any breach of the terms of this subsection is a material breach of the AGREEMENT.

Upon termination of the AGREEMENT for any reason, **CONTRACTOR** shall immediately surrender to **CARRIER** all Confidential Information in **CONTRACTOR'S** possession or control, including correspondence, written memoranda, computer files, diagrams, books, plans, information, records, and notebooks, as well as any and all other tangible Confidential Information, and all copies thereof, relating in any way to the business of **CARRIER**, whether prepared by **CONTRACTOR** or by others.

In the event of a violation by **CONTRACTOR** of any of the confidentiality covenants contained in this AGREEMENT, **CONTRACTOR** agrees and acknowledges that the damages caused thereby will be incapable of ascertainment and will be irreparable, and that injunction relief against any such violation or violations may be issued against **CONTRACTOR** as a matter of course in any action instituted for that purpose, in addition to any of the remedies **CARRIER** may have in law or equity, for all damages.

**30. FORCE MAJEURE.**

Neither party hereto shall be liable for the failure to tender or timely transport property pursuant to this AGREEMENT if such failure, delay or other omission is caused by strikes, acts of God, war, civil disorder, or other similar circumstances beyond the party's reasonable control. In the event of such occurrence, **CONTRACTOR** shall give notice to **CARRIER** as soon as practicable, which notice shall include the nature of the occurrence and the estimated duration of the occurrence, and if and when such occurrence abates sufficiently for **CONTRACTOR** to resume **CONTRACTOR'S** obligations under this AGREEMENT.

**31. NO LIENS.**

**CONTRACTOR** shall not have any right, title, interest, ownership or claim in the property or **CARRIER'S** equipment tendered for service under this AGREEMENT. **CONTRACTOR** shall not in any way encumber or otherwise impair a shipper's right to possession of such property, including but not limited to asserting any lien or withholding any property or **CARRIER** equipment on account of any dispute arising under this AGREEMENT. **CONTRACTOR** shall not possess, and expressly waives, disclaims and releases, any lien, whether statutory or otherwise, security interest or encumbrance of any kind or nature whatsoever with respect to any property, or any portion thereof, transported under this AGREEMENT.

**32. NOTICE OF DELAY.**

In the event of any delay, in transit or accident which may interfere with the timely delivery of any shipment, **CONTRACTOR** shall promptly notify **CARRIER** of the occurrence of such delay. **CONTRACTOR** agrees to follow **CARRIER'S** reasonable instructions concerning the disposition of any delayed shipment. If a shipment is refused by the consignee or **CONTRACTOR** is unable to complete delivery for any reason, **CONTRACTOR** shall provide **CARRIER** with written notice stating the date and time storage charges shall begin to accrue, if any. **CONTRACTOR'S** liability as a warehouseman and ability to assess storage charges shall not begin until **CONTRACTOR** has placed the shipment in a public warehouse or other storage facility under security.

**33. SUCCESSORS AND ASSIGNS.**

This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective successors in interest, assigns and legal representatives. **CONTRACTOR** shall not sell, assign, broker or transfer, in whole or in part, any right, interest, obligation or responsibility contained in this AGREEMENT, including the obligation to transport a tendered shipment, without the prior written consent of **CARRIER**.

**34. THIRD-PARTY BENEFICIARY.**

This AGREEMENT shall not provide any person not a party, assignee or successor to this AGREEMENT, with any remedy, claim, liability, reimbursement, and cause of action or other right in excess of those existing without reference to this AGREEMENT. Notwithstanding the foregoing, the parties agree that **CARRIER’S** customers are intended third-party beneficiaries of this AGREEMENT, and independently entitled to the benefits of **CONTRACTOR’S** obligations of performance.

**35. WAIVER AND SEVERABILITY.**

The failure of **CARRIER** or **CONTRACTOR** to insist upon the performance of any of the terms, covenants or conditions of this AGREEMENT or to exercise any right or privilege herein, or the waiver by either party of any breach of any of the terms, covenants or conditions of this AGREEMENT, shall not be construed as thereafter waiving any such term, covenant or condition, right or privilege, but the same shall continue and remain in full force and effect the same as if no such forbearance or waiver had occurred. In the event any statute, ordinance or governmental rule or regulation shall apply 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. The provisions of this Section 25 Waiver and Severability shall survive the termination, expiration or cancellation of this AGREEMENT.

**36. ASSIGNMENT.**

This AGREEMENT shall not be assignable by **CONTRACTOR**; any attempt to assign this AGREEMENT by **CONTRACTOR** shall be void and ineffective without prior written consent from **CARRIER**.

IN WITNESS WHEREOF, the parties have executed this Equipment Lease Agreement the day and year first above written.

**LAWRENCE TRANSPORTATION CO.  
CARRIER**

\_\_\_\_\_ LACIE TINGESDAL \_\_\_\_\_

Title LACIE TINGESDAL  
SAFETY DEPARTMENT

**CONTRACTOR**

\_\_\_\_\_

EXHIBIT "A"  
EQUIPMENT

(TYPE)	(YEAR)	(MAKE)	(SERIAL NO.)
(TYPE)	(YEAR)	(MAKE)	(SERIAL NO.)
(TYPE)	(YEAR)	(MAKE)	(SERIAL NO.)
(TYPE)	(YEAR)	(MAKE)	(SERIAL NO.)
(TYPE)	(YEAR)	(MAKE)	(SERIAL NO.)

APPENDIX A-1

RECEIPT FOR POSSESSION OF EQUIPMENT

The undersigned hereby acknowledges possession of # \_\_\_\_\_  
(UNIT)

\_\_\_\_\_  
(TYPE) (YEAR) (MAKE) (SERIAL NO.)

This \_\_\_ day of \_\_\_\_\_, 2013 at \_\_\_\_\_ o'clock (a.m.)/p.m. at 1515 Industrial Dr. NW, Rochester, Minnesota

Contractor's Initials \_\_\_\_\_

**LAWRENCE TRANSPORTATION CO.**

By Lacie Tingesdal

Title SAFETY DEPARTMENT

\*\*\*\*\*

APPENDIX A-2

\*\*\*\*\*

\*\*\*\*\*COMPLETE UPON TERMINATION OF LEASE\*\*\*\*\*

RECEIPT FOR RETURN OF EQUIPMENT

The undersigned, \_\_\_\_\_ hereby  
certifies that he is the duly qualified owner, or person authorized to have  
possession, on this \_\_\_\_\_ day of \_\_\_\_\_

at \_\_\_\_\_ o'clock a.m./p.m., received for the above described equipment at 1515 Industrial Blvd. NW, Rochester, Minnesota.  
**CONTRACTOR** further certifies that all identification has been removed from described vehicle.

\_\_\_\_\_  
**CONTRACTOR**

By \_\_\_\_\_

Title \_\_\_\_\_

EXHIBIT B

COMPENSATION

**CONTRACTOR** shall be entitled to the following compensation per tractor:

**70% OF GROSS REVENUE ON REGULAR FREIGHT MOVEMENTS AND ON A MILEAGE BASIS FOR IRREGULAR FREIGHT UPON MUTUAL CONSENT BY CARRIER AND CONTRACTOR. THERE SHALL BE NO ALLOWANCE FOR DEADHEAD MILES. CONTRACTOR WILL BE PAID 100% FOR THE FOLLOWING ACCESSORIAL CHARGES: FUEL SURCHARGE AND LUMPER FEES WHEN PAID BY CUSTOMERS.**

**LICENSE BASE PLATE**

If **CONTRACTOR** prefers to purchase license base plate through **CARRIER**, after the first year, the plate cost will be reimbursed to **CONTRACTOR** based on the following criteria:

- i) **CONTRACTOR** meets or exceeds 100,000 paid miles in the current calendar year, (Miles will be prorated the 1st year, based on the lease date)

If **CONTRACTOR** prefers to license base plate in his/her own name, the plate cost will be reimbursed to **CONTRACTOR** based on the following criteria:

- i) **CONTRACTOR** will be reimbursed the cost of the plate, with a copy of a paid receipt (reimbursement will be prorated the 1st year, based on the lease date), and
- ii) **CONTRACTOR** meets or exceeds 100,000 paid miles in the current calendar year, (miles will be prorated for the 1st year, based on the lease date);
- iii) Reimbursement will be paid over a 12-month period for the first two years of the lease date. After the two-year anniversary date, the plate will be reimbursed in full, with a copy of a paid receipt.

**CARRIER** will reimburse **CONTRACTOR** for the cost of permits and Single State Registration fees.

**I have read Appendix A, and understand what is herein.**

\_\_\_\_\_  
**Owner Signatures**

\_\_\_\_\_  
**Date**

**COMPANY/OWNER NAME:**  
**TRACTOR # \_\_\_\_\_**

EXHIBITS C AND D  
INSURANCE CERTIFICATES  
(IF NEEDED)