

## TRUCKING SERVICES AGREEMENT

This Trucking Services Agreement ("Agreement") is made by **Oldcastle Building Products, Inc.**, 400 Perimeter Center Terrace, FL.10, Atlanta, GA 30346 and \_\_\_\_\_ ("Contractor") of \_\_\_\_\_ ("Contractor Address") with an effective date of **[Insert Effective Date]**.

**1. TERM & PARTIES:** Contractor agrees to furnish the trucking services ("Services") requested by Company for a 1-year period beginning on the above-referenced date in accordance with the provisions of this Agreement. Contractor may self-perform the Services or arrange for motor carriers ("Carriers") perform the Services as a broker. The Services shall be performed at the locations designated by Company and at the prices set forth in **Schedule 2** or as may be mutually agreed upon by the parties in writing. This Agreement shall automatically renew for successive 1-year terms, unless Company or Contractor terminates this Agreement by providing the other party written notice of non-renewal prior to the current term expiration. This Agreement shall also govern any Services provided by Contractor to Company's corporate affiliates and subsidiaries ("Affiliates"). Contractor agrees that such Affiliates are intended third-party beneficiaries of this Agreement and have the same rights and privileges of a Company as described herein, including the right to insist upon the performance of all obligations and duties of Contractor. Each Affiliate shall agree upon specific pricing, delivery terms and any required cargo coverage with Contractor in writing. Further, each Affiliate shall solely be responsible for payment of its own obligations under this Agreement and shall not be liable to Contractor for the performance of the obligations of any other Affiliate.

**2. NON-EXCLUSIVITY:** This Agreement shall not constitute an exclusive arrangement. Company shall remain free to engage other persons or entities to perform trucking services. Contractor shall remain free to perform trucking services for any other person or entity.

**3. SAFETY; COMPLIANCE:** In the performance of this Agreement, Contractor shall, at no additional cost to Company, comply with Company's safety rules, including those on **Schedule 1** hereto, and with all applicable laws, rules, and regulations related to the Services, including employment discrimination, wage/hour, drug-free workplace, FMCSA, OSHA, MSHA, weight limits, and the environment. **Contractor has a duty to monitor all applicable weight regulations and no driver shall leave or enter Company's property or projects with an overweight or unsecured load. Contractor shall also take any necessary action to prevent material from escaping from the truck.** In connection with the performance of Services, Contractor shall, and shall cause its suppliers and subcontractors to abide by the CRH Supplier Code of Conduct which can be viewed at <http://www.crh.com/our-group/our-people/corporate-governance/codes-of-conduct>. When performing the Services, Contractor, its Carrier, and their employees shall act in a professional manner at all times.

**4. INSURANCE:** Contractor and its Carriers shall provide and maintain worker's compensation, general liability, automotive liability, cargo and excess/umbrella insurance, written by insurers acceptable to Company. The minimum required limits and coverages required are as follows: Workers Compensation Coverage-Statutory Limits; Auto Liability-\$1,000,000 Combined Single Limit; General Liability-\$1,000,000 per occurrence and \$2,000,000 aggregate; Cargo: As required by **Schedule 2**; and Excess/Umbrella coverage with minimum limits not less than \$1,000,000. All policies, except for worker's compensation policies, shall name Company as an additional insured with primary coverage and shall, to the fullest extent permitted by law, defend, indemnify and protect Company from all claims, expenses and liabilities related to or arising out of (i) the Services; (ii) any breach of this Agreement; or (iii) any act or omission of Contractor or any person or entity performing Services on behalf of Contractor. Company's coverage shall be non-contributory. To the extent permitted by law, all insurance shall expressly provide that all rights of subrogation against the Company are waived and that no amendment or cancellation of any policy shall be effective until 30 days' written notice to Company. Before providing the Services and upon Company's request, Contractor shall provide Company with certificates evidencing the required insurance coverage. Company's payment to Contractor prior to receipt of the certificates shall not diminish Contractor's duty to maintain the required insurance and Company shall not have waived any rights by allowing Contractor to perform Services prior to supplying the certificates.

**5. INDEMNITY:** To the fullest extent permitted by law, Contractor shall defend, indemnify and hold Company, its officers, employees, agents, insurers, sureties, and affiliates, harmless from any and all losses, damages, expenses (including attorneys' fees), claims, suits, liabilities, fines and remedial or clean-up costs arising out of or related to: (i) the performance of the Services; (ii) any breach of this Agreement; or (iii) any act or omission by or on behalf of Contractor, its employees, and agents. These defense and indemnity obligations are in addition to, and in no way limited by, Contractor's duty to provide insurance. Contractor's defense and indemnity obligations shall apply to any claim against Company by any employee of Contractor and Contractor shall not assert as a defense in any suit by Company to enforce Contractor's obligations under this Article any immunity or other defense provided under any workers' compensation or other laws. When required by law, Contractor's indemnification obligation shall be limited to \$5,000,000 and the parties agree that said amount bears a reasonable commercial relationship to the Services.

**6. EXPENSES:** Contractor or its Carriers shall obtain pay for all fuel, labor, permits, licenses, and inspections related to the Services.

**7. INDEPENDENT CONTRACTOR:** Contractor and its Carriers shall remain independent contractors solely responsible for performing the details of the Services. Further, Contractor and its Carriers shall remain employing units subject to and in compliance with all applicable tax, unemployment compensation, worker's compensation and other laws, including all recordkeeping, wage payment, payroll withholding, and all other requirements for full compliance. Contractor shall provide proof of such compliance upon Company's request. Company and Contractor agree that Company has no right to control the manner in which the Contractor or its Carriers perform the Services hereunder. Contractor shall also provide proof of its experience and qualifications upon Company's request.

**8. FLOW-DOWN:** In the event that the Services are performed in connection with Company's performance of a contract with a third party, the provisions of that contract are incorporated into this Agreement by reference. Company will make any such contract available to the Contractor for inspection.

**9. COMPANY SUPPLIED EQUIPMENT:** From time to time, Contractor or its Carriers may perform the Services with Company's trailing equipment. Contractor and its Carriers shall be liable for any loss or damage to such equipment, normal wear and tear excluded. Company's equipment shall not be used to provide services to any other person or entity.

**10. ASSIGNMENT & MODIFICATION:** This Agreement and any payments related to the same may not be assigned by Contractor to any person or entity without Company's advance written consent. Any unauthorized assignment is void. This Agreement sets forth the complete agreement of the parties with respect to the Services. Any modification of this Agreement must be in writing and signed by both parties.

**11. CONFIDENTIALITY:** Contractor and its Carriers shall treat Company's business information, including Company's products and customers, as confidential information and shall not disclose the information to any third party.

**12. MONITORING; DAMAGED OR REJECTED SHIPMENTS:** Contractor shall closely monitor the drivers and vehicles used in the performance of this Agreement so that the drivers and vehicles comply with all applicable regulations. If Company's customer rejects a shipment or Contractor is unable to deliver a shipment in a timely manner for any other reason, Contractor shall provide prompt notice of the delivery issue to Company. Contractor shall immediately notify Company of any damaged shipment and photograph any damaged shipment. Company shall instruct Contractor as to the manner of disposal of the damaged shipment and the parties shall agree on any compensation for the returned shipment in writing.

**13. ENFORCEABILITY:** If any provision of this Agreement is found unenforceable by any arbitrator or court, the parties agree that such provision shall be modified to the minimum extent necessary to render it enforceable and that the remainder of this Agreement shall not be affected by the modification of such provision. Any damages recoverable by Company from Contractor shall bear interest at the annual rate of 12%, or the highest rate permitted by law, whichever is lower.

**14. DISADVANTAGED BUSINESS ENTERPRISE:** If Contractor is to perform as a Disadvantaged, Small, Minority or Female-Owned Business Enterprise ("DBE"), Contractor (i) shall ensure that all Services are performed and supervised by Contractor's own forces, except for Services subcontracted to others with Company's prior written consent, and (ii) shall comply with all applicable federal, state, and local laws, regulations or ordinances governing the Contractor's performance and continuing certification as a DBE so that its performance will count toward Company's DBE requirements in the Contract.

**15. MANDATORY BINDING ARBITRATION:** ANY DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT SHALL BE SUBMITTED TO AND RESOLVED BY BINDING ARBITRATION BY A SINGLE ARBITRATOR IN THE STATE AND COUNTY OF COMPANY'S OFFICE. THE AMERICAN ARBITRATION ASSOCIATION ("AAA") SHALL CONDUCT THE ARBITRATION AND THE COSTS OF THE ARBITRATION SHALL BE BORNE EQUALLY BY THE PARTIES. NOTWITHSTANDING ANY LANGUAGE TO THE CONTRARY IN THE CONTRACT DOCUMENTS, THE PARTIES AGREE: THAT THE UNDERLYING AWARD MAY BE APPEALED PURSUANT TO THE AAA'S OPTIONAL APPELLATE ARBITRATION RULES; THAT THE UNDERLYING AWARD RENDERED BY THE ARBITRATOR(S) SHALL, AT A MINIMUM, BE A REASONED AWARD; AND THAT THE UNDERLYING AWARD SHALL NOT BE CONSIDERED FINAL UNTIL AFTER THE TIME FOR FILING THE NOTICE OF APPEAL HAS EXPIRED.

**16. LIMITATION OF LIABILITY:** TO THE FULLEST EXTENT PERMITTED BY LAW, COMPANY SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WITH REGARD TO ANY CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

**17. COUNTERPARTS:** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by electronic transmission shall be deemed to have the same legal effect as an original.

**18. SCHEDULES.** The following documents are attached hereto and incorporated into the Agreement:

Schedule Number	Description of Schedule	Included (Yes/No)
1	Safety Policy & Operating Requirements	Yes
2	Pricing Schedule	Yes
3	FWHA Form 1273 – Required Contract Provisions Federal-Aid Construction Contracts	
4	VEVRAA – Section 503 Clause	
5	State Specific Provisions	

**CONTRACTOR:**

By: \_\_\_\_\_  
 Printed: \_\_\_\_\_  
 Title: \_\_\_\_\_

**COMPANY:**

By: \_\_\_\_\_  
 Printed: \_\_\_\_\_  
 Title: \_\_\_\_\_

**SCHEDULE 1  
SAFETY POLICY & OPERATING REQUIREMENTS**

All persons visiting Company's facilities or projects must comply with the following safety rules in addition to any safety regulations imposed by law. These rules are not intended to encompass every conceivable situation or to contradict any applicable laws, legal duties, or more stringent site-specific rules. As a result, these general safety rules should always be considered subject to such laws, duties, rules and the exercise of reasonable judgment.

1. All drivers must remain in their vehicles unless in an area specifically designated for vehicle parking and pedestrian use. Drivers must carefully examine the surrounding prior to exiting their vehicle due to the nature of business environment.
2. If applicable, request a copy of the applicable **Internal Traffic Control Plan ("ITCP")** prior to entering any project or facility and attend any required meetings regarding the ITCP.
3. To the extent required by 49 CFR 382.301 or any other regulation, Contractor shall require its drivers to undergo testing for controlled substances prior to the first time any of Contractor's drivers performs safety-sensitive functions as a condition to being used, unless Contractor qualifies for an approved exception. Contractor shall not allow any driver to perform safety-sensitive functions unless the employer has received a controlled substances test result from the Medical Review Officer or Consortium/Third Party Administrator indicating a verified negative test result for that driver.
4. **MAINTAIN AWARENESS OF THOSE AROUND YOUR VEHICLE AT ALL TIMES.**
5. Establish and maintain eye contact with anyone directing you while backing. **IF, AT ANY TIME, YOU LOSE SIGHT OF ANY PERSON AROUND YOUR VEHICLE, STOP YOUR VEHICLE IMMEDIATELY.** Do not continue backing until you have located this person and are assured that there is no one else behind your vehicle. NEVER assume that a person around your vehicle has seen you or heard you or will get out of the way. It should be second nature for you to stop in this situation and to remain stopped until it is clearly safe to proceed. **WHEN IN DOUBT, STOP.**
6. **A "spotter" (also known as a "backer" or "observer") must be guiding you whenever you are backing up a vehicle.** The spotter must be guiding you the entire time—no matter how little or how far you are backing up the vehicle. If you lose sight of the spotter at any time, stop backing immediately. **IF, AT ANY TIME, YOU LOSE SIGHT OF THE SPOTTER OR A SPOTTER IS NOT PRESENT, STOP YOUR VEHICLE IMMEDIATELY.**
7. All vehicles with obstructed rear views must be equipped with functioning backup alarms and/or cameras. Although backup alarms are meant to warn others that you are moving in reverse, they do not guarantee that everyone will see you, hear you, or get out of your way, nor do they guarantee that all "blind spots" behind your vehicle are clear. It is extremely important, therefore, to STOP and ask for assistance if you need help while backing. **WHEN IN DOUBT, STOP.**
8. Contractor must obey all speed limits and other traffic control at all facilities.
9. Contractor must yield the right-of-way to all pedestrians and equipment at all facilities.
10. Your headlights must be on at all times, day or night.
11. Do not leave your vehicle unattended, unless it is absolutely necessary. When you do determine that it is absolutely necessary to leave your vehicle unattended, ensure that your vehicle is properly secured and that it is safely located.
12. Use extreme care when entering and exiting all facilities and projects.
13. Do not use cell phones or other communication devices at all, unless you are (1) in a building or trailer, (2) in a properly secured, safely located, and completely stopped vehicle that is not performing or waiting to perform operations (for example, you may not use cell phones while loading, unloading, or waiting to load/unload), or (3) receiving, or responding, to instructions related to the work at hand (but only if it is safe to do so).
14. Familiarize yourself with the area in which you are operating your vehicle by becoming aware of, among other things: overhead wires/power lines that could be struck by any part of your vehicle.
15. Contractor shall clean all tailgates and securely fasten a tarp to all loose loads or take any other necessary action to prevent material from escaping from the truck.
16. Company may terminate this Agreement if Contractor's employees fail to comply with Company's safety requirements.
17. **ACCIDENT/SPILL REPORTING:** Any accident with another vehicle or stationary object, or any material spill while laden with Company's products must be reported to the Company immediately. Any accidents or spills should first be reported to the proper authorities.
18. **Contractor shall comply with all applicable weight regulations and inspect all loads prior leaving or entering Company's projects or facilities. No driver shall leave or enter Company's projects or facilities with an overweight, unsecured or unsafe load.**
19. **PERSONAL PROTECTIVE EQUIPMENT:** Contractor shall instruct and require all of its employees to comply with Company's Personal Protective Equipment ("PPE") requirements. The PPE requirements include the following:

Job/Operation	Type of Hazard(s)	PPE Required
Driver	Head Hazard – impact	Hard Hat
Driver	Foot Hazard – impact	Steel Toe Shoes
Driver	Face/Eye Hazard – impact & dust	Safety Glasses
Driver	Skin Hazard - abrasion	Sleeved Shirt & Long Pants
Driver	Face – liquid spray	Face Shield
Driver	Hands – abrasion & burns	Gloves (Elbow Length–Liquid AC)

**SCHEDULE 2  
PRICING & PAYMENT TERMS**

Contractor shall invoice the applicable Company following the completion of each delivery. Payment of the amount due shall be made by Company within \_\_\_\_\_ Days of receipt of the invoice. Company shall have no obligation to pay any invoice that is not presented for payment within Ninety (90) Days of a completed shipment. Contractor shall be responsible for issuing payment to its drivers and shall submit with any such invoice any documents relating to the services covered by such invoice that Company may request, including signed ship tickets and/or bills of lading. Payments shall be made in accordance with the schedule below, if any, or as otherwise agreed to in writing by the parties on per shipment basis.

Unless otherwise agreed to in writing, the shipments are subject to Company's current **Energy Rate Surcharge Schedule**. Services provided with regard to construction projects are subject to the fuel index applicable to the project.

Costs for all permits for over-dimensional or overweight loads, and any required escort vehicles secured by Contractor, shall be billed to Company at actual cost. Unless expressly agreed to in writing, Company's load shall not be combined with the load of any other party.

**Cargo Insurance: (1) Minimum: \$10,000; (2) Equipment Shipment: \$500,000; (3) Glass Shipment: \$1,000,000; (4) Precast Building Shipment: \$500,000; (5) Cement: \$1,000,000.**