

# RAY CHIARATTI JR. TRUCKING, INC.

P.O. Box 126, GARDEN VALLEY, CA 95633

PHONE: (916) 261-9071, OFFICE: (916) 261-9072, FAX: (530) 333-4050

EMAIL: [RAYCHIARATTI1960@GMAIL.COM](mailto:RAYCHIARATTI1960@GMAIL.COM)

## Important!! Please Read

Dear \_\_\_\_\_:

Ray Chiaratti Jr. Trucking, Inc. is requiring ALL sub-haulers to complete a Sub-Haul Packet, which includes a Sub-Haul Agreement. The Sub-Haul Packet is attached for your review.

You will notice that a request for information and certifications is on the front page. It is mandatory that you send all of this in with the packet.

If you have any questions regarding the contents of our packet, please do not hesitate to contact us. We also encourage you to consult legal counsel if you wish.

Thank you for your patience and continued relationship. Ray Chiaratti Jr. Trucking, Inc., is looking forward to a GREAT year, with your help.

Best Regards,

Ray Chiaratti Jr. Trucking, Inc.

# RAY CHIARATTI JR. TRUCKING, INC.

## SUB-HAUL PACKAGE

Please complete, sign and return all enclosed forms and provide copies of each item as indicated below. An incomplete package/file will prevent your truck(s) from working as a sub-hauler and/or prevent/delay in payment if work has already been performed. Each page has a place to initial; please initial each page.

- ☐ Sub-Haul Information Sheet (form enclosed)
- ☐ Sub-Haul Agreement (form enclosed)
- ☐ DOT Verification of Maintenance records (form enclosed)
- ☐ Copy of an enrollment certificate from a DOT approved Drug and Alcohol testing program
- ☐ DOT Drug and Alcohol testing certification (form enclosed)
- ☐ CHP Certificate of Compliance (form enclosed)
- ☐ Copy of current Motor Carrier Permit
- ☐ CARB certificate of compliance
- ☐ Certificate of insurance with a minimum of \$1 million in auto and general liability and Ray Chiaratti Jr. Trucking, Inc., listed as the holder and additional insured and additional insured endorsements.
- ☐ Certificate of Workers Compensation or completed owner-operator certification (if applicable), and copies of all lease agreements for all leased equipment.
- ☐ W9- request for taxpayer ID number (form enclosed)
- ☐ Drug and Alcohol Testing Certification (form enclosed)
- ☐ DIR Registration Proof
- ☐ Clean Truck check Compliance

# RAY CHIARATTI JR. TRUCKING, INC.

## SUB-HAUL INFORMATION SHEET - EXHIBIT A

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

CA Number: \_\_\_\_\_ DOT Number: \_\_\_\_\_

DIR Number: \_\_\_\_\_

Name of Owner/Responsible Party: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Street Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Cell: Number: \_\_\_\_\_ Dispatcher Name: \_\_\_\_\_

Tax ID#: \_\_\_\_\_ CDL # \_\_\_\_\_

### Type and Quantities of Equipment:

Transfer(s) \_\_\_\_\_ Bottom(s) \_\_\_\_\_ Semi Bottom(s) \_\_\_\_\_ End Dump(s) \_\_\_\_\_ Ten Wheeler(s) \_\_\_\_\_

### Equipment Information

Truck # \_\_\_\_\_ Truck License Plate# \_\_\_\_\_ Trailer License Plate# \_\_\_\_\_

Truck # \_\_\_\_\_ Truck License Plate# \_\_\_\_\_ Trailer License Plate# \_\_\_\_\_

Truck # \_\_\_\_\_ Truck License Plate# \_\_\_\_\_ Trailer License Plate# \_\_\_\_\_

Truck # \_\_\_\_\_ Truck License Plate# \_\_\_\_\_ Trailer License Plate# \_\_\_\_\_

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Truck # \_\_\_\_\_ Truck License Plate# \_\_\_\_\_ Trailer License Plate# \_\_\_\_\_

Truck # \_\_\_\_\_ Truck License Plate# \_\_\_\_\_ Trailer License Plate# \_\_\_\_\_

(If you own more than 10 pieces of equipment, please attach a separate sheet listing all trucks and/or trailer information.)



# RAY CHIARATTI JR. TRUCKING, INC.

## SUB-HAUL AGREEMENT

Prime Carrier: Ray Chiaratti Jr. Trucking, Inc.  
P.O. Box 126  
Garden Valley, CA 95633

Sub-Hauler: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
City State Zip Code

CA Number: \_\_\_\_\_

### RECITALS

WHEREAS, Ray Chiaratti Jr. Trucking, Inc., hereinafter referred to as "Prime Carrier," is engaged in the business of trucking brokerage services;

WHEREAS, \_\_\_\_\_, hereinafter referred to as "Sub-Hauler," is an independent motor carrier of property that owns and operates one or more commercial motor vehicles;

WHEREAS, Sub-Hauler desires to transport freight (aggregate, soil, liquid, rock, construction material, nonhazardous and hazardous waste and materials, or anything that can be legally transported) for Project Owners or Contractors engaged by Prime Carrier (hereinafter "Services"), and to furnish all equipment and perform all services required for such transportation;

WHEREAS, Sub-Hauler has provided Prime Carrier with a completed Sub-Haul Information Sheet (attached hereto as Exhibit A and incorporated by reference herein);

THEREFORE, in consideration of the mutual promises and agreements set forth in this Sub-Haul Agreement ("Agreement"), Prime Carrier and Sub-Hauler (collectively, the "Parties") agree as follows:

#### **1. Sub-Hauler's Representations And Warranties.**

- a. Sub-Hauler's Qualifications. Sub-Hauler is an independently owned and operated trucking business which is a registered, active corporation, partnership, LLC, LP, LLP or sole proprietorship possessing all federal, state, county, city or other governmental certificates, licenses, permits, authorizations and registrations (including tax



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registrations) necessary to perform Services pursuant to this Agreement. Sub-Hauler will immediately notify Prime Carrier if any such certificates, licenses, permits, authorizations or registrations lapse or are suspended or revoked, and shall further notify Prime Carrier and cease to provide Services if Sub-Hauler's operating authority is suspended or revoked by any governmental entity. Sub-Hauler warrants that it shall maintain all federal, state, county, city or other governmental certificates, licenses, permits, authorizations and registrations necessary to perform Services throughout the term of this Agreement and agrees that any suspension or revocation of Sub-Hauler's operating authority by any governmental entity shall constitute a material breach of this Agreement. Sub-Hauler further warrants that it is enrolled in the California Highway Patrol BIT Program and the DMV Pull Notice Program. Upon Prime Carrier's request, Sub-Hauler shall provide to Prime Carrier with documentation establishing that Sub-Hauler's federal, state, county, city or other governmental certificates, licenses, permits, authorizations and registrations which are necessary to perform Services pursuant to this Agreement are current. Sub-Hauler further represents and warrants that it has the requisite expertise, experience, facilities (or access thereto), equipment, qualified personnel and legal right to perform the Services. Sub-Hauler shall provide to Prime Carrier all certifications, verifications and similar documents as requested by Prime Carrier relating to the Services, or, which are required by any laws to confirm Sub-Hauler's compliance with such laws.

- b. Sub-Hauler agrees, as a condition precedent to performing any Services hereunder, to furnish Prime Carrier with photocopies of: 1) current, valid driver's licenses for each of Sub-Hauler's truck drivers covering the size and type of vehicle used in performance of the Services; 2) current and subsequent vehicle registration cards for all vehicles owned by Sub-Hauler that will be (are) used in performance of the Services covered by this Agreement; and 3), certificate(s) of insurance for all vehicles used for Services under this Agreement, indicating the required coverages defined elsewhere in this Agreement and additional insured endorsements. Sub-Hauler agrees to notify Prime Carrier of any changes, during the life of this Agreement, in the status of Sub-Hauler's driving privileges, vehicle ownership or registration, or insurance coverages.
- c. Independent Contractor. Sub-Hauler represents and warrants that it is an independently owned and operated trucking business. It is the express intention of the Parties that Sub-Hauler is an independent contractor, and that nothing herein shall be interpreted or construed as establishing a joint venture, partnership or employment relationship between Sub-Hauler or its officers, directors, employees, agents or personnel, and, Prime Carrier.
- d. Sub-Hauler's Equipment. Sub-Hauler agrees to furnish, at its sole expense, all materials, instrumentalities, vehicles, equipment and tools necessary for its performance of the Services pursuant to this Agreement, except as otherwise noted in Section 10, below. Sub-Hauler represents and warrants that it is the sole owner and sole operator of any



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vehicle(s) used by it in performing the Services, and that it operates \_\_\_\_\_ truck(s) to conduct its business. As sole owner of the vehicle(s) utilized in performing Services pursuant to this Agreement, Sub-Hauler accepts all risks, expenses and decisions associated with ownership, including, but not limited to: initial selection(s), purchase(s), financing, labor, maintenance, repairs, fuel, lubricants, state inspections, registration and licensing requirements, travel and operating time to and from the jobsite and disposition and/or replacement. Sub-Hauler shall maintain and operate its vehicles at its sole expense and shall pay any and all charges arising therefrom, including, but not restricted to, fuel, repairs, and any and all insurance, permits, and taxes levied or assessed; provided, however, any taxes or monies advanced by Prime Carrier on behalf of Sub-Hauler shall be immediately deducted from any amount due Sub-Hauler. Sub-Hauler further represents and warrants that it will operate and maintain its materials, instrumentalities, vehicles, equipment and tools in compliance with the requirements of all federal, state, county and city laws or ordinances, and, all regulatory bodies and agencies. Sub-Hauler further represents and warrants that any facilities or equipment used by Sub-Hauler to perform the Services shall be in, and licensed or permitted as required for, material compliance with applicable federal, state and local laws, rules, ordinances and regulations. Sub-Hauler's signed Verification of Maintenance Records form, which Sub-Hauler provided to Prime Carrier prior to Prime Carrier's execution of this Agreement, is attached hereto as Exhibit B and incorporated by reference herein.

- e. Sub-Hauler's Employees, Agents And Personnel. Sub-Hauler's employees, agents and personnel are not employees of, and are separate from, Prime Carrier, and nothing herein shall be construed or interpreted to establish an employment relationship between Sub-Hauler's employees, agents and personnel, and, Prime Carrier. Sub-Hauler shall be solely responsible for all any and all of its labor costs incurred through performing the Services pursuant to this Agreement. Sub-Hauler shall be solely responsible for selecting, hiring, training, supervising, and terminating its employees, agents and personnel. Sub-Hauler shall be solely responsible for the wages, hours, and working conditions of its employees, agents and personnel, for addressing their grievances, and for all applicable payroll taxes and employment benefits for its employees, agents and personnel. Sub-Hauler shall determine the method, means, and manner of the performance of the work of its employees, agents, and personnel, and shall be responsible for assigning and directing their work in furtherance of the performance of Services pursuant to this Agreement. Prime Carrier shall neither have, nor exercise, disciplinary authority or control over Sub-Hauler's employees, agents or personnel. Prime Carrier shall have no authority to supervise or direct Sub-Hauler's employees, agents or personnel in the performance of work for Sub-Hauler, and shall have no authority or right to select, approve, hire, terminate, or discipline any of Sub-Hauler's employees, agents or personnel. Sub-Hauler further warrants and represents that in performing the Services, it shall comply with all applicable federal, state and local laws, rules, ordinances and regulations relating to employment, including, without limitation: the California Labor Code; the applicable California Wage Orders; the



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California Fair Employment and Housing Act; the Fair Labor Standards Act; and Title VII of the Civil Rights Act of 1964. Upon Prime Client's request, Sub-Hauler shall make available for Prime Client's inspection time and payroll records for any of Sub-Hauler's employees, agents or personnel who perform work pursuant to this Agreement so that Prime Client may audit them for compliance with all applicable federal, state and local laws, regulations, rules and ordinances. Sub-Hauler further represents, warrants and agrees that it shall not utilize contract personnel to perform work for Sub-Hauler pursuant to this Agreement, and that all personnel of Sub-Hauler who perform work for Sub-Hauler pursuant to this Agreement shall be employees of Sub-Hauler.

- f. Compliance With All Applicable Laws, Rules And Regulations. Sub-Hauler warrants that it shall perform the Services in compliance with all applicable federal, state and local laws, rules, ordinances and regulations, including, without limitation, the laws and regulations applicable to drug and alcohol testing and compliance for motor carriers, in a reasonably safe manner using the highest standards of nationally recognized and industry-accepted practices and procedures. Sub-Hauler's signed Drug and Alcohol Testing Certification form, which Sub-Hauler provided to Prime Carrier prior to Prime Carrier's execution of this Agreement, is attached hereto as Exhibit C and incorporated by reference herein.
- g. Compliance With Prevailing Wage Laws. The Parties anticipate that Sub-Hauler may perform Services in connection with public works projects (as defined by applicable law). Sub-Hauler therefore warrants that it shall comply with all applicable federal, state or local laws, rules, ordinances and regulations pertaining to prevailing wage requirements, when applicable. Sub-Hauler further warrants that it shall: (a) maintain an active public works contractor registration with the California Department of Industrial Relations ("DIR") during the term of this Agreement; (b) pay the applicable prevailing wage rate(s) to its employees, agents and personnel for work performed in connection with public works projects; (c) submit accurate certified payroll records to the DIR, when required, in conformance with the DIR's then current procedures; (d) maintain copies of Sub-Hauler's certified payroll records and make them available to Prime Client upon request; and (e) pursuant to Section 5, below, protect, defend (using the counsel of Indemnitees' choice), indemnify, and hold harmless Prime Carrier and Indemnitees (as defined in Section 5, below) from and against any costs (as defined in Section 5, below) arising out of or in connection with any act, failure to act, error or omission of Sub-Hauler with respect to compliance with applicable federal, state or local laws, rules, ordinances and regulations pertaining to prevailing wage requirements.
- h. Taxes And Other Expenses. Sub-Hauler shall pay all fees, licenses, taxes and fines necessary or incidental to the performance of the Services. Sub-Hauler understands and agrees that Sub-Hauler is solely responsible for the payment of any taxes, assessments, levies or other charges imposed on account of Sub-Hauler's performance of Services and/or payments made to Sub-Hauler pursuant to this Agreement, including, but not limited to: unemployment insurance tax; federal, state, local and foreign income taxes;



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Social Security and Medicare payments; disability insurance taxes; and workers' compensation insurance.

- i. Insurance. Sub-Hauler warrants and represents that it is fully protected by workers' compensation and property damage/liability insurance and will continue in effect said coverage while acting as a Sub-Hauler hereunder and during the term of this Agreement, and will furnish to Prime Carrier satisfactory evidence of such coverage at any time requested to do so by Prime Carrier. Sub-Hauler's signed Certification Regarding Workers' Compensation form, which Sub-Hauler provided to Prime Carrier prior to Prime Carrier's execution of this Agreement, is attached hereto as Exhibit D and incorporated by reference herein. Sub-Hauler, at its own expense, shall maintain the following minimum insurance coverages and limits:

- i) Workers' Compensation and Employer's Liability insurance of at least One Million Dollars (\$1,000,000);
- ii) Commercial General Liability insurance (ISO Form CG 00 01), covering all operations, of at least One Million Dollars (\$1,000,000); and
- iii) Automobile Liability insurance, including coverage for all owned, hired and non-owned automobiles of at least One Million Dollars (\$1,000,000).

If not covered by the insurance above, Sub-Hauler shall also maintain the following insurance: Motor Truck Cargo Legal Liability insurance with a limit of not less than One Million Dollars (\$1,000,000) and a deductible not greater than Twenty-Five Thousand Dollars (\$25,000) covering "All-Risk" perils, including loading and unloading.

All insurance coverages shall be in amounts and for durations acceptable to Prime Carrier, and is independent of the obligation Sub-Hauler has to defend and indemnify the Indemnitees as set forth in Section 5, below.

Sub-Hauler shall name and list Prime Carrier, and all Indemnitees as defined in Section 5, below, by endorsement, as additional insureds under said Sub-Hauler's insurance policies using ISO Form CG 20 10 or similar form as approved in writing by Prime Carrier. Sub-Hauler shall provide certificates of insurance to Prime Carrier prior to commencement of Services performed pursuant to this Agreement. The certificates of insurance shall provide that there will be no cancellation nor reduction of coverage without thirty (30) days' prior written notice to Prime Carrier. The certificate shall reflect all limiting or exclusionary endorsements amending the required ISO Form CG 00 01. Receipt by Prime Carrier of any certificate of insurance or additional insured endorsement which does not comply with any provisions of this section shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of this Agreement. If any claims are made against Prime Carrier arising out of the hiring of



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Sub- Hauler or Sub-Hauler's performance hereunder, Prime Carrier is authorized to withhold any monies due Sub-Hauler until such claims are adjusted or paid by Sub-Hauler to the satisfaction of Prime Carrier.

## 2. Prime Carrier's Representations And Warranties.

- a. Prime Carrier represents and warrants that it is a broker of trucking services and maintains all required federal, state, county, city or other governmental certificates, licenses, permits, authorizations and registrations.
- b. Prime Carrier represents and warrants that it shall not restrict Sub-Hauler's ability to perform services for businesses other than Prime Carrier during the term of this Agreement.
- c. Prime Carrier represents and warrants that Sub-Hauler shall have the sole right to control and direct the means, manner and method by which Sub-Hauler performs the Services, consistent with the nature of the Services.
- d. Prime Carrier represents and warrants that it shall have no control, whether in contract or in fact, over the employees, agents and personnel utilized by Sub-Hauler to perform the Services pursuant to this Agreement.

## 3. Performance Of The Services.

- a. Pursuant to this Agreement, Sub-Hauler agrees to transport freight (aggregate, soil, liquid, rock, construction material, nonhazardous and hazardous waste and materials, or anything that can be legally transported) for Project Owners or Contractors engaged by Prime Carrier.
- b. Prime Carrier shall notify Sub-Hauler of material to be transported, the time and location to load and the time and location for delivery, all within a reasonable time prior to the delivery time required by a Project Owner or Contractor engaged by Prime Carrier. Sub-Hauler may, in its discretion, decline any such opportunity to perform Services. Should Sub-Hauler accept an opportunity to perform Services, then Sub-Hauler will, without delay, cause said material to be transported to the place designated by the Project Owner or Contractor engaged by Prime Carrier.
- c. Prime Carrier will furnish to Sub-Hauler all shipping documents, and Prime Carrier shall further be responsible for billing and collecting from the Project Owners or Contractors it has engaged. Sub-Hauler shall place the haul number on all shipping documents.
- d. Work days, durations, start and finish times and locations of work to be performed by Sub- Hauler shall conform with the requirements of Project Owners or Contractors



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engaged by Prime Carrier. Sub-Hauler shall have the sole right to determine the means, manner, methods by which the Services are performed, and, the schedules of its employees, agents and personnel, and shall be responsible for ensuring that the Services are performed in a manner consistent with applicable laws and the requirements set by Project Owners or Contractors engaged by Prime Carrier.

- e. Prime Carrier shall have no control over the vehicles, truck drivers or other employees, agents or personnel used or employed by Sub-Hauler. Sub-Hauler agrees to employ capable and responsible personnel to operate its vehicles safely and expeditiously and to maintain its vehicles so as to efficiently perform the Services.
- f. Sub-Hauler acknowledges that time is strictly of the essence of this Agreement. Sub-Hauler further agrees to commence work relating to the Services immediately after accepting an opportunity to perform Services, and, to prosecute the same diligently and continuously until completion. Further, Sub-Hauler agrees to be bound by all schedules required by Project Owners or Contractors engaged by Prime Carrier, and, to perform the Services hereunder continuously so as not to delay their completion.
- g. Sub-Hauler understands and agrees that Services may be performed strictly on a day-to-day basis at the discretion of Prime Carrier's designated representative. Prime Carrier reserves the right to change any of the above conditions, at any time, as may be warranted by project circumstances.
- h. Sub-Hauler acknowledges that if, in the course of performing Services, its vehicle transports to or from a treatment, storage, or disposal facility (TSDF) handling hazardous or non-hazardous waste materials, it may be working with and around substances known to have any or all of the following characteristics, among others, possible hazardous characteristics, ignitability, corrosivity, reactivity and/or toxicity. Sub-Hauler further acknowledges and agrees that transporting to and from a hazardous waste facility involves a significant responsibility to workers and the public and that it must abide by all applicable rules, regulations, safety codes, training requirements, and orders while at such facilities.
- i. Sub-Hauler, when performing Services hereunder, shall provide proper safety equipment and any other extraordinary equipment appropriate to protect its employees, agents and personnel from harm, such as, but not limited to: hard hats, goggles, gloves, protective suits, and breathing apparatuses. Sub-Hauler, and its employees, agents and personnel, shall be responsible for their own safety during performance of the Services. Sub-Hauler hereby releases and agrees to defend, indemnify and hold Prime Carrier harmless from and against any damage to the Sub-Hauler's employees, agents or personnel which may be incurred by reason of Sub-Hauler performance of Services hereunder, pursuant to Section 5, below. Sub-Hauler warrants and represents that it is familiar with and will conform with all federal, state,



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and local laws, ordinances and regulations governing the transportation of hazardous and non-hazardous wastes.

## 4. Payment.

- a. Prime Carrier agrees to pay Sub-Hauler a sum equal to that which is agreed upon by the Parties, as a result of their arms' length negotiations, in exchange for Sub-Hauler's performance of Services. The amount to be paid to Sub-Hauler for the Services will be set forth in an addendum to this Agreement.
- b. Sub-Hauler's invoiced hours and amounts must be verified by Prime Carrier's designated representative prior to submission to Prime Carrier. Invoiced hours and amounts will be based on actual hours of services rendered during the course of work days and times established by Prime Carrier. Travel time to and from jobsite(s) will not be invoiced by Sub-Hauler or paid for by Prime Carrier.
- c. As a condition of payments, Sub-Hauler (a) shall be responsible for the freight during the course of its transportation; (b) provide Civil Code waivers and releases if requested by Prime Carrier; and (c) provide all documents or information, and comply with all requirements, for payment by the Project Owner or Contractor with whom Prime Carrier has contracted. Sub-Hauler must complete the Services agreed to be performed and said Services shall be deemed complete only when evidenced by delivery of the clear and legible receipt bill of lading, hand tag, manifest, weight certificate, freight bill and/or other such written documents as required to the office of the Prime Carrier no later than the third (3rd) day following Sub-Hauler's last day of work on a particular project. Any paperwork submitted AFTER the third (3rd) day following Sub-Hauler's last day of work on a particular project may be subject to a penalty from Prime Carrier. Any documents received after sixty (60) days following Sub-Hauler's last day of work on a particular project will not be honored. Payment from Prime Carrier is to be paid the fifteenth (15th) of the following month for all Services completed in the previous month. Prime Carrier may withhold, from any payments otherwise due hereunder, any charges, fees, taxes or other amounts that Sub-Hauler is required to pay hereunder and pay any and all amounts directly to the party owed same.
- d. Prime Carrier shall subtract from payments to Sub-Hauler a five percent (5%) commission fee from each truck ticket submitted by the Sub-Hauler. Truck tickets turned into Prime Carrier's office with incomplete or illegible information will be subject to an additional five percent (5%) fee per ticket. Any ticket(s) received in Prime Carrier's office more than five (5) days after date on the ticket will be charged an additional five percent (5%) fee per ticket, and an additional five percent (5%) fee per ticket will be deducted for each five (5) day increment thereafter. Tickets received in Prime Carrier's office sixty (60) days or more after the date on the ticket will not be honored for payment.



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- e. All shipping documents are subject to review by Prime Carrier for false claims, and Prime Carrier shall not be obligated to pay Sub-Hauler for time spent performing the Services by Sub-Hauler which is, in Prime Carrier's sole judgment, excessive in light of the requirements of a particular project. All shipping documents will be edited at Prime Carrier's sole discretion and paid in accordance with Prime Carrier's reasonable evaluation. Comparable range will be used to estimate actual time spent on a project. Any undocumented delays will be deducted from total time.
5. **Indemnity.** To the fullest extent allowed by law, Sub-Hauler shall protect, defend (using the counsel of Indemnitees' choice), indemnify, and hold harmless Prime Carrier, together with its affiliates, subsidiaries, agents, employees, officers, directors, successors, assigns and representatives, and, all Project Owners and Contractors with whom Prime Carrier has contracted (collectively "Indemnitees"), from and against all liabilities, losses, costs, liens, stop payment notices, damages (including consequential damages), penalties, fines, suits, administrative proceedings, judgments, citations and expenses (including attorneys' and consultants' fees) (collectively referred to as "costs") of any kind which may be asserted, claimed or recovered against or imposed upon any the Indemnitees, or any of them, arising out of or in connection with any act, failure to act, error or omission of Sub-Hauler or Sub-Hauler's employees, agents or personnel, or contractors, including, but not limited to: (i) failure to comply with applicable requirements of any federal, state or local law, regulation or ordinance; (ii) any environmental claims; (iii) the failure of Sub-Hauler to obtain, maintain, or comply with any applicable permits; (iv) costs arising out of, caused by, or as a result of Sub-Hauler's duties and performance pursuant to this Agreement; (v) all claims relating to the death or injury of any person or damage to any property; (vi) all claims or damages resulting from any breach by Sub-Hauler of the terms, conditions, representations, warranties or other provisions of this Agreement; (vii) all claims brought by employees, agents or personnel of Sub-Hauler or contractors engaged by Sub-Hauler alleging an employment relationship with Prime Carrier, including, but not limited to, claims arising from the California Labor Code, the California Unemployment Insurance Code, the California Fair Employment and Housing Act, failure to provide workers' compensation coverage or legally mandated benefits, the Fair Labor Standards Act, the National Labor Relations Act and Title VII of the Civil Rights Act of 1964; and (viii) any other actions of Sub-Hauler pursuant to this Agreement. Sub-Hauler shall not be obligated to indemnify and defend Prime Carrier for claims found to be due to the active negligence or willful misconduct of the Indemnitees or for defects in design furnished by such persons. Additionally, Sub-Hauler is responsible for costs and losses of all material during the transit of the material until the material is placed in its final resting place. The foregoing indemnification and hold harmless provisions, and all rights and obligations thereunder, shall survive the completion or termination of this Agreement.
6. **Termination.** This Agreement may terminate upon thirty (30) days' notice in writing being given by either party to the other. Prime Carrier may also terminate this Agreement on two



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(2) days' notice if Sub-Hauler breaches any term hereof or defaults in any manner hereunder. In such instance, Sub-Hauler shall be liable to Prime Carrier for all damages incurred by Prime Carrier arising out of or related to Sub-Hauler's breach and/or default, in accordance with Section 5, above. In the event of a breach, unless terminated, this Agreement shall be continuous until cancelled.

7. **Non-Exclusivity.** Sub-Hauler represents and warrants that it will endeavor to perform the same or similar services as those contemplated by this Agreement for businesses other than Prime Carrier, and further, that it advertises and/or holds itself out to the public as available to provide the same or similar services as those contemplated by this Agreement.
8. **Severability And Waiver.** The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of Prime Carrier to insist, in any one or more instances, upon the performance of any of the terms, conditions, or covenants contained in this Agreement, or, the waiver by Prime Carrier of a breach of any term, condition, or covenant contained in this Agreement, shall not be construed as a continuing waiver of such term, condition, or covenant, or as a waiver of a future breach of the same or any other term, condition, or covenant contained in the Agreement. All rights and remedies of Prime Carrier hereunder shall be cumulative and are in addition to, and not in derogation of, all other rights and remedies available to Prime Carrier. Prime Carrier may exercise all such rights and remedies either successively or concurrently.
9. **Assignment.** Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Subhauler without the prior written consent of Prime Carrier, which shall be granted or withheld in Prime Carrier's sole discretion. Sub-Hauler warrants that if another company or hauler is utilized in the place of Sub-Hauler, it shall be the Sub-Hauler's responsibility to have on file proper permits and insurance requirements for said company or owner-operator/person. Sub-Hauler further agrees to protect, defend (using the counsel of Indemnitees' choice), indemnify, and hold harmless Prime Carrier and the Indemnitees against any and all costs arising from the acts or omissions of any company or owner-operator/person engaged by Sub-Hauler arising from said company or owner-operator/person's performance of work for Sub-Hauler in accordance with Section 5, above. Prime Carrier retains the right to assign any and all of its duties or obligations under this Agreement in its sole discretion.
10. **Sub-Hauler's Use Of Prime Carrier's Trailing Equipment.**
  - a. Sub-Hauler may, in its sole discretion, opt to utilize trailing equipment provided by Prime Carrier in connection with its performance of the Services. Sub-Hauler shall not, under any circumstances, be required to utilize trailing equipment belonging to Prime Carrier. Sub-Hauler agrees that it shall use trailing equipment belonging to Prime Carrier only in connection with Sub-Hauler's performance of Services pursuant to this



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## Agreement.

- b. Prime Carrier shall subtract from payments to Sub-Hauler an eighteen percent (18%) equipment leasing fee, and, a five percent (5%) commission fee, per ticket, should Sub-Hauler utilize trailing equipment belonging to Prime Carrier. If Sub-Hauler is found to have used Prime Carrier's trailing equipment on jobs not authorized by Prime Carrier, Sub-Hauler shall pay Prime Carrier a leasing fee of twenty-five percent (25%) of Sub-Hauler's receipts for each day of unauthorized use.
  - c. Sub-Hauler shall inspect Prime Carrier's trailing equipment for mechanical and safety defects prior to utilizing it in performance of the Services. Upon acceptance of Prime Carrier's trailing equipment following Sub-Hauler's inspection, Sub-Hauler shall hold Prime Carrier harmless for any liabilities incurred by Sub-Hauler or Sub-Hauler's equipment or any other third parties as result thereof in accordance with Section 5 above.
  - d. Sub-Hauler shall be responsible for returning trailing equipment in the same condition received with exception of normal wear and tear. Sub-Hauler accepts liability for repair and/or replacement of Prime Carrier's trailing equipment, which may be damaged or destroyed while under the control of the Sub-Hauler, if loss, damage or destruction is due to the negligence, acts or omissions of Sub-Hauler or its employees, agents or personnel. Prime Carrier will provide Sub-Hauler with a written explanation and itemization of any assessed back charges. Sub-Haulers with Prime Carrier's trailing equipment shall inspect said equipment for mechanical and safety defects.
11. **Entire Agreement.** This Agreement is solely for the benefit of the signatories hereto and it (and all exhibits and addenda hereto) represents the entire and integrated Agreement between the Parties hereto and supersedes all prior proposals, bids, correspondence, negotiations, representations, or agreements, whether written or oral.
12. **Amendments.** This Agreement can only be amended or changed in a writing executed by all Parties.
13. **California Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.
14. **Terms.** The terms of this Agreement are contractual and the result of negotiations between the Parties hereto. Accordingly, any rule of construction of contracts, including without limitation California Civil Code section 1654, that ambiguities are to be construed against the drafting party shall not be employed in the interpretation of this Agreement.



**EXHIBIT A**

# California Code, Labor Code - LAB § 2776

Current as of January 01, 2023 | Updated by [FindLaw Staff](#)

Section 2775 and the holding in *Dynamex* do not apply to a bona fide business-to-business contracting relationship, as defined below, under the following conditions:

(a) If an individual acting as a sole proprietor, or a business entity formed as a partnership, limited liability company, limited liability partnership, or corporation ("business service provider") contracts to provide services to another such business or to a public agency or quasi-public corporation ("contracting business"), the determination of employee or independent contractor status of the business services provider shall be governed by *Borello*, if the contracting business demonstrates that all of the following criteria are satisfied:

(1) The business service provider is free from the control and direction of the contracting business entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(2) The business service provider is providing services directly to the contracting business rather than to customers of the contracting business. This subparagraph does not apply if the business service provider's employees are solely performing the services under the contract under the name of the business service provider and the business service provider regularly contracts with other businesses.

(3) The contract with the business service provider is in writing and specifies the payment amount, including any applicable rate of pay, for services to be performed, as well as the due date of payment for such services.

(4) If the work is performed in a jurisdiction that requires the business service provider to have a business license or business tax registration, the business service provider has the required business license or business tax registration.

(5) The business service provider maintains a business location, which may include the business service provider's residence, that is separate from the business or work location of the contracting business.

(6) The business service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed.

(7) The business service provider can contract with other businesses to provide the same or similar services and maintain a clientele without restrictions from the hiring entity.

(8) The business service provider advertises and holds itself out to the public as available to provide the same or similar services.



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**EXHIBIT A**

(9) Consistent with the nature of the work, the business service provider provides its own tools, vehicles, and equipment to perform the services, not including any proprietary materials that may be necessary to perform the services under the contract.

(10) The business service provider can negotiate its own rates.

(11) Consistent with the nature of the work, the business service provider can set its own hours and location of work.

(12) The business service provider is not performing the type of work for which a license from the Contractors' State License Board is required, pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

(b) When two bona fide businesses are contracting with one another under the conditions set forth in subdivision (a), the determination of whether an individual worker who is not acting as a sole proprietor or formed as a business entity, is an employee or independent contractor of the business service provider or contracting business is governed by Section 2775.

(c) This section does not alter or supersede any existing rights under Section 2810.3.



## RAY CHIARATTI JR. TRUCKING, INC.

15. **Dispute Resolution.** Any and all controversies, claims or disputes between the Parties arising out of or relating to this Agreement or the breach thereof shall be resolved in accordance with the Arbitration Agreement executed by the Parties attached hereto as Exhibit E and incorporated by reference herein.
16. **Voluntary Agreement.** The Parties enter into this Agreement voluntarily and of their own free will. The Parties further represent and agree that they received the opportunity to consult the legal counsel of their choice prior to executing this Agreement.

Prime Carrier: Ray Chiaratti Jr. Trucking, Inc.

Signature: \_\_\_\_\_

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

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

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

Sub-Hauler: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

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



# RAY CHIARATTI JR. TRUCKING, INC.

## VERIFICATION OF MAINTENANCE RECORDS - EXHIBIT B

As directed by the DOT, CHP, and BIT programs, I/we, the undersigned, certify that all required inspection records and driver qualification records are maintained and on file at the location listed below:

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

Physical Address: \_\_\_\_\_

City State Zip

Telephone/Contact Number: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

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



# RAY CHIARATTI JR. TRUCKING, INC.

## DRUG AND ALCOHOL TESTING CERTIFICATION - EXHIBIT C

This is to certify that Sub-Hauler is currently enrolled in a DOT approved drug and alcohol-testing program for the purpose of pre-employment, random, and post-accident drug and alcohol testing. (Include a copy of enrollment certificate.)

Sub-Hauler will notify Ray Chiaratti Jr. Trucking, Inc. if and when its current enrollment expires.

Sub-Hauler: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

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

If not enrolled in a DOT approved testing program, list or describe the means of compliance:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



# RAY CHIARATTI JR. TRUCKING, INC.

## CERTIFICATION REGARDING WORKERS' COMPENSATION - EXHIBIT D

I hereby certify that \_\_ (hereinafter "Sub-Hauler"):

- ☐ Sub-Hauler operates as a sole proprietorship (Owner/Operator) and will not hire any employees to perform work during the term the Sub-Haul Agreement with Ray Chiaratti Jr. Trucking, Inc., for whom workers' compensation coverage is required. Further, Sub-Hauler agrees to indemnify, hold harmless and defend Ray Chiaratti Jr. Trucking, Inc., for and against any claims, demands, suits or damages asserted by any person under the workers' compensation laws of any state in which said claims, demands, suits or damages arise, in accordance with Section 5 of the Sub-Haul Agreement. In the event Sub-Hauler for any reason hires an employee during any project relating to Sub-Hauler's performance under the Sub-Haul Agreement, Sub-Hauler agrees to comply with the Workers' Compensation Insurance requirements set forth by the State of California, and to provide Ray Chiaratti Jr. Trucking, Inc., with a certificate of such coverage.
- ☐ Sub-Hauler certifies that it is in compliance with the Workers' Compensation Insurance requirements set forth by the State of California, and has provided Ray Chiaratti Jr. Trucking, Inc., with a certificate of such coverage.

Sub-Hauler: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

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



# RAY CHIARATTI JR. TRUCKING, INC.

## ARBITRATION AGREEMENT - EXHIBIT E

Ray Chiaratti Jr. Trucking, Inc., ("Company") and \_\_\_\_ ("Sub-Hauler") (collectively the "Parties") hereby agree as follows:

1. The Parties agree that they shall participate in a mediation of any controversy, claim or dispute of whatever nature, including, but not limited to, disputes arising out of the Sub-Haul Agreement between the Parties, which cannot be resolved informally. The mediator shall be a retired judge or practicing attorney agreed upon by the Parties. The mediation shall be held in the County of Sacramento, California. The Parties shall each be responsible for fifty percent (50%) of the expense of the mediation. Company and Sub-Hauler shall each be represented at the mediation by a person having authority to bind Company and Sub-Hauler, respectively. If the mediation does not result in the resolution of any such dispute between the Parties, then binding individual arbitration may be commenced pursuant to this Arbitration Agreement.
2. Any controversy, claim or dispute of whatever nature, between Sub-Hauler and Company, including those disputes arising out of the Sub-Haul Agreement between the Parties, which cannot be resolved through mediation shall be resolved by binding individual arbitration. The terms of this Arbitration Agreement are made with respect to transactions involving commerce and are governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16 ("FAA"). If an arbitrator or a court determines that the FAA does not apply, then the California Arbitration Act, as amended, as set forth in Title 9 of the California Code of Civil Procedure, shall apply to and govern this Arbitration Agreement. Disputes over arbitrability shall be determined by a court of competent jurisdiction.
3. The complaining party will institute arbitration proceedings by sending a written demand for arbitration to the American Arbitration Association ("AAA"). To be considered timely, a demand for arbitration must be presented within the time required by law. The arbitration shall be administered by AAA pursuant to the AAA Commercial Arbitration Rules (a copy of which is available at [www.adr.org/Rules](http://www.adr.org/Rules)) before a neutral arbitrator. The arbitrator shall be a retired judge or practicing attorney agreed upon by the Parties. If the Parties cannot agree on a neutral arbitrator, then the arbitrator shall be appointed pursuant to the applicable AAA rules. Each party shall bear its own costs and attorneys' fees in connection with the arbitration.
4. The venue for the arbitration shall be in the County of Sacramento, California.
5. All claims must be brought in the party's individual capacity and not as a plaintiff or class member in any purported class, collective action or representative proceeding unless otherwise provided by applicable laws. The Parties acknowledge that by this Agreement they have waived any rights to a trial by jury.
6. The arbitrator may not consolidate more than one party's claims, and may not otherwise preside over any form of a representative or class proceeding.



## RAY CHIARATTI JR. TRUCKING, INC.

7. The arbitrator shall have no power or authority to add to, subtract from, disregard or modify any of the terms of this Arbitration Agreement or any other agreement between the Parties which he/she is required to interpret or apply in order to resolve the underlying dispute, and his/her award must be supported by law and substantial evidence. The arbitration's decision shall be in writing, setting forth the essential findings and conclusions on which the award is based. The arbitrator shall be authorized to award any relief that would have been available in court. Attorney's fees and costs shall be awarded to the prevailing party, to the extent permitted by law. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction.
8. Pending arbitration, either party may seek temporary injunctive relief from the appropriate court in circumstances otherwise authorized under the state or federal law.
9. No modifications of this Arbitration Agreement shall be effective unless made in writing and signed by Company and Sub-Hauler.
10. If this Agreement is found to be invalid with respect to any claim, it shall continue to apply to all other claims which either party may have against the other. Further, if any provision in this Arbitration Agreement is deemed invalid, void, unenforceable or illegal, the remaining provisions shall nonetheless continue in full force without being impaired or invalidated in any way.
11. By signing this Arbitration Agreement, the Parties affirm that they: (a) have read and understand its terms; and (b) have been given the opportunity to consult the legal counsel of their choice before signing.

Prime Carrier: Ray Chiaratti Jr. Trucking, Inc.

Its Authorized Agent: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

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

Sub-Hauler: \_\_\_\_\_

Its Authorized Agent: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

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