



INDEPENDENT CONTRACTOR OWNER/OPERATOR AGREEMENT

This Independent Contractor Owner / Operator Agreement (referred to as the “Agreement”) is made on this ____ day of the month of _____, and year of _____, by and between STRITTMATTER METRO, LLC (referred to as “STRITTMATTER”), and _____ OWNER/OPERATOR”), for the provision by OWNER/ OPERATOR of certain services to STRITTMATTER as further defined in this Agreement.

RELATIONSHIP OF THE PARTIES

- A. It is expressly agreed that OWNER/OPERATOR shall always be acting as an independent contractor during the performance of any services arising under this Agreement, and further that this Agreement does not constitute, and shall not be construed as constituting or creating, an employer/employee relationship between OWNER/OPERATOR and STRITTMATTER. Under no circumstances is OWNER/OPERATOR an agent of STRITTMATTER, and OWNER/OPERATOR has no authority to bind STRITTMATTER in any manner.
- B. OWNER/OPERATOR is solely responsible for the means and methods of carrying out its services under this Agreement. OWNER/OPERATOR warrants and represents that OWNER/OPERATOR is in business for itself, has invested in its own equipment, is regularly engaged in providing the types of services being provided hereunder, and is available to provide the same or similar services to other companies or enterprises.
- C. OWNER/OPERATOR shall report and pay in a timely fashion all necessary amounts for worker’s compensation insurance, federal and state taxes, unemployment insurance, social security, and other withholdings or insurances for itself and its employees, which includes any individual providing services on behalf of OWNER/OPERATOR to STRITTMATTER under this Agreement. OWNER/OPERATOR agrees to indemnify, defend, and hold harmless STRITTMATTER, its owners, affiliated companies, employees, agents and representatives, from any and all claims, demands, damages, suits, losses, liabilities, causes of action, costs and expenses (including reasonable attorneys’ fees) arising out of OWNER/OPERATOR’s failure to comply with the terms of this paragraph. The foregoing statement shall survive the termination of this Agreement and the provision of services by OWNER/OPERATOR to STRITTMATTER under this Agreement.
- D. In connection with the services performed under this Agreement, it is the policy of STRITTMATTER and, by operation of this Agreement, a requirement of OWNER/OPERATOR to observe and comply with the Civil Rights Act (Title VII) of 1964, the Federal Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967,

Executive Order 11246, the Veterans Re-Adjustment Act of 1974, American Disability Act of 1992 and all applicable and pertinent regulations related thereto, the basic requirements of which prohibit discriminating against any individual because of race, color, sex, religion, national origin, age or handicap. OWNER/OPERATOR shall take affirmative action to hire employees without regard to race, creed, color, sex, religion, national origin, age, handicap, or other protected class, or because he/she is a veteran or disabled veteran in regard to any position for which the employee or applicant for employment is qualified. The aforesaid provisions shall include, but shall not be limited to, employment, promotion, demotion, transfer, layoff or termination, rates of pay or other forms of compensation. OWNER/OPERATOR agrees to indemnify, defend, and hold harmless STRITTMATTER, its owners, affiliated companies, employees, agents and representatives, from any and all claims, demands, damages, suits, losses, liabilities, causes of action, costs and expenses (including reasonable attorneys' fees) arising out of OWNER/OPERATOR's failure to comply with the terms of this paragraph.

- E. STRITTMATTER maintains a strong commitment to provide a safe workplace and to establish policies promoting high standards of health and safety. In keeping with this commitment, it is STRITTMATTER's intent to maintain a drug/alcohol free workplace for all employees, contractors, and visitors. OWNER/OPERATOR agrees to exclude from STRITTMATTER jobsites, premises, and work areas any illegal and unauthorized drugs, controlled substances and alcohol. Any OWNER/OPERATOR found in violation of this policy will be removed from STRITTMATTER jobsites, premises, and work areas immediately and when appropriate, such individuals will be reported to the proper law enforcement agencies.

NON-EXCLUSIVE ARRANGEMENT

A. This Agreement shall not constitute an exclusive arrangement and STRITTMATTER retains the right to engage other entities and individuals to perform and render any type of services, including services of the same type then being performed by OWNER/OPERATOR. Similarly, because OWNER/OPERATOR is regularly engaged in providing the type of services it is providing to STRITTMATTER, this Agreement does not preclude OWNER/OPERATOR from providing the same or similar type of services to other entities and individuals; provided, however, that it is expressly understood as to any project to which OWNER/OPERATOR is introduced or performs services through STRITTMATTER, OWNER/OPERATOR shall not obtain additional work for that project except through STRITTMATTER.

INSURANCE

A. Prior to the commencement of services under this Agreement, OWNER/OPERATOR shall provide STRITTMATTER with a Certificate of Insurance in accordance with

STRITTMATTER's Certificate of Insurance Form Guidelines attached as Exhibit "A" to this Agreement. OWNER/OPERATOR shall maintain the required insurance during all times that OWNER/OPERATOR is providing services to STRITTMATTER under this Agreement.

LICENSES/PERMITS/INSPECTIONS

- A. OWNER/OPERATOR shall comply with all federal, state and local laws governing interstate and intrastate trucking as well as all other laws, regulations, requirements, and licensing required to operate its trucking business in the states in which OWNER/OPERATOR conducts business.

- B. OWNER/OPERATOR acknowledges and agrees that: (i) all vehicle and other inspections required by law are current and that all vehicles are roadworthy and in proper working condition; (ii) all vehicles are equipped with the proper and current vehicle registration(s), tag(s) and sticker(s) required by law; (iii) any OWNER/OPERATOR driver, operator or other employee or agent operating an OWNER/OPERATOR vehicle shall at all times physically possess and maintain the proper licensing documents required by law to operate the vehicle including, but not limited to, documentation proving the driver or operator has proper Commercial Driver's License ("CDL"), Department of Transportation ("DOT") and/or other required credentials, and that all vehicle drivers and operators comply with the requirements of the Federal Motor Carrier Safety Administration ("FMCSA") regulations; (iv) that all vehicles utilized on STRITTMATTER projects are equipped with an automatic tarp system; (v) that all vehicles on STRITTMATTER projects are equipped with a working back-up warning device; and (vi) that all vehicles on STRITTMATTER projects are equipped with a "body stop" that is utilized at all times when performing any work or maintenance on the vehicles.

- C. OWNER/OPERATOR agrees that the use or possession of firearms while performing services for STRITTMATTER is prohibited. In addition, no OWNER/OPERATOR may use any handheld cell phone or other electronic device while actively providing services for STRITTMATTER under this Agreement.

INDEMNITY

- A. To the fullest extent permitted by law, OWNER/OPERATOR agrees to defend, indemnify, protect and hold harmless STRITTMATTER, its affiliated companies, members, employees, agents and representatives, as well as any additional individuals and entities STRITTMATTER is required to defend, indemnify and hold harmless under the contract documents or other laws applicable to the project (the "Indemnified Parties"), from and against any claim, demand, lawsuit, damage, loss, cost, expense, and/or other

liability (including costs and attorneys' fees, and including costs and attorneys' fees incurred to enforce this indemnity obligation), caused by, arising out of, in connection with, or resulting from the performance of the OWNER/OPERATOR's services under this Agreement, where any such claim, demand, lawsuit, damage, loss, cost, expense or other liability is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and is caused by or arises in whole or in part, from any negligent or non-negligent act or omission of OWNER/OPERATOR or any of its agents, employees, subcontractors or others; provided, however, OWNER/OPERATOR's duty hereunder shall not arise if such claim, demand, lawsuit, damage, loss, cost, expense, and/or other liability is caused by the sole negligence of a party indemnified hereunder.

B. OWNER/OPERATOR's obligation hereunder shall not be limited by the provisions of any workers' compensation or similar act. Should any individual or entity assert a claim or institute a suit, action, or proceeding against STRITTMATTER or other Indemnified Parties involving the manner or sufficiency of the performance of the services under this Agreement, OWNER/OPERATOR shall upon the request of STRITTMATTER or other Indemnified Parties promptly assume the defense of such claim, suit, action or proceeding at OWNER/OPERATOR's expense, and shall use legal counsel acceptable to STRITTMATTER. To the fullest extent permitted by law, OWNER/OPERATOR shall indemnify and hold harmless STRITTMATTER and the other Indemnified Parties from and against any liability, loss, damage, or expense (including costs and attorneys' fees, and including costs and attorneys' fees incurred to enforce this indemnity obligation) arising out of or related to such claim, suit, action or proceeding. Nothing in this paragraph shall be construed to require any indemnification which would make this paragraph void or unenforceable or to eliminate or reduce any indemnification or rights which STRITTMATTER or the other Indemnified Parties have by operation of law. If OWNER/OPERATOR is a sole proprietor and elects not to procure workers' compensation insurance because such coverage is not required by law, then OWNER/OPERATOR agrees to waive all rights of recovery and forever release STRITTMATTER and the Indemnified Parties for any injuries or damages incurred by OWNER/OPERATOR regardless of cause.

C. The indemnity obligations set forth in this Agreement are continuing and shall survive the termination of this Agreement.

RATE/PAYMENT

A. STRITTMATTER will quote OWNER/OPERATOR a rate of pay, and STRITTMATTER agrees to pay OWNER/OPERATOR the quoted rate of pay for the services rendered under this Agreement. Payment shall always be governed by the terms and conditions of STRITTMATTER's standard form driver/operator invoices, together with appropriate rental tickets or other supporting backup documentation as required by STRITTMATTER. The terms and conditions contained in STRITTMATTER's standard form driver/operator invoices are incorporated by reference into this Agreement.

- B. All payments for services rendered under this Agreement shall be conditioned upon OWNER/OPERATOR or its employees/representatives obtaining approved signatures by STRITTMATTER on the appropriate rental tickets or other supporting backup documentation required by STRITTMATTER. It is the responsibility of the OWNER/OPERATOR to ensure that appropriate rental tickets or other supporting backup documentation required by STRITTMATTER is properly completed before submission of payment request documents to STRITTMATTER.

- C. STRITTMATTER'S payable week runs from Sunday through Saturday. STRITTMATTER will disburse all checks on the following Friday. All appropriate rental tickets or other supporting backup documentation required by STRITTMATTER must be received by STRITTMATTER on Monday mornings by 9:00 AM. All appropriate rental tickets or other supporting backup documentation required by STRITTMATTER over fourteen (14) days old will not be honored for payment until payment is received by STRITTMATTER under the contract documents applicable to the project. It is the responsibility of OWNER/OPERATOR to communicate these rules to its employees/representatives.

- D. OWNER/OPERATOR shall furnish an executed Affidavit and Release of Liens in the form attached as Exhibit "B" to this Agreement as a condition precedent to every payment due and owing under this Agreement.

ACCIDENTS/MOVING VIOLATIONS

- A. OWNER/OPERATOR shall immediately notify and thereafter furnish a full and complete report to STRITTMATTER's dispatch office of any accidents, injuries or moving violations involving OWNER/OPERATOR or its employees, representatives, drivers, operators, subcontractors, or other personnel that occur while services are rendered under or incidental to this Agreement. OWNER/OPERATOR shall provide the date, time, and location of the incident, together with other relevant information including, but not necessarily limited to, identification of the project and customer, identification of the vehicles and subjects involved and, if possible, photographs of damages when reporting and furnishing its full and complete report to STRITTMATTER.

- B. STRITTMATTER will not be responsible or held liable for any lost time or damages resulting from accidents, moving violations, or other circumstances regardless of how caused. STRITTMATTER will not reimburse OWNER/OPERATOR for any speeding or other traffic citations.

- C. OWNER/OPERATOR shall conduct the services arising under this Agreement strictly in compliance with all applicable federal, state and local laws, ordinances and regulations.

In addition, OWNER/OPERATOR shall comply with all safety and environmental rules and procedures, as well as all jobsite rules and procedures, promulgated by STRITTMATTER and its customers.

RELEASE

A. OWNER/OPERATOR, for itself and its owners, heirs, successors, assigns, administrators, representatives, employees, agents, and all other persons claiming by or through it, hereby unconditionally waive and release all claims, rights, and demands of any nature whatsoever against STRITTMATTER including, without limitation, those arising out of any tax liability, unemployment claim, workers' compensation claim, accident or any other tort, statute and/or other legal claim which could in any way derive from or arise out of OWNER/OPERATOR's performance of any services to or on behalf of STRITTMATTER.

ATTORNEY'S FEES

A. OWNER/OPERATOR shall be responsible for all costs and attorneys' fees incurred by STRITTMATTER to enforce the terms of this Agreement including, without limitation, those fees and costs incurred in connection with legal action taken between STRITTMATTER and any third-party because of OWNER/OPERATOR's acts or omissions.

ORAL STATEMENTS

A. No oral statement shall modify or otherwise affect the terms and conditions stated in this Agreement. All modifications to this Agreement must be made in writing and signed by OWNER/OPERATOR and STRITTMATTER.

ACKNOWLEDGEMENT

A. OWNER/OPERATOR acknowledges that OWNER/OPERATOR has read this Agreement in its entirety and understands all of its terms and conditions and has had the opportunity to consult with legal counsel of OWNER/OPERATOR's choice regarding this Agreement.

AUTHORITY

A. By signing this Agreement, the undersigned fully accepts and understands all of the above requirements of an independent contractor and that the undersigned has the authority to bind OWNER/OPERATOR to this Agreement.

ADDITIONAL PROVISIONS

A. Additional terms and conditions are attached as Exhibit "C" to this Agreement and are incorporated into this Agreement as if fully set forth herein.

OWNER/OPERATOR:

OWNER/OPERATOR NAME:

BY: _____

Its: _____

Federal Tax ID No.: _____

STRITTMATTER METRO, LLC

By: _____

Authorized Signatory: _____

EXHIBIT "A"

Certificate of Insurance Form Guidelines

OWNER/OPERATOR shall provide insurance as follows:

- 1. Workers Compensation and Employers Liability:
 - a. Statutory Workers Compensation (including occupational disease) in accordance with the laws of the state in which the work is performed, including the Other States Endorsement, if applicable.

- b. Employers Liability Insurance with \$500,000 in limits for each of the following exposures: bodily injury by accident (each accident); bodily injury by disease (policy limit), bodily injury by disease (each employee).
 - c. Waiver of Subrogation in favor of all parties referenced in 2 below.
2. Commercial Automobile Liability (including all owned, leased, hired and non-owner automobiles) with a combined single limit for Bodily Injury and Property Damage of at least \$1,000,000 per occurrence. The limit may be provided through a combination of primary and umbrella/excess liability policies. Endorsement naming STRITTMATTER and its affiliated companies, members, employees, agents, and representatives, as well as any additional individuals and entities STRITTMATTER is required to insure on the project (to the extent applicable), and any other entity as required by STRITTMATTER as Additional Insured, except for umbrella insurance policies.
 3. Umbrella and/or excess liability policies may be used to comply with Auto Liability and Employers Liability limits shown above.
 4. A Certificate of Insurance naming Strittmatter Metro, LLC as additional insured, and indicating the minimum coverages applicable as stated above. Cancellation, non-renewal, or material modification in any policy must be submitted, approved, and available to STRITTMATTER prior to commencement of services in the Agreement. Certificates of Insurance must also contain a provision that coverage afforded under the policies will not be canceled unless at least thirty (30) days prior written notice has been given to STRITTMATTER. STRITTMATTER shall not make any payment to OWNER/OPERATOR until proper evidence of insurance is received by STRITTMATTER.
 5. Submit certificate to accounting at STRITTMATTER.

A Certificate of Insurance, when submitted to STRITTMATTER, constitutes a warranty by OWNER/OPERATOR that:

- A. With respect to the Excess Liability Insurance, the following policies are scheduled as primary:
 - Automobile Liability
 - Employers Liability
- B. The insurance policies for all OWNER/OPERATOR insurance shall include a waiver of subrogation as follows:

“It is agreed that in no event shall _____ have any right of recovery against Strittmatter Metro, LLC or any other additional insured applicable to the underlying Agreement requiring this policy.”

- C. The insurance policies shown are endorsed to be primary as respects any other insurance available to any Additional Insured.
- D. All insurance carriers must: (i) be licensed in the State where the Project is located; and (ii) be rated at least A in Best's.
- E. The OWNER/OPERATOR shall secure, pay for, and maintain Property Insurance necessary for protection against loss of owned, borrowed, or rented capital equipment and tools, including any tools owned by employees, and any tools, equipment, staging, towers, and forms owned, borrowed or rented by OWNER/OPERATOR. The requirement to secure and maintain such insurance is solely for the benefit of OWNER/OPERATOR. Failure of OWNER/OPERATOR to secure such insurance or to maintain adequate levels of coverage will release STRITTMATTER, its affiliated companies, members, employees, agents and representatives, as well as any additional individuals and entities STRITTMATTER is required to insure on the project (to the extent applicable), from any liability. The property insurance shall include a Waiver of Subrogation in favor of all parties required to be named as additional insureds under this Agreement.
- F. Any person that drives, operates, maintains, or works for an independent trucking company or independent contractor must be covered by their own policies, regardless of whether such person(s) is/are a Sole Proprietorship(s), Partnership(s), or Officer(s) of a Corporation.

EXHIBIT "B"

AFFIDAVIT AND RELEASE OF LIENS

- I. The undersigned, to support its entitlement to the requested payment identified herein, and for and in consideration of the prior and current payments made by STRITTMATTER

METRO, LLC and/or its related entities, affiliates, subsidiaries and assigns (collectively referred to as "STRITTMATTER"), to the undersigned, or to an owner, officer, employee, subcontractor or supplier of the undersigned for labor, materials, equipment, and/or services rendered or performed for STRITTMATTER by or through the undersigned prior to, up to and including the date of this Affidavit and Release of Liens, hereby warrants, affirms, and certifies as follows:

- a. Payment in the amount of \$ _____, plus any prior payments received by the undersigned prior to the date of this Affidavit and Release of Liens, represents the total value of the labor, materials, equipment, and/or services rendered by or through the undersigned for which payment is due prior to, up to and including the date of this Affidavit and Release of Liens, between

the undersigned and STRITTMATTER, including all (a) labor, materials, equipment, and/or services expended and performed on behalf of STRITTMATTER, and (b) any and all claims, other costs, damages, or expenses incurred by the undersigned.

- b. The undersigned has received payment in full for all labor, materials, equipment, and /or service rendered or performed for STRITTMATTER by or through the undersigned for which payment is due prior to, up to and including the date of this Affidavit and Release of Liens, and there are no outstanding claims or damages of any nature against STRITTMATTER in connection with the work performed by the undersigned.

- c. The undersigned certifies that all subcontractors, material men, suppliers, employees, and others with respect to all labor, materials, equipment, and/or services performed and/or rendered by the undersigned have been paid in full prior to, up to and including the date of this Affidavit and Release of Liens including, but not limited to, all benefits, funds, insurance, workman's compensation insurance, applicable state, federal and local taxes, applicable fees, duties and other like charges. The undersigned further warrants and guarantees that no individual, corporation or other entity has filed, can properly file, or has been assigned any right by the undersigned to file any claim enumerated in this Affidavit and Release of Liens against STRITTMATTER. The undersigned further certifies that it has complied with all applicable federal, state, and local taxes, codes ordinances, and regulations applicable to work performed by the undersigned.

- d. The undersigned has the right, power and authority to execute this Affidavit and Final Release of Liens.

II. In consideration of the payment enumerated herein, the undersigned does hereby forever waive and release in favor of STRITTMATTER all rights presently existing or that may hereafter accrue to the undersigned by reason of the labor, materials, equipment, and/or services rendered and/or performed for STRITTMATTER by or through the undersigned prior to, up to and including the date of this Affidavit and Release of Liens, and further does hereby forever waive and release its right to assert any lien upon the land and/or improvements comprising any project involved with the labor, materials, equipment, and/or services rendered or performed for STRITTMATTER by or through the undersigned.

III. The undersigned hereby agrees to indemnify and hold harmless STRITTMATTER, their lenders, guarantors, successors and assigns, from any and all damages, costs, expenses, demands and suits (including attorney's fees, consultant fees, accountants' fees, and any other expenses of litigation) relating to any cause of action, claim (including but not limited to the claims enumerated in this Affidavit and Release of Liens) or lien filing by any individual, corporation, or entity with respect to any (a) labor, materials, equipment, and/or services rendered by or through the undersigned prior to, up to and including the date of this Affidavit and Release of Liens, (b) any rights waived or released herein, and (c) any misrepresentation or breach of any condition, affirmation or warranty made by the undersigned in this Affidavit and Final Release of Liens. Upon the request of STRITTMATTER, the undersigned will undertake to defend any such cause of action, claim or lien filing at its sole cost and expense.

Date

Company

Signature

PRINT NAME AND TITLE

EXHIBIT "C"

ADDITIONAL TERMS AND CONDITIONS

1. Any OWNER/OPERATOR truck receiving an overweight citation must furnish both the citation, as well as the appropriate rental tickets or other supporting backup documentation required by STRITTMATTER, to STRITTMATTER dispatch within forty-eight (48) hours of receiving any overweight citation. Notify the job foreman immediately upon your return to the job that loaded your truck. No overweight citation should be paid prior to speaking with STRITTMATTER's Safety Manager, Dispatch, or other designated STRITTMATTER personnel.

2. Any OWNER/OPERATOR truck stopped for an overweight violation that is given the option of shifting the load from one axle to another must do so. All OWNER/OPERATOR trucks must be able to scale the maximum allowable weight for its wheel base:

	VA (W/5)	MD	DC (MUST HAVE DC TAGS)
Tri-axle	57,500	70,000	65,000
Quad-axle	61,500	70,000	65,000
Trailer	80,000	80,000	80,000

3. It is OWNER/OPERATOR's responsibility to maintain legal tags on your vehicle(s). It is OWNER/OPERATOR's responsibility to make sure your vehicle(s) are tagged to haul a legal load in the jurisdictions that jobs are set each day. Any ticket that results from a truck that is tagged improperly is the sole responsibility of the OWNER/OPERATOR.

4. All OWNER/OPERATOR trucks must load and dump at locations specified by STRITTMATTER only. Charges for dumping fees to STRITTMATTER's accounts can only be made with daily authorization from STRITTMATTER's dispatch office.

5. Any OWNER/OPERATOR truck caught "short dumping" is subject to job termination and will be totally responsible for material dumped. If OWNER/OPERATOR truck starts at one location and the customer requests you go to another job, you must notify STRITTMATTER's dispatcher before changing jobs. Any OWNER/OPERATOR truck that is down or will be late must notify STRITTMATTER's dispatcher before the assigned job is scheduled to start.

6. Any OWNER/OPERATOR truck not on the job within thirty minutes of start time will have another truck dispatched to replace it. In the event of rain or snow, you must check in with STRITTMATTER's dispatcher before reporting to the job. If rain or snow begins during the day OWNER/OPERATOR must contact STRITTMATTER's dispatch office. OWNER/OPERATOR is expected to remain at work site until all work has been completed.

All OWNER/OPERATORS must check-in with STRITTMATTER's dispatcher each afternoon.

7. All OWNER/OPERATOR TICKETS must have the following information in order to process payment:
 - a. Customer Name

- b. PO#, when required. **When subcontracting, every Ticket must have a PO#. It should be written under the "Location" section of the Ticket.**
 - c. Date
 - d. Location
 - e. Start/Stop Time and Hours
 - f. Load Count
 - g. Job Number – **This number must be on every Ticket.** It should be written on the upper left-hand corner of each Ticket.
8. Every Ticket must be signed by the job foreman or timekeeper/load counter. If for some reason (breakdown, accident, illness, pulled from job) you are not able to have the Ticket signed, give the Ticket to another driver to get it signed for you.
9. If you work through lunch, it must be noted on the Ticket and initialed by the job foreman/timekeeper. Otherwise, you cannot be paid for this time.
10. All dump truck beds must be empty of any and all trash before performing work on a STRITTMATTER job. If any trash (oil jugs, tires, soda cans, fast food containers or previous day's material) is dumped on a job, the OWNER/OPERATOR will be responsible for all costs for the cleanup and disposal of all such material.