



Motor Carrier Attachment –UDA Contract with AMT

Phoenix, AZ

HWY21MH008

(15 pages)

TRANSPORTATION AGREEMENT

THIS AGREEMENT made this 25 day of June 2020 by and between UNITED DAIRYMEN OF ARIZONA, an Arizona corporation, and **Arizona Milk Transport Inc. #32**(Federal ID ([REDACTED]), ([REDACTED] Litchfield Park, Az. 85340-3032).

WITNESSETH:

It is agreed between the parties as follows:

1. Definitions. The terms defined in this Article whenever used and capitalized in this Agreement shall, unless the text otherwise requires, have the respective meanings hereinafter specified.
 - a. "Association" means the agricultural and marketing association UNITED DAIRYMEN OF ARIZONA, an Arizona corporation.
 - b. "Carrier" means (**Arizona Milk Transport Inc. #32**)
 - c. "Combined Gross Load" means the sum of the weight in pounds of the Truck Tractor plus the weight in pounds of the tanker-trailer loaded with Milk.
 - d. "Milk" means raw milk.
 - e. "Pasteurized Milk Ordinance" means the most recent version of the federal Grade A Pasteurized Milk Ordinance adopted by the Department of Agriculture for the State of Arizona.
 - f. "Plant" means the Association's plant at Tempe, Arizona, or any other milk processing or manufacturing plant or milk holding facility to which Association directs milk to be hauled.

g. "Truck Tractor" means the following truck tractor(s) of Carrier and includes also such "Truck Tractor" of the Association that Carrier may from time to time rent to transport and deliver the milk of Association members:

- h. #32 00 DOD VIN#YJ112109 #36 08 DOD VIN#8G196798
#40 07 FRT LIN VIN#7LY28628 #41 07 FRT LIN VIN#7PY79904
#42 07 FRT LIN VIN#7PY83503 #43 07 FRT LIN VIN#7PY06031
#44 07 FRT LIN VIN# 7PY90138 #45 06 FRT LIN VIN#6LW32154 #46 04
DOD VIN#4G122527 #47 07 FRT LIN VIN#7PY99981
#48 09 FRT LIN VIN#9DAE2647 #49 08 FRT LIN VIN#8DZ70904
#53 07 FRT LIN VIN#7PY99551 #54 07 FRT LIN VIN#7PY99552
#55 07 FRT LIN VIN#7PY99553 #56 16 FRT LIN VIN#GDHE8128
#57 16 FRT LIN VIN#GSGW6726 #59 17 FRT LIN VIN#HDHS9291
#60 17 FRT LIV VIN#HDJG6717 #61 18 FRT LIN VIN#JSJT9759
#62 18 FRT LIN VIN#JSJP6006 #63 18 FRT LIN VIN# JSKC6788
#64 18 FRT LIN VIN# JSKC6789 #65 18 FRT LIN VIN#JDJR6146
#66 14 FRT LIN VIN# ESFY1956 #67 14 FRT LIN VIN#ESFY1953
#68 19 FRT LIN VIN#LDLW2878 #69 19 FRT LIN VIN#LDLW2877
#70 19 FRT LIN VIN#LDLR1545 #71 19 FRT LIN VIN#LDLR1546

2. Covenants of Carrier. Carrier shall:

- a. Pick up assigned Milk routes at such times as Association shall direct, promptly transport and deliver daily (including Sundays and holidays) to such Plants as Association shall specify pursuant to an Association schedule, all Milk at Association member dairy farms within the State of Arizona which Association

may tender to Carrier for such transport and delivery. Carrier's transport and delivery shall conform to the routing established by the Association.

- b. Furnish at its own expense a driver or drivers and a "Truck Tractor" (including all fuel, maintenance, repairs and replacements thereto) as required to fully and safely carry out the obligations of Carrier hereunder.
- c. Keep its "Truck Tractors" in legal and safe operating condition and to comply with, adhere to, and abide by, all applicable laws and regulations governing the hauling of Milk and the operating of motor carriers upon those highways used in the performance of this Agreement, including but not limited to, those regulations issued by the federal or state Department of Transportation and Department of Agriculture.
- d. Pay at its own expense all fines and other charges or assessments in relation to any violation of laws, regulations, or ordinances applicable to the transportation of Milk, including but not limited to, the load weight limits set forth in Chapter 28, § 1100 of the Arizona Revised Statutes.
- e. AGREES TO HAUL IN COMPLIANCE WITH ALL APPLICABLE WEIGHT LIMIT LAWS AND REGULATIONS. CARRIER WILL ONLY BE COMPENSATED FOR NET MILK LOAD WEIGHTS UP TO THE COMBINED GROSS LOAD WEIGHT LIMIT OF 80,000 POUNDS. IF CARRIER LOADS QUANTITIES OF MILK THAT CAUSE THE COMBINED GROSS LOAD TO EXCEED 80,000 POUNDS, THEN CARRIER WILL NOT BE COMPENSATED FOR MILK WEIGHTS IN AN AMOUNT EQUAL TO THE AMOUNT OF COMBINED GROSS LOAD OVER 80,000 POUNDS.

The tractors that have obtained Arizona Heavy Haul Permits from ADOT will be allowed to haul the legal amount based on the permit obtained with no penalty for overweight.

- f. Pay at its own expense any license, tax, fee or charge required by Carrier by reason of its business operations hereunder.
- g. Require each Carrier driver to be trained and licensed as a Milk sampler in accordance with the standards of the Pasteurized Milk Ordinance, to attend and complete a UDA conducted class in proper milk hauling and sampling procedures, and to obtain a Milk samplers license before Carrier drivers are allowed to pick up Milk on their own. All drivers will be required to pass a verification of knowledge test on milk sampling and milk pick up procedures each year administered by the Association. CARRIER WILL NOT BE COMPENSATED FOR ANY LOAD HAULED BY AN UNLICENSED DRIVER AND WILL BE ASSESSED THE COST INCURRED BY UDA IN THE EVENT THAT IT IS REQUIRED TO PICK UP A CONTRACTED LOAD BY REASON OF CARRIER'S FAILURE TO PROVIDE A LICENSED DRIVER.
- h. Perform its obligations hereunder in accordance with the best accepted standards for hauling Milk and conform to all applicable sanitary and health requirements imposed by public authorities, including, but not limited to, the following:
 - (i) Take a Milk sample at each dairy farm at which Milk is picked up, following the sampling procedure as specified by the Arizona

Department of Agriculture and deliver such sample to the Association's designated laboratory.

- (ii) Obtain a Milk sampling permit from the Arizona Department of Agriculture.
 - (iii) Be equipped with all supplies and tools necessary to take Milk samples.
 - (iv) Properly vent tanker-trailer prior to loading at a dairy farm so as to prevent damage to tanker-trailer (such damage commonly referred to as "collapsing" a tanker-trailer) when necessary. In the event that a tanker-trailer is required to be offloaded at a dairy farm, it is the hauler's responsibility to properly vent the tanker-trailer prior to unloading.
 - (v) At any Plant, it is the receiver's responsibility to properly vent tanker-trailer prior to unloading milk.
- i. Promptly notify, with as much advance notice as possible, Association as to any time it is unable to perform its obligations hereunder.
 - j. Be liable for the loss of any Milk while transporting the same and for the loss to Association, if any, resulting from any cause, including but not limited to, Carrier's failure to accurately measure and record the pounds of Milk loaded at each dairy farm's holding tank, or loading the Milk in a manner that does not conform to the quality standards of the Association or the Arizona Department of Agriculture for Grade A raw milk
 - k. Carrier shall:

- (i) Carry adequate and proper insurance insuring the Milk being transported against any such loss;
- (ii) Compensate the Association for any loss resulting from Carrier's failure to accurately measure and record the pounds of Milk loaded at each dairy farm by an amount equal to the difference between the Federal Order value of the producer pounds of such Milk, as recorded by the Carrier, and the delivered scale weight in excess of 300 pounds of such Milk as received by the Association. Prior to assessing Carrier with the loss provided for herein, the Association shall provide Carrier with a copy of the records showing the basis for the assessment.
- (iii) Be assessed a \$25.00 administration fee for each such failure to accurately measure and record the pounds of Milk loaded at each member's dairy farm.
- (iv) Be assessed a \$50.00 administration fee for each lab sample that is not within the normal range of acceptable Butter Fat standards as a result of poor sampling by Carrier's employee.
- (v) Be assessed a \$100.00 administration fee for warm temperature samples greater than 4.5 degrees Celsius or 40 degrees Ferin height.
- (vi) Be assessed a \$25.00 administration fee for paper work not turned in on time, or not correctly recorded with explanation of wrong recordings (prior to 8:00am following the pickup date).

(vii) Hauler will pay for damages resulting from the mis-recording of the Producer number on a milk ticket invoice that has been entered into the Producer record file on the UDA computer system which has resulted in the wrong Producer getting credit for milk picked up from the Dairy. The penalty for such error will be ten percent (10%) of the total pounds error on the invoice, and will be deducted from hauler settlement for the month involved.

- l. Indemnify, defend and hold Association free and harmless from and against any and all claims, demands, liability, loss or damage in any way arising out of, or based upon, the business operations and services of Carrier under this Agreement, including but not limited to, violations of the load weight limits established by Chapter 28, § 1100 of the Arizona Revised Statutes. Failure on the driver's part to properly seal the tanker.

As to any other claims of liability, other than above described, Carrier shall defend, indemnify and hold harmless United Dairymen of Arizona, its officers, subsidiaries, affiliates, agents and employees from any claims, actions, liability or costs including attorney fees and other costs of defense, arising out of or in any way related to the work performed under this agreement, and arising from the sole or joint negligence of Carrier.

- m. The Carrier shall maintain in force for the duration of this agreement a Commercial General Liability and Automobile Liability policy(s) written on an occurrence basis with limits not less than \$5,000,000 per occurrence and \$5,000,000 in the aggregate naming the Entity, its employees, officials and agents

as an additional insured as respects to work of services performed under this agreement. This insurance will be primary and noncontributory over any insurance United Dairymen of Arizona may carry on its own. These limits can be satisfied by way of a primary and excess policy (umbrella).

Evidence of the above coverages issued by a company satisfactory to United Dairymen of Arizona shall be provided to the Entity by way of a certificate of insurance before any work of services commences. A 30 day notice of cancellation or material change in coverage clause shall be included. Failure to maintain the proper insurance shall be ground for immediate termination of this contract.

- n. Carrier shall provide and maintain Workers' Compensation coverage for its employees, officers, agents, or partners, as required by applicable workers' compensation law. Carrier shall provide a certificate of insurance to the Entity as evidence of coverage containing a 30 day notice of cancellation clause along with a waiver of subrogation in favor of United Dairymen of Arizona.
- o. Reimburse Association for any damage to any Truck Tractor or tanker-trailer provided Carrier by Association, provided said damage was caused by Carrier, its agents or employees.
- p. Take reasonable care of the running gear of any Truck Tractor or tanker-trailer provided Carrier by Association including, but not limited to, brakes, wheels, bearings, tires and lights, and promptly report damage and/or malfunctions to Association. Association shall have the right to periodically inspect the running

gear and Carrier shall be subject to the reimbursement provisions of 2.j. above regarding such running gear.

- q. Carrier will be responsible to inform Association when damage to tanker has occurred, and when none of the Carriers report damages to Association tankers, the total amount of repairs will be borne over all Carriers and Association equally each month to cover the total losses for all damage.
- r. Abide by Association policy that all drivers, be required to wear clean and neat clothing to present them selves in a professional manner and must have completely enclosed footwear.
- s. Carrier shall properly supervise and control all drivers performing services. Carrier shall comply with all applicable federal and state laws and regulations regarding its operation and shall not require or permit drivers or employees to operate any motor vehicles or equipment in a manner that is unsafe and/or not in compliance with such laws or regulations. Association shall provide employee with appropriate information, training, and safety equipment with respect to any hazardous substances or conditions to which they may be exposed at the work site. Association shall provide a safe work environment and include Carrier's drivers in all site-specific safety and health training programs that Association deems required. Except in the event of a life-threatening emergency, Association shall not cause or permit driver(s) to make any repairs to or alter Association's vehicles or equipment. Carrier and Association shall comply with all Occupational Safety and Health Administration ("OSHA") and Department of Transportation ("DOT") regulations.

- t. Carrier shall comply with all applicable federal, state and local laws and regulations concerning employment, including but not limited to: wage and hour, breaks and meal period regulations, the hiring and discharge of employees, Title VII and the FLSA. Carrier and Association shall provide a workplace free from discrimination and unfair labor practices.

3. Covenants of Association:

- a. Association shall establish the routing to which Carrier shall conform and shall:
 - 1. To the extent required by the business and operations of the Association, as determined solely by the Association, provide Carrier with up to five (5) local routes per day per contracted truck, each route consisting of approximately fifty thousand pounds (50,000 lbs.) of Milk on an annualized daily average basis, to be picked up and transported to the Plant(s) designated by Association in accordance with Paragraph 2(a) (ii) hereof.
- b. Supply Carrier with a suitable stainless steel bulk Milk tanker-trailer(s) for use by Carrier in picking up and transporting Milk for Association, with a milk hauling capacity of at least fifty thousand (50,000 lbs.); Association to bear all necessary and reasonable costs to operate and maintain such tanker-trailers(s), except as provided in provisions (j), (m), and (a) of Article 2 of this Agreement.
- c. Pay Carrier for all services performed by Carrier hereunder the 1st year of this contract a sum equal to [REDACTED] per each one hundred (100) pounds of Milk delivered hereunder, subject to the

limitations imposed by Paragraphs 2(e) and 4(m) hereof, payment to occur as follows:

- (i) For the first 15 days of the month, payment by the 27th day of that month.
- (ii) For the last half of the month, payment by the 15th day of the next month.
- (iii) Any charges due to the Association, including the charges specified in paragraphs 2(g) and 2(h) hereof, are due on the 15th of the month following the month in which such charges are incurred. All such charges will be deducted from payment due to the Carrier on the 15th of the month.
- (iv) **All rates are subject to change as needed due to route time and distance changes.**

d. Association shall be the shipper of all Milk tendered to Carrier under this Agreement.

4. Mutual covenants of the Parties.

- a. **This Agreement shall remain in effect for a term of 15 Months (Until Sept 30 2021), commencing on (July 1st 2020), unless terminated pursuant to provision (d) hereof, and shall continue in effect thereafter until notice of cancellation is given in writing by either party at least thirty (30) days prior to the effective date thereof.**
- b. This Agreement is subject to the condition precedent of Carrier obtaining any and all permits, licenses or bonds required from the State of Arizona to allow Carrier

to operate under the terms of this Agreement; and in the event carrier does not obtain any such required permit, license or bond within thirty (30) days from the date hereof, this Agreement shall terminate and be of no further force whatsoever.

- c. Carrier shall have full, complete and uncontrolled authority to exercise its own judgment and discretion as to the manner and method of performing each and every obligation assumed herein free of any direction by Association, except the right of the Association to compel performance by Carrier of its obligations assumed herein, including the obligation to provide the Association with accurate and complete paperwork to insure proper reporting to regulatory agencies and to enable the Association to discharge its obligations to its members and customers, and except the rights conferred by law upon one who has made a contract with an independent contractor; and Carrier disclaims possession of any rights in the Association, or its business or property except those rights to which Carrier, as an independent contractor, is entitled pursuant to this Agreement. Nothing herein shall be construed to create an employer-employee relationship between the parties.
- d. In the event of breach by Carrier of any obligation to be performed by Carrier, of any covenant or condition of the Agreement, Association shall have the right to terminate this Agreement by giving written notice to Carrier, which termination shall be effective on the next day following receipt of such notice, and Carrier shall forthwith return to Association any property of Association in its possession or under its control to such location as Association shall designate.

- e. The waiver by Association of any breach of any covenant or condition of the Agreement shall extend to the particular case only, and such waiver shall not be deemed to waive any subsequent breach of the same or any other covenant, condition or obligation of Carrier under the Agreement.
- f. This Agreement may not be assigned by either party without the prior written consent of the other.
- g. This Agreement contains all of the agreements between the parties, and this Agreement may be modified, amended, renewed or extended only by an instrument in writing executed by the parties hereto.
- h. This Agreement cancels, supersedes and replaces any other agreement, written or oral, that may exist between the parties.
- i. Any notice or notices provided for herein to be given by Association to Carrier shall be by electronic notification, in writing and delivered personally, or sent by certified United States mail, addressed to Carrier at [REDACTED] [REDACTED] Litchfield Park, Az. 85340-3032) or such other address, as Carrier shall designate in writing. Any notice or notices are to be given by Carrier to Association at Post Office Box 26877; Tempe, Arizona 85285-6877, or such other address as Association shall designate in writing.
- j. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto, their successors, administrators, legal representatives and assigns.
- k. If any section, paragraph, clause, sentence, phrase or any part of this Agreement is declared to be void, invalid, or of no effect by a court of law or arbitrator with jurisdiction over this Agreement, then the remaining sections, paragraphs,

sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect.

1. Carrier will be evaluated annually based on a monthly performance score card set up by Association in 2015' for contract years to follow and meet Association standards and must be met each year in order to have the Contract renewed.

Substandard performance may result in monetary reduction or loss of contract.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

UNITED DAIRYMEN OF ARIZONA

CARRIER

By [Redacted Signature]
Its, CHIEF EXECUTIVE OFFICER

By [Redacted Signature]
Its, President/CEO