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Title: **Excavators, Inc. and International Brotherhood of Teamsters (IBT), Excavating, Grading, Asphalt, Private Scavengers, & Automobile Salesmen Garage Attendants, Local 731 (2000)**

K#: **8581**

Employer Name: **Excavators, Inc.**

Location: **Chicago IL**

Union: **International Brotherhood of Teamsters (IBT)**

Local: **Excavating, Grading, Asphalt, Private Scavengers, & Automobile Salesmen Garage Attendants Local 731**

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Number of Workers: **1100**

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K 8581  
1,100 workers  
28 pp.

4/1/2000-3/31/2005

## EXCAVATORS INC. AGREEMENT

THIS AGREEMENT entered into this First Day of April, 2000, by and between Excavators, Inc. for and on behalf of itself, its member associations and their members who have assigned bargaining rights to their Association, and any Employer signatory to this Agreement both present and future or

EXCAVATORS INC.

8603 PYOTT ROAD LAKE IN THE HILLS, IL 60102

(hereinafter called EMPLOYER or EMPLOYERS), and EXCAVATING, GRADING, ASPHALT, PRIVATE SCAVENGERS AND AUTOMOBILE SALESROOM GARAGE ATTENDANTS LOCAL UNION NO. 731, affiliated with the International Brotherhood of Teamsters (hereinafter called the UNION). This Agreement shall be known as LOCAL UNION NO. 731 EXCAVATORS INC., AGREEMENT.

### WITNESSETH

1. The purpose of this Agreement is (a) to enter into a definite labor management contract covering the wages, hours, conditions of work and terms of employment in the relationship between Employer and employee; (b) to prevent strikes, lockouts and work stoppages; (c) to adopt suitable measures for the peaceful settlement of grievances and differences; (d) to secure to the members of the Association or other Employer sufficient capable employees; (e) to protect the economic and employment welfare of employees.
2. It is mutually understood and agreed that the following terms relating to the wages, hours and working conditions of workmen covered by this Agreement have been decided upon by means of collective bargaining, and that the following provisions will be binding upon the parties to this Agreement during the terms of this Agreement and any renewal period thereof.

### ARTICLE I - RECOGNITION AND SCOPE OF AGREEMENT

Section 1.1 **Geographic Coverage.** The geographic area is the area covered by I.B. of T. Local 731 within the jurisdiction of I.B. of T. JOINT COUNCIL NO. 25 AREA.

Section 1.2 **Recognition.** Employer recognizes the Union as the sole and exclusive bargaining agent with respect to rates of pay, hours of work, and all other conditions of employment for all employees covered by this Agreement.

Section 1.3 **Bargaining Unit.** Employees covered by this Agreement are all employees in the classifications of work covered by this Agreement, employed by the Employers in the contract territory and engaged in the work described in Section 1.4 hereof.

Section 1.4 **Work Covered.** Jurisdiction. This Agreement shall apply to employees in the classifications herein set forth in the performance of work involved in the following operations:

- a. **Heavy Construction:** Heavy construction is defined as constructing substantially in its entirety any fixed structure, other improvement or modification thereof, or an addition or repair thereto, including any structure or operation which is an incidental part of a contract thereof, including without limitation, railroads and street railway construction projects, sewers, water mains, grade separations, foundations, pile driving, piers, abutments, retaining highways, drainage projects, sanitation projects, aqueducts, irrigation projects, flood control projects, reclamation projects, reservoirs, water supply projects, water power development, hydroelectric development, duct lines, pipelines, locks, dams, dikes, levees, revetments, channels, channel cutoffs, intakes, dredging projects, jetties, breakwaters, docks, harbors, industrial sites, airports, excavation and disposal of earth rock.
- b. **Highway Construction Work:** Highway construction work is defined as all work ordinarily included in highway construction contracts, bridges, sewer and street grading, street paving, curb setting, sidewalks, etc., and landscaping on work where prevailing wage rules are in effect.
- c. Removal and disposal of rubbish from wrecking jobs.
- d. Snow removal.
- e. Hauling of cinders, slag, asphalt (including liquid asphalt), sand fill and all other types of fill on constructions jobs.
- f. Delivery to and spreading on the construction site or the road bed of any stabilized base material to be used as sub-surface, including but not limited to fill, Poz-O-Pac, aggregate materials, Bituminous aggregate materials, Cement aggregate materials, or any other trade name of base or paving material.
- g. Back filing.
- h. Digging.
- i. Leveling and grading.
- j. Street sprinkling and flushing.
- k. Concrete breaking.
- l. Pipeline work.
- m. Pavement marking and sealing.
- n. Construction, slag and sludge hauling or any other trucking in or out of steel mills.
- o. Hauling of salt.
- p. Asphalt plant in areas where it has been past practice.
- q. The hauling of recycled broken concrete and recycled asphalt.
- r. Concrete Pumper Trucks.

s. Concrete Crushing Plants.

t. Stockpiling in or around plants and yards of raw materials utilized in the manufacture of asphalt and concrete.

## **ARTICLE II – UNION SECURITY**

Section 2.1 ***Maintenance of Membership.*** Present employees who are members of the Union must, as a condition of employment, maintain such membership during the term of this Agreement to the maximum extent permitted under law.

Section 2.2 ***New Employees.*** New employees shall, as a condition of employment, become members of the Union to the maximum extent permitted under law, on the eighth day after the beginning of employment or after the execution date of this Agreement, whichever is later, and shall maintain such membership as a condition of continued employment.

Section 2.3 ***Enforcement.*** Any employee who refuses or fails to fulfill the obligations of Sections 2.1 or 2.2 above, shall forfeit his right of employment; and the Employer shall discharge such employee within three (3) working days of receiving written notice from the Union of the failure of an employee to fulfill said obligations; provided that the Union shall hold the Employer harmless for demands under this Section not in accord with Federal law.

Section 2.4 ***Additional Employees.*** When the Employer needs additional employees he shall give the Local Union equal opportunity with all sources to provide suitable applicants, but shall not be required to hire those referred by the Union. The names and addresses of all new employees shall be furnished to the office of the Union not later than the first pay period after their hiring.

## **ARTICLE III – SUBCONTRACTING**

Section 3.1 ***Effective May 1, 2001,*** the Employer shall utilize its own equipment to perform the work covered by this Agreement, provided the equipment is available, operative and suitable for the work available before utilizing other trucking services. This Section shall not apply if: (1) there are insufficient numbers of employees available to perform the work; (2) if sufficient number of employees fail to timely report for work after being notified to do so; or (3) insofar as the Employer may be obligated to comply with set aside minority business enterprises, women business enterprises, disadvantaged business enterprises or affirmative action provisions of the signatory Employer's construction contract, provided that such set-aside or affirmative action obligations are not enforced disproportionately for work covered by this Agreement relative to the Employer's remaining work under the construction contract that is subject to these obligations.

This provision shall apply only to the Employer's equipment actually present and available at each of its yards or barns and for work that is assigned to that yard or barn and is within a reasonable geographical distance of each yard or barn. Equipment that is unavailable due to breakdowns, maintenance, repair or upkeep is not considered operative under this provision.

Section 3.2(a) In order to protect the wages, working conditions and job opportunities of workmen employed under this Agreement, it is agreed that if the signatory contractor subcontracts or transfers any work on any construction project covered by this Agreement, such subcontract shall provide that the employees of such subcontractor are paid an amount equal to the Wages and Fringe Benefits paid to employees working under this Agreement. Such subcontract shall also require the subcontractor to furnish proof of compliance herewith. If the employees of such subcontractor are not paid as provided under this Article, the signatory contractor shall, upon three (3) working days notice, discontinue such subcontract for the duration of the construction project, and the violating subcontractor shall pay his employees working under this agreement the deficiency as damages.

Section 3.2(b) The Employer shall require any subcontractor to observe the economic equivalent of the wages, hours and working conditions of this Agreement. The subcontract shall further require the subcontractor to make payments to the Health and Welfare Fund and the Pension Fund in Articles IX and X of this Agreement. Such payments shall be made only for work performed on the particular project by the subcontractor's employees. Such payments shall be made to the same Trusts, in the same amounts, and upon the same terms and conditions as required of the signatory Employer under this Agreement.

Section 3.2(c) The Employer acknowledges that the Union ordinarily cannot determine whether the subcontractor is paying the wages, hours and other terms and conditions required under this Article. Therefore, the Employer agrees to provide all relevant documents and information necessary for the enforcement of this Article within three (3) days after receiving written notice from the Union. Should the Employer fail to provide such information, or should the subcontractor fail to make this information available for inspection by the Union, then the Employer shall remove the subcontractor by the close of business on the third day.

Section 3.2(d) Notwithstanding any terms in this Article to the contrary, should the Employer fail to remove a subcontractor whose continued use violates this Article, the Union may strike the project until such time as the Employer removes the subcontractor and provides the Union with a written notification of the removal.

Section 3.3 This Article shall be enforced so as to protect employment opportunities and to prohibit Employers from indirectly achieving lower labor costs through the subcontracting of bargaining unit work.

Section 3.4 All past practices contrary to the express conditions under this Article are null and void. No practice contrary to the terms of this Agreement shall hereafter be recognized without prior written notice to the Union, and prior written Agreement from the Union, regarding such practice.

#### **ARTICLE IV – PRE-JOB CONFERENCE**

Section 4.1 Upon receiving written request from the Union and before commencement of any job, an Employer shall respond in writing (via facsimile or letter form) to the Union's request for information regarding the Employer's requirements as to the number of employees, the probable starting date, duration of the job, working schedules and other matters affecting employees. If such response is deemed inadequate, the Union may require a formal pre-job conference. All contractors shall provide a list of subcontractors and owner-driver or drivers to the Local Union three (3) days prior to commencement of work.

Section 4.2 When a project is within the territory of more than one Local Union, the determination of the division of employees for representation purposes shall be made by an Agreement between the Local Union and the Employer, or Employers, involved. In the event the Local Unions and the Employer, or the Employers, are unable to reach such an Agreement, the issue shall be referred within five (5) days to Teamsters Joint Council No. 25. The Teamsters Joint Council No. 25 shall meet with the Employer, or Employers, involved to settle this dispute and their joint decision shall be final and binding on all parties concerned. If a contractor evades a pre-job conference, he automatically forfeits his right to the grievance procedure, and the Local Union may strike the project if a contractor fails to cooperate in said pre-job conference.

#### **ARTICLE V – NO STRIKES OR LOCKOUTS**

Section 5.1 In view of the fact that parties have provided for an orderly procedure for settling differences of opinions and disputes, the Union agrees that for the duration of this Agreement there shall be no strikes, except as otherwise herein provided, and the Company agrees that during the life of this Agreement there shall be no lockouts. The provisions of this Article shall not apply to any Company that refuses to follow the procedures outlined in Article VI.

#### **ARTICLE VI – GRIEVANCES AND ARBITRATION**

Section 6.1 All disputes or grievances arising out of work and operations under this Agreement shall be settled and resolved as provided in this Article, except as otherwise herein provided.

Section 6.2 A dispute or grievance not resolvable by the Foreman or Superintendent shall be first taken up between the Employer and a representative of the Local Union, having geographic jurisdiction within the contract territory, within seven (7) working days after the date of the occurrence which is the subject of the dispute or grievance, or no action shall be required.

Section 6.3 In the event that the grievance cannot be resolved within two (2) working days of the provisions of Section 6.2, it shall be reduced to writing and referred for conference and resolution by designated officials of the Union and the Association. In the event the Employer is not a member of an Association, the written grievance shall be submitted directly to the Joint Grievance Committee in accordance with this Article.

Section 6.4 In the event the grievance cannot be resolved by the provision of Section 6.3 within seven (7) working days after receipt of the Union and the Association of the written grievance, the written grievance shall be submitted immediately to the Joint Grievance Committee created in this Article.

Section 6.5 No action shall be required on employee complaints as to wages and working conditions, unless made within ten (10) working days of the supposed violation.

Section 6.6 Excavators Inc., and the Union shall together create and appoint a Joint Area Committee consisting of an equal number of members representing the Employers and the Union, but no less than two (2) from each group. Alternates may also be appointed. The Joint Area Committee shall, at its first meeting, formulate rules of procedure to govern the conduct of its proceedings.

Section 6.7 It shall be the function of the Joint Area Committee to resolve disputes or grievances, which cannot be settled under Section 6.3.

Section 6.8(a) No Employer shall sit on a panel of the Joint Area Committee which is hearing or considering a grievance or dispute arising from his own operations.

Section 6.8(b) All Union representatives on the panel of the Joint Grievance Committee shall be representatives or agents of Teamsters Local 731 who are familiar with this Agreement, provided, however, that no Union-designated member of the Joint Grievance Committee shall have been involved in the processing of the grievance prior to the hearing before the Joint Grievance Committee.

Section 6.9 When the Joint Area Committee by a majority vote decides a dispute or grievance; such decision shall be final and binding on all parties.

Section 6.10 When the Joint Area Committee is unable to decide a dispute or grievance, it may be submitted at the option of the moving party within thirty (30) days to an arbitrator jointly selected by the Committee from a panel of five (5) potential arbitrators provided by the American Arbitration Association and/or the Mediation and Conciliation Service. Each party shall alternately strike names from the list, the moving party striking first, until one arbitrator remains. The decision of the arbitrator shall be final and binding upon all parties.

Section 6.11 The expense of the arbitrator shall be jointly paid by the Employer and the Local Union between whom the grievance or dispute exists.

Section 6.12 The arbitrator shall have no authority to add to, detract from, or in any way alter the provisions of the Agreement.

#### **ARTICLE VII – JURISDICTIONAL DISPUTE**

Section 7.1 In the event of a jurisdictional dispute between the Unions party to this Agreement and another labor organization who is party to a Collective Bargaining Agreement with the Employer, the Employer or the Union shall request such Unions or labor organizations involved to send representatives to a mutually agreed location to meet to settle the dispute.

Section 7.2 The meeting referred to in Section 7.1 shall be held at a mutually agreed location within three (3) working days of the request for such a meeting by either of the disputing labor organizations, Unions, or the Employer, and shall be between the Employer and the representatives of the disputing Unions and labor organizations. At this meeting, the disputing Unions and labor organizations shall submit whatever evidence and arguments they contend to support their respective positions.

Section 7.3 Not later than twenty-four (24) hours after conclusion of the meeting referred to in Section 7.1 and 7.2 above, the Employer shall make a written assignment of said disputed work, and serve copies of same on all interested parties.

Section 7.4 Whenever the assignment made by the Employer in Section 7.3 above is not agreeable to the Unions or labor organizations, the provisions of this Agreement shall prevail until a jurisdictional award has been made by the proper *Jurisdictional Board of the International Unions of which the local disputing labor organizations are members*. Employers agree to abide by such jurisdictional award for that project, but there shall be no work stoppage while the settlement of the dispute is pending.

### ARTICLE VIII – WAGES

Section 8.1 Pursuant to Article VIII – Wages, Article IX – Health and Welfare and Article X – Pension Fund, effective June 1, 2000, the following hourly wage rates and health/welfare and pension contribution rates shall apply for Local Union No. 731 members.

#### **EFFECTIVE JUNE 1, 2000 – INCREASE OF \$1.10\* PER HOUR FOR ALL CLASSIFICATIONS**

\*There shall be an increase in Wages and/or Fringe Benefits (Health & Welfare Fund and Pension Fund) according to the following schedule. Allocation of these amounts between Wages and/or Fringe Benefit Funds shall be determined by the Local Union Executive Board thirty (30) days prior to the effective date of the increase.

#### ALLOCATION BREAKDOWN

WAGES .....	\$0.80
PENSION .....	\$0.20
HEALTH/WELFARE .....	\$0.00
TASK FORCE .....	\$0.10*

\*Effective July 1, 2000, Ten Cents (\$0.10) shall be allocated to the newly formulated Labor/Management Cooperation Committee that shall be known as the “Task Force” to be utilized to monitor and police the construction industry. The initial ten cents will be in effect throughout the duration of the Agreement.

Section 8.2 The following rates of hourly pay shall prevail during the period herein set forth and the trucks listed in this Section shall be classified and drivers paid on the following axle basis:

Work or services performed at the construction site which includes driving trucks to and from and the spreading on the construction site or the road bed of any base material to be used for such a sub-surface which shall include, but not be limited to fill, gravel, blacktop, cement, or Poz-O-Pac, and building, wrecking, excavating and renovation shall be covered by the hourly rates set forth as follows:

Section 8.3 Trucks listed in this Section shall be classified and drivers paid on the following axle basis:

**Classification:**

***Effective June 1, 2000***

Group 1 – 2 or 3 Axle Trucks .....	\$22.90
Group 2 – 4 Axle Trucks .....	\$23.15
Group 3 – 5 Axle Trucks .....	\$23.35
Group 4 – 6 Axle Trucks .....	\$23.55
Group 5 – Additional 20¢ Per Axle	

Bulk Tank Trucks

Dry Batch Trucks

Buses

Dump or Conveyor Trucks

Fuel Trucks

Grease Trucks

Low Boys

Service Trucks

Scissor Trucks

Telescope Trucks

Water Trucks

All Trucks Over 6 Axles

\*Effective July 1, 2000, Ten Cents (\$0.10) shall be contributed to the Teamsters Local 731 Labor/Management Cooperation Committee that shall be known as the "Task Force" to be utilized to monitor and police the construction industry. The initial Ten Cents (\$0.10) will be in effect throughout the duration of the Agreement.

\*There shall be an increase in Wages and/or Fringe Benefits (Health & Welfare Fund and Pension Fund) according to the following schedule. Allocation of these amounts between Wages and/or Fringe Benefit Funds shall be determined by the Local Union Executive Board thirty (30) days prior to the effective date of the increase:

Effective April 1, 2001* .....	\$1.00 per hour
Effective April 1, 2002* .....	\$1.00 per hour
Effective April 1, 2003* .....	\$1.00 per hour
Effective April 1, 2004* .....	\$1.00 per hour

Section 8.4 *Pit/Quarry Material Haulers Rates*. This Section shall be amended to incorporate the comparable hauling wage rate to be negotiated under the Area Wide Pit/Quarry Material Haulers Agreement by Construction Local Unions under the jurisdiction of I.B. of T. Joint Council No. 25, effective May 1, 2001, and thereafter until the expiration of this Agreement.

Except as provided above, persons performing all work described herein shall receive all wages, hours, benefits and working conditions provided under this Agreement.

Section 8.5 The classifications listed in this Section shall be paid on the following basis:

***Group 1.***

- A Frame Truck when used for transportation purposes
- Air Compressors and Welding Machines, including those pulled by cars, pickup trucks and tractors
- Ambulances
- Batch Gate Locker
- Batch Hopperman
- Car and Truck Washers
- Carry Alls
- Fork Lifts and Hoisters
- Helpers
- Mechanic Helpers and Greasers
- Oil Distributors, 2-Man operation
- Pavement breakers
- Pole Trailer, up to 40 feet
- Power Mower Tractors
- Self-Articulating End Dump
- Shipping and Receiving Clerks and Checkers
- Skipman
- Slurry Trucks, 2-Man operation
- Slurry Trucks, Conveyor Operated – 2 or 3 man operation
- Teamsters
- Unskilled Dumpmen
- Warehousemen and Dockmen
- Truck Drivers hauling warning lights, barricades, and portable toilets on the job site

***Group 2.***

Dispatcher

Dump Crets and Adgetors under 7 yards

Dumpsters, Track Trucks, Euclids, Hug Bottom Dump Turnapulls or Turnatrailers when pulling other than self-loading equipment or similar equipment under 16 cubic yards

Mixer Trucks under 7 yards

Ready-Mix Plant Hopper Operator

Winch Trucks, 2 Axles

***Group 3.***

Dump Crets and Adgetors 7 yards and over

Dumpsters, Track Trucks, Euclids, Hug Bottom Dump Turnatrailers or Turnapulls when pulling other than self-loading equipment or similar equipment over 16 cubic yards

Explosives and/or Fission Material Trucks

Mixer Trucks 7 yards or over

Mobile Cranes while in transit

Oil Distributors, 1-Man operation

Pole Trailer, over 40 feet

Pole and Expandable Trailers hauling material over 50 feet long

Slurry Trucks, 1-Man operation

Winch Trucks, 3 axles or more

Mechanic - \*Truck Welder and \*Truck Painter

\*These classifications shall only apply in areas here and when it has been a past area practice.

***Group 4.***

Asphalt Plant Operators in areas where it has been past practice

Dual-purpose vehicles, such as mounted crane trucks with hoist and accessories

Foreman

Master Mechanic

Self-loading equipment like P.B. and trucks with scoops on the front

Section 8.6 Drivers operating different types and sizes of equipment on the same day which they operate for two (2) hours or more shall be paid the rate governing the highest rated equipment operated for the entire day.

Section 8.7 The Association or Employer and employee agree to notify the Union representative when using new types of equipment not formerly used by his company. The Negotiating Committee of the Employers and the Unions shall meet to immediately negotiate the wage scale for same. The agreed rate shall be retroactive to the equipment's first day of use.

Section 8.8 An employee's pay shall start at whenever time the employee reports for work as instructed by the Employer, or as provided for in Article 12.3 and shall not stop until his truck is through with work, including filling with fuel and oil if requested by the Employer.

Section 8.9 All employees shall be paid weekly and no more than five (5) days shall be withheld. Employee's paycheck to be ready for him not later than quitting time on designated payday.

Section 8.10 The Employer shall list on each employee's check stub the amount of straight-time hours and the amount of overtime hours, as well as all deductions from the check.

Section 8.11 An employee who was injured on the job, and is sent home, or to a hospital, or who must obtain medical attention, shall receive pay at the applicable hourly rate for the balance of his regular straight-time shift on that day. An employee who has returned to his regular duties after sustaining a compensable injury who is required by the Employer's doctor to receive additional medical treatment during his regularly scheduled working hours shall receive his regular hourly rate of pay for the straight-time hours lost from work.

Section 8.12 It is agreed that no individual ready-mix trucks are to be operated other than those that are company-owned or operated.

**ARTICLE IX – HEALTH AND WELFARE**

Section 9.1(a) The Employer shall pay to the HEALTH & FUND, EXCAVATING, GRADING AND ASPHALT CRAFT, LOCAL UNION NO. 731, I.B. of T. (hereinafter called "HEALTH AND WELFARE FUND"), located at 1100 E. 31<sup>st</sup> Street, LaGrange Park, IL 60526, the sum of Four Dollars (\$4.00) per hour, effective June 1, 2000\*, for each hour worked by the employee covered by this Agreement.

\*There shall be an increase in Wages and/or Fringe Benefits (Health & Welfare Fund and Pension Fund) according to the following schedule. Allocation of these amounts between Wages and/or Fringe Benefit Funds shall be determined by the Local Union Executive Board thirty (30) days prior to the effective date of the increase:

Effective April 1, 2001* .....	\$1.00 per hour
Effective April 1, 2002* .....	\$1.00 per hour
Effective April 1, 2003* .....	\$1.00 per hour
Effective April 1, 2004* .....	\$1.00 per hour

Section 9.1(b) ***Penalty for Failure to Pay Health and Welfare.*** The Employer recognizes the necessity of making prompt Health and Welfare contributions, the possibility that employee's benefit standing will be placed in jeopardy if contributions are not timely made, and the concern of the Union that all eligible employees are covered by such contributions.

Whenever the Employer is delinquent in making payments to the Health and Welfare Fund, the Union may strike the Employer to force payments.

This provision shall not be subject to and is specially excluded from the grievance procedure (Article VI). Additionally, in the event the Employer has been found to be delinquent, the Employer shall be required to pay, in addition to the actual delinquency, twenty percent (20%) of the delinquent amount as liquidated damages, and accountant fees, attorney fees, and court costs.

**ARTICLE X – PENSION FUND**

Section 10.1(a) The Employer shall pay to the Local Union No. 731 EXCAVATORS AND PAVERS PENSION FUND (hereinafter called "PENSION FUND"), located at 1100 E. 31<sup>st</sup> Street, La Grange Park, IL 60526, the sum of Two Dollars and Eighty Cents (\$2.80) per hour, effective June 1, 2000, for each hour worked by the employee covered by this Agreement.

\*There shall be an increase in Wages and/or Fringe Benefits (Health & Welfare Fund and Pension Fund) according to the following schedule. Allocation of these amounts between Wages and/or Fringe Benefit Funds shall be determined by the Local Union Executive Board thirty (30) days prior to the effective date of the increase:

Effective April 1, 2001* .....	\$1.00 per hour
Effective April 1, 2002* .....	\$1.00 per hour
Effective April 1, 2003* .....	\$1.00 per hour
Effective April 1, 2004* .....	\$1.00 per hour

Section 10.1(b) The Employer shall also submit a Remittance Report in a form to be furnished by the Administrators of the Health and Welfare and Pension Fund showing the name of each employee employed during the period for which the report is made. The Remittance Form and required contributions shall be submitted each month to the Administrator of each Fund not later than the twentieth day of the month following the month for which contributions are due.

Section 10.1(c) The Employer agrees that it is bound by and is a party to the Trust Agreements creating the Health and Welfare Fund and the Pension Fund, and all prior and subsequent amendments thereto, as if it has signed the original copy of each of the said Trust Agreements, both of which said Agreements being incorporated herein by reference and made a part hereof; the Employer hereby designates as its representatives on the Board of Trustees of said Funds such Trustees as are named in said Agreements and Declarations of Trust, as Employer Trustees, together with their successors selected in the manner provided in said Agreements and Declarations of Trust, as they may be amended from time to time; and further, agrees to be bound by all action taken by said Employer Trustees regarding and pursuant to the said Agreements and Declarations of Trust as amended from time to time.

Section 10.1(d) ***Failure to Pay Pension.*** The Employer recognizes the necessity of making prompt Pension contributions when required, the possibility that employee's benefit standing could be placed in jeopardy if contributions are not timely made, and the concern of the Union that all eligible employees are covered by such contributions.

Whenever the Employer is delinquent in making required payments to the Pension Fund, the Union may strike the Employer to force required payments. This provision shall not be subject to, and is specifically excluded from, the grievance procedure (Article VI). If an Employer fails to pay any required contributions due in accordance with this Article, the Trustees of the respective Fund may assess the Employer twenty percent (20%) of the required contributions due as liquidated damages in addition to all reasonable attorney fees, accountant fees, and cost of collection.

## ARTICLE XI - CHECK-OFF

Section 11.1 Upon receipt of a written authorization from the employee on a form provided by the Union, the Employer agrees to deduct initiation fees, reinitiation fees, and monthly Union dues from the pay of each such employee in the amount and manner prescribed the Union in accordance with its Constitution and By-Laws, and shall remit same to the Union within ten (10) days from its collection.

Section 11.2 The Union shall indemnify, defend, and save the Company harmless against any and all claims, demands, suits, or other forms of liability that shall arise out of or by reason of action taken, or not taken by the Company for the purpose of complying with any provisions of this Article or reliance upon any list, notices, or assignments furnished under this Article.

## ARTICLE XII - WORKING HOURS AND OVERTIME

Section 12.1 Eight (8) continuous hours (not including meal period referred to in Article 12.10(a) shall constitute a workday. Forty (40) straight-time hours, Monday through Friday, shall constitute a workweek, without regard to the weekly pay period as established by the Employer.

Section 12.2(a) **Overtime.** Time and one-half (1½) shall be paid for all hours worked over eight (8) hours in any one day, and over forty (40) hours in any one week, Monday through Friday (and Saturday unless an employee works a Saturday as a make-up day as determined in this Section). Effective upon execution of this Agreement, if an employee calls off, voluntarily leaves work before the workday is concluded for any reason, or loses a day of work due to inclement weather or conditions beyond the control of the Employer, i.e., acts of God, lightning, tornadoes, fire, etc., during the Monday through Friday workweek, then Saturday shall be paid as a non-premium make-up day. Otherwise, Saturday shall be paid at the applicable overtime rate of time and one-half (1½) for all hours worked.

Section 12.2(b) **Make-Up Day.** If an employee calls off at his own initiative or loses a day or work due to inclement weather or conditions beyond the control of the Employer, i.e., acts of God, lightning, tornadoes, fire, etc., on a regular scheduled workday during the workweek and is put to work on Saturday as a make-up day, he shall be guaranteed eight (8) continuous hours of work at his applicable straight-time hourly rate of pay for that day.

Section 12.3 If an employee is ordered to start work by his Employer, Monday through Friday, he shall not receive less than eight (8) hours straight-time pay. If he starts work on Saturday, Sunday and Holidays, he shall not receive less than four (4) hours pay at the applicable hourly rate.

Section 12.4 Employees starting work after 12:00 Noon, shall be paid a Fifty Cents (\$0.50) per hour shift differential in addition to their straight-time hourly rate for all worked performed in a second shift.

Section 12.5 **Continuous Work Shift.** All hours continuously worked shall be deemed part of the same workday that commenced with the first hour worked, regardless if the work extends into the next calendar day. All hours in each workday after the eighth (8<sup>th</sup>) hour shall be paid at time and one-half (1½), except that all hours worked on a Sunday shall be paid at double-time.

**[Illustration:** If an employee works ten (10) hours, beginning 10:00 P.M. Monday and ending 8:00 A.M. Tuesday, he will be paid eight (8) hours straight-time and two (2) hours at time and one half (1½). If an employee works ten (10) hours, beginning 10:00 P.M. Sunday and ending 8:00 A.M. Monday, he will be paid six (6) hours straight-time and two (2) hours time and one half (1½), and two (2) hours double-time.]

**Section 12.6 *Show-Up/Report Time.*** The Employer not notifying the employee at least one (1) hour prior to reporting time that there will be no work that day, shall compensate the employee for one (1) hour of pay for reporting. If requested by the Employer, the employee must stay on the job to qualify for the one (1) hour of pay. All reporting time shall be paid at the applicable straight-time hourly rate for that day. The Employer may establish a call off system to provide notice to employees that no work is available.

**Section 12.7 *Inclement Weather.*** Employees who report to work shall receive not less than eight (8) consecutive hours pay, except in the cases of inclement weather or other conditions beyond the control of the Employer, i.e., acts of God, tornadoes, fire, etc., that directly affects the driver involved where the employee will be guaranteed four (4) hours pay and eight (8) hours pay if he works after the fourth (4<sup>th</sup>) hour. Inclement weather shall be defined to mean raining, snowing, or extreme weather conditions where the prime contractor is not permitted to work the job site.

**Section 12.8** The Employer shall have the option of implementing a four (4) day workweek only during a holiday week. The workday shall consist of ten (10) hours of work at the applicable straight-time hourly rate of pay. All hours worked in excess of forty (40) hours in any workweek or in excess of ten (10) hours in any one (1) workday shall be paid at the appropriate overtime rate of pay. The four (4) day workweek shall be utilized only for the abovementioned circumstances.

**Section 12.9 *Sunday Work.*** All work performed on any Sunday shall be paid at the applicable double-time rate.

**Section 12.10(a) *Meal Period.*** Each shift shall include an unpaid one-half (½) hour meal period.

**Section 12.10(b)** Any employee required to work through their meal period and does work through their meal period, shall be paid the overtime rate of time and one half (1½) for such time worked. All such time shall count towards the accrual of vacation benefits as per Article XVIII. Any such work performed during the meal period shall not be included in or counted as part of the work guarantees provided for in 12.3 and shall be excluded from hours worked when computing daily and weekly overtime pay.

**Section 12.10(c)** The one-half (½) hour meal period shall commence between the fourth (4<sup>th</sup>) and end of the sixth (6<sup>th</sup>) hour on all shifts.

### **ARTICLE XIII – GENERAL CONDITIONS**

**Section 13.1(a) *Seniority.*** Seniority, as the term is used herein, means the length of continuous service of any regular employee from the date of first employment by the Employer as hereinafter provided.

Section 13.1(b) New employees shall be regarded as probationary employees until they have acquired seniority rights. Probationary employees shall attain seniority rights when they have been actually at work in the employ of the Employer for a total of ninety (90) worked days or one hundred twenty (120) calendar days, whichever comes first. A probationary employee may be terminated prior to attaining seniority rights at the sole discretion of the Employer without recourse to the grievance and arbitration provisions of this Agreement. There shall be no responsibility for the re-employment of probationary employees if they are laid-off or discharged prior to attaining seniority rights. After ninety (90) worked days, or one hundred twenty (120) calendar days, whichever comes first, of employment as above defined, the names of such employees shall be placed on the seniority list as provided in Section 13.1(b) with a service credit of ninety (90) days, reverting back to the first day of hire. The Union shall receive a seniority list upon request.

Any employee covered by this Agreement who accepts a promotion to a salaried position with the Employer shall retain all previously accumulated seniority for a period of twelve (12) consecutive months.

Section 13.1(c) In case of layoff due to lack of work, employees shall be laid-off in reverse order of seniority, providing the senior employee is qualified to replace the laid-off employee.

Section 13.1(d) The re-hiring procedure shall be the reverse of the layoff procedure. When work increases, employees laid-off shall be notified to report to work in order of seniority.

Section 13.1(e) Failure by an employee to return to work within five (5) consecutive working days after notice or attempted notice, by phone or certified mail to the employee's last known phone number or address, and a copy being sent to the Local Union office, will result in loss of seniority rights. The Local Union office shall be notified by the Employer the same day as the employee. The five (5) consecutive days do not begin to run until the Union has been notified by the Employer.

The Union may furnish temporary drivers if requested to do so, until the laid-off employee shall report to work.

Section 13.1(f) If there are any breakdowns or shut-downs during the day, a man whose vehicle is broken down or whose operations are shut down shall go home for the completion of the workday and shall be paid as provided in Article XII; however, the Employer may assign him to perform other duties at his prevailing wage rate for that day. When a vehicle shall be out of service for more than that day, seniority shall prevail on the following day.

Section 13.1(g) Seniority shall be broken by discharge, voluntary quit, failure to report after five (5) working days as outlined in Section 13.1(e), or by layoff for twelve (12) consecutive months.

Section 13.1(h) Where employees have been scheduled the night before from the permanent location, and due to circumstances some jobs are cancelled, the Employer shall not be required to change the schedule for the following day. Seniority shall prevail on the next following day.

Section 13.1(i) Where the same Employer has more than one job in progress, working out of different garages or parking sites and at the starting time of the job, due to weather or other conditions beyond the Employer's control, the job is not able to work and no decision can be made as to when the job can go, such layoffs shall not exceed more than two (2) working days. After the expiration of two (2) days, the employee according to his company seniority shall be entitled to transfer to another job of the Employer if there are employees of less seniority working for the Employer on another job. When an employee requests a transfer to another job-site such employee shall stay at said job-site until its completion or until employee is laid-off.

Notwithstanding the foregoing, the Employer may permit a transfer immediately upon the layoff without waiting two (2) days.

Section 13.2 All employees domiciled at the same location will be assigned to work according to their seniority provided they are qualified. This will not affect the daily starting time.

Section 13.3 When hauling blacktop or similar material, drivers shall have a platform to stand on to roll their tarps at the plant.

Section 13.4 If the employee is directed to take a truck to a job site or a garage and leave it at same; he shall be compensated until he returns to his original start.

Section 13.5 Shift seniority shall prevail on selection of shifts in truck shop providing the mechanics have equal qualifications.

Section 13.6 Employee when told to park on a job-site, the Employer shall, with all possible means, have the employee living nearest to the job-site report for work there.

Section 13.7 Employers may offer work opportunities to non-regular employees under this Agreement to perform snow removal, emergency or other specialized work under this Agreement from December 1 to April 1 of each year. Hours worked by employees under this provision shall not be treated as hours worked for vacation, holiday or other seniority purposes under this Agreement. Employees who decline any such work opportunities will not, as a consequence, suffer any loss or break in seniority under Article XIII of this Agreement. Hours worked under this provision shall not be deemed as counting for any seniority provision under this Agreement including satisfying the probationary provisions and the holiday and vacation provisions of the Agreement.

Section 13.8 ***Referral System.*** The Union shall establish and maintain a referral system for the purpose of providing qualified employees to Employers under this Agreement. Signatory Employers may, at their option, contact the Union when they are in need of new employees, but shall be free to hire employees from any source. The Employer may refuse to employ any individual referred by the Union under this provision and such refusal may not be submitted as a grievance under the grievance/arbitration provision of this Agreement.

#### **ARTICLE XIV – LABOR WORK**

Section 14.1 Chauffeurs are exempt from all labor work except when necessary to clean their truck body or to maintain the safety of their vehicles in the event of an emergency or breakdown. Chauffeurs may be required to act as flagman upon request by the Employer. Chauffeurs shall operate one vehicle only unless said vehicle is replaced with another. Chauffeurs shall maintain their trucks at the job-site for loading until quitting time. Supply and service truck drivers shall load and unload their vehicles, except where doing so, will infringe on the work of other trades or where the equipment or material to be loaded or unloaded is unreasonably heavy and help is needed, it will be supplied.

Section 14.2 *Dump Man*. A dump man shall be employed when there are two (2) or more pieces of equipment covered by this Agreement engaged in the hauling and dumping of dirt, blacktop, road gravel, and other solid filling material. This paragraph shall only apply in areas where and when it has been a past area practice.

Section 14.3 The Employer shall equip all trucks and tractors with workable heaters and defrosters.

#### **ARTICLE XV – NON-DISCRIMINATION**

Section 15.1 The Employer and the Union agree they will continue not to discriminate against any individual with respect to their hiring, compensation, terms or conditions of employment because of such individual's race, color, religion, sex, national origin, or age (to the extent prohibited by law), nor will they limit, segregate or classify employees in any way to deprive any individual employee of employment opportunities because of their race, color, religion, sex, national origin, or age (to the extent prohibited by law).

#### **ARTICLE XVI – EMPLOYMENT TERMINATION**

Section 16.1(a) *No Discrimination*. There shall be no discrimination on the part of the Employer against any employee nor shall any employee be discharged for any Union activity not interfering with the proper performance of their work.

Section 16.1(b) The Employer shall not discharge any employee because of race, creed, national origin, sex, or age; nor because the employee has demanded the wages, overtime or other benefits to which this Agreement entitles them.

Section 16.2 *Discharge or Suspension*. The Employer shall not discharge or suspend any employee without just cause.

#### **ARTICLE XVII – HOLIDAYS**

Section 17.1(a) Effective April 1, 2000, qualified employees covered by this Agreement shall receive eight (8) hours straight-time pay as holiday pay (without working) for the following holidays: New Year's Day, Decoration Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

To qualify for holiday pay, an employee must fulfill all of the following requirements:

- A. Must have earned a vacation the previous year OR have worked thirty-one (31) days in the current year before the holiday, or have seniority as stated in Article 13; and,
- B. Work the scheduled work-day before and the scheduled work-day after the holiday; and,
- C. Work one (1) day in the holiday week.

Section 17.1(b) If any of the abovementioned holidays in Section 17.1(a) are worked, double-time shall be paid for all hours worked in addition to the holiday pay. If a paid holiday falls within an employee's vacation period, he shall receive his vacation pay plus eight (8) hours' pay at straight-time for the holiday or, by Agreement with Employer prior to taking his vacation, an extra day's vacation with pay in lieu of the holiday pay. If any of the above listed holidays fall on a Saturday, it shall nevertheless be a paid holiday under this Article.

#### **ARTICLE XVIII – VACATIONS AND LEAVES OF ABSENCE**

Section 18.1(a) Any employee having worked 900 straight-time hours, or more, in any one (1) calendar year for the same Employer, shall be entitled to one a (1) week vacation with pay. In computing straight-time hours of such an employee who has so worked, no more than forty (40) straight-time hours shall be credited in any one (1) week.

Section 18.1(b) Any employee having worked 900 straight-time hours, or more, in any one calendar year for the same Employer, and who shall have worked for the said Employer at least 900 straight-time hours in each of two (2) preceding years, without a break in seniority, shall be entitled to a two (2) week vacation with pay.

Section 18.1(c) Any employee having worked 900 straight-time hours, or more, in any one calendar year for the same Employer, and who shall have worked for the said Employer at least 900 straight-time hours in each of ten (10) preceding years, without a break in seniority, shall be entitled to a three (3) week vacation with pay.

Section 18.1(d) Any employee having worked 900 straight-time hours, or more, in any one calendar year for the same Employer, and who shall have worked for the said Employer at least 900 straight-time hours in each of twenty (20) preceding years, without a break in seniority, shall be entitled to a four (4) week vacation with pay.

Section 18.1(e) The contractor is to pay the employee his or her vacation when he or she has earned it without taking time off, or not later than December 31<sup>st</sup> of the year he or she earned it. Vacations shall be taken at such time as agreed upon between the Employer and the employee.

Section 18.1(f) In computing 900 straight-time hours in this paragraph referred to, an employee hurt or sick due to working conditions and being covered under compensation insurance and having actually worked 750 hours, shall be credited, for vacation purposes only, with such additional straight-time hours he would have worked in the anniversary year had he not been injured, but not more than forty (40) hours per week.

Section 18.1(g) *Leave of Absence*. Leave of absence shall be granted to employees by mutual agreement between the Employer, the Local Union and the employee. Such leave, when granted, shall be in writing by the Employer and the employee each signing three (3) copies, one of which shall be retained by each of them and the third copy to be retained by the Union.

Section 18.1(h) Contractors signatory to this Agreement who may be either the prime contractor or co-venture contractors who perform cross country pipeline work, as covered by the National Pipeline Agreement, shall for the purpose of computing vacation and holiday pay combine hours worked on both pipeline work and construction work covered by the local area agreement.

Section 18.1(i) *Holidays and Vacations* – (In Pipeline Agreement) Cook County Illinois Zone No. 4 in National Pipeline Agreement. Vacations and Holidays: All contractors performing work under the terms and conditions of this Agreement, who are signatory to the Local Heavy and Highway Agreement shall pay holidays and vacations to their employees covered by this Agreement at the rate of Fifty Cents (\$0.50) per hour for all hours worked in addition to the applicable hourly rate for the classifications of work being performed by the employee.

#### **ARTICLE XIX – OWNERS-DRIVERS**

Section 19.1 Owner-drivers operating their own vehicle are covered within the terms and conditions of this Agreement as to hours, wages, overtime, supplemental allowances, working conditions, and other provisions to the extent permitted by law. Separate checks for wages and equipment shall be issued by the contractor to such owner-drivers, and the contractor shall maintain proper books and records for inspection by the Union to determine the contractor's compliance with the provisions of this Agreement including the specific provisions of this Article. The books and records (including payroll records, time card, owner-driver operating expenses, etc.) shall be produced at the Union headquarters upon reasonable notice.

Section 19.2 Detailed statements shall be furnished by the contractor to such owner-drivers at least once a month, designating all such owner-driver's income and expenses for the month. Any money due at this time must be paid.

Section 19.3 Each Employer will identify each and every such owner-driver to the Union regardless of whether or not the vehicle is licensed in the name of the driver or the lessee.

Section 19.4 The Employer reserves the right to control the manner, means and details of and by which such owner-driver performs his services, as well as the ends to be accomplished.

Section 19.5 Such owner-drivers shall receive the full wages, supplemental allowances, and all working conditions provided in this Agreement and shall receive as a minimum salary after payment of all direct and indirect operating expenses, a sum equal to the wages and benefit amounts he would have received for the equivalent time worked on that date as an hourly-rated driver. If the contractor does not provide satisfactory evidence that an owner-driver is paid as provided under this Article, the contractor shall upon three (3) working days notice, discontinue use of such owner-driver.

Section 19.6 Such owner-driver shall have complete freedom to purchase fuel, oil, grease, tires, tubes, etc., including repair work, at any place where efficient service and satisfactory products can be obtained at the most favorable prices.

Section 19.7 The Employer agrees not to enter into any Agreement or contract with such owner-driver, either individually or collectively, which in any way conflicts with any of the terms or provisions of this Article. Any such Agreement shall be null and void.

Section 19.8 In no event shall such owner-drivers' wages be paid on a percentage basis.

Section 19.9 For hours worked under the Area Wide Pit/Quarry Material Haulers Agreement and for leased vehicles, the Employer shall deduct from the owner-drivers pay and shall remit to the appropriate fringe benefit funds, the amounts designated for coverage under Articles IX and X of this Agreement.

### **ARTICLE XX – MECHANIC'S TOOLS**

Section 20.1 If a mechanic's tools are lost or stolen through fire or burglary on the Employer's premises or job-site, the Employer will replace the tools at no cost to the mechanic. The mechanic shall be paid in accordance with the inventory list that is on file with the Employer prior to the loss. The employee shall update the inventory list annually.

Section 20.2 The Employer shall furnish, for use by the mechanic, the necessary sockets over half (½) inch drive at no cost to the mechanic.

Section 20.3 There must be at least two (2) employees on duty in the shop at all times during the night shift.

### **ARTICLE XXI – JOB ACCESS BY UNION STEWARDS**

Section 21.1 The Business Representative shall have the privilege to visit any job to enforce the provisions of this Agreement.

Section 21.2 The Employer recognizes the right of the Union to designate job stewards. If requested by the Local Union, the steward shall have preference for overtime, Saturday, Sunday and Holiday work and shall be the last man laid-off at the conclusion of a project, provided he is qualified to perform the work. The authority of job stewards so designated by the Union shall be limited to, and shall not exceed, the following duties and activities:

- a) The investigation and presentation of grievances with his Employer or the designated company representative in accordance with the provisions of the Collective Bargaining Agreement.
- b) The transmission of such messages and information which shall originate with, and are authorized by the Local Union, or its Officers, provided such messages and information:
  - 1) have been reduced to writing; or,
  - 2) if not reduced to writing, are of a routine nature and do not involve work stoppages, slow-down, refusal to handle goods or any other interference with the Employer's business.

- c) Job stewards have no authority to take strike action or any other action interrupting the Employer's business.
- d) The Employer recognizes these limitations upon the authority of job stewards and shall not hold the Union liable for any unauthorized act by the job stewards. The Employer in so recognizing such limitations, shall have the authority to impose discipline, including discharge, in the event the steward has taken unauthorized strike action, slow-down, or work stoppage in violation of this Agreement, and any action taken by the Employer shall not be subject to the grievance and arbitration procedure.

Section 21.3 A job steward shall be a competent working Teamster.

Section 21.4 A steward shall not leave the job during working hours unless authorized by the Employer.

#### **ARTICLE XXII – PROTECTION OF RIGHTS**

Section 22.1 It shall not be a violation of this Agreement, and it shall not be cause for discharge or disciplinary action in the event an employee refuses to enter upon any property involved in a lawful primary labor dispute, or refuses to go through or work behind any lawful primary picket line, including the lawful primary picket line of Unions party to this Agreement, and including lawful primary picket lines at the Employer's place of business. In the application of this Article it is immaterial if the labor dispute or picketing is illegal if the labor dispute or picketing is primary.

Section 22.2 This Article in its entirety is excluded from the application of the grievance procedure of this Agreement.

#### **ARTICLE XXIII – SEPARATE AGREEMENTS**

Section 23.1 It is agreed that the Employer or the employee and the Union will not be asked to make any written or verbal agreement which may conflict with this Agreement.

Section 23.2 There shall be no waiver of fringe benefit fund contributions and participation under this Agreement unless ratified by the Trustees of such fringe benefit funds.

#### **ARTICLE XXIV – COMPLIANCE WITH SAFETY AND TRAFFIC LAWS**

Section 24.1 No employee shall be responsible for the purchase or display of City or State License tags or plates. Overloading of trucks shall be the responsibility of the Employer unless it is due to employee's negligence. If any employee is arrested or is issued a summons because of faulty equipment, failure to display tags or licenses, overloading or overweight, he shall not be required to surrender his chauffeurs license in lieu of bond, and if he is thereby to appear in court on behalf of his Employer, he shall be reimbursed for lost time at his regular straight-time hourly rate of pay unless it is due to employee's negligence.

### **ARTICLE XXV – ECONOMIC LOSS**

Section 25.1 Employees covered by this Agreement receiving higher wages or more attractive working conditions than those provided for in this Agreement, shall suffer no reduction by virtue of this Agreement, and shall be paid the increase in wages herein negotiated.

### **ARTICLE XXVI – INSPECTION PRIVILEGES**

Section 26.1 Authorized representatives of the Union shall have access to the Employer's establishment at all reasonable times for the purpose of adjusting disputes, investigating working conditions, collecting dues, and ascertaining compliance with this Agreement which shall include the right to inspect and audit those specific payroll records, time cards and sheets as may relate to a particular grievance or grievances alleging non-payment or improper payment of wages, health and welfare or pension contributions. Such records shall be produced at a place mutually agreed upon.

Section 26.2 Employers shall keep a permanent daily payroll record of all employees and of hours worked by employees employed on a time basis showing starting and quitting time. Notwithstanding the limitations of Section 1 above, such records effective June 1, 1991, shall be preserved for a period of not less than three (3) years and shall be subject to examination by the Union, but the Employer shall have the right to be present.

### **ARTICLE XXVII – EMERGENCIES**

Section 27.1 In case of emergencies such as floods, heavy snowfalls, fires, or other disasters, it shall be permissible for the Employer to require employees to work additional time in the same day at the applicable rate for that day, provided there is at least a four (4) hour break in employment.

Section 27.2 It is understood and agreed that the above provision applies only in the event of emergencies and is not applicable where the job regularly demands more than one (1) shift.

### **ARTICLE XXVIII – SALES AND TRANSFERS – SCOPE OF OBLIGATION**

Section 28.1 This Agreement shall be binding upon the parties hereto, respective successors, administrators, executors, assigns and legal representatives; in the event the Employer's business or operation or part thereof, is sold, leased, transferred or taken over by any means whatsoever, including but not limited to sale, transfer, lease, succession, merger, consolidation, assignment, receivership, bankruptcy proceedings, or operation of law, or taken or absorbed by a parent company or a subsidiary company of this Agreement for the life thereof. The Employer shall not use any leasing device to evade this Agreement. Nothing in this Agreement shall limit or restrict the right of an Employer to cease its business or operation.

Section 28.2(a) In the event an Employer buys out the business or operations of another Employer and operates it as a separate legal entity, then the seniority of the employees shall continue on the same basis as it existed prior to the occurrence of said buy-out.

Section 28.2(b) In the event an Employer buys out another Employer covered by this Agreement and merges operations of the bought-out Employer into his own, the seniority of the employees shall be established as follows:

- i. In the event the acquiring Employer has bought-out or merged with another solvent Employer who is covered by this Agreement, the seniority of the employees of both Employers shall be merged within their seniority units in accordance with their dates of hire with their respective Employers, to the extent of the acquiring Employer's need as to qualifications and number of employees. This provision shall apply only as to merged operations within the same Local Union's jurisdiction.
- ii. In the event the bought-out Employer is solvent, the employees of such Employer who are retained shall be placed at the bottom of the seniority list as a group listed in accordance with their previous seniority standing. The acquiring Employer need retain such employees of the bought-out Employer only to the extent of his need as to qualifications and number.

#### **ARTICLE XXIX – CONFORMITY TO LAW – SAVING CLAUSE**

Section 29.1 If any provision or the enforcement or performance of any provision of this Agreement is or shall at any time be contrary to law, then such provision shall not be applicable or enforced or performed, except to the extent permitted by law. If at any time thereafter such provision or its enforcement or performance shall no longer conflict with the law, then it shall be deemed restored in full force and effect as if it had never been in conflict with the law.

Section 29.2 If any provision of this Agreement or the application of such provision to any person or circumstances shall be held invalid, the remainder of this Agreement or the application of such provision to other persons or circumstances, shall not be affected thereby.

Section 29.3 If any provision of this Agreement or the application of such provisions to any person or circumstances shall at any time be contrary to law, then the parties shall meet to negotiate a substitute provision which shall remain in effect until the expiration of the Agreement or until the affected provision is restored pursuant to Section 1 above. Should the parties bargain to impasse over the substitute provision either or both may impose economic sanctions in support of their position and neither the grievance and arbitration provisions of this Agreement nor the no strike-no lockout provision shall be applicable.

#### **ARTICLE XXX – UNIFORM DRUG/ALCOHOL ABUSE POLICIES**

Section 30.1 The Union recognizes that the Employers of Teamsters are required to meet the regulations established by more than one governmental agency.

It is agreed that Employers adopting the CISCO "Uniform Drug/Alcohol Abuse Program" required by State and Federal Drug Free Workplace Acts, or other policies required to meet the regulations established by the Federal Department of Transportation or the Illinois Department of Transportation, shall not be in conflict with the Area Construction Agreement, Joint Council No. 25.

It is further understood that policies adopted by Employers that are in excess of governmental regulations shall be subject to the Grievance Procedure established in Article VI of this Agreement.

**ARTICLE XXXI – LABOR/MANAGEMENT COOPERATION COMMITTEE**

Section 31.1 Effective July 1, 2000, a jointly trusteeed Labor/Management Cooperation Committee shall be established under the provisions of Section 302(c) of the Labor Management Relations Act. The Committee shall be known as the "Task Force" and shall undertake such actions as are appropriate under Section 302(c)(9). The Task Force shall be jointly funded by the Employers and the Union, each contributing Ten Cents (\$0.10) per hour for each hour worked under this Agreement. The President of Teamsters Local Union No. 731 shall appoint two (2) committee members to serve as trustees and there shall be two (2) Employer/Management Trustees appointed.

**ARTICLE XXXII – MOST FAVORED NATIONS CLAUSE**

Section 32.1 In the event any Teamster Construction Local Union under the jurisdiction of I.B. of T. Joint Council No. 25 enters into or permits any contract terms or conditions of employment, including wage rates and work rules, with any other Employer performing work of the type covered by this Agreement, then any Employer working under this Agreement shall be entitled to implement any or all such more favorable terms or conditions. The Union will be given notice of the implementation of any more favorable terms. International Agreements or Project Labor Agreements are excluded from this provision, provided that such agreements are available to all Employers working under this Agreement.

**ARTICLE XXXIII – WORK CONTINUATION PROGRAM**

Section 33.1 In an effort to maintain a positive labor relations environment and a competitive Union construction market in the Metropolitan Chicago Area, Excavators Inc., the Contractor Members of the Builders Association of Greater Chicago (BAGC), Chicago Outer Belt Contractors Association (COB), Illinois Road Builders Association (IRBA), Lake County Contractors Association (LCCA), and Underground Contractors Association (UCA), represented by Mid-America Regional Bargaining Association (MARBA), their collective bargaining representative, and Teamsters Joint Council No. 25, as follows:

1. The parties agree to exchange contract proposals at least ninety (90) days prior to the expiration date of the contract.
2. The parties agree to meet on a regular basis, to be determined, at least thirty (30) days before expiration.
3. After the expiration date, and for thirty (30) days following, the parties will meet Mondays, Wednesdays, and Fridays for a designated period of time, to be determined, until an Agreement is reached.
4. Any time after expiration date an Agreement is reached, it shall be retroactive back to the day after expiration.
5. If after thirty (30) days from expiration no Agreement is reached, the Union retains the right to strike.

**ARTICLE XXXIV – DURATION AND TERMINATION**

Section 34.1 This Agreement shall become effective on April 1, 2000, and shall remain in full force and effect until and including March 31, 2005. After March 31, 2005, this Agreement shall be renewed automatically for periods of one (1) year unless either Excavators Inc., the Employer or the Union gives written notice to the other of a desire to modify, amend or terminate same at least sixty (60) days prior to the expiration of any such period.

IN WITNESS WHEREOF the parties have hereunto set their hands this 15<sup>th</sup> day of MARCH, 2002.

**AGREED:**

**FOR EXCAVATORS INC.:**

**FOR THE UNION:**

EXCAVATING, GRADING, ASPHALT  
PRIVATE SCAVENGERS, AUTOMOBILE  
SALESROOM GARAGE ATTENDANTS,  
LINEN AND LAUNDRY DRIVERS LOCAL  
UNION NO. 731 affiliated with the International  
Brotherhood of Teamsters

BY: David M. Snelten  
David M. Snelten, President

BY: William Woldman  
William Woldman, President

BY: T. J. Hancock  
Terrence J. Hancock, Secretary-Treasurer

## ADDENDUM TO THE EXCAVATORS INC. AGREEMENT

THIS ADDENDUM TO THE TEAMSTERS LOCAL UNION NO. 731 EXCAVATORS INC. AGREEMENT (EFFECTIVE APRIL 1, 2000 TO MARCH 31, 2005) IS MADE BY AND BETWEEN EXCAVATORS INC. FOR AND ON BEHALF OF ITSELF, ITS MEMBER ASSOCIATIONS AND THEIR MEMBERS WHO HAVE ASSIGNED BARGAINING RIGHTS TO THEIR ASSOCIATION, AND ANY EMPLOYER SIGNATORY TO THIS AGREEMENT BOTH PRESENT AND FUTURE (HEREINAFTER CALLED EMPLOYER OR EMPLOYERS), AND TEAMSTERS LOCAL UNION NO. 731 AGREE TO AMEND AS PROVIDED BELOW, ALL OF THE OTHER TERMS AND CONDITIONS OF THE EXCAVATORS INC. AGREEMENT SHALL REMAIN UNCHANGED.

### ARTICLE VIII - WAGES

#### SECTION 8.4 - AREA WIDE PIT/QUARRY MATERIAL HAULER RATES

AMEND TO INCLUDE ADDITION AS FOLLOWS:

THE EMPLOYER SHALL OBSERVE THE FOLLOWING PROCEDURE WITH RESPECT TO WORK PERFORMED UNDER THE AREA WIDE PIT/QUARRY MATERIAL HAULERS AGREEMENT:

1. PRIOR TO THE COMMENCEMENT OF EACH CONSTRUCTION SEASON, BUT IN NO EVENT LATER THAN APRIL 15<sup>TH</sup> OF EACH YEAR, THE EMPLOYER SHALL OFFER EVERY DRIVER THAT HAS WORKED UNDER THIS AGREEMENT THE OPPORTUNITY TO PERFORM WORK COVERED UNDER THE AREA WIDE PIT/QUARRY AGREEMENT. ALL WORK PERFORMED UNDER THE AREA WIDE PIT/QUARRY AGREEMENT SHALL BE COMPENSATED ONLY AT THE RATES OF PAY AND OTHER CONDITIONS COVERED BY THE AREA WIDE PIT/QUARRY AGREEMENT FOR SUCH WORK.
2. DRIVERS SHALL, AT THE TIME OFFERED, ACCEPT OR DECLINE THE ABOVE OPPORTUNITY IN WRITING, WHICH SHALL BE AVAILABLE AT ALL TIMES FOR INSPECTION BY THE UNION. SUCH ACCEPTANCE OR REFUSAL SHALL REMAIN EFFECTIVE FOR THE ENTIRE CONSTRUCTION SEASON.
3. DRIVERS THAT ACCEPT THE ABOVE OPPORTUNITY SHALL BE DISPATCHED IN ORDER OF SENIORITY ACCRUED UNDER THE EXCAVATORS INC. CONTRACT TO PERFORM WORK, IF AND TO THE EXTENT AVAILABLE, UNDER THE AREA WIDE PIT/QUARRY AGREEMENT.

4. IF AN INSUFFICIENT NUMBER OF DRIVERS ACCEPT THE ABOVE OPPORTUNITY TO MEET THE EMPLOYER'S NEED FOR MATERIAL HAULING DRIVERS, IT SHALL NOT BE A VIOLATION OF THIS AGREEMENT FOR THE EMPLOYER TO SUBCONTRACT SUCH WORK, BUT ONLY TO THE EXTENT IT LACKS A SUFFICIENT NUMBER OF VOLUNTEER DRIVERS AND SUBJECT TO LIMITATIONS UNDER THE AREA WIDE PIT/QUARRY AGREEMENT.

5. THIS ADDENDUM RELATES ONLY TO DRIVERS EMPLOYED UNDER THE EXCAVATORS INC. CONTRACT EXCEPT AS EXPRESSLY PROVIDED HEREIN, NOTHING IN THIS ADDENDUM LIMITS OR ALTERS THE EMPLOYER'S RIGHTS UNDER THE AREA WIDE PIT/QUARRY AGREEMENT.

**ARTICLE XII - WORKING HOURS AND OVERTIME**

SECTION 12.10(b)

ADD TO LAST SENTENCE OF EXISTING LANGUAGE:

ANY SUCH WORK PERFORMED DURING THE MEAL PERIOD SHALL NOT BE INCLUDED IN OR COUNTED AS PART OF THE WORK GUARANTEES PROVIDED FOR IN SECTION 12.3 AND SHALL BE EXCLUDED FROM HOURS WORKED WHEN COMPUTING DAILY AND WEEKLY OVERTIME PAY.

**ARTICLE XXXII - MOST FAVORED NATIONS CLAUSE**

AMEND TO READ AS FOLLOWS:

IT IS HEREBY AGREED BY AND BETWEEN EXCAVATORS INC. AND TEAMSTERS LOCAL UNION NO. 731, THAT ANY EMPLOYER WHO ELECTS TO WORK UNDER THE TERMS AND CONDITIONS OF ANOTHER MORE FAVORABLE COLLECTIVE BARGAINING AGREEMENT, PURSUANT TO ARTICLE XXXII MOST FAVORED NATIONS CLAUSE, MUST COMPLY WITH ALL TERMS OF SAID MORE FAVORABLE AGREEMENT, INCLUDING APPLICABLE WAGES RATES, FRINGE BENEFIT FUND CONTRIBUTIONS AND WORK RULES.

EXCEPT AS PROVIDED IN THIS ADDENDUM, ALL OTHER TERMS AND CONDITIONS OF THE TEAMSTERS LOCAL UNION NO. 731 EXCAVATORS INC. AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT FOR THE DURATION OF SAID AGREEMENT.

THE PARTIES HAVE SIGNED THIS ADDENDUM BY THEIR AUTHORIZED REPRESENTATIVES ON THE DATE INDICATED BELOW.

**AGREED:**

DATED: 03/15/02

**FOR THE EMPLOYERS:**

EXCAVATORS INC.  
8603 PYOTT ROAD  
LAKE IN THE HILLS, IL 60102

BY: David M. Snelten  
DAVID M. SNELTEN, PRESIDENT

**FOR THE UNION:**

EXCAVATING, GRADING, ASPHALT,  
PRIVATE SCAVENGERS, AUTOMOBILE  
SALESROOM GARAGE ATTENDANTS,  
AND LINEN AND LAUNDRY DRIVERS  
LOCAL UNION NO. 731, AFFILIATED  
WITH THE INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS

BY: William Woldman  
WILLIAM WOLDMAN, PRESIDENT

BY: T. Hancock  
TERRENCE J. HANCOCK SEC.-TREAS.