

This agreement is entered into on 1/17, 2024, by and between the Mid-America Regional Bargaining Association (“MARBA”), Excavators, Inc. (“Excavators”), and Locals 179, 301, 330, 673, 705 and 786, affiliates of the International Brotherhood of Teamsters.

WHEREAS, the parties negotiated a labor agreement effective June 1, 2023, through May 31, 2027;

WHEREAS, the labor agreement contemplates that the Unions will draft an Owner/Driver Agreement for Owner/Driver consideration and potential execution;

WHEREAS, the parties agreed in Article 3.2(c) of the labor agreement to draft a side letter setting forth the procedures for certain pension fund remittances of Owner/Drivers; and

WHEREAS, the parties having met to discuss said procedures in order to implement the provisions of Article 3.2 (c) of the parties labor agreement, which are fully incorporated into this side letter, the parties agree as follows.

#### **Owner/Driver Benefit Contributions**

- The Labor Management Cooperation Committee referenced in the subsequent paragraphs shall be abbreviated as LMCC. The LMCC referenced herein is identified in Article 33 of the MARBA/Excavators labor agreement.
- A Local Union will assign an LMCC ID Number to every Owner/Driver upon signing the Owner/Driver Agreement. There shall only be one Owner/Driver Agreement made available to Owner/Drivers that sets forth the basis for the Employer’s obligation to make pension fund contributions on behalf of an Owner/Driver. (see attachment A). The LMCC ID Number will begin with the designated Local Union number (e.g., 301-###). The Employer has no obligations set forth in any other Owner/Driver agreement previously entered into by a Local Union.
- The assigned LMCC ID Number must be used on all Pension Fund reports and contributions made by an Employer pursuant to these procedures provided the Employer has been provided with such LMCC ID Number.
- The assigned LMCC ID Number will also be provided by the Local Union to the LMCC and MARBA/Excavators. The Employer’s obligation shall only apply to the scope of work and geographic jurisdiction under the MARBA/Excavators labor agreement.

## **Pension Contributions for MARBA/ Excavators Hours**

- An Employer may be designated as a pay agent by an Owner/Driver by mutual agreement of the Employer and Owner/Driver, solely for the purposes of making pension contributions only for work performed that is covered by the MARBA/Excavators labor agreement. If an Employer is designated as a pay agent, in the manner prescribed by the MARBA/Excavators labor agreement, the Employer shall remit pension fund contributions to the LMCC. Nothing herein shall prevent an Owner/Driver from making such contributions on its own. Accompanying the pension fund contributions will be a report, to be prepared and made available by the LMCC that contains the required Owner/Driver information. In the event an Employer agrees to be designated as a pay agent by an Owner/Driver the following shall apply:
- It is the responsibility of the Owner/Drivers to provide their LMCC ID Number on all invoices to the Employer hiring the Owner/Driver. A failure of the Owner/Driver to provide their LMCC ID Number on an invoice to the Employer for work covered by the MARBA/Excavators labor agreement shall not subject the Employer to any penalties, including a claim by the LMCC and/or a Local Pension Fund for pension contributions under the Owner/Driver agreement.
- The Employer must report covered hours worked by the Owner/Drivers on the Employer's projects to the LMCC on a monthly basis.
- The Employer's payments of Owner/Driver pension contributions shall be due by the 20<sup>th</sup> of the month following the Employer's receipt of the Owner/Driver's invoice for payment.
- The Employer must provide the following information on a monthly report to the LMCC:
  - LMCC ID Number for whom pension contributions are submitted;
  - Hours worked by the LMCC ID Number; and
  - Amount remitted for the LMCC ID Number (based on total hours worked times the contribution rate then in effect in the Owner/Driver agreement, see Schedule A).
- The monthly Pension Fund contribution report and pension payment for work performed that is covered by the MARBA/Excavators labor agreement will be sent to the LMCC.
- The LMCC will disburse pension contributions to the designated Local Union's affiliated Pension Fund ten (10) business days after receipt or such other period required to ensure the actual payment of the pension contributions. Failure of the LMCC to disburse the pension contributions to the designated Local Union's affiliated Pension Fund within the ten (10) business days shall not subject the Employer to any penalties.

- The designated Local Union's affiliated Pension Fund (and not the LMCC) shall enforce the collection of all Owner/Driver Pension contributions under the policies of the Pension Fund.
- Disputes between an Owner/Driver and an Employer over an invoice(s) or any other demand for payment shall toll the obligation of the Employer to make pension fund contributions as a pay agent on behalf of the Owner/Driver until such time as the dispute is resolved.
- To the fullest extent permitted by law, and with the exception of a failure to make timely contributions, the Union shall indemnify and hold harmless the Employer or Subcontractor from all claims regarding pension fund remittance, including claims concerning employee classification under the Illinois Employee Misclassification Act or under similar law or regulation.
- No Employer-Employee relationship is created in the event the Employer and Owner/Driver mutually agree to designate the Employer as a pay agent solely for the purpose of making pension fund contributions. Owner/Drivers shall not be considered employees of the Employer. The remittance of pension contributions by Employers on behalf Owner/Drivers shall be done in accordance with the Owner/Driver Collective Bargaining Agreement and the MARBA/Excavators labor agreement and for no other reason. Employers are not a party to the Owner Driver Agreement which prescribes wages, hours, and terms of conditions of employment of the Owner/Drivers. The relationship between the Employers and Owner/Drivers is based on a contractor and sub-contractor relationship and not that of an employer and employee relationship.

### **Health and Welfare Contributions**

- The Employer shall have no obligation to submit either reports or contribution payments for Owner/Driver Health and Welfare contributions it being understood that the obligations of this agreement and the labor agreement concern pension contributions only, notwithstanding an Owner/Driver's separate obligation it may undertake for itself to make Health and Welfare contributions.
- If applicable, Health and Welfare contributions must be remitted by the Owner/Driver on a monthly basis to the designated Local Union's affiliated Health and Welfare Fund.
- The Owner/Driver Health and Welfare contributions shall be remitted by the Owner/Driver on the regular monthly contribution form used by the designated Local Union's affiliated Health and Welfare Fund.
- The monthly Health and Welfare Fund contribution report and payment must be sent by the Owner/Driver directly to the designated Local Union's affiliated Health and Welfare Fund.

- All eligibility and coverage decisions shall be governed by the designated Local Union's affiliated Health and Welfare Fund.
- The designated Local Union's affiliated Health and Welfare Fund shall enforce the collection of Owner/Driver contributions under the policies of the Health and Welfare Fund.

**SCHEDULE A**

**Pension Fund Contribution Rates Under Owner/Driver Agreement**

Effective June 1, 2023, \$10.00 per hour


Effective June 1, 2024, \$10.00 per hour

Effective June 1, 2025, \$10.50 per hour

Effective June 1, 2026, \$11.00 per hour

  
John Healy  
Craft Committee Chair on behalf of  
MARBA

1/17/2024  
Dated

  
Dave Snelten  
On behalf of Excavators, Inc.

2/05/2024  
Dated

  
Mike Haffner  
On behalf of  
Chicago Teamsters Construction Labor/Management Cooperation Committee

1-16-2024  
Dated