

This is Exhibit "K" to the Affidavit of Greg R. May  
sworn before me this 15<sup>th</sup> day of October 2019

*Linda E. Murphy*

A Notary Public in and for the State of Missouri



LINDA E. MURPHY  
My Commission Expires  
August 13, 2021  
Jackson County  
Commission #13406172



IT IS ORDERED as set forth below:

Date: October 11, 2019

Paul W. Bonapfel  
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

In re:	)	Chapter 11
JACK COOPER VENTURES, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 19-62393 (PWB)
Debtors.	)	(Jointly Administered)

**ORDER AUTHORIZING THE DEBTORS TO ENTER  
INTO THE PENSION PLAN AGREEMENT AND RELEASE**

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Jack Cooper Ventures, Inc. (0805); Jack Cooper Diversified, LLC (9414); Jack Cooper Enterprises, Inc. (3001); Jack Cooper Holdings Corp. (2446); Jack Cooper Transport Company, Inc. (3030); Auto Handling Corporation (4011); CTEMS, LLC (7725); Jack Cooper Logistics, LLC (3433); Auto & Boat Relocation Services, LLC (9095); Axis Logistic Services, Inc. (2904); Jack Cooper CT Services, Inc. (3523); Jack Cooper Rail and Shuttle, Inc. (7801); Jack Cooper Investments, Inc. (6894); North American Auto Transportation Corp. (8293); Jack Cooper Transport Canada Inc. (8666); Jack Cooper Canada GP 1 Inc. (7030); Jack Cooper Canada GP 2 Inc. (2373); Jack Cooper Canada 1 Limited Partnership (3439); and Jack Cooper Canada 2 Limited Partnership (7839). The location of the Debtors' corporate headquarters and service address is: 630 Kennesaw Due West Road NW, Kennesaw, Georgia 30152.

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), (a) authorizing the Debtors to enter into the Pension Plan Agreement and Release (attached hereto as **Exhibit 1**), and (b) granting related relief, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Pension Plan Agreement and Release is the product of arm’s-length and good faith negotiations by and among the Debtors, New Jack Cooper, and the CSPF, and entering into

---

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Motion.

the Pension Plan Agreement and Release and performance thereunder is in the best interests of the Debtors' estates.

3. The terms of the Pension Plan Agreement and Release are hereby approved.

4. Pursuant to sections 105 and 363 of the Bankruptcy Code, the Debtors are authorized to enter into the Pension Plan Agreement and Release and perform thereunder.

5. Nothing in this Order shall restrict, impair or modify the rights of any party in interest to object to the amount of any claim filed by CSPF in the Debtors' bankruptcy cases.

6. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a), the Bankruptcy Local Rules for the Northern District of Georgia, and the Complex Case Procedures are satisfied by such notice.

7. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

8. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

9. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order, except as set forth in the Pension Plan Agreement and Release.

END OF ORDER



Prepared and presented by:

/s/ Sarah R. Borders

Sarah R. Borders

Georgia Bar No. 610649

Leia Clement Shermohammed

Georgia Bar No. 972711

Britney Baker

Georgia Bar No. 625752

**KING & SPALDING LLP**

1180 Peachtree Street NE

Atlanta, Georgia 30309

Telephone: (404) 572-4600

Email: sborders@kslaw.com

Email: lshermohammed@kslaw.com

Email: bbaker@kslaw.com

-and-

Kelley A. Cornish (admitted *pro hac vice*)

New York Bar No. 1930767

Brian S. Hermann (admitted *pro hac vice*)

New York Bar No. 2810232

**PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON LLP**

1285 Avenue of the Americas

New York, New York 10019

Telephone: (212) 373-3000

Email: kcornish@paulweiss.com

Email: bhermann@paulweiss.com

*Counsel for the Debtors in Possession*

**Exhibit 1**

**Pension Plan Agreement and Release**

## AGREEMENT AND RELEASE

THIS AGREEMENT is made by and among, each intending to be legally bound, the Central States, Southeast and Southwest Areas Pension Fund (“**Pension Fund**”), Jack Cooper Transport Company, Inc. (“**JC**”) and Auto Handling Corporation (“**AHC**” and together with JC, “**Old JC**”), JC Buyer Company, Inc. (“**New JC**”), and, solely for purposes of Sections 6.2 and 6.6, Solus Alternative Asset Management LP on behalf of itself and each of its managed funds and accounts (“**Initial Investor**”) and certain of its and their affiliates and transferees as described in such section (Old JC, New JC, the Pension Fund and, solely for purposes of Sections 6.2 and 6.6, the Initial Investor are collectively referred to herein as the “**Parties**,” and each a “**Party**”).

A. The Pension Fund is a multiemployer pension plan within the meaning of 29 U.S.C. §§ 1002(37) and 1301(a)(3).

B. JC and AHC are corporations organized under the laws of the State of Delaware.

C. New JC is a corporation organized under the laws of the State of Delaware.

D. Old JC is currently signatory to the 2015 National Master Automobile Transporters Agreement (“**NMATA**”), under which Old JC is required to make contributions to the Pension Fund on behalf of certain of its employees.

E. Old JC failed to remit any contributions to the Pension Fund with respect to the June 2019 billing period, which began May 26, 2019.

F. On July 25, 2019, the Parties finalized a term sheet (the “**Term Sheet**”) that described the terms and conditions related to Old JC’s and New JC’s participation in the Pension Fund. Under the Term Sheet and the subsequently executed Pension Plan Treatment Agreement, each Party has agreed (subject to certain contingencies and conditions precedent) to support Old JC’s Restructuring (as defined below) to the extent commercially reasonable.

G. On August 5, 2019, the trustees of the Pension Fund voted to terminate Old JC's participation in the Pension Fund retroactively effective to May 26, 2019 (the start of the June 2019 billing period). Accordingly, Old JC and its controlled group effected a complete withdrawal from the Pension Fund (within the meaning of 29 U.S.C. § 1383) on May 26, 2019.

H. On August 6, 2019, Old JC, along with certain related entities, commenced jointly administered voluntary cases under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Georgia (the "Bankruptcy Court") to implement a restructuring (the "Restructuring") that the parties anticipate will involve the sale pursuant to Section 363 of the Bankruptcy Code (the "Sale Transaction") of all, or substantially all, of Old JC's assets to New JC, which is a third-party and newly created entity that has not previously participated in the Pension Fund.

I. On August 6, 2019, the Parties entered into that certain Pension Plan Treatment Agreement to express to each other their mutual support and commitment in respect of the Restructuring and to agree that, in connection with the Restructuring, Old JC will permanently cease to have an obligation to contribute to, and completely withdraw from, the Pension Fund on or before the consummation of the Sale Transaction with New JC, and that the Parties will consummate the transactions contemplated by the Term Sheet by, among other things, entering into the Pension Fund's participation agreement whereby New JC commences participation in the Pension Fund as a New Employer under the Pension Fund's hybrid plan rules, and this Agreement, which contains additional provisions concerning New JC commencing participation in the Pension Fund as a New Employer and also provides New JC, the Initial Investor and affiliated parties the releases contemplated by the Term Sheet.



J. In connection with the Sale Transaction, New JC will offer employment, effective immediately following the closing of the Sale Transaction, on terms set forth under the Modified CBA, to substantially all of Old JC's International Brotherhood of Teamsters affiliates (collectively, "Union")-represented employees who were participating in the Pension Fund immediately prior to the Sale Transaction.

K. Pursuant to 29 U.S.C. § 1391(c)(5), the Pension Fund adopted an alternative method for determining an employer's allocable share of unfunded vested benefits ("**Alternative Method**"), and the Pension Benefit Guaranty Corporation approved such Alternative Method effective October 14, 2011 ("**Alternative Method Date**"), and such Alternative Method became part of Appendix E to the Pension Fund's plan document (the "**Plan**").

L. Pursuant to the Alternative Method, on or after the Alternative Method Date an employer that has never been an "Old Employer," as that term is defined in the Plan, may become a "New Employer," as that term is defined in the Plan, by commencing an obligation to contribute to the Pension Fund (such participation in the Pension Fund as a New Employer is hereinafter referred to as participation in the "**Hybrid Plan**") at rates established in a collective bargaining agreement ("**CBA**").

M. On [DATE], Old JC entered into an agreement with the Union which modified the NMATA (the "**Modified CBA**") to provide that New JC would participate in the Pension Fund as a New Employer and contribute to the Hybrid Plan an amount of \$150 per week per covered employee from the closing date of the Sale Transaction through and including December 31, 2024. In connection with the Sale Transaction, New JC is obligated to assume, as of the closing date of the Sale Transaction the Modified CBA (the "**Sale Closing Date**" refers to the specific



date on which the Sale Transaction closes, which shall be the same date on which New JC assumes the Modified CBA);

NOW THEREFORE, in consideration of the mutual promises and agreements contained herein, the parties agree as follows:

**Article 1 – Old JC Withdrawal from the Pension Fund; Adjustable Benefits.**

1.1 The Parties agree that, effective May 26, 2019, Old JC permanently ceased to have an obligation to contribute to, and has completely withdrawn from, the Pension Fund and that New JC shall have no obligation or liability with respect to Old JC's participation in the Pension Fund, including Old JC's withdrawal liability. Notwithstanding the foregoing, New JC shall nonetheless be required to remit the Special Contribution described in Article 2 of this Agreement.

1.2 Notwithstanding Old JC's withdrawal from the Pension Fund as described in Section 1.1, the Pension Fund will not curtail, reduce, eliminate or otherwise adversely affect any benefit that Old JC's Union participants in the Pension Fund (including current employees or former employees eligible for or receiving benefits from the Pension Fund) would otherwise be eligible to receive from the Pension Fund, including, without limitation, any "adjustable benefits" or any accrued vested pension benefits; provided, however, that subsequent to the Sale Closing Date employees will earn future benefits in accordance with the terms of the Plan and the Modified CBA (including the new contribution rates set forth therein). Further, nothing contained in this Agreement shall limit the Pension Fund's rights to curtail, reduce, eliminate or otherwise adversely affect any benefit that Old JC's participants in the Pension Fund (including current employees or former employees eligible for or receiving benefits from the Pension Fund) would be eligible to receive from the Pension Fund (including, without limitation, any "adjustable benefits", or any accrued vested pension benefits) subsequent to the Sale Closing

Date due to any circumstance that would otherwise allow the Pension Fund to do so (other than the circumstances arising exclusively from the Restructuring itself).

**Article 2 – Special Contribution Obligation of New JC and Benefit Restoration Commitment of the Pension Fund**

2.1 New JC shall, on or before the 18-month anniversary of the Sale Closing Date, pay a special contribution to the Pension Fund equal in amount to the aggregate amount of contributions not paid by Old JC (or which would have been paid by Old JC but for the termination of its participation in the Pension Fund) for work performed from May 26, 2019 through the Sale Closing Date (the “**Special Contribution**”), plus interest calculated as follows: (a) with respect to the period beginning on the date the contributions were due (or would have been due from Old JC but for the termination of its participation in the Pension Fund) and ending on the day prior to the Sale Closing Date, interest shall be computed at an annualized rate of 4.93%; and (b) with respect to the period beginning on the Sale Closing Date and ending on the date the Special Contribution is actually paid, interest shall be computed at the greater of: (i) an annualized interest rate equal to two percent (2%) plus the prime interest rate established by JPMorgan Chase Bank, NA for the fifteenth (15th) day of the month for which the interest is charged, or (ii) an annualized interest rate of 7.5%. The Special Contribution obligation shall be secured by a lien on New JC’s assets junior to liens in favor of New JC’s lenders and other liens permitted to be incurred under New JC’s financing agreements.

2.2 Promptly after full and timely payment of the Special Contribution and all accrued interest, the Pension Fund shall retroactively credit any benefit accruals that the Pension Fund did not grant on account of (a) any Old JC contribution delinquencies or (b) Old JC’s discontinuation of participation in and/or withdrawal from the Pension Fund, in each case, in

respect of individuals who were Old JC's employees on or prior to the Sale Closing Date, whether or not such individuals enter New JC's employ.

**Article 3 – New JC's Participation in the Hybrid Plan as a New Employer**

3.1 Effective as of the Sale Closing Date, New JC shall commence participation in the Pension Fund as a New Employer at a contribution rate of \$150 per week per covered employee as established by the Modified CBA and shall enter into the Pension Fund's participation agreement attached hereto as Exhibit A (the "**Participation Agreement**"), which such Participation Agreement shall at all times be read in conjunction with, and interpreted in a manner consistent with, this Agreement. The Parties acknowledge and agree that Sections 5 and 6 of the Participation Agreement shall not be construed to prevent New JC and the Union from bargaining for a cessation of New JC's obligation to contribute to the Pension Fund at the expiration of the Modified CBA and Guarantee Period (as defined below), subject to the requirements of Sections 5 and 6 of the Participation Agreement. New JC's employees participating in the Pension Fund pursuant to the Modified CBA will earn future benefits under the Pension Fund based on such contribution rate in accordance with the terms of the Pension Fund's Hybrid Plan. New JC agrees to be bound by, and comply with, the Pension Fund's trust agreement (the "**Trust Agreement**"), the Plan, the Participation Agreement, and all rules and policies of the Pension Fund, in each case to the extent not inconsistent with this Agreement. In addition, the Pension Fund shall not be bound by the Modified CBA to the extent the Modified CBA contains terms contrary to those contained in this Agreement.

3.2 New JC's participation in the Pension Fund during the entire Guarantee Period (as defined below) shall be pursuant to the terms of the Qualifying New ("Hybrid Method") Employers Schedule contained in Appendix M of the Plan, and New JC shall enter into a CBA



(or a series of CBAs) that (a) includes an obligation to contribute to the Hybrid Plan and which embodies such requirements, (b) expires on the last day of the Guarantee Period (the relevant provisions of the initial collective bargaining period shall cover a period of five years), and (c) covers all of the work including, without limitation, job classifications and locations, covered under Old JC's NMATA (and all supplements and addendums thereto).

3.3 For each of the calendar years 2020 through 2024 (as well as for a prorated portion of calendar year 2019) ("**Guarantee Period**"), New JC's contribution base units ("**CBUs**") shall be at least 68,619 per plan year (prorated for 2019) ("**Guaranteed CBUs**").<sup>1</sup> The amount of Guaranteed CBUs is subject to adjustment as set forth in Sections 3.8 and 3.10 of this Agreement.

3.4 During the Guarantee Period, New JC's employees that participate in the Pension Fund shall not participate in any 401(k) or other pension plan established by New JC or contributed to by New JC.

3.5 If the actual CBUs during the Guarantee Period are less than the Guaranteed CBUs for the Guarantee Period, New JC shall remit to the Pension Fund additional contributions in order to meet the Guaranteed CBUs for the Guarantee Period ("**Additional Contributions**"). CBUs in excess of the Guaranteed CBUs for any plan year shall be credited toward any other plan year in which the actual CBUs are less than Guaranteed CBUs. The dollar amount of the Additional Contributions owed by New JC to the Pension Fund in order to meet the Guaranteed CBUs for the Guarantee Period shall be calculated as follows: the net difference between the Guaranteed CBUs and the actual CBUs for New JC for the Guarantee Period, multiplied by \$150. By way of example, if the actual CBUs are less than the Guaranteed CBUs by 100 CBUs

---

<sup>1</sup> The amount of Guaranteed CBUs was calculated as 85% of two times the CBUs that Old JC reported for the period December 30, 2018 through June 29, 2019 as follows  $(.85 * (2 * 40,364))$ .

for the Guarantee Period, then the Additional Contributions owed by New JC would be \$15,000 (100 CBUs multiplied by \$150).

3.6 Except as otherwise provided in this Agreement, the Additional Contributions which New JC must remit to the Pension Fund shall be remitted by New JC such that it is received in full by the Pension Fund on or before the second anniversary following the end of the Guarantee Period (*i.e.*, December 31, 2026). By way of example, if New JC failed to meet the Guaranteed CBUs for the entire Guarantee Period, New JC's Additional Contributions shall be due in full on or before the second anniversary following the end of the Guarantee Period. Any and all Additional Contributions due under this Agreement that New JC fails to remit when due shall be deemed to be delinquent contributions due under the terms of the Plan and 29 U.S.C. § 1145, and the Pension Fund shall be entitled to all remedies available under 29 U.S.C. § 1132(g)(2).

3.7 Old JC and New JC understand and agree that any Additional Contributions owed under this Agreement will not be attributable to any particular participant or group of participants in the Pension Fund, and shall not result in any additional benefit accruals.

3.8 In the event that (a) New JC (or any member of New JC's controlled group, determined pursuant to the objective tests under 26 C.F.R. §1.414(b) or §1.414(c)), or (b) any person, or group of persons together, that directly or indirectly, within the meaning of 26 C.F.R. § 1.414(c)-4, has a 51% or greater ownership interest in New JC, and acting alone or with New JC (or any member of New JC's controlled group, determined pursuant to the objective tests under 26 C.F.R. §1.414(b) or §1.414(c)), acquires at least a 51% interest in any trade or business (within the meaning of 29 U.S.C. § 1301(b)(1)) which participates in the Pension Fund and which, at any time before the acquisition, conducted any operations (regardless of location) of



the type covered by any of the CBAs that Old JC was a party to during any part of January 1, 2013 through the Sale Closing Date ("Ownership Transaction"), New JC agrees that the amount of Guaranteed CBUs for each plan year in the Guarantee Period subsequent to the plan year of the Ownership Transaction will be increased by 85% of the CBUs attributable to the acquired trade or business for the plan year prior to the plan year of the Ownership Transaction. For the plan year in which the Ownership Transaction occurs, the increase to the Guaranteed CBUs shall consist of adding 85% of the CBUs attributable to the acquired trade or business for the plan year prior to the plan year of the Ownership Transaction, multiplied by the number of weeks in the plan year of the Ownership Transaction subsequent to the Ownership Transaction, divided by the total number of weeks in the plan year of the Ownership Transaction. For purposes of meeting the Guaranteed CBUs, the CBUs of an acquired trade or business shall be counted toward meeting the Guaranteed CBUs only with respect to CBUs accruing in weeks subsequent to the Ownership Transaction. By way of example, if the Guaranteed CBUs on January 1 for the plan year in question is 100 CBUs and on September 30 of such plan year an Ownership Transaction occurs and the CBUs attributable to the acquired trade or business for such plan year is 100 CBUs, then the Guaranteed CBUs for such plan year shall be 121.25 CBUs  $= ((100 \times 9) / 12) + (((85\% \times 100) + 100) \times 3) / 12$ .

3.9 The contribution rate for the acquired trade or business in an Ownership Transaction shall be the higher of \$150 per week or the rate in effect prior to the acquisition (including any required contribution rate increases).

3.10 In the event that (a) New JC (or any member of New JC's controlled group, determined pursuant to the objective tests under 26 C.F.R. §1.414(b) or §1.414(c)), or (b) any person, or group of persons together, that directly or indirectly, within the meaning of 26 C.F.R.

§ 1.414(c)-4, has a 51% or greater ownership interest in New JC, and acting alone or with New JC (or any member of New JC's controlled group, determined pursuant to the objective tests under 26 C.F.R. §1.414(b) or §1.414(c)), acquires or acts as lessee (or sublessee) of at least 50% of the assets used in any covered operations of any trade or business (within the meaning of 29 U.S.C. § 1301(b)(1)) that participates in the Pension Fund ("Asset Transfer Transaction"), New JC agrees that the amount of Guaranteed CBUs for each plan year in the Guarantee Period subsequent to the plan year of the Asset Transfer Transaction will be increased by 85% of the CBUs attributable to the operations related to the Asset Transfer Transaction for the plan year prior to the plan year of the Asset Transfer Transaction. For the plan year in which the Asset Transfer Transaction occurs, the increase to the Guaranteed CBUs shall consist of adding 85% of the CBUs attributable to the operations related to the Asset Transfer Transaction for the plan year prior to the Asset Transfer Transaction, multiplied by the number of weeks in the plan year of the Asset Transfer Transaction subsequent to the Asset Transfer Transaction, divided by the total number of weeks in the plan year of the Asset Transfer Transaction. For purposes of meeting the Guaranteed CBUs, the CBUs attributable to the operations transferred in the Asset Transfer Transaction shall be counted toward meeting the Guaranteed CBUs only with respect to CBUs accruing in weeks subsequent to the Asset Transfer Transaction with respect to such operations. By way of example, if the Guaranteed CBUs on January 1 for the plan year in question is 100 CBUs and on September 30 of such plan year an Asset Transfer Transaction occurs and the CBUs attributable to the operations related to the Asset Transfer Transaction for such plan year is 100 CBUs, then the Guaranteed CBUs for such plan year shall be 121.25 CBUs  $= ((100 \times 9) / 12) + (((85\% \times 100) + 100) \times 3) / 12$ .

3.11 The contribution rate for the acquired operations in an Asset Transfer Transaction shall be the higher of \$150 per week or the rate in effect prior to the acquisition (including any required contribution rate increases).

3.12 In the event that at least a 51% ownership interest in New JC is transferred, or at least 50% of the assets used in any covered operations of New JC are transferred or leased, and the acquirer/lessee (or sublessee) of such ownership interest or assets (as the case may be) participates in the Pension Fund, or is in the controlled group within the meaning of 29 U.S.C. § 1301(b)(1) (determined pursuant to the objective tests under 26 C.F.R. § 1.414(b) or § 1.414(c)) with any trade or business that participates in the Pension Fund (an “**Existing Employer Transaction**”), participants from the acquirer’s/lessee’s (or sublessee’s) existing operations (including all controlled group members of such acquirer/lessee (or sublessee)) may not be counted toward satisfying the Guaranteed CBUs.

3.13 In the event that, prior to the end of the Guarantee Period, New JC permanently ceases covered operations and/or permanently ceases to have an obligation to contribute to the Pension Fund for any reason other than a Pension Fund insolvency, termination or mass withdrawal, but including, for the avoidance of doubt, as a result of a decertification, disclaimer of interest, or change in bargaining representative (a “**Withdrawal**”), New JC shall pay the following to the Pension Fund: (a) if the Withdrawal occurs on or before June 30, 2022, an amount equal to double the amount of Additional Contributions; or (b) if the Withdrawal occurs after June 30, 2022, the amount of Additional Contributions (either (a) or (b), the “**Termination Fee**”). The amount owed in the preceding sentence shall be computed using the assumption that the actual CBUs owed for periods after the Withdrawal is zero. The Termination Fee shall include payment for the entire period of time between the Withdrawal and the end of the



Guarantee Period. Under no circumstances will New JC be entitled to a refund of any contributions or other amounts.

3.14 In the event of New JC's permanent cessation of covered operations and/or the permanent cessation of the obligation to contribute to the Pension Fund prior to the end of the Guarantee Period, New JC shall provide additional information and documents related to the cessation as reasonably requested by the Pension Fund. The Pension Fund shall calculate the amount of the Termination Fee (if any) and provide notice of the amount to New JC within 14 days of receipt of the notice from New JC. New JC shall then pay the Termination Fee in a lump sum payment which must be received by the Pension Fund within 14 days of New JC's receipt of the Pension Fund's notice. Any portion of the Termination Fee which New JC fails to remit when due shall be deemed to be delinquent contributions due under the terms of the Plan and 29 U.S.C. § 1145, and the Pension Fund shall be entitled to all remedies available under 29 U.S.C. § 1132(g)(2).

3.15 Neither an obligation to remit the Additional Contributions nor an obligation to remit the Termination Fee shall be considered when determining (a) whether New JC has permanently ceased to have an obligation to contribute under the terms of this Agreement or (b) whether a complete or partial withdrawal has occurred under 29 U.S.C. §§ 1383 and/or 1385. Further, the Termination Fee shall be paid in addition to any other amounts which New JC may owe under this Agreement, and, to the extent not inconsistent with this Agreement, the Plan, the Employee Retirement Income Security Act of 1974 (as amended) ("ERISA"), or otherwise.

3.16 In the event New JC sells all or substantially all assets that it acquired from Old JC in the Sale Transaction prior to the end of the Guarantee Period ("Future Asset Sale"), New JC shall be liable to the Pension Fund for, and shall pay on the closing date of the Future Asset Sale,

all unsatisfied contribution obligations due from New JC under the Modified CBA or any other CBA with respect to the period from the Sale Closing Date to the closing date of the Future Asset Sale, and all unpaid Special Contribution, all unpaid Additional Contributions, and the Termination Fee; provided, however, that New JC shall be relieved of any such obligations if the subsequent buyer in the Future Asset Sale is an unrelated third party reasonably acceptable to the Pension Fund and such subsequent buyer agrees to assume New JC's obligations under this Agreement on terms reasonably acceptable to the Pension Fund.

3.17 In the event that an Ownership Transaction, Asset Transfer Transaction, or Existing Employer Transaction occurs, New JC shall give the Pension Fund notice of such event within 14 days of the closing of the transaction. Such notice shall describe the transaction, indicate the effective date of the transaction, and identify all parties to the transaction. New JC agrees to provide all additional information and documents related to the transaction as reasonably requested by the Pension Fund.

**Article 4 – Assessment of Withdrawal Liability for any New JC Withdrawal from the Hybrid Plan**

4.1 If New JC incurs a withdrawal within the meaning of 29 U.S.C. §1383 or 29 U.S.C. §1385 from the Hybrid Plan at any time from or after the Sale Closing Date, the associated withdrawal liability (if any) shall be based solely and exclusively on the Alternative Method and based on New JC's contributions to the Hybrid Plan made from and after the Sale Closing Date as a New Employer described in Section 2.2(b)(1) of Appendix E of the Plan in accordance with Section 2.4 of Appendix E of the Plan, and in no event shall the Pension Fund take into account for any purpose any contribution history of Old JC (or any member of its controlled group within the meaning of 29 U.S.C. §1301(b)(1)) to the Pension Fund prior to the Sale Closing Date.



4.2 For purposes of calculating New JC's withdrawal liability (if any) upon any future withdrawal by New JC from the Hybrid Plan, the amount of the Special Contribution and Additional Contributions shall not be taken into account in determining: (a) the amount of New JC's withdrawal liability, (b) the annual payoff amount of such withdrawal liability, (c) New JC's CBU contribution rate or (d) New JC's annual number of CBUs; provided, that both the Additional Contributions that are owed by New JC for the Guarantee Period and the CBUs that are necessary to be added to meet the Guaranteed CBUs shall be included in any withdrawal liability actually incurred by New JC.

4.3 New JC and Old JC understand and agree that Old JC is not entitled to an abatement of its withdrawal liability (whether in the form of a reduction or a waiver) pursuant to 29 U.S.C. §§ 1386-1388. New JC and Old JC further understand and agree that neither is entitled to receive the exception to withdrawal liability provided in 29 U.S.C. § 1390.

4.4 Notwithstanding any other provision of this Agreement:

(a) In the event the asset purchase agreement in connection with any Asset Transfer Transaction complies with 29 U.S.C. §1384, then New JC shall be treated as an Old Employer under the terms of the Plan for purposes of any withdrawal liability assessment, absent the explicit consent of the Pension Fund, but any withdrawal liability assessment shall not include any contribution history of Old JC (or any member of its controlled group) to the Pension Fund prior to the Sale; and

(b) In the event that (i) New JC (or any member of New JC's controlled group, determined pursuant to the objective tests under 26 C.F.R. §1.414(b) or §1.414(c)), or (ii) any person, or group of persons together, that directly or indirectly, within the meaning of 26 C.F.R. § 1.414(c)-4, has an 80% or greater ownership interest in New JC, and

acting alone or with New JC (or any member of New JC's controlled group, determined pursuant to the objective tests under 26 C.F.R. §1.414(b) or §1.414(c)), acquires at least an 80% ownership interest in any trade or business (within the meaning of 29 U.S.C. § 1301(b)(1)) which participates in the Pension Fund ("**80% Ownership Transaction**"), such acquired trade or business must satisfy its withdrawal liability, if any, to the Pension Fund in full at or before the acquisition in an amount determined under ERISA as though the acquired trade or business completely withdrew from the Pension Fund immediately prior to the acquisition. The occurrence of an 80% Ownership Transaction without the payment of such withdrawal liability shall result in New JC being treated as an Old Employer under the terms of the Plan, but any withdrawal liability assessment shall not include any contribution history of Old JC (or any member of its controlled group) to the Pension Fund prior to the Sale.

#### **Article 5 – Representations and Warranties**

5.1 Old JC warrants and represents to the Pension Fund that the contribution history reported by Old JC to the Pension Fund does not understate the contributions or CBU's of Old JC from January 1, 2009, through and including December 31, 2018.

5.2 Old JC warrants and represents that from January 1, 2009, through and including the Sale Closing Date, there were no trades or businesses (other than Jack Cooper Transport Company, Inc. and Auto Handling Corporation) that were both under common control with Old JC within the meaning of 29 U.S.C. § 1301(b)(1) and the regulations promulgated thereunder, and obligated to contribute to the Pension Fund during any part of that period.

5.3 Old JC warrants and represents that all the documents produced to the Pension Fund were true and accurate at the time they were produced to the Pension Fund, as well as at the

Sale Closing Date, and Old JC understands and agrees that the Pension Fund reasonably relied upon such documents in evaluating this Agreement.

5.4 The Pension Fund warrants and represents that, based upon the actuarial assumptions and methods utilized by the Pension Fund's actuaries, New JC is not projected to have any withdrawal liability to the Pension Fund in the event New JC should withdraw from participation in the Hybrid Plan. If at any time hereafter the Pension Fund determines that New JC is projected to have withdrawal liability to the Pension Fund based on the actuarial assumptions and methods utilized by the Pension Fund's actuaries, the Pension Fund will provide written notice thereof to New JC within thirty days of the earlier of: (a) the Pension Fund receiving its annual actuarial valuation from its actuaries or (b) another actuarial report is provided to the Pension Fund's trustees indicating such liability.

#### **Article 6 – Settlement and Release**

6.1 In consideration of New JC's payment obligations with respect to (a) the Special Contribution as set forth in Article 2 and (b) contributions, Additional Contributions (if any) and the Termination Fee (if any) as set forth in Article 3, the Pension Fund and its trustees, by their duly authorized agent, do for themselves, their successors and assigns, hereby release New JC and any member of New JC's controlled group within the meaning of 29 U.S.C. § 1301(b)(1) (and any of New JC's direct or indirect investors, owners, shareholders, representatives, limited or general partners, directors, officers, employees, agents or affiliates, in their capacity as such), whether on a successor theory or otherwise, from withdrawal liability, or any other liability related to the Pension Fund, arising from Old JC's withdrawal from the Pension Fund in connection with the Restructuring, or otherwise with respect to any participation in the Pension Fund prior to the Sale Closing Date (including on account of events occurring after the Sale Closing Date, such as mass withdrawal, plan termination, or insolvency). As part of the release



provided in the foregoing sentence, the Pension Fund and its trustees, by their duly authorized agent, do for themselves, their successors and assigns, release, settle, cancel, and discharge any and all claims, demands, rights, and causes of action to collect the liabilities released in this Section 6.1 from the parties released in this Section 6.1. This release shall become effective immediately upon the Sale Closing Date.

6.2 In consideration of New JC's payment obligations with respect to (a) the Special Contribution as set forth in Article 2 and (b) contributions, Additional Contributions (if any) and the Termination Fee (if any) as set forth in Article 3, and the Initial Investor's support for the Restructuring, the Pension Fund and its trustees, by their duly authorized agent, do for themselves, their successors and assigns, hereby release the Initial Investor, and any of its direct or indirect investors, shareholders, owners, representatives, officers, employees, limited or general partners, directors, agents, and affiliates (the "**Initial Investor Affiliates**"), in their capacity as such, and any transferees of the Initial Investor or the Initial Investor Affiliates that do not otherwise participate in the Pension Fund (collectively, the "**Investor Released Parties**"), whether on a controlled group theory or otherwise, from withdrawal liability, contributions, Additional Contributions, Special Contributions, or the Termination Fee, in each case, relating to or arising out of New JC's or Old JC's participation in the Hybrid Plan or the Pension Fund, whether arising or attributable to periods before, on or after the Sale Closing Date. As part of the release provided in the foregoing sentence (but subject to the limitations and exceptions set forth in the remainder of this Section 6.2), the Pension Fund and its trustees, by their duly authorized agent, do for themselves, their successors and assigns, release, settle, cancel, and discharge any and all claims, demands, rights, and causes of action to collect the liabilities released in this Section 6.2 from the parties released in this Section 6.2. For the avoidance of doubt, this Section

6.2 shall not: (a) release an Investor Released Party from liabilities arising out of such Investor Released Party's actions that are unrelated to New JC's participation in the Hybrid Plan, including fraudulent transfer or similar non-ERISA-specific creditors' remedies under state or federal law, and (b) release New JC from its liabilities or contribution obligations under the Hybrid Plan described in this Agreement, including any of New JC's obligations to pay Special Contributions, Additional Contributions, or the Termination Fee. Further, the release described in this Section 6.2 shall only apply to a transferee of the Initial Investor or an Initial Investor Affiliate if: (i) the transferee is not T. Michael Riggs, any person related to him by blood, marriage, or adoption, any trust of which T. Michael Riggs or any such related person is a settlor, trustee, or beneficiary, or any trustee, settlor, or beneficiary of any such trust, or any entity in which T. Michael Riggs, any such related person, or any such trust, individually or collectively, have a twenty percent (20%) or greater ownership interest; (ii) the transferee is not a natural person listed by such person's name in the "Name" column of the Jack Cooper Investments, Inc. capitalization table attached hereto as **Exhibit B** (collectively, the "**Identified Individuals**"), or, to the knowledge of the Investor Released Party making such transfer, any person related to an Identified Individual by blood, marriage, or adoption, any trust of which an Identified Individual or any such related person is a settlor, trustee, or beneficiary, or any trustee, settlor, or beneficiary of any such trust; (iii) the transferee is not a trust listed in the "Name" column of Exhibit B or, to the knowledge of the Investor Released Party making such transfer, any trustee, settlor, or beneficiary of any such trust; and (iv) the transferee is not a non-trust entity (other than an Initial Investor Affiliate) listed in the "Name" column of Exhibit B. For the avoidance of doubt, no transfer described in the preceding sentence shall affect the release of the Initial



Investor, the Initial Investor Affiliates or the Investor Released Parties described in this Section 6.2

6.3 None of the Parties or their respective successors, agents or assigns shall take any action to challenge this Agreement, the effect of this Agreement or the ability of the Parties to enter into this Agreement. None of the Parties or their respective successors, agents or assigns shall take any action that could reasonably be expected to cause the Union, any Pension Fund participant or beneficiary, any governmental agency or any other person or entity to take any action, under applicable law, the terms of the Plan or Trust Agreement (or related agreements) or otherwise, to challenge this Agreement, the effect of this Agreement or the ability of the Parties to enter into this Agreement; provided, that, for the avoidance of doubt, this sentence shall in no way restrict the Parties or any of their respective employees, trustees, successors, agents, or assigns from taking any action required by law (including such person's fiduciary duties), or providing any information or documents requested by any governmental entity, organization, or department, including but not limited to the Department of Labor, nor shall it prevent the Pension Fund from providing any information or documents to the Pension Fund's Independent Special Counsel.

6.4 It is agreed and understood by the Parties that nothing in this Agreement, including Section 6.1 or Section 6.2 above, shall release New JC from any of its obligations to the Pension Fund provided for in this Agreement, including but not limited to New JC's obligation to make contributions to the Pension Fund pursuant to the terms of the Modified CBA. Except as otherwise provided in this Agreement, all payments and obligations of New JC under this Agreement shall be joint and several obligations of each trade or business in New JC's controlled group (within the meaning of 29 U.S.C. § 1301(b)(1) and the regulations promulgated

thereunder). For the avoidance of doubt, no Investor Released Party shall at any time be deemed a member of such controlled group.

6.5 All payments and obligations of Old JC under this Agreement shall be joint and several obligations of each trade or business in Old JC's controlled group (within the meaning of 29 U.S.C. § 1301(b)(1) and the regulations promulgated thereunder). For the avoidance of doubt, neither New JC nor any Investor Released Party shall at any time be deemed a member of such controlled group.

6.6 To the extent that Old JC negotiates relief with other multiemployer pension plans in which it participates in connection with the Restructuring on terms that are more favorable than the terms agreed to between the Pension Fund and Old JC, this Agreement shall be revised to include the more favorable terms. If New JC or the Initial Investor hereafter agree to pay contributions or withdrawal liability that Old JC owed for periods prior to the Sale Closing Date to any other multiemployer pension plan on terms more favorable than those provided to the Pension Fund, this Agreement shall be revised to include the more favorable terms.

#### **Article 7 – Notices**

7.1 All notices required under this Agreement shall be provided by electronic mail, with a copy by first class United States mail, and sent as follows:

Notices to the Pension Fund:

Brad R. Berliner  
Deputy General Counsel  
Central States Funds  
8647 W. Higgins Rd.  
Chicago, IL 60631  
Email: bberliner@centralstatesfunds.org

Pete Priede  
Senior Director of Employer Services, Pension, and Finance  
Central States Funds  
8647 W. Higgins Rd.  
Chicago, IL 60631  
Email: ppriede@centralstatesfunds.org

Notices to Old JC:

Jack Cooper Investments, Inc.  
630 Kennesaw Due West Road  
Kennesaw, GA 30152  
Attn.: Theo Ciupitu  
Email: tciupitu@jackcooper.com

with a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
Attn: Brian S. Hermann  
Kelley A. Cornish  
John T. Weber  
Email: bhermann@paulweiss.com  
kcornish@paulweiss.com  
jweber@paulweiss.com

Notices to New JC:

JC Buyer Company, Inc.  
410 Park Avenue, 11th Floor  
New York, New York 10022  
Attention: Thomas Higbie  
Stephen Blauner  
Email address: thigbie@soluslp.com  
sblauner@soluslp.com  
complaine@soluslp.com

with a copy to:



Kirkland & Ellis LLP  
300 North LaSalle  
Chicago, Illinois 60654  
Attention: Marc Kieselstein  
Alexandra Schwarzman  
E-mail address: mkieselstein@kirkland.com  
alexandra.schwarzman@kirkland.com  
and

Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, New York 10022  
Attention: Jonathan S. Henes  
E-mail address: jhenes@kirkland.com

Notices shall be deemed received on the date they are sent in accordance with this paragraph. A party may change the person(s) to whom or the address to which notice must be given by giving notice of the change to the other party in accordance with this Section 7.1.

#### **Article 8 –Jurisdiction and Venue**

8.1 This Agreement is being entered into and performed within Cook County in the State of Illinois and shall be construed and interpreted in accordance with federal law and the laws of the State of Illinois without regard to Illinois's conflict of laws rules. Any and all actions brought that relate in any way to this Agreement shall be filed and litigated only in courts located in Cook County, Illinois, and all of the parties to this Agreement consent to personal jurisdiction in any federal or state court located in Cook County, Illinois. Notwithstanding the foregoing consent to Illinois jurisdiction, solely for the period prior to the Sale Closing Date, (a) each Party agrees that the Bankruptcy Court shall have exclusive jurisdiction of all matters arising out of or in connection with this Agreement, and (b) each of the Parties irrevocably and unconditionally submits to the personal jurisdiction of the Bankruptcy Court solely for purposes of any action, suit, proceedings or other contested matter arising out of or relating to this Agreement.

**Article 9 – Certifications and Understandings of the Parties**

9.1 The term “person” as used in this Agreement shall include not only individuals, but also entities including, without limitation, partnerships, corporations, trusts, estates, limited liability companies, limited liability partnerships, and joint ventures.

9.2 In the event of any conflict between the terms of the Plan, Trust Agreement, the Participation Agreement, any amendments subsequently adopted to any of them, or any other rules, regulations and policies presently in effect or subsequently adopted by the trustees of the Pension Fund or their duly authorized agent and this Agreement, the terms of this Agreement shall apply.

9.3 Subject to Section 1.2, the Parties understand and agree that nothing in this Agreement constitutes a representation or guarantee by the Pension Fund regarding the benefits that any participant or group of participants in the Pension Fund is receiving or shall receive in the future.

9.4 This Agreement has been drafted and edited by all Parties. Therefore, this Agreement shall not be construed against any Party on the basis that one or more of the Parties was the principal drafter of the Agreement.

9.5 Each of the Parties to this Agreement certifies that it has read the terms of this Agreement, that it has had the opportunity to discuss this Agreement with its attorneys, and that it understands the terms and effects of this Agreement.

9.6 Each person signing this Agreement represents that he or she has the capacity and the authority to execute this Agreement on behalf of the Party on whose behalf he or she signs this Agreement, that he or she also has the full power, right and authority to bind the Party on whose behalf he or she signs this Agreement, and that this Agreement constitutes the legal, valid and binding obligation of such Party. Other than Bankruptcy Court approval of this Agreement

in connection with the Restructuring and Sale Transaction, no permit, approval or consent of, or notification to any other person is necessary in connection with the execution, delivery and performance by the Pension Fund, Old JC or New JC of this Agreement. None of the execution, delivery or performance of this Agreement by the Pension Fund, Old JC or New JC will (with or without notice or passage of time or both) result in the breach or violation of any of the terms of the Pension Fund or any of its governing documents or instruments, the Modified CBA, or any other contract or other agreement or obligation of any kind or nature to which the Pension Fund, Old JC or New JC is party or subject.

9.7 Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement or the application of any such provision to any person or circumstance shall be held to be prohibited by, illegal or unenforceable under applicable law in any respect by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such prohibition or illegality or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

#### **Article 10 – Entire Agreement, Changes, Counterparts**

10.1 This Agreement represents the entire understanding between the Parties and cannot be changed or amended, except by a written agreement, signed by all of the Parties, and attached to this Agreement.

10.2 The Recitals set forth in paragraphs A through M are incorporated into, and made part of, this Agreement.

10.3 The date of this Agreement shall be deemed to be the date of the latest signature, and the Agreement shall be effective as of such date.



10.2 The Recitals set forth in paragraphs A through M are incorporated into, and made part of, this Agreement.

10.3 The date of this Agreement shall be deemed to be the date of the latest signature, and the Agreement shall be effective as of such date.

10.4 This Agreement may be executed in separate counterparts, which when taken together shall form and constitute the Parties' entire agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the indicated dates.

**CENTRAL STATES, SOUTHEAST AND  
SOUTHWEST AREAS PENSION FUND**

BY: 

DATE: 10-7-2019

**JACK COOPER TRANSPORT COMPANY, INC.**

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

**AUTO HANDLING CORPORATION**

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

**JC BUYER COMPANY, INC.**

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

10.2 The Recitals set forth in paragraphs A through M are incorporated into, and made part of, this Agreement.

10.3 The date of this Agreement shall be deemed to be the date of the latest signature, and the Agreement shall be effective as of such date.

10.4 This Agreement may be executed in separate counterparts, which when taken together shall form and constitute the Parties' entire agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the indicated dates.

**CENTRAL STATES, SOUTHEAST AND  
SOUTHWEST AREAS PENSION FUND**

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

**JACK COOPER TRANSPORT COMPANY, INC.**

BY:  \_\_\_\_\_

DATE: \_\_\_\_\_

**AUTO HANDLING CORPORATION**

BY:  \_\_\_\_\_

DATE: \_\_\_\_\_

**JC BUYER COMPANY, INC.**

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

10.2 The Recitals set forth in paragraphs A through M are incorporated into, and made part of, this Agreement.

10.3 The date of this Agreement shall be deemed to be the date of the latest signature, and the Agreement shall be effective as of such date.

10.4 This Agreement may be executed in separate counterparts, which when taken together shall form and constitute the Parties' entire agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the indicated dates.

**CENTRAL STATES, SOUTHEAST AND  
SOUTHWEST AREAS PENSION FUND**

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

**JACK COOPER TRANSPORT COMPANY, INC.**

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

**AUTO HANDLING CORPORATION**

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

**JC BUYER COMPANY, INC.**

BY: *Hyd J. Blum*

DATE: 9/27/2019



*Solely for Purposes of Sections 6.2 and 6.6 hereof:*

**SOLUS ALTERNATIVE ASSET MANAGEMENT LP**

BY: 

DATE: 9/27/2019

**Exhibit A**

Participation Agreement



## PARTICIPATION AGREEMENT

CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS  
 PENSION FUND/HEALTH AND WELFARE FUND  
 8647 WEST HIGGINS ROAD  
 CHICAGO, ILLINOIS 60631-2803  
 PHONE: (847) 518-9800

**EMPLOYER NAME:** JC BUYER COMPANY, INC.  
**ACCOUNT NUMBER:** \_\_\_\_\_

**THIS AGREEMENT** sets forth the terms under which the Employer will participate in the Central States, Southeast and Southwest Areas Pension Fund ("Pension Fund") and/or the Central States, Southeast and Southwest Areas Health and Welfare Fund ("Health and Welfare Fund") in accordance with its collective bargaining agreement with the Union covering the following job classification(s): all classifications covered by the collective bargaining agreements under which the employer is required to contribute to the Pension Fund and/or Health and Welfare Fund  
 and any other job classification covered by the collective bargaining agreement.

1. The Union and Employer agree to be bound by the Trust Agreement(s) of the Pension Fund and/or the Health and Welfare Fund and all amendments subsequently adopted as well as all rules and regulations presently in effect or subsequently adopted by the Trustees of the Fund(s) and accept the respective Employer and Employee Trustees and their successors.

2. The Employer shall contribute to the Pension Fund for each Covered Employee at the following rates:

Effective Date: <u>10/10/2019</u>	Rate: <u>\$150.00 / wk</u>
Effective Date: _____	Rate: _____
Effective Date: _____	Rate: _____
Effective Date: _____	Rate: _____
Effective Date: _____	Rate: _____

3. The Employer shall contribute to the Health and Welfare Fund for each Covered Employee at the following rates:

Effective Date: _____	Rate: _____	_____	_____	_____
Effective Date: _____	Rate: _____	_____	_____	_____
Effective Date: _____	Rate: _____	_____	_____	_____
Effective Date: _____	Rate: _____	_____	_____	_____
Effective Date: _____	Rate: _____	_____	_____	_____

4. Contribution rate changes after the last Effective Date set forth in paragraphs 2 and 3 shall be determined by each new collective bargaining agreement and such rate changes shall be incorporated into this Agreement. The parties may execute an interim agreement establishing contribution rates during the periods when a new collective bargaining agreement is being negotiated. In the absence of an interim agreement, the contribution rate required to be paid after termination of a collective bargaining agreement and prior to either the execution of a new collective bargaining agreement or the termination of this Agreement, shall be the rates in effect on the last day of the terminated collective bargaining agreement. However, the Trustees reserve the right to reduce benefit levels if the contribution rate is or becomes less than the then published rate for the applicable benefit plan or class.

5. This Agreement and the obligation to pay contributions to the Fund(s) will continue after the termination of a collective bargaining agreement except no contributions shall be due during a strike unless the Union and the Employer mutually agree in writing otherwise. This Agreement and the Employer's obligation to pay contributions shall not terminate until a) the Trustees decide to terminate the participation of the Employer and provide written notice of their decision to the Employer specifying the date of termination of participation or b) the Employer is no longer obligated by a contract or statute to contribute to the Fund(s) and the Fund(s) have received a written notice directed to the Fund(s)' Contracts Department at the address specified above sent by certified mail with return receipt requested which describes the reason why the Employer is no longer obligated to contribute or c) the date the NLRB certifies the result of an election that terminates the Union's representative status or d) the date the Union's representative status terminates through a valid disclaimer of interest. In the event the Employer participates in both the Pension



Fund and the Health and Welfare Fund and the termination referred to in a) or b) relates to only one Fund, then this Agreement shall remain in effect with respect to the other Fund. In the event an NLRB election or disclaimer of interest referred to in c) or d) relates to only part of the bargaining unit, this Agreement shall remain in effect with respect to the remainder of the bargaining unit.

6. When a new collective bargaining agreement is signed or the Employer and the Union agree to change the collective bargaining agreement, the Employer shall promptly submit the entire agreement or modification to the Fund(s)' Contracts Department by certified mail (return receipt requested) at the address specified above. Any agreement or understanding which affects the Employer's contribution obligation which has not been submitted to the Fund(s) as required by this paragraph, shall not be binding on the Trustees and this Agreement and the written agreement(s) that has been submitted to the Fund(s) shall alone remain enforceable. The following agreements shall not be valid: a) an agreement that purports to retroactively eliminate or reduce the Employer's statutory or contractual duty to contribute to the Fund(s); b) an agreement that purports to prospectively reduce the contribution rate payable to the Pension Fund or c) an agreement that purports to prospectively eliminate the duty to contribute to the Pension Fund during the stated term of a collective bargaining agreement that has been accepted by the Pension Fund.

7. For purposes of this Agreement, the term "Covered Employee" shall mean any full-time or part-time employee covered by a collective bargaining agreement requiring contributions to the Fund(s) and includes casual employees (i.e. short term employees who work for uncertain or irregular duration) except a casual employee shall not be a Covered Employee with respect to the Health and Welfare Fund if the collective bargaining agreement explicitly excludes casual employees from participation in the Health and Welfare Fund. Covered Employee shall not include any person employed in a managerial or supervisory capacity or any person employed for the principal purpose of obtaining benefits from the Fund(s).

8. The Employer agrees to remit contributions on behalf of each Covered Employee for any period he/she receives, or is entitled to receive, compensation (regardless of whether the employment relationship is terminated), including show up time pay, overtime pay, holiday pay, disability or illness pay, layoff/severance pay, vacation pay or the payment of wages which are the result of any National Labor Relations Board proceeding, grievance/arbitration proceeding or other legal proceeding or settlement. If the collective bargaining agreement states that contributions shall not be due on newly hired Covered Employees for a specified waiting period, no contributions shall be due until the Covered Employee completes the specified waiting period. If required by the applicable collective bargaining agreement, contributions shall also be made to the Fund(s) on behalf of any Covered Employee who is not working due to illness or injury even if the Covered Employee is not entitled to compensation. The Employer shall pay any contributions that would have otherwise been paid on any Covered Employee who is a re-employed service member or former service member but for his or her absence during a period of uniformed service as defined at 32 C.F.R. §104.3.

9. On or before the 15th day of each month, the Employer must report to the Fund(s) any change in the Covered Employee workforce (including, but not limited to new hires, layoffs or terminations) which occurred during the prior month and must pay all contributions owed for the prior month. In the event of a delinquency, a) the Employer shall be obligated to pay interest on the monies due to the Fund(s) from the date when payment was due to the date when the payment is made, together with all expenses of collection incurred by the Fund(s), including, but not limited to, attorneys' fees and costs and b) at the option of the Trustees or their delegated representative, the payment of contributions that accrue after the Employer has become delinquent shall be accelerated so that the contributions owed for each calendar week (Sunday through Saturday) shall be due on the following Monday. If the Employer fails to report changes in the covered workforce on time, the Employer must pay the contributions billed by the Health and Welfare Fund regardless of actual terminations, leaves of absence, layoffs or other changes in the workforce. The Trustees reserve the right to terminate the participation of any Employer that fails to timely pay required contributions.

10. The Employer shall provide the Trustees with access to its payroll records and other pertinent records when requested by the Fund(s). If litigation is required to either obtain access to the Employer's records or to collect additional billings that result from the review of the records, all costs incurred by the Fund(s) in conducting the review shall be paid by the Employer and the Employer shall pay any attorneys' fees and costs incurred by the Fund(s).

11. The Trustees shall not be required to submit any dispute concerning the Employer's obligation to pay contributions to any grievance/arbitration procedure set forth in any collective bargaining agreement.

12. The Employer acknowledges that it is aware of the Fund(s)' adverse selection rule (including Special Bulletin 90-7) and agrees that while this Agreement remains in effect, it will not enter into any agreement or engage in any practice that violates the adverse selection rule.

13. This Agreement shall in all respects be construed according to the laws of the United States. In all actions taken by the Trustees to enforce the terms of this Agreement, including actions to collect delinquent contributions or to conduct audits, the Illinois ten year written contract statute of limitations shall apply. The Employer agrees that the statute of limitations shall not begin to accrue with respect to any unpaid contributions until such time as the Fund(s) receive actual written notice of the existence of the Employer's liability.

14. This Agreement may not be modified or terminated without the written consent of the Fund(s). To the extent there exists any conflict between any provisions of this Participation Agreement and any provisions of the collective bargaining agreement, this Participation Agreement shall control.

**IN WITNESS WHEREOF**, said Employer and Union have caused this Instrument to be executed by their duly authorized representatives, the day and year first above written.

**JC Buyer Company, Inc.**

\_\_\_\_\_  
Employer Name

Local Union No. **Various**

\_\_\_\_\_  
Representative Signature

\_\_\_\_\_  
Representative Signature

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Complete Address of Employer

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
Federal Employer Identification Number

If the Employer is signatory to a National or Group Contract, indicate the name of such Contract:

Is the Employer an itinerant construction company working on a project or on a seasonal basis? Yes \_\_\_\_\_ No \_\_\_\_\_

**Exhibit B**

Old JC Capitalization Table