

**LETTER OF UNDERSTANDING**

BETWEEN:

**INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793**

(the "Union")

– and –

**GREATER TORONTO SEWER AND WATERMAIN CONTRACTORS ASSOCIATION**

(the "Employer")

**RE: SUPPLEMENTARY UNEMPLOYMENT BENEFIT PLAN**

**WHEREAS** the Union and the Employer are parties to a collective agreement effective May 1, 2019 to April 30, 2022 and any renewals thereof ("Collective Agreement");

**AND WHEREAS** the Union wishes to establish and the Employer agrees to support the establishment of the Supplementary Unemployment Benefit Plan ("SUB Plan") to provide certain monetary benefits to Union members who become unemployed and otherwise qualify under the terms of the SUB Plan;

**AND WHEREAS** the SUB Plan will be funded by redirecting a portion of contractor contributions that, as per the Collective Agreement, are currently being contributed to the International Union of Operating Engineers, Local 793 Members Life and Health Benefit Trust of Ontario (the "Health Benefit Plan");

**AND WHEREAS** the Union represents and warrants that the SUB Plan will, at all times, be registered with the Canada Revenue Agency and Service Canada and comply with applicable laws, including but not limited to, the *Income Tax Act (Canada)*, and the *Employment Insurance Act*;

**AND WHEREAS** the redirection of contractor contributions required as per the Collective Agreement to be remitted to the Health Benefit Plan to the SUB Plan is subject to the approval of the SUB Plan by both the Canada Revenue Agency and Service Canada;

**AND WHEREAS** the Employer is not a party to the SUB Plan and the Trust Agreement;

**NOW THEREFORE** the Union and the Employer (the "Parties") agree as follows:

1. The Parties agree the Collective Agreement is hereby amended to permit the establishment and funding of the SUB Plan as set out in this Letter of Understanding. To

the extent there is any conflict between the Collective Agreement and this Letter of Understanding, the terms of this Letter of Understanding shall prevail.

2. To the extent there is any conflict between the terms of the SUB Plan and the Trust Agreement, and the Collective Agreement and this Letter of Understanding, the terms of the Collective Agreement and/or Letter of Understanding shall prevail.
3. The Parties agree that the contributions made by contractors bound to the Collective Agreement will commence to be redirected from the Health Benefit Plan to the SUB Plan, in incremental increases per hour earned as follows, upon approval of the SUB Plan by both the Canada Revenue Agency and Service Canada:
  - a. within 30 days of approval of the SUB Plan by both the Canada Revenue Agency and Service Canada - \$0.05,
  - b. May 1, 2021 - \$0.05,

subject to paragraph 13 below.

The Trustees of the Health Benefit Plan shall have full discretion to ensure funding of the Health Benefit Plan on an actuarial basis and in no event shall the redirection of funds exceed \$0.50 per hour earned under the Collective Agreement.

4. The redirection of contributions in paragraph 3 shall not be construed as changing the procedure and deadlines for contractors to remit monthly contributions. The procedures and deadlines in the Collective Agreement will prevail.
5. The Parties agree the redirection of contributions from the Health Benefit Plan to the SUB Plan shall not result in the reduction of any benefit entitlement to any member entitled to coverage under the Health Benefit Plan.
6. The Parties agree the SUB Plan shall be established, managed, operated and administered solely by the Trustees of the SUB Plan and that that nothing herein shall be construed to make the Employer, or any individual contractor bound to the Collective Agreement, an insurer or provider of SUB Plan benefits. The financial obligation of the Employer and any individual contractor bound to the Collective Agreement is entirely fulfilled by making the contributions required to the SUB Plan according to the terms of the Collective Agreement as amended by this Letter of Understanding. The Employer or any individual contractor bound to the Collective Agreement shall not be liable to any employee or the Union for SUB Plan top-up payments.
7. The Union agrees that nothing in this Letter of Understanding shall result, directly or indirectly, in any increased costs or contribution rates to the Employer and any contractors bound to the Collective Agreement while it is effective.

8. The Parties agree any issue concerning the SUB Plan (including but not limited to eligibility to participate in, and entitlement under, the SUB Plan) shall be subject to the specific provisions of the SUB Plan. Any dispute over payment of SUB Plan benefits shall be adjusted solely between the member and the Trustees of the SUB Plan. The Employer, or any individual contractor bound to the Collective Agreement, shall not be requested or required to participate in any such dispute.
9. No individual contractor bound to the Collective Agreement shall be asked, required or permitted to sign a participation agreement, including but not limited to the Participation Agreement in Schedule "B" of the Trust Agreement, without the express written consent of the Employer.
10. Any duty, obligation or requirement in the SUB Plan and/or Trust Agreement, including but not limited to procedures for individual contractors to remit contributions to the SUB Plan and penalties for failing to do the same, shall be unenforceable against the Employer and individual contractors bound to the Collective Agreement. This includes, but is not limited to, the deadlines for contribution remittances, procedures for remitting contributions, the powers of the Union and/or Trustees to request documents from contractors and to perform audits of individual contractors, charge interest, liquidated damages and any other penalty that may be imposed on contractors for failing to remit contributions. The provisions of the Collective Agreement in respect of any of the aforesaid matters will prevail. In the absence of any provision in the Collective Agreement, no such power on the part of the Union or the Trustees can be inferred despite the provisions of the SUB Plan or the Trust Agreement.
11. The Union agrees to save harmless and indemnify the Employer, and any individual contractor bound to the Collective Agreement, from and against any claim, charge, tax, penalty, damages or demand which might be made upon the Employer and/or any contractors in connection with this Letter of Understanding respecting withholdings and remittances pursuant to the *Income Tax Act (Canada)*, the *Employment Insurance Act*, the *Canada Pension Plan Act*, and pursuant to any other duly recognized federal and provincial taxing authorities or statutes, and in respect of any claim, charge, tax or penalty which may be made on behalf of or related to the Canada Employment Insurance Commission and Canada Pension Commission or any other government agency or commission under the applicable statutes and regulations with respect to any amount paid to a member under the SUB Plan, and from and against any claim of whatever nature which may be made by, on behalf of or in respect of any member in connection with the SUB Plan, including legal fees and expenses related to such claims.
12. In addition, the Union agrees to indemnify the Employer and any contractor bound to the Collective Agreement, in respect of any claims or demands by Employment and Social Development Canada ("ESDC"), or any similar governmental agency, for overpaid benefits which, according to the ESDC, should be clawed back due to the payments to a

particular employee from the SUB Plan, and any interest or penalties relating thereto and any reasonable costs or expenses incurred in defending such claims or demands.


13. The Union confirms that it is taking all reasonable steps to register and seek approval of the SUB Plan with both the Canada Revenue Agency and Service Canada. The Union will be responsible for obtaining any further approval required to renew the SUB Plan with both the Canada Revenue Agency and Service Canada. Upon request, the Union will provide the Employer with proof of registration of the SUB Plan with Service Canada and/or the Canada Revenue Agency.
14. If the Canada Revenue Agency and Service Canada approval, in accordance with paragraph 13, is not received by December 31, 2020, this Letter of Understanding will become null and void.
15. Upon request, the Union or the Trustees will provide the Employer with a copy of the SUB Plan or the Trust Agreement. In the event that the Union or the Trustees amend the terms of the SUB Plan or the Trust Agreement, or terminate the SUB Plan or Trust Agreement, at any time following the execution of this Letter of Understanding, the Employer shall be provided with notice, in writing, no later than 30 days prior to the effective date of the amendment or termination.
16. This Letter of Understanding is being entered into on a without precedent prejudice basis.
17. The Parties agree they may execute this Letter of Understanding in counterpart and all of the parts shall constitute the whole. Signed facsimile or .pdf copies of this Letter of Understanding are binding as if originally executed.

Dated at OAKVILLE <sup>25TH</sup> this 22<sup>nd</sup> day of May, 2020.

  
Signature for the Union  
(I have the authority to bind the Union)

MIKE GALLASHER  
Name (printed)

Dated at Friday this 22 day of May, 2020.

  
Signature for the Employer  
(I have the authority to bind the Employer)

Ben Ruggieri  
Name (printed)