

LANDSCAPING AGREEMENT

BETWEEN: DYNEX CONSTRUCTION INC.

hereinafter referred to as the "**Employer**"

- and -

INTERNATIONAL UNION OF OPERATING ENGINEERS,
Local 793

hereinafter referred to as the "**Union**"

WHEREAS the Union and the Employer are desirous of establishing a form of standard collective agreement with respect to employees engaged in construction work within the geographical area defined herein so as to provide uniform interpretation, application and administration of the relationship established.

IT IS EXPRESSLY AGREED AND DECLARED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

ARTICLE 1 - DURATION OF AGREEMENT

1.1 This Agreement shall become effective on the 1st day of May, 2019, and shall remain in effect until the 30th day of April, 2022, and shall continue in force from year to year thereafter unless either party shall furnish the other with notice of termination of, or proposed revision of, this agreement within one hundred and twenty (120) days before the 30th day of April, 2022, or in a like period in any year thereafter.

ARTICLE 2 - RECOGNITION

2.1 The Employer recognizes the Union as the sole and exclusive bargaining agent for all employees engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same and those employees engaged as surveyors, while working within the Municipality of Metropolitan Toronto, the Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, the County of Simcoe, District Municipality of Muskoka, County of Dufferin, County of Wellington and the Towns of Ajax and Pickering in the Regional Municipality of Durham, including the industrial, commercial and institutional sector of the construction industry, save and except non-working foremen and persons above the rank of non-working foreman.

2.2 Each employee shall, when working in a position within the bargaining unit described in Article 2.1 above, be required, as a condition of employment be a member of and remain a member in good standing of the Union. If the Employer requires employee, he shall call the Union Dispatcher who shall supply qualified men as soon as reasonably possible. If the Dispatcher is unable to supply qualified men, the Employer may hire independently provided such employees are members in good standing of the Union.

- 2.3** Before a new employee starts work, he must have an official Clearance Card issued by the Union Office, unless other arrangements are made by the Union's Dispatcher.
- 2.4** If an employee is hired outside the Union Office, the Employer shall notify the Union within twenty-four (24) hours.
- 2.5** Upon written authorization by an employee, the Employer shall deduct initiation fees, Union dues and annual assessments from the employee's wages and shall submit such deductions to the Union Office, 2245 Speers Road, Oakville, on the first pay period of each month, or as otherwise directed by the Union together with a list of employees from whom such deductions have been made.

2.6 **WORKING DUES CHECK-OFF**

- a) As a condition of employment, the Employer shall require each employee to sign a form which authorizes the Employer to deduct regular monthly Union dues, Advancement dues, Working dues of two percent (2%) per hour for each hour earned of the employee's total wage package which includes the regular hourly rate, vacation pay and health plan and pension plan contributions, initiation fees and annual assessments from the employee's pay. The Employer agrees to change the amounts of such regular deductions after being duly notified by the Union such deductions shall be forwarded along with the remittances required under Article 16, and supporting information shall be as required by the Trustees on the Reporting Forms. Such deductions shall be immediately paid to the Local Union by the Administrator of the Plans.
- b) All dues fees and assessments so deducted shall be remitted together with Pension and/or Benefit contributions as set out in this agreement on or before the 15th day of the month following the month in which such deductions were made. The Employer shall, when making all remittances to the Union, identify employees both by name and Social Insurance Number and indicate the amount deducted from each employee

2.7 **ADVANCEMENT DUES CHECK-OFF**

Effective May 1, 2019, the Employer shall deduct thirty -five cents (\$0.35) per hour for each hour earned by each employee covered by this Agreement for Advancement Dues. The amount deducted shall be remitted together with other monthly contributions and deductions in the manner set out in this Agreement.

Effective May 1, 2020, the amount of thirty-five cents (\$0.35) shall increase to forty cents (\$0.40) per hour for each hour earned by each employee covered by this Agreement for Advancement Dues.

- 2.8** The Employer shall engage only those sub-contractors (or equipment from these sub-contractors) who are in contractual relations with the Union to perform work covered in this Agreement.

2.9 SUCCESSOR AND RELATED EMPLOYERS

Any related and/or successor companies as defined by the Ontario Labour Relations Act that may currently exist or be formed at a future date, shall be bound by the applicable Collective Agreement.

2.10 The Employer further recognizes the Union as the sole and exclusive bargaining agent for all employees covered by the Union's designation order in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all other sectors of the construction industry in those areas of the Province other than the area described in **Article 2.1** above.

- a) This Collective Agreement shall be binding upon each Employer and any successor or related Employers as defined herein.
- b) Successor Employers shall be deemed to be Employers who would be bound by this Collective Agreement pursuant to the provisions of Section 69 of the *Labour Relations Act, 1995* S.O. 1995, c.1 Sch. A, as amended by Bill 69.
- c) Related Employers shall be deemed to be Employers who would be bound by this Collective Agreement pursuant to the provisions of Section 1(4) of the *Labour Relations Act, 1995*, S.O. 1995, c.1, Sch. A., as amended by Bill 69.
- d) For the purposes of clarity, this Article shall continue to apply, notwithstanding any amendments to or the repeal of either section 69 or Section 1(4) of the Ontario *Labour Relations Act, 1995*, subsequent to the effective date of this Collective Agreement.
- e) If there is any dispute concerning the interpretation, application or administration of this Article, it may be dealt with as a grievance under this Collective Agreement. The arbitrator shall have the power to interpret and apply the provisions of paragraph (a), (b), (c) and (d) hereof and it is agreed that the arbitrator shall follow decisions of the Ontario Labour Relations Board with respect to Sections 69 and 1(4) of the Ontario *Labour Relations Act, 1995* as amended by Bill 69. For the purposes of clarity, the arbitrator shall have the power to pierce any corporate veil to ascertain the relationship between or amongst any corporations and the arbitrator shall have the jurisdiction to declare that the successor or related Employers are bound by this Collective Agreement that the successor or related Employers are bound by this Collective Agreement & grant any other relief as may be appropriate.

ARTICLE 3 - GEOGRAPHICAL AREA

If the Employer works in other areas of the Province of Ontario, where there exists an agreement between a contractor or association of contractors and the Union, which covers the class and character of work in question, the Employer agrees to be bound by and apply the wage rates and conditions of the said agreement.

ARTICLE 3.1 INDUSTRY AND TRAINING FUND

Effective May 1, 2019 the Employer shall contribute the sum of Sixty-Six cents (0.66¢) per hour for each hour earned by each employee covered by this Agreement, as the Employers contribution to a mutually trusted Training Fund.

Effective May 1, 2020 the Employer shall contribute the sum of Seventy-One cents (0.71¢) per hour for each hour earned by each employee covered by this Agreement, as the Employers contribution to a mutually trusted Training Fund.

Effective May 1, 2021 the Employer shall contribute the sum of Seventy-One cents (0.71¢) per hour for each hour earned by each employee covered by this Agreement, as the Employers contribution to a mutually trusted Training Fund.

ARTICLE 4 - MANAGEMENT RIGHTS

4.1 The Union agrees that is the exclusive function of the Employer:

- (a) to conduct his business in all respects in accordance with his commitments and responsibilities, including the right to manage the jobs, locate, extend, curtail or cease operations, to determine the number of men required at any or all operations, to determine the kinds and locations of machines, tools and equipment to be used and the schedules of productions, to judge the qualifications of the employees and to maintain order, discipline and efficiency;
- (b) to hire, discharge, classify, transfer, promote, demote, layoff, suspend or otherwise discipline employees, provided that a claim by an employee that he has been discharged without reasonable cause shall be subject to the provisions of the Grievance Procedure;
- (c) to make, alter from time to time, and enforce reasonable rules of conduct and procedure to be observed by the employees;

And it is agreed that these functions shall not be exercised in a manner inconsistent with the express provisions of this Agreement.

ARTICLE 5 - GRIEVANCE PROCEDURE

- 5.1** There shall be an earnest effort on the part of both parties to this Agreement to settle promptly, through the procedure set out herein, any complaints, grievances or disputes arising from the interpretation, application or administration of this Agreement.
- 5.2** All grievances to be dealt with under **Step 2** below shall be in writing on a form supplied by the Union and signed by the employee having such grievance.
- 5.3** Written grievances, to be valid, shall set out the nature of the grievance, the Article or Articles of the Agreement alleged to have been violated and the nature of the remedy sought, and shall not be subject to change at later steps, except by mutual agreement in writing with the Employer, or in the case of remedy, by an Arbitration Board.

- 5.4** In determining the time which is allowed in the various steps, Saturday, Sunday and Statutory Holidays shall be excluded and any time limits may be extended by mutual agreement in writing.
- 5.5** If advantage of the provisions of **Articles 5 and 6** hereof is not taken within the time limits specified therein, or as extended in writing as set out above, the grievance shall be deemed to have been abandoned and may not be reopened.
- 5.6** The Employer shall designate and name the official to whom a written grievance is submitted at **Step 2**.
- 5.7** It is understood and agreed that an employee does not have a grievance until he has discussed the matter with his foreman or other supervisory personnel acting in this capacity and given him an opportunity of dealing with the complaint. His decision shall be made known to said employee within forty-eight (48) hours.
- 5.8** Grievances properly arising under this Agreement shall be adjusted and settled as follows:

STEP 1

Within ten (10) days after the circumstances giving rise to the grievance occurred or originated (save and except grievances involving monetary items as defined in **Section 5.9** below), the aggrieved employee, with or without the Steward shall present his grievance orally or in writing to the official of the Employer named by the Employer to handle grievances at this step. If a settlement satisfactory to the Union and the employee is not reached within two (2) full working days, a grievance may be presented as indicated at Step 2 at any time within four (4) full working days thereafter.

In those instances where the Union is required to file a second or subsequent monetary grievance under this Article and such grievance is settled with the assistance of the Ontario Labour Relations Board, the Employer responsible for violation of the Agreement will pay the legal costs incurred by the Union to arrive at such settlement. Should the Union refer a grievance to the Ontario Labour Relations Board and fail to prove the alleged violation, and such failure to prove violation is established by Board decision, the Union will pay the legal costs incurred by the Employer as a result of such referral.

STEP 2

- (a)** At this step, the grievance may be processed as an individual, joint, or Union grievance & shall be presented in writing by a Union Steward or Representative to the Company Official assigned to handle written grievances. Should no settlement satisfactory to the Union be reached within five (5) full working days, the grievance may be submitted to arbitration.
- (b)** The Employer or the Union may process a written grievance at this step concerning the interpretation or alleged violation of the Agreement.
- 5.9** Monetary grievances are defined as those involving payment of hours of work, rates of pay, overtime, vacation and statutory holiday pay, shift premiums, traveling expenses, room & board allowances, pension & welfare contributions, reporting allowances & dues, but not including grievances arising out of classification assignments. Such monetary grievances shall be brought forward at Step 1 within three (3) months after the circumstances giving rise to the grievance occurred or originated.

ARTICLE 6 - ARBITRATION

- 6.1** The parties to this Agreement agree that any grievance concerning the interpretation or alleged violation of this Agreement which has been properly carried through all the steps of the grievance procedure outlined in **Article 5**, which has not been settled, will then be referred to a Board of Arbitration at the request of either of the parties hereto.
- 6.2** The Board of Arbitration will be composed of one (1) person appointed by the Employer, one (1) person appointed by the Union and a third person to act as Chairman, chosen by the other two members of the Board.
- 6.3** Within five (5) working days of the request by either party for a Board, each party shall notify the other in writing of the name of its appointee.
- 6.4** Should the person chosen by the Employer to act on the Board and the person chosen by the Union fail to agree on a third member as Chairman within five (5) days of the notification mentioned above, the Minister of Labour of the Province of Ontario will be asked to appoint a Chairman.
- 6.5** The decisions of the Board of Arbitration or a majority of such Board constituted in the above manner shall be binding on the parties of this Agreement.
- 6.6** The Board of Arbitration shall not have any power to alter or change any of the provisions of this Agreement or to substitute any new provisions for any existing provisions, nor to give a decision inconsistent with the terms & provisions of this Agreement.
- 6.7** Each of the parties to this Agreement will bear the expense of the Arbitrator appointed by it and the parties will jointly bear the expense of the Chairman.

ARTICLE 7 - NO STRIKES, NO LOCKOUTS

- 7.1** In view of the grievance and arbitration procedure provided in this Agreement, it is agreed by the Union that there shall be no strike, picketing, slowdown or stoppage of work, either complete or partial, and the Employer agrees that during the term of this Agreement there shall be no lockout.
- 7.2** It will not be considered a violation of this Agreement for employees to refuse to cross a legal picket line, however, the Union agrees to grant permission to the Employer to remove equipment from behind a picket line when reasonably possible and where the Employer is not involved.

ARTICLE 8 - UNION REPRESENTATION

- 8.1** The Business Representative of the Union shall have access to all jobs and the Employer's yard or shop during working hours but in no case shall his visits interfere with the progress of the work, unless it is necessary to correct a violation of safety regulations, relating to this Agreement. When visiting a job site or the Employer's yard or shop, he will advise someone from supervision, if possible, before contacting employees.
- 8.2** It is agreed that a Steward may be appointed by the Union. In each case where a Steward has been appointed, the Union shall notify the Employer of such appointment in writing.

- 8.3** The Steward shall be the last employee laid off provided he is competent to complete the work to be completed and the first to be recalled provided he is competent to complete the work to be completed.
- 8.4** The Steward, where possible, will be responsible for reporting any grievances to the Employer and to the Union Business Representative, so that these can be taken up in the proper manner without delay.
- 8.5** Reasonable time shall be allowed a Steward to perform his duties, however, these shall not interfere with his regular work and normal progress, unless safety is involved.
- 8.6** No discrimination shall be shown against any Steward for carrying out his duties.
- 8.7** The employer agrees to engage only owner/operators to perform work covered by this Agreement who are signatory to an owner/operators commitment form. The Employers agree that their present ratio of owner/operators to employees, shall not be significantly increased over the lifetime of this agreement. It is further agreed that said ratio of owner/operators shall never be higher than ten (10%) percent or one (1) owner/operator per ten (10) Operating Engineers. Regular employee=s employment and overtime provisions shall be protected.

8.8 Lay-off Procedure

In the event of lay-off of employees covered by this Agreement, the following procedure shall prevail:

- a) First laid-off shall be applicants for membership;
- b) Second laid-off shall be members of the Union from out-of-province working on permits or travel cards;
- c) Third laid-off shall be members of the Union who are in receipt of a retirement pension from the I.U.O.E., Local 793 Pension Plan;
- d) Last laid-off shall be all other members of the Union.

8.9 Recall Procedure

In the event of recall of employees covered by this Agreement, the Employer shall abide by the following procedure, provided the employees to be recalled are capable of performing the required work:

- a) First recalled shall be members of the Union, except those identified in (b), (c) and (d) below;
- b) Second recalled shall be members of the Union who are in receipt of a retirement pension from the I.U.O.E., Local 793 Pension Plan;
- c) Third recalled shall be members of the Union from out-of-province working on permits or travel cards;
- d) Last recalled shall be applicants for membership in the Union.

ARTICLE 9 - PAYMENT OF WAGES

- 9.1** Wages shall be paid weekly by direct deposit, cash or cheque on the job or direct deposit at the option of the Employer during working hours Thursday of each week and shall be accompanied by a retainable slip outlining all hours of work, rate of pay, overtime hours, deductions for income tax, Unemployment Insurance, Canada Pension, etc., where applicable. It is further agreed that an employee's pay slip will show the number of hours worked in each week.
- 9.2** In the case of layoff, all men will be notified the day before the layoff where practical, but in any event shall receive one (1) hour's notice in advance of the layoff.
- 9.3** Whenever Record of Unemployment Certificate, Vacation Pay and Statutory Holiday Pay Credits and pay cheque are not given to employees at the time of termination, they shall be sent by the Employer to the employee, by Registered Mail, to his last known address on file with the Employer within 48 hours of the time of termination.
- 9.4** When employees who are laid off are not paid up to date on the job site and should the Employer fail to send such wages and/or employment records as stated above, the Employer shall pay eight (8) hours pay at the regular hourly rate for each additional regular working day the employee is required to wait for his pay and records after notice to the Employer is and giving him three (3) business days to correct such fault.

ARTICLE 10 - SAFETY, SANITATION AND SHELTER

- 10.1** Employees shall be provided with reasonable and adequate protection from the weather and falling material or other hazards on the job.
- 10.2** In co-operation with the Employer's overall program of accident prevention, the Steward shall report to the foreman for immediate corrective action any unsafe conditions, unsafe acts, and violations of safety regulations.
- 10.3** Every employee shall, as a condition of employment, be required to own and wear a safety helmet of a type approved by the Construction Safety Association and the Employer agrees that such helmets may be purchased from him at cost.
- 10.4** Every employee shall, as a condition of employment, own and wear suitable protective footwear, safety glasses, welder's helmet, and other personal protective equipment required in the normal course of his duties.
- 10.5** The Employer, the employees and the Union agree to abide by the provisions of the Occupational Health and Safety Act.
- 10.6** It shall be the duty of every employee to practice good housekeeping.
- 10.7** The operator of any equipment shall be directly responsible for the safe operation of same. If in doubt as to the ability of the equipment or the load, he shall not move same until safe conditions have been assured.

- 10.8** The Employer agrees that when work is to be performed outside normal working hours, and Management and the Union consider it hazardous or a risk to the safety of the employee, arrangements shall be made to have other employees available in case of emergency.
- 10.9** No employees shall be discharged by his Employer because he fails to work in unsafe conditions, contrary to the provisions of the Occupational Health and Safety Act 1978. Any refusal by an employee to abide by such regulations, after being duly warned, will be sufficient cause for dismissal.

10.10 HAZARDOUS WASTE

The Employer agrees to be bound by the provisions and mandates set by the committee of the Union and Associated Earthmovers of Ontario regarding hazardous waste in the work place.

10.11 REINSTATEMENT OF EMPLOYEES UPON RETURN FROM INDUSTRIAL ACCIDENT

An employee injured in the performance of his duties will resume his regular work when medically fit to do so if work is available and he applies. The job of an injured worker shall be deemed to be available if upon his return to work within his classification on any project under this Agreement is being performed by an employee who, subsequent to the time of injury, was hired by the Employer or transferred or otherwise assigned to perform any work within the said classification on any project covered by this Agreement.

An employee, who claims he has been denied employment contrary to this provision, may have recourse to the grievance and arbitration procedures as set out in this Agreement.

The above shall not apply if the injury is attributable solely to the willful misconduct of the employee.

ARTICLE 11 - WAGES AND CLASSIFICATIONS**11.1****CLASS 1**

Engineers operating Dozers D3 and over, shovels, backhoes, hoptoes, graders, gradalls, heavy duty mechanics, welders and instrument men.

DATE	WAGES	VAC. PAY	BENEFIT PLAN	PENSION PLAN	TRAINING FUND	TOTAL
May 1, 2018	\$35.62	\$3.56	\$5.15	\$5.52	\$0.56	\$50.41
May 1, 2019	\$36.49	\$3.64	\$5.35	\$5.52	\$0.66	\$51.66
May 1, 2020	\$37.44	\$3.74	\$5.55	\$5.52	\$0.71	\$52.96
May 1, 2021	\$38.53	\$3.85	\$5.65	\$5.52	\$0.71	\$54.26

CLASS 2

Operators of tractors, scrapers, emcoes, rock trucks, overhead loaders, front-end loaders, fork-lifts, pitman type cranes, industrial tractors with or without excavating attachments, compressor operators, Kubota type backhoe and similar small equipment, drivers of farm tractor with pulverizing or fine grading equipment, tree farmers, hydro axes, power mounted drills.

DATE	WAGES	VAC. PAY	BENEFIT PLAN	PENSION PLAN	TRAINING FUND	TOTAL
May 1, 2018	\$35.12	\$3.51	\$5.15	\$5.52	\$0.56	\$49.86
May 1, 2019	\$35.99	\$3.59	\$5.35	\$5.52	\$0.66	\$51.11
May 1, 2020	\$36.94	\$3.69	\$5.55	\$5.52	\$0.71	\$52.41
May 1, 2021	\$38.03	\$3.80	\$5.65	\$5.52	\$0.71	\$53.71

CLASS 3

Operators of water truck, soil stabilizer, utility operators, skid steer loader, service trucks, track mounted hydro seeders, hydro seeding trucks, float drivers, Jr. Rodman.

DATE	WAGES	VAC. PAY	BENEFIT PLAN	PENSION PLAN	TRAINING FUND	TOTAL
May 1, 2018	\$31.34	\$3.13	\$5.15	\$5.52	\$0.56	\$45.73
May 1, 2019	\$32.23	\$3.22	\$5.35	\$5.52	\$0.66	\$46.98
May 1, 2020	\$33.18	\$3.32	\$5.55	\$5.52	\$0.71	\$48.28
May 1, 2021	\$34.27	\$3.43	\$5.65	\$5.52	\$0.71	\$49.58

- 11.1 b)** The classifications set out above shall include all similar equipment, with or without attachments, in each group working on land, water or underground; and shall be manned and/or operated by members of I.U.O.E., Local 793. Rates for new types of equipment not presently used by the Employer shall be classified and agreed upon by the Union and the Employer as conditions indicate.
- 11.2** It is further agreed that no employee covered by this Agreement shall receive a reduction in wages and conditions through the introduction of the Schedule. Classifications within the jurisdiction of the Union not covered herein shall be paid at the rates set out in the appropriate Collective Agreement referred to **Article 11.7** below.
- 11.3** Salaried employees, or employees who operate only part-time shall not replace regular operators when overtime is to be worked.
- 11.4** Operators required to operate equipment under two-rate classifications shall be paid the higher classification rate per shift.
- 11.5** Employees required to supply their own tools shall be provided a suitable and safe place to keep said tools.
- 11.6** Employees will be granted a coffee break in each half of shift at a time designated by the Employer.
- 11.7**
- a)** It is understood that the terms and conditions of this Collective Agreement shall apply only when performing work after final grade and site preparation has been completed.
 - b)** If the Employer engaged in work not generally recognized as landscaping (such as excavating and site preparation), then the Employer shall contact the Union regarding such work and shall perform such work under the appropriate Collective Agreement.
 - c)** For all work concerning the use of machines for all types of drilling and/or ground heat systems, the appropriate Collective Agreement shall apply.
- 11.8** Time spent by an Employee in training, instruction, and/or education that they are directed to participate in by their Employer or is otherwise required by the Employer, by statute, or by regulation and may be necessary for an employee to continue performing the duties of their job, or may be necessary before an employee can be recalled to work, shall constitute hours worked for which an employee will be compensated pursuant to the terms of this Agreement.

ARTICLE 12 - HOURS OF WORK AND OVERTIME

- 12.1** The standard work week shall be ten (10) hours per day between the hours of 7:00 a.m. and 6:00 p.m., fifty (50) hours per week, Monday to Friday inclusive.
- 12.2** Overtime for all work performed in excess of the hours noted in paragraph 12.1 above and on Saturday will be paid at the rate of time and one-half (1-1/2).

12.3 Overtime for all work performed on Sunday and the following Statutory Holidays shall be paid at the rate of double (2) time.

- | | |
|----------------|------------------------------|
| New Year's Day | Labour Day |
| Good Friday | Thanksgiving Day |
| Victoria Day | Christmas Day |
| Canada Day | Boxing Day |
| Civic Holiday | Heritage Day (if proclaimed) |
| Family Day | |

12.4 Employees shall be allowed a one-half (1/2) hour unpaid lunch break between 11:30 a.m. and 1:00 p.m. and a paid fifteen (15) minute coffee break during each half of their shift. It is understood that no employee shall be required to work more than five (5) consecutive hours without a lunch break.

ARTICLE 13 - VACATION AND STATUTORY HOLIDAY ALLOWANCE

13.1 Vacation and Statutory Holiday Pay shall be held separate and apart and paid weekly to each employee covered by this Collective Agreement, at the rate of ten percent (10%) of the gross wages earned, and income tax will be deducted weekly.

It is understood and agreed that four percent (4%) of the gross wages is to be considered Vacation Pay and six percent (6%) of the gross wages is to be in lieu of Statutory Holiday Pay.

It is further understood that Vacation Pay and Statutory Holiday Pay credits will be paid to employees on termination and on the first pay day of July and December in each year.

13.2 The parties agree that **Article 13.1** above shall remain in effect until such time as the Jointly Administered Trust Fund to be known as "OPERATING ENGINEERS, LOCAL 793 MEMBERS HOLIDAY AND VACATION WITH PAY TRUST" is established. At this time the Holiday and Vacation With Pay Trust Fund shall replace such article.

ARTICLE 14 - SHIFT WORK

14.1 If a three (3) shift operation is required under this Section, the standard work week for shift work shall be comprised of six (6) shifts of eight (8) hours each, Monday to Saturday inclusive.

DAY SHIFT - Six (6) consecutive shifts at regular day shift rate

2ND SHIFT - Six (6) consecutive shifts at \$2.50 per hour premium above the regular day shift rate

3RD SHIFT - Six (6) consecutive shifts at \$3.00 per hour premium above the regular day shift rate.

14.2 Overtime at the rate of time and one-half (1-1/2) the regular day shift rate shall be paid after forty-five (45) hours in any work week and after eight (8) hours in any work day.

14.3 When the employee is required to work a single afternoon shift or night shift, the premiums in Article 14.1 shall not apply and the ordinary overtime provisions of this agreement shall apply.

ARTICLE 15 - REPORTING TIME

- 15.1**
- (a) An employee who reports for work as usual, unless directed not to report the previous day by his Employer, shall receive a minimum of four (4) hours pay at the applicable rate and shall remain at other work of his craft, if requested by the foreman. An employee directed to work after noon lunch period and who commences to work shall also be subject to a minimum of four (4) hours' pay at the applicable rate for the remainder of his shift. This Article does not apply when conditions under paragraph (c) prevail.
 - (b) In the case of employees who are requested to and do report for work on Saturdays, Sundays and Holidays, the minimum hours applicable shall be four (4) hours at the applicable rate.
 - (c) **Inclement Weather:** Two (2) hours' pay, together with travelling expenses whenever applicable, shall be allowed by the Employer when an employee covered by this Agreement reports to work at the Employer's shop or job, but work is not available due to inclement weather, provided the employee remains on the job for two (2) hours after his designated starting time. However, no reporting pay shall be allowed where an employee has been informed not to report for work and such information has been given to him on the previous day. If an employee is directed to work and commences to work, paragraph (a) above shall apply.

ARTICLE 16 - WELFARE AND PENSION

16.1 a) Welfare Plan Contributions

Effective May 1st, 2019 Employers shall contribute in total:

Ten Dollars and Eighty-Seven cents (\$10.87) per hour to the International Union of Operating Engineers, Local 793 Members Life and Health Benefit Trust of Ontario (the "Health Plan") and to the International Union of Operating Engineers, Local 793 Members Pension Benefit Trust of Ontario (the "Pension Plan") for each hour earned by each employee in his employ.

Effective May 1st, 2020, the total Employer contributions of Ten Dollars and Eighty-Seven Cents (\$10.87) per hour shall increase to Eleven Dollars and Seven Cents (\$11.07) per hour.

Effective May 1st, 2021, the total Employer contributions of Eleven Dollars and Seven Cents (\$11.07) per hour shall increase to Eleven Dollars and Seventeen Cents (\$11.17) per hour.

- (b) It is agreed that Employers shall make a single monthly payment to an independent administrator appointed by the Trustees of the Health Plan and the Pension Plan for contributions owing to the two plans. The administrator shall be responsible for ensuring that the contributions are allocated and made on behalf of each Employer and employee to the Health Plan and the Pension Plan, as set out in this Agreement.
- (c) These monies shall be remitted in accordance with this Agreement to the Health Plan and Pension Plan, which Trusts shall be administered by an equal number of Trustees appointed by the Union and an equal number of Trustees appointed by the Employer.
- (d) Payments into the Health Plan and Pension Plan are to be made by the 15th day of the month following the month for which payment is made, and at no time shall the contributions be paid directly to the employee.

- (e) Every Employer bound by these Collective Agreement herby covenants and agrees to sign a Participation Agreement with the Trustees in the form attached hereto as **Appendix "A"**.

16.1 b) requires that the Employer shall make a single monthly payment to an independent administrator appointed by the Trustees of the Health Plan and the Pension Plan for contributions owing to the two plans. The administrator shall be responsible for ensuring that the contributions are allocated and made on behalf of each Employer and employee to the Health Plan and the Pension Plan as follows:

Effective May 1st, 2019:

- (i) for employees with \$6,750.00 or fewer dollars in their Health Plan dollar bank, Five Dollars and Thirty-Five Cents (\$5.35) to the Health Plan and Five Dollars and Fifty-Two Cents (\$5.52) to the Pension Plan;
- (ii) for employees with more than \$6,750.00 in their Health Plan dollar bank, Ten Dollars and Eighty-Seven Cents (\$10.87) to the Pension Plan.

Effective May 1st, 2020:

- (i) for employees with \$6,750.00 or fewer dollars in their Health Plan dollar bank, Five Dollars and Fifty-Ten Cents (\$5.55) to the Health Plan and Five Dollars and Fifty-Two Cents (\$5.52) to the Pension Plan;
- (ii) for employees with more than \$6,750.00 in their Health Plan dollar bank, Eleven Dollars and Seven Cents (\$11.07) to the Pension Plan.

Effective May 1st, 2021:

- (i) for employees with \$6,750.00 or fewer dollars in their Health Plan dollar bank, Five Dollars and Sixty-Five Cents (\$5.65) to the Health Plan and Five Dollars and Fifty-Two Cents (\$5.52) to the Pension Plan;
- (ii) for employees with more than \$6,750.00 in their Health Plan dollar bank, Eleven Dollars and Seventeen Cents (\$11.17) to the Pension Plan.

The amount \$6,750.00 in a Member's Health Plan dollar bank noted in (i) and (ii) above shall be redetermined from time to time as determined by a duly constituted motion passed by the Board of Trustees of the International Union of Operating Engineers, Local 793 Members Life and Health Benefit Trust of Ontario, and as conveyed to the administrator.

- 16.2** i) These monies shall be remitted in accordance with this Collective Agreement and shall be remitted by the 15th day of the month following the month in which the hours have been earned, together with the supporting information entered on a Reporting Form as designated by the Trustees and at no time shall the contributions be paid directly to the employee.
- a) In the event an Employer fails to remit any contributions, deductions or remittances for the Health Plan, the Pension Plan, dues, Advancement Dues, fees or assessments etc pursuant to **Article 2**, I.U.O.E., Local 793 Industry and Training Fund pursuant to **Article 3**, Working Dues Check-Off or Advancement Dues Check-off, by the 15th day of the month due, the Employer shall pay to the appropriate fund as liquidated damages and not as penalty, an amount equal to three percent (3%) per month, compounded monthly (42-6% per annum) for any delinquent contributions, deductions, remittances fifteen (15) days in arrears calculated from the date due, provided the Employer has received five (5) days prior written notice to correct such delinquency and has done so.
- b) With reasonable cause, the Trustees may request an Employer to submit to them within a stipulated period a certified audited statement of payroll contributions to these funds for a period not to exceed the period from the effective date of this Agreement until the date the audit takes place. Such statements shall reply to the questions submitted to the Employer by the Trustees.
- c) If the Employer does not submit the certified audited statement as per **Article 16.2 (iii)**, the Trustees may appoint an independent chartered accountant to enter upon the Employer's premises during the regular business hours to perform an audit of the Employer's records only with respect to the Employer's contributions or deductions to the required Employee Benefit Plan.
- d) Where the trustees appoint an auditor, the cost of the audit shall be borne by the appropriate funds or plans, but the cost of the audit shall be borne by the Employer if the Employer is found to be in deliberate violation of the Agreement. In addition, the trustees may assess a penalty not to exceed Twenty-Five Thousand Dollars (\$25,000.00), if the audit discloses any deliberate violation.

- 16.3** In the event such audit reveals that the Employer has failed to remit contributions in accordance with the provisions of this Agreement, the Employer shall, within five (5) days of receipt of written notice from the trustees, remit all outstanding contributions together with any liquidated damages required under the terms of **Article 16.2 (ii)** above and completed supporting contribution report forms as required by the Plan.

- 16.4** When an Employer fails to remit all delinquent contributions the provisions of **16.2 (ii)** shall apply and the Union, on instruction from the Trustees, shall immediately institute proceedings against the delinquent Employer under **Section 126** of the **Labour Relations Act** of Ontario. All costs of such actions shall be borne by the appropriate plan or fund unless otherwise recoverable.
- a) Where the parties agree to a settlement of a delinquency and such settlement is violated by the Employer, the violation may be used by the Union as evidence [subject to **Article 16.2 (iii)**] at the Ontario Labour Relations Board; and **Article 16.2 (ii)** shall apply.
 - b) In the event that a grievance alleging that an Employer has failed to remit the proper contributions, deductions or remittances to any Trust Fund or party as required by this Agreement, the parties agree that for the purposes of determining any issue, the following presumption shall apply:
 - c) A statement signed by a member of the Union, a business representative, a trustee or the administrator of a Trust Fund, shall be *prima facie* evidence of the number of hours worked by members of the Union, and of a failure to make the appropriate payments as required by this Agreement. This evidence shall establish only a rebuttable presumption and may be challenged by the Employer with proper documentary evidence.
 - d) If the Ontario Labour Relations Board or a Board of Arbitration to which a grievance alleging failure to pay wages to employees or a failure to make appropriate payments to a Trust Fund of an administrator as required by the Agreement is litigated and the Board determines that an Employer has violated the Agreement, then the Ontario Labour Relations Board or the Board of Arbitration shall also require the Employer to pay all reasonable costs incurred by the Union in prosecuting the grievance including but not limited to, all legal costs on a solicitor-and-client basis, travel, meal and accommodation costs of all witness(es) and business representative(s), conduct money cost incurred in serving a summons, any expenses incurred by the Union pursuant to **Section 126(4)** of the **Labour Relations Act** or otherwise, for the Board of Arbitration.
 - e) The Union may with cause require the Employer to post or secure an unconditional letter of credit or other form of security acceptable to the Union to cover any delinquencies as required by this Agreement. The maximum amount of the unconditional letter of credit or other form of security shall be the amount the Employer would be expected to contribute for a four (4) month period or Twenty Thousand Dollars (\$20,000.00) whichever is the greater amount.
 - f) The parties recognize that the payments to the various Trust Funds as required by this Agreement are part of a total wage package. For the purposes of director=s liability to employees under the Ontario **Business Corporations Act** and the Canada **Business Corporations Act**, the wages set out in this Agreement are the total wage packages.

- 16.5** Where the Union has taken prior proceedings and obtained a decision against the Employer for delinquent contributions, deductions or remittances, the Union may require the said Employer to post a cash bond, certified cheque or other form of security acceptable to the Union, not to exceed Twenty Thousand Dollars (\$20,000.00), or an amount equal to four (4) months contributions whichever is the greater amount, to be held in trust by the Trustees for a period to be determined by the Trustees. In the event that the said Employer again becomes delinquent for contributions, deductions, or remittances, the Union and/or the Trustees may apply the cash bond or certified cheque, or any portion thereof, to satisfy the delinquency and require the Employer to replenish the cash bond or certified cheque in a higher amount. In the event that the cash bond or certified cheque does not satisfy the full amount of the delinquency, the Union may take other proceeding to recover the balance.
- 16.6** If the Employer does not have any employees in his employ, he shall submit a NIL report in accordance with the provisions of **16.2**.
- 16.7** The Trustees of the employee benefit plans referred to in this Collective Agreement shall promptly notify the Union of the failure by the Employer to pay any employee benefit contributions required to be made under this Collective Agreement and which are owed under the said plans in order that the Programs Administrator of the Employee Wage Protection Program may deem that there has been an assignment of compensation under the said program in compliance with the Regulations of the Employment Standards Amendment Act, 1991 in relation to the Employee Wage Protection Program.
- 16.8** *DeNovo*: The Employer shall contribute two cents (\$0.02) per hour to the Health Plan for each hour earned by each employee in his employ as a DeNovo Treatment Centre contribution, to be submitted with the Health and Pension Fund payments herein provided.

ARTICLE 17 - OUT-OF-TOWN ALLOWANCES AND TRAVELING TIME

- 17.1** In regard to out-of-town allowances, it is understood that if the Employer requires an operator to be out of town overnight, the Employer will provide suitable room and board for the employee up to a maximum of Eighty-Two Dollars and Forty Cents (\$82.40) per day and Four Hundred and Twelve Dollars (\$412.00) per week.

It is further understood that on projects located beyond 160 kilometres, out-of-town allowances shall be paid seven (7) days per week.

On May 1, 2013 this amount will change to \$84.87 per day and \$424.36 per week.

On May 1, 2014 this amount will change to \$87.42 per day and \$437.09 per week.

17.2 In regard to traveling time in the fringe area, beyond the 50 kilometre radius and beyond the Town of Newmarket, up to a radius of 100 kilometres, the employee will be paid at the rate of Fifty-Three Cents (53¢) per road kilometer, one way from Toronto City Hall to the job site. Such payment is in lieu of room and board and is not paid when Company transportation to the job is supplied and straight time to a maximum of one and one-half (1-1/2) hours' pay a day is paid to the employee.

17.3 In regard to travel time outside the Metropolitan Toronto Free Zone; the Free Zone consisting of the area west of the Pickering Town Line (to Lake Ontario), south of Highway #7 and Langstaff Road (or its continuation) and east of Highway #410 and Cawthra Road but within the 50 kilometre radius including the Town of Newmarket,

Employees will be granted Eleven Dollars and Sixty-Six (\$11.66) per day travelling allowance, when Company transportation to the job is not supplied. It is understood when an employee is sent out of town by his Employer in the circumstances contemplated by **17.1** and **17.2** above, the Employer will maintain the rate of wages and hours of work for such employee, as provided in this Agreement.

On May 1, 2013 this amount shall change to \$12.02

On May 1, 2014 this amount shall change to \$12.38.

ARTICLE 18-HEAVY EQUIPMENT APPRENTICES

18.1 The purpose of this Article is to provide a program to train skilled tradesmen by making provision for earthmoving apprentices in this Landscaping Agreement.

18.2 "Apprentices" shall mean employees considered to be in the training stage of their careers by the Union. The Union shall have the sole discretion to determine whether a person is an apprentice.

18.3 When the Employer wishes to employ an Apprentice, the Employer shall make such a request to the Union Dispatcher. The Union Dispatcher shall make immediate efforts to dispatch an Apprentice within three (3) days of receipt of the request. Any person not dispatched in accordance with this Article shall not be considered to be an Apprentice for the purpose of this Agreement.

18.4

- a) An Indentured Heavy Equipment Apprentice entering the industry who has taken pre-employment training through the Operating Engineers Training Institute of Ontario will work for his first 1,000 hours at fifty percent (50%) of the current base rate for the machine which he is operating.
- b) When an Apprentice has completed his first 1,000 hours plus all of the related training provided for in the Training Standards of the Training Fund, and after written assessment by the Employer and the Training Fund, each Apprentice will be employed for the next 1,000 hours at sixty percent (60%) of the current base rate for his classification.
- c) When an Apprentice has completed 2,000 hours plus all of the related training provided for in the Training Standards of the Training Fund, and after written assessment by the Employer and the Training Fund, each Apprentice will be employed for the next 500 hours at seventy-five (75%) of the current base rate for his classification.
- d) After completion of 2,500 hours of on-the-job training and all related training as from time to time specified by the Training Fund the Apprentice will then fit into the work force at the rate of pay provided for in the Collective Agreement.
- e) Hours spent at the Training Institute shall constitute hours worked for purposes of rate increases.
- f) Employers shall make every effort to keep Apprentices on a steady basis in order to complete their training hours as quickly as possible.
- g) Employers shall request Apprentices through the Union District Offices who, in turn, will notify the Training Fund at 2245 Speers Road, Oakville. All dispatching of apprentices shall be done from the appropriate Union District Office under the Direction of the Training Fund.

Ratio of Apprentices

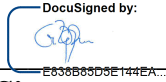
The ratio of Indentured Heavy Equipment Apprentices employed by the Employer may be a minimum of one (1) Apprentice to each five (5) Journeymen Operating Engineers in his employ, but in all cases, the ratio shall be a minimum of one (1) Apprentice to each ten (10) Journeymen Operating Engineers or as otherwise authorized in writing by the Union.

IN WITNESS WHEREOF the Party of the First Part and the Party of the Second Part have caused their proper Officers to affix their signatures

ON THIS 11/8/2021 | 11:32:06 AM PST

**ON BEHALF OF:
DYNEX CONSTRUCTION INC.**

**ON BEHALF OF:
I.U.O.E. LOCAL 793**

DocuSigned by:

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Signature

George Zeppieri President

Please Print Name and Title
(Note: Please complete date line above)

80 Costa Road

Address

Concord, Ontario

City, Province, Postal Code

(T) 905-669-5923 (F) 905-669-9380

Telephone/Fax Number(s)

georgez@dynexconstruction.com

Email Address

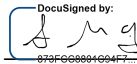
Mike Gallagher, Business Manager

Joe Redshaw, President

Rick Kerr, Treasurer

Dave Turple, Vice President

Brian Alexander, Recording- Corresponding Secretary

DocuSigned by:

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**Recommended By: Shawn McLeary,
Sector Coordinator**

APPENDIX "A"
LETTER OF UNDERSTANDING

BETWEEN: **DYNEX CONSTRUCTION INC.**

(the "Employer")

- and -

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793


(the "Union")

IT IS UNDERSTOOD AND AGREED between the Employer and the Union that any related and/or successor companies as defined by the Ontario Labour Relations Act that may currently exist or be formed at a future date, shall be bound by the applicable Collective Agreement.

ON THIS 11/8/2021 | 11:32:06 AM PST

ON BEHALF OF:
DYNEX CONSTRUCTION INC.

ON BEHALF OF:
I.U.O.E. LOCAL 793

DocuSigned by:

6638893D9E144EA...

Signature

George Zeppieri President

Please Print Name and Title
(Note: Please complete date line above)

80 Costa Road
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City, Province, Postal Code

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Telephone/Fax Number(s)

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Email Address


Mike Gallagher, Business Manager

Joe Redshaw, President

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Dave Turple, Vice President

Brian Alexander, Recording- Corresponding Secretary

DocuSigned by:

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Recommended By: Shawn McLeary,
Sector Coordinator