BETWEEN: Groundworks Construction  
51 Kersey Crescent  
Richmond Hill, Ontario  
L4C 5H4

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, 2004, and shall remain in effect until the 30th day of April, 2007, 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, 2007, 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 Regional Municipality of Durham and Simcoe County, Labour Relations Board Area #9, excluding 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.
ARTICLE 2 - RECOGNITION (Continued)

2.2 The terms and conditions of this collective agreement shall apply to all residential construction as specifically described in Schedules “A” and “B” attached hereto. For all other work the employer shall apply and be bound by the current terms and conditions of employment of the Union=s appropriate area/sector collective agreement.

2.3 Without limiting the generality of Article 2.2 above, if an employer covered by this agreement engages in work other than Residential construction and such other work comes within the purview of the existing Provincial Collective Agreement between the Operating Engineers Employee Bargaining Agency and the Operating Engineers Employer Bargaining Agency, the employer agrees to be bound by the Provincial Collective Agreement and apply the full terms and conditions therein.

2.4 It is further agreed between the parties that for excavation & backfill of residential apartment & condominium buildings the Provincial Collective Agreement referred to in Article 2.3 above shall apply.

2.5 Without limiting the generality of Article 2.2 above, should the Employer perform any work falling within the scope of the collective agreements with or binding upon the Union, then the Employer shall be bound by and perform such work in accordance with the terms and conditions of the applicable collective agreement including, but without limiting the generality of the foregoing, any terms and conditions thereof with respect to contracting or subcontracting restrictions. The following collective agreements are for example only and is not meant to limit the scope of this clause.

a) The "Toronto and Area Road Builders Association Agreement" being the collective agreement between the Metropolitan Toronto Road Builders' Association and the International Union of Operating Engineers;

b) The "Greater Toronto Sewer and Watermain Contractors Association Agreement" being the collective agreement between the Metropolitan Toronto Sewer & Watermain Contractors' Association and the International Union of Operating Engineers;

c) The "Forming Agreement" being a collective agreement between the Ontario Formwork Association and the Formwork Council of Ontario;

d) The "Utilities Agreement" being a collective agreement between the Utility Contractors' Association of Ontario and the International Union of Operating Engineers;

e) The "Demolition Agreement" being a collective agreement between a group of Demolition Contractors and the International Union of Operating Engineers.

f) The "Landscaping Agreement" being a collective agreement between a group of Landscaping Contractors and the International Union of Operating Engineers.

g) The “Landclearing Agreement” being a collective agreement between a group of Landclearing Contractors and the International Union of Operating Engineers.

h) The “Milling Agreement” being a collective agreement between a group of Milling Contractors and the International Union of Operating Engineers.
ARTICLE 3 - UNION SECURITY

3.1 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 to be a member of and remain a member in good standing of the Union. If the Employer requires employees, he shall call the Union Dispatcher who shall supply qualified men as soon as reasonably possible. If the Dispatcher is unable to supply suitable personnel within twenty-four (24) hours, the Company may obtain employees from any other source.

3.2 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.

3.3 If an employee is hired outside the Union Office, the Employer shall notify the Union within twenty-four (24) hours.

3.4 Upon written authorization by an employee, the Employer shall deduct initiation fees, Union dues, Advancement dues and annual assessments from the employee's wages and shall submit such deductions to the Union Office, 30 Commercial Road, Toronto, 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.

3.5 Working Dues Check-Off
The Employer agrees to deduct from each employee in the bargaining unit, Working Dues at the rate of two percent (2%) of the employee's total monetary package which includes the hourly rate, vacation pay, health plan and pension plan contributions for each hour earned. Such deductions shall be forwarded along with the remittances required under Article 17, 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.

Advancement Dues Check-Off
The Employer shall deduct Ten Cents ($0.10) 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 Collective Agreement.

3.6 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. This includes but is not limited to all landscape work.

ARTICLE 4 - INDUSTRY AND TRAINING FUND

4.1 Each Employer bound by this Agreement shall contribute seven cents (7¢) per hour for each hour worked by each employee to cover the cost of negotiating this Agreement.

4.2 Such contributions shall be forwarded along with the remittances required under Article 17, together with the supporting information as required by the Trustees on the Reporting Forms.

4.3 Such contributions shall be immediately paid to the Associated Earthmovers of Ontario by the Administrator of the Funds.

4.4 The Associated Earthmovers of Ontario agrees to hold harmless and indemnify the Union and the Trustees against any liability incurred as a result of contributions made under Article 4.1 above.
ARTICLE 4 - INDUSTRY AND TRAINING FUND (Continued)

4.5 Training Fund
The employer shall contribute the sum of thirty seven cents (37¢) per hour for each hour earned by each employee covered by this Agreement to the International Union of Operating Engineers, Local 793 Training Fund.

ARTICLE 5 - MANAGEMENT RIGHTS

5.1 (a) The Union agrees that it is the exclusive function of the Employer:
- 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 or disciplined 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 6 - GRIEVANCE PROCEDURE

6.1 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.

6.2 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.

6.3 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.

6.4 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.

6.5 If advantage of the provisions of Articles 6 and 7 hereof is not taken within the time limits specified herein, or as extended in writing as set out above, the grievance shall be deemed to have been abandoned and may not be reopened.

6.6 The Employer shall designate and name the official to whom a written grievance is submitted at Step 2 as set out below.

6.7 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.
ARTICLE 6 - GRIEVANCE PROCEDURE - (continued)

6.8 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 6.9 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 and 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.

6.9 Monetary grievances are defined as those involving payment of hours of work, rates of pay, overtime, vacation and statutory holiday pay, shift premiums, travelling expenses, room and board allowances, pension and welfare contributions, reporting allowances and 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 7 - ARBITRATION

7.1 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 6, which has not been settled, will then be referred to a Board of Arbitration at the request of either of the parties hereto.

7.2 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.

7.3 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.

7.4 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.
ARTICLE 7 – ARBITRATION (continued)

7.5 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.

7.6 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 and provisions of this Agreement.

7.7 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 8 - NO STRIKES, NO LOCKOUTS

8.1 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.

8.2 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 9 - UNION REPRESENTATION

9.1 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.

9.2 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.

9.3 The Steward shall be one of the last two employees covered under the terms of this Agreement to remain, provided he is qualified and capable of doing the work.

9.4 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.

9.5 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.

9.6 No discrimination shall be shown against any Steward for carrying out his duties.

9.7 The employer agrees to engage only owner/operators to perform work covered by this Agreement who are signatory to an Owner/Operators Commitment Agreement. 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 employees employment and overtime provisions shall be protected.
ARTICLE 10 - PAYMENT OF WAGES

10.1 Wages shall be paid weekly by cash or cheque at the option of the Employer on the job and shall be accompanied by a slip outlining all hours of work, rate of pay, overtime hours, deductions for income tax, Unemployment Insurance, Canada Pension, etc., where applicable.

10.2 In the case of layoff, all employees shall receive one (1) hour's notice in advance of the layoff.

10.3 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.

10.4 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 two (2) business days to correct such fault.

ARTICLE 11 - SAFETY, SANITATION AND SHELTER

11.1 Employees shall be provided with reasonable and adequate protection from the weather and falling material or other hazards on the job.

11.2 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, & violations of safety regulations.

11.3 Every employee shall, as a condition of employment, be required to own & wear a safety helmet of a type approved by the Construction Safety Association & the Employer agrees that such helmets may be purchased from him at cost.

11.4 Every employee shall, as a condition of employment, own & wear suitable protective footwear, safety glasses, welder's helmet & other personal protective equipment required in the normal course of his duties.

11.5 The Employer, the employees and the Union agree to abide by the provisions of the Occupational Health and Safety Act and its Regulations as amended from time to time and copies of which will be made available by the Employer upon request.

11.6 It shall be the duty of every employee to practice good housekeeping.

11.7 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.

11.8 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.

11.9 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 and its Regulations as amended from time to time. Any refusal by an employee to abide by such regulations, after being duly warned, will be sufficient cause for dismissal.
ARTICLE 11 - SAFETY, SANITATION AND SHELTER

11.10 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.

11.11 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 12 - GENERAL CONDITIONS

12.1 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 & agreed upon by the Union & the Employer as conditions indicate.

However, the Union shall be notified in advance of intended use of such equipment and said rates shall be incorporated within seven (7) days of such operation.

12.2 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.

12.3 Salaried employees, or employees who operate only part-time shall not replace regular operators when overtime is to be worked.

12.4 Operators required to operate equipment under two-rate classifications shall be paid the higher classification rate per shift.

12.5 Employees required to supply their own tools shall be provided a suitable and safe place to keep said tools.

12.6 Employees will be granted a coffee break in each half of shift at a time designated by the Employer.

12.7 For work concerning the use of machines for all types of drilling and/or ground heat systems, the appropriate Collective Agreement shall apply.

12.8 For all work in those areas of the Province not set out in Article 2.1 above, the Employer agrees that it shall be bound by and apply the full terms and conditions of the standard Union Agreement for the class and character of work performed.
ARTICLE 13 - HOURS OF WORK AND OVERTIME

13.1 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.

13.2 Overtime for all work performed in excess of the hours noted in paragraph 13.1 above and on Saturday will be paid at the rate of time and one-half (1-1/2).

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

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13.4 Employees shall be allowed a one-half (2) hour unpaid lunch break between 11:30 a.m. and 1:00 p.m. It is understood that no employee shall be required to work more than five (5) consecutive hours without a lunch break.

ARTICLE 14 - VACATION AND STATUTORY HOLIDAY ALLOWANCE

14.1 Vacation and Statutory Holiday Pay shall be paid to each employee covered by this Agreement with each regular pay cheque, at a rate of ten percent (10%) of the gross wages earned, and income tax will be deducted.

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.

ARTICLE 15 - SHIFT WORK

15.1 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 $2.25 per hour premium above the regular day shift rate

3rd Shift - Six (6) consecutive shifts at $2.50 per hour premium above the regular day shift rate.

15.2 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.
ARTICLE 16 - REPORTING

16.1 (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 17 - WELFARE AND PENSION

17.1 a) Schedule "A" - Welfare Plan Contributions
Effective August 1, 2004, Employers shall contribute in total:

Seven Dollars and Ninety Cents ($7.90) 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 2, 2005, the total Employer contributions of Seven Dollars and Ninety Cents ($7.90) per hour shall increase to Eight Dollars and Ten cents ($8.10) per hour.

Effective May 1, 2006, the total Employer contributions of Eight Dollars and Ten Cents ($8.10) per hour shall increase to Eight dollars and Thirty cents ($8.30) per hour.

b) Schedule "B" - Welfare Plan Contributions
Effective May 3, 2004, Employers shall contribute in total:

Seven Dollars and Twenty Cents ($7.20) 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 1, 2005, the total Employer contributions of Seven Dollars and Twenty Cents ($7.20) per hour shall increase to Seven Dollars and Forty Cents ($7.40) per hour.
Effective May 1st, 2006, the total Employer contributions of Seven Dollars and Forty Cents ($7.40) per hour shall increase to Seven Dollars and Sixty Cents ($7.60) per hour.

(c) 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.

(d) 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.

(e) 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.

(f) Every Employer bound by this Collective Agreement hereby covenants and agrees to sign a Participation Agreement with the Trustees in the form attached hereto as Appendix "A".

(g) In the event the Employer fails to remit any contributions, deductions or remittances for the Health Plan, Pension Plan, dues, fees or assessments pursuant to Article II, International Union of Operating Engineers, Local 793 Trades Training Fund pursuant to Article III, Working Dues Check-Off, Advancement Dues Check-Off pursuant to Article II or Industry Fund pursuant to Article III, by the 15th day of the month due, the Employer shall pay to the appropriate Fund as liquidated damages and not as a penalty, an amount equal to two percent (2%) per month, compounded monthly (24% per annum), for any delinquent contributions, deductions or remittances fifteen (15) days in arrears calculated from the date due, provided the Employer had received five (5) days prior written notice to correct such delinquency and has not done so.

In the event that the Employer is deemed to be in arrears as stated, the employees may refuse to work and shall have the right to picket at any of the projects where the Employer is engaged and the Employer agrees that such refusal to work, or such picketing, shall not constitute an unlawful strike or unlawful picketing, as the case may be, within the provisions of the Ontario Labour Relations Act or this Collective Agreement, and the Employer agrees not to prosecute any person for such conduct.

(h) 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.

(i) If the Employer does not submit the certified audited statement as per Clause (h), the Trustees may appoint an independent chartered accountant or other qualified person to enter upon the Employer’s premises during 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.

(j) Where the Trustees appoint an auditor, the cost shall be borne by the appropriate plan. In the event that the audit reveals discrepancies between the Employer’s records or other relevant documents & the contributions or deductions submitted, the cost shall be borne by the Employer.
(k) 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 Clause (g) above and completed supporting contribution report forms as required by the Plan.

(l) When an Employer fails to remit all delinquent contributions, the provisions of Clause (g) shall apply and the Union, on instructions from the Trustees, shall immediately institute proceedings against the delinquent Employers under Section 133 of the Labour Relations Act of Ontario. All costs of such actions shall be borne by the appropriate plan or fund unless otherwise recoverable.

(m) Where the Union has taken prior proceedings and obtained a decision against an Employer for delinquent contributions, deductions or remittances, the Union may require the said Employer to post a cash bond or certified cheque not to exceed Fifty Thousand Dollars ($50,000.00) 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 proceedings to recover the balance.

(n) 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:

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 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 the proper documentary evidence.

(o) If the Ontario Labour Relations Board or a Board of Arbitration to which a grievance alleging failure to make appropriate payments to a Trust Fund or an Administrator as required by this Agreement is litigated and the Board determines that an Employer has violated the Agreement, then the Ontario Labour Relations Board or a 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 witnesses and Business Representatives, conduct monies, cost incurred in serving a summons, any expenses incurred by the Union pursuant to Section 133(4) of the Labour Relations Act or otherwise, for the Board of Arbitration.

(p) If the Ontario Labour Relations Board determines that the Employer has not violated the Agreement, then the Ontario Labour Relations Board or the Board of Arbitration shall require the Union to pay all costs to the Employer as required to in sub-paragraph (n) above.

(q) If an Employer does not have any employees in his employ, he shall submit NIL report in accordance with the provisions of Section 8(h).
ARTICLE 18 - OUT-OF-TOWN ALLOWANCES AND TRAVELLING TIME

18.1 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 Fifty-Five Dollars ($55.00) per day and Two Hundred and Seventy-Five Dollars ($275.00) 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.

Effective July 9th 2001, the out of town allowance will increase to a maximum of Fifty-Five Dollars and Fifty Cents ($55.50) per day and Two Hundred and Seventy-Seven Dollars and Fifty Cents ($277.50) 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.

Effective May 1, 2002, the out of town allowance will increase to a maximum of Sixty-One Dollars and Five Cents ($61.05) per day and Three Hundred and Five Dollars and Twenty-Five Cents ($305.25) 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.

Effective May 1, 2003, the out of town allowance will increase to a maximum of Sixty-Four Dollars and Ten Cents ($64.10) per day and Three Hundred and Twenty Dollars and Fifty Cents ($320.50) 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.

18.2 In regard to travelling 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 Thirty-Three Point One Cents (33.14) per road kilometre, 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.

18.3 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 ($11.00) 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 18.1 and 18.2 above, the Employer will maintain the rate of wages and hours of work for such employee, as provided in this Agreement.
ARTICLE 19 - APPRENTICES

19.1 The purpose of this Article is to provide a program to train skilled tradesmen by making provision for earthmoving trainees and apprentices in this Residential Agreement.

19.2 "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.

19.3 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.

19.4 The Employer shall be allowed to employ one (1) Apprentice for each four (4) Journeymen Operating Engineers in its employ and shall not exceed that ratio.

19.5 The said Apprentices supplied by the Training Institute shall have completed no less than six (6) weeks training or other related experience. Such training will be identified through the log book that the apprentice will carry at all times.

19.6 Apprentices shall have their wage rates for the first one thousand (1,000) hours worked, at the rate of sixty percent (60%) of the top rate of this Agreement, and for the next one thousand (1,000) hours they will receive eighty percent (80%) of the top rate of this Agreement. At the completion of the two thousand (2,000) hours they will receive the full rate.

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.

THIS 23 DAY OF January 2006

ON BEHALF OF:
GROUNDWORKS CONSTRUCTION

ON BEHALF OF:
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793

Business Manager

Recording Secretary

President

Recommended by: Vince Mora
**SCHEDULE "A"**

This schedule shall apply to Residential General Contractors for House & Highrise Building Work.

### 1.1 CLASS 1

Engineers operating shovels, backhoes, hoptoes, draglines, gradalls, tower hoist (brake & friction type), cranes, pitmans (10 ton capacity & over) & similar equipment, heavy duty mechanics & welders, survey instrument man, self-propelled drills & truck mounted drills.

<table>
<thead>
<tr>
<th>Date</th>
<th>Wages</th>
<th>Vac. Pay</th>
<th>Benefit Plan</th>
<th>Pension Plan</th>
<th>Labour Relations</th>
<th>Train. Fund</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
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### CLASS 2

Operators or bulldozers, tractors, emcees, graders, overhead loaders, front-end loaders, fork-lifts, pitman type cranes under 10 ton capacity, industrial tractors with excavating attachments and compressor operators.

<table>
<thead>
<tr>
<th>Date</th>
<th>Wages</th>
<th>Vac. Pay</th>
<th>Benefit Plan</th>
<th>Pension Plan</th>
<th>Labour Relations</th>
<th>Train. Fund</th>
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<td>$40.96</td>
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### CLASS 3

Operators of man & material hoists on residential highrise buildings, senior rodman, tuggers.

<table>
<thead>
<tr>
<th>Date</th>
<th>Wages</th>
<th>Vac. Pay</th>
<th>Benefit Plan</th>
<th>Pension Plan</th>
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### CLASS 4

Operators of material hoist (with remote control) on residential highrise buildings.

<table>
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<tr>
<th>Date</th>
<th>Wages</th>
<th>Vac. Pay</th>
<th>Benefit Plan</th>
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### CLASS 5

Oiler-grademen & oiler-drivers, mechanics' helpers & servicemen, bobcat & Kubota type backhoe operators, junior rodman, utility operators, compaction equipment.

<table>
<thead>
<tr>
<th>Date</th>
<th>Wages</th>
<th>Vac. Pay</th>
<th>Benefit Plan</th>
<th>Pension Plan</th>
<th>Labour Relations</th>
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Residential Lowrise Toronto 2004-2007.wpd
SCHEDULE "B"

This schedule shall apply to all Residential Excavating Contractors for excavation on lowrise single family residential subdivisions.

1.2 **CLASS 1** Engineers operating Dozers D5 and over, shovels, backhoes, hoes, graders, gradalls, heavy duty mechanics, welders and instrument men.

<table>
<thead>
<tr>
<th>DATE</th>
<th>WAGES</th>
<th>VAC. PAY</th>
<th>BENEFIT PLAN</th>
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**CLASS 2** Operators of bulldozers D4 and under, tractors, emoes, overhead loaders, front-end loaders, fork-lifts, pitman type cranes, industrial tractors with or without attachments, compressor operators, skid steer loader, Kubota type backhoe and similar small equipment, drivers of farm tractor with pulverizing or fine grading equipment, tree farmers, hydro-axes, Jr. Rodman, power mounted drills.

<table>
<thead>
<tr>
<th>DATE</th>
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**CLASS 3** Float Drivers, Off Highway Vehicles, Volvo Dumps and similar vehicles.

<table>
<thead>
<tr>
<th>DATE</th>
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</table>

**CLASS 4** Survey Grade Man, Fuel & Service Trucks.

<table>
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<tr>
<th>DATE</th>
<th>WAGES</th>
<th>VAC. PAY</th>
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</table>
LETTER OF UNDERSTANDING

BETWEEN: Groundworks Construction
51 Kersey Crescent
Richmond Hill, Ontario
L4C 5H4

- and -

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(the "Union")

NEW OR EXISTING ENTITIES

(a) This Collective Agreement shall be binding upon the Employer & any successor or related Employers as defined herein.

(b) A successor Employer shall be deemed to be an Employer 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) A related Employer shall be deemed to be an Employer 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 paragraphs (a), (b), (c) & (d) hereof & 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 Employer is bound by this Collective Agreement & grant any other relief as may be appropriate.

DATED AT Richmond Hill this 23 day of February 2006

ON BEHALF OF THE EMPLOYER:

[Signature]

Business Manager

Recording Secretary

President

Recommended by: Vince Mora

ON BEHALF OF THE UNION:

[Signature]

Vince Mora
LETTER OF UNDERSTANDING

BETWEEN: Groundworks Construction
51 Kersey Crescent
Richmond Hill, Ontario
L4C 5H4

(the "Employer")

- and -

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793

(the "Union")

The Employer and the Union specifically agree that the Union's jurisdiction includes, and that the Employer will assign to members of the Union: the operation of all small equipment including skid steer loaders, mini-skid steer loaders, mini-backhoes, bobcats and all similar equipment, and the operation of personnel and/or material hoists whether or not the operator's duties require that more than fifty percent (50%) of the operator's time be spent on loading or unloading material. The Employer and Union further agree that the Employer may assign general duties related to its job requirements to members of the Union on an intermittent or as needed basis; that such duties shall be considered to be part of the Union's work jurisdiction; and that the Union's members shall perform such duties.

DATED at Richmond Hill this, 23 day of January, 2006

Employer

Union: Vince Mora
APPENDIX "A"
PARTICIPATION AGREEMENT

BETWEEN:

THE TRUSTEES OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 793 BENEFIT TRUST FUND OF ONTARIO
(hereinafter called the "Trustees")

OF THE FIRST PART

- and -

Name & Address: Groundworks Construction, 51 Kersey Crescent, Richmond Hill, Ontario, L4C 5H4

(hereinafter called the "Employer")

OF THE SECOND PART

IN CONSIDERATION of the establishment and administration by the Trustees of the International Union of Operating Engineers, Local 793 Welfare and Pension Plans providing benefits for employees in the construction industry in the Province of Ontario and the extension of such Plans to cover employees of the Employer, the Employer covenants and agrees with the Trustees as follows:

1. To make contributions to the said Plan in accordance with the provisions of the collective Agreement in force from time to time between the employer and the International Union of Operating Engineers, Local 793;

2. To file monthly reports as required by the Trustees whether or not contributions are due and payable by the Employer;

3. To produce complete employment records to permit the review of those records by any person appointed by the Trustees to determine whether the Employer has made the required contributions as provided herein;

4. To pay interest at two percent (2%) per month (24% per annum) on all overdue contributions provided the Employer is given five (5) days notice to correct such delinquency and, where required, to post a cash bond of up to Fifty Thousand Dollars ($50,000.00) on request of the Trustees after delinquency.

SIGNED, SEALED AND DELIVERED this day of , 20

THE TRUSTEES OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 PENSION BENEFIT TRUST FUND OF ONTARIO

BY: __________

Union Trustee

and by: __________

Association Trustee

Groundworks Construction

Name of Employer
APPENDIX "B"

Article 17 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 August 1st, 2004:
(i) for employees with $4,320.00 or fewer dollars in their Health Plan dollar bank, two dollars and seventy cents ($2.70) to the Health Plan and five dollars and twenty cents ($5.20) to the Pension Plan;

(ii) for employees with more than $4,320.00 in their Health Plan dollar bank, seven dollars and ninety cents ($7.90) to the Pension Plan.

Effective May 2, 2005:
(i) for employees with $4,320.00 or fewer dollars in their Health Plan dollar bank, two dollars and ninety cents ($2.90) to the Health Plan and four dollars and five dollars and twenty ($5.20) to the Pension Plan;

(ii) for employees with more than $4,320.00 in their Health Plan dollar bank, eight dollars and ten cents ($8.10) to the Pension Plan.

Effective May 1st, 2006:
(i) for employees with $4,320.00 or fewer dollars in their Health Plan dollar bank, three dollars and ten cents ($3.10) to the Health Plan and five dollars and twenty cents ($5.20) to the Pension Plan;

(ii) for employees with more than $4,320.00 in their Health Plan dollar bank, eight dollars and thirty ($8.30) to the Pension Plan.

The amount $4,320.00 in a Member's Health Plan dollar bank noted in (i) and (ii) above shall be predetermined 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.
APPENDIX "C"

Article 17 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 Pension Plan as follows:

Effective **August 1st, 2004:**

(i) for employees with $4,320.00 or fewer dollars in their Health Plan dollar bank, two dollars and seventy cents ($2.70) to the Health Plan and four dollars and fifty cents ($4.50) to the Pension Plan;

(ii) for employees with more than $4,320.00 in their Health Plan dollar bank, seven dollars and twenty cents ($7.20) to the Pension Plan.

Effective **May 2, 2005:**

(i) for employees with $4,320.00 or fewer dollars in their Health Plan dollar bank, two dollars and ninety cents ($2.90) to the Health Plan and four dollars and fifty cents ($4.50) to the Pension Plan;

(ii) for employees with more than $4,320.00 in their Health Plan dollar bank, seven dollars and forty cents ($7.40) to the Pension Plan.

Effective **May 1st, 2006:**

(i) for employees with $4,320.00 or fewer dollars in their Health Plan dollar bank, three dollars and ten cents ($3.10) to the Health Plan and four dollars and fifty cents ($4.50) to the Pension Plan;

(ii) for employees with more than $4,320.00 in their Health Plan dollar bank, seven dollars and sixty ($7.60) to the Pension Plan.

The amount $4,320.00 in a Member's Health Plan dollar bank noted in (i) and (ii) above shall be predetermined 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.