OPERATING ENGINEERS LOCAL UNION NO. 3 – UNITED CONTRACTORS

LETTER OF UNDERSTANDING

PAYMENTS TO EMPLOYEES

THIS AGREEMENT is made and entered into this 1st day of April, 2020, by and between United Contractors, ("Association") and OPERATING ENGINEERS LOCAL UNION NO. 3 of the International Union of Operating Engineers, AFL-CIO ("Union"), collectively known as “the Parties”.

It shall continue to be the understanding of the Parties that, in the event that an Individual Employer issues any form of disbursement to a current or former employee per a government ordinance or mandate, e.g. Emergency Paid Sick Leave Act, Emergency Family & Medical Leave Expansion Act, such payments shall not constitute “each hour worked or paid” under Section 12.01.00, meaning that corresponding fringe contributions under Section 12.00.00 are not required, unless otherwise required under the government ordinance or mandate.

Furthermore, in recognition of the current COVID-19 emergency in our industry, effective March 16, 2020, for workers who are unable to work for COVID-19 related reasons (e.g., job shut downs, sickness, self-quarantine, etc.), Individual Employers may voluntarily compensate workers with wages only. No fringe benefit payments (as defined under Section 12.00.00) shall apply in such cases, provided the worker is not performing covered or non-covered work.

IN WITNESS WHEREOF, the parties hereto set their hands and seals by their respective officers duly authorized to do so this 1st day of April, 2020.

ASSOCIATION:

UNITED CONTRACTORS

Victor Sella, Director of Labor Relations

UNION:

OPERATING ENGINEERS LOCAL UNION NO. 3 of the International Union of Operating Engineers, AFL-CIO

Dan Reding, Business Manager

Victor Sella
Print Name

Print Name
LETTER OF UNDERSTANDING

UCON-OPERATING ENGINEERS MASTER AGREEMENT

FRINGE BENEFITS

Notwithstanding references in the Master Agreement regarding the payment of various fringe benefits for “hour[s] worked or paid”; it is hereby agreed by United Contractors (UCON) and the Operating Engineers Local Union No. 3 (OE3) that fringe benefits shall not be owed for:

- Non-mandatory training time to a maximum of 48 hours - Hours that employees spend participating in voluntary professional development or trainings, excluding covered work, offered by the Employer shall be compensated at the regular wages employees would receive had they been performing covered work. However, the hours shall not be considered hours worked or paid under Section 12.01.00, and the Employer shall not owe fringe contributions under Section 12.00.00 for such compensation. Hours of compensation under this Section shall not exceed 48 hours in one calendar year for any one employee by a single Employer or Individual Employer.

IN WITNESS WHEREOF, the parties hereto execute this Letter of Understanding by their respective officers authorized to do so this 3rd day of April 2020.

FOR THE EMPLOYER:
UNITED CONTRACTORS [UCON]:  

[Signature]
Victor Sella, Director of Labor Relations

FOR THE UNION:
OPERATING ENGINEERS LOCAL UNION NO. 3 of the International Union of Operating Engineers, AFL-CIO

[Signature]
Dan Reding, Business Manager
OE3 – UCON
CLARIFICATION MEMORANDUM OF UNDERSTANDING (CLARIFICATION MOU)
RE PAYMENTS TO EMPLOYEES & FRINGE BENEFITS LOUS

UCON & OE3 executed the “Payments to Employees” LOU (attached). It is the understanding of the parties that the terms of the LOU applies to all UCON-OE3 collective bargaining agreements, retroactively as amended and clarified to when the LOU was first executed. Furthermore, and for the purpose of clarification for the Trust, it is the intent of OE3 to apply the terms of the LOU and this Clarification MOU to all OE3 collective bargaining agreements. The following shall serve as a clarification to the LOU concerning payment of wages and fringes under the following conditions:

(1) FFCRA - Families First Coronavirus Response Act Payments - per April 1, 2020 “Payments to Employees” LOU

(2) Bonus or Stipend Payments - per the April 1, 2020 “Payments to Employees” LOU

***If after reviewing the following clarifications, an Individual Employer determines that an amendment to prior Trust fund submissions is required, the Individual Employer may request to amend prior submissions, pay any difference in wages or fringe benefits owed, or seek reimbursement from the Trust in accordance with the Trust Fund’s Policy on Mistaken Contributions and Withdrawal Liability Payments, or as determined by the Board of Trustees. Additionally, OE3 Trust may, at its own discretion, offer courtesy audits regarding the specific LOU provisions referenced here to address potential errors or issues.***

***It is the understanding of the parties that terms of the LOU referenced herein applies to all UCON-OE3 collective bargaining agreements (CBAs). If a UCON-OE3 CBA contains a different form of wages and fringes than those referenced here, the terms of the LOU shall nevertheless apply to accommodate those differences so as to be consistent with the FFCRA, the LOU and the Clarification MOU. In the event that any questions or disputes arise regarding the interpretation of this LOU or the clarification MOU, including by the OE3 Trust, the Parties shall make every attempt to resolve the interpretation issue as consistent with the parties’ intent at the time of bargaining.***

(1) FFCRA - Families First Coronavirus Response Act Payments

“Payments to Employees” LOU – “It shall continue to be the understanding of the Parties that, in the event that an Individual Employer issues any form of disbursement to a current or former employee per a government ordinance or mandate, e.g. Emergency Paid Sick Leave Act, Emergency Family & Medical Leave Expansion Act, such payments shall not constitute “each hour worked or paid” under Section 12.01.00, meaning that corresponding fringe contributions under Section 12.00.00 are not required, unless otherwise required under the government ordinance or mandate.”

CLARIFICATION

- It is the understanding of the Parties that “wages” as referenced in the “Payments to Employees” LOU excerpt above, is understood to mean wages including vacation/holiday/sick pay (paid directly to individual employees as part of wages and not to the Vacation Fund), up to the applicable daily maximum provided for under FFCRA guidelines. No other forms of wage payment shall apply.

- Additionally, the only fringe benefit owed to an employee while receiving FFCRA-related benefits is the Health & Welfare (H&W) fringe at the applicable collective bargaining amount of 120 hours per month, or pro-rated for the period of time the employee was not working and receiving FFCRA-related benefits. (e.g. an employer must only contribute the prorated amount of 60 hours on behalf
of an employee on paid FFCRA sick leave for two weeks, and 30 hours on behalf of an employee on paid FFCRA sick leave for one week).

- No form of retirement (Pension or Annuity), Vacation Fund, or Pensioned H&W, nor any other fringe benefits obligations shall apply with respect to the “Payments to Employees” LOU.

SUGGESTED DOCUMENTATION FOR TRUST FUND AUDIT COMPLIANCE
Contractors who paid FFCRA-related benefits to employees per the terms of this LOU must substantiate compliance with the LOU and related audit requests by providing at least one (1) or more of the following documents to the Fund Auditor:

1) Proof of quarantine order such as a government shelter in place order (or similar order) impacting their specific location, office and/or job site;
2) Employee timecards and payroll (or similar document including Certified Payroll Reports) during the period for which the employee is not performing any work;
3) Document or other certification reflecting the employee’s request for FFCRA benefit and the factor(s) that made the employee eligible for said benefits;
4) Doctor’s note or other order that an employee receive a COVID-19 test, or other directive that an employee quarantine (1) pending the results of a COVID-19 test, or (2) quarantine due to the positive COVID-19 test of the employee, employee’s spouse or child(ren), and/or individual under employee’s care;
5) Applications for government assistance (including tax credits) filed with the Small Business Administration or copies of IRS Forms 941 or 7200 showing evidence that the employer continued to retain and pay employees who were not working;
6) Other adequate documentation, records and/or information.

(2) Bonus or Stipend Payments

“Payments to Employees” LOU - “Furthermore, in recognition of the current COVID-19 emergency in our industry, effective March 16, 2020, for workers who are unable to work for COVID-19 related reasons (e.g., job shut downs, sickness, self-quarantine, etc.), Individual Employers may voluntarily compensate workers with wages only. No fringe benefit payments (as defined under Section 12.00.00) shall apply in such cases, provided the worker is not performing covered or non-covered work.”

CLARIFICATION

- It is the understanding of the Parties that “wages” as referenced in this excerpt of the LOU shall be interpreted to mean any amount of compensation – stipend, bonus, or wages (not under FFCRA or a PPP loan) – provided to employees at the discretion of the Individual Employer for non-working hours related to COVID-19. Neither vacation/holiday/sick, nor any form of wage or fringe as defined in the collective bargaining agreement (CBA) shall apply under the referenced excerpt of this LOU. The compensation contemplated herein can never be paid in lieu of wages and fringes for work actually performed.

SUGGESTED DOCUMENTATION FOR TRUST FUND AUDIT COMPLIANCE
Contractors who paid a voluntary bonus or stipend per the terms of this LOU are strongly advised to adhere to these best practices to distinguish such bonus payments from other payments to employees for hours worked or paid which may be requested by the Fund Auditor:
1) Use distinct cost, payroll, and accounting codes for bonus payments, e.g. COVID-19;
2) Keep a copy of the “Payments to Employees” LOU with payroll records associated with the bonus payment(s);
3) Maintain other documentation reflecting and distinguishing that a bonus was paid per the terms of this LOU.
IN WITNESS WHEREOF, the parties hereto set their hands and seals by their respective officers' duly authorized to do so this 24 day of JULY, 2020.

FOR THE EMPLOYER:
UNITED CONTRACTORS
["UCON"]

Victor Sella, Director of Labor Relations

FOR THE UNION:
OPERATING ENGINEERS LOCAL UNION
NO. 3 of the International Union of Operating Engineers, AFL-CIO

Dan Reyfin, Business Manager

Steve Ingersoll, President

Justin Diston, Vice President

Dave Harrison, Financial Secretary

Nate Tucker, Treasurer

CONTRACTS
JUL 24 2020
OE3 – UCON
CLARIFICATION MEMORANDUM OF UNDERSTANDING (CLARIFICATION MOU)
RE NON-MANDATORY TRAINING PAYMENTS

UCON & OE3 executed the “Fringe Benefits” LOU on April 3, 2020 (attached). It is the understanding of the parties that the terms of the LOU applies retroactively as amended and clarified to when the LOU was first executed. The following shall serve as a clarification to the LOU concerning payment of wages and fringes under the following conditions:

***If after reviewing the following clarifications, an Individual Employer determines that an amendment to prior Trust fund submissions is required, the Individual Employer may request to amend prior submissions, pay any difference in wages or fringe benefits owed, or seek reimbursement from the Trust in accordance with the Trust Fund’s Policy on Mistaken Contributions and Withdrawal Liability Payments, or as determined by the Board of Trustees.

*** In the event that any questions or disputes arise regarding the interpretation of this LOU or the clarification MOU, including by the OE3 Trust, the Parties shall make every attempt to resolve the interpretation issue as consistent with the parties’ intent at the time of bargaining.

(1) Non-Mandatory Training Payments

Fringe Benefits LOU – “Notwithstanding references in the Master Agreement regarding the payment of various fringe benefits for “hour[s] worked or paid”, it is hereby agreed by United Contractors (UCON) and the Operating Engineers Local Union No. 3 (OE3) that fringe benefits shall not be owed for:

Non-mandatory training time to a maximum of 48 hours - Hours that employees spend participating in voluntary professional development or trainings, excluding covered work, offered by the Employer shall be compensated at the regular wages employees would receive had they been performing covered work. However, the hours shall not be considered hours worked or paid under Section 12.01.00, and the Employer shall not owe fringe contributions under Section 12.00.00 for such compensation. Hours of compensation under this Section shall not exceed 48 hours in one calendar year for any one employee by a single Employer or Individual Employer.”

CLARIFICATION

- It is the understanding of the Parties that “wages” as referenced in the LOU shall be interpreted to mean wage rate at which the eligible employee is normally compensated at. No other form of wages, e.g., vacation/holiday/sick pay, are owed. Additionally, no fringes obligations apply while being compensated under this LOU.

- It is the understanding of the parties that the terms of the LOU referenced herein, as amended, apply to all UCON-OE3 collective bargaining agreements (CBAs). If a UCON-OE3 CBA contains a different form of wages and fringes than those referenced here, the terms of the LOU shall nevertheless apply to accommodate those differences so as to be consistent with this LOU and the Clarification MOU. In the event that any questions or disputes arise regarding the interpretation of this LOU or the Clarification MOU, including by the OE3 Trust, the Parties shall make every attempt to resolve the interpretation issue as consistent with the parties’ intent at the time of bargaining the LOU and the Clarification MOU.

July 20, 2020-vs-gl-sac
Non-mandatory training
SUGGESTED DOCUMENTATION FOR TRUST FUND AUDIT COMPLIANCE

Contractors who pay employees for non-mandatory training time per the LOU are strongly advised to adhere to these best practices to distinguish such bonus payments from other payments to employees for hours worked or paid:

1) Use distinct cost, payroll, and accounting codes for non-mandatory training payments;
2) Keep a copy of the “Fringe Benefits” LOU with payroll associated with the non-mandatory training payments;
3) Maintain other records and/or documentation reflecting and distinguishing non-mandatory training hours from other hours worked or paid.

IN WITNESS WHEREOF, the parties hereto set their hands and seals by their respective officers’ duly authorized to do so this 22 day of July, 2020.

FOR THE EMPLOYER:

UNITED CONTRACTORS
[“UCON”]

Victor Sella, Director of Labor Relations

FOR THE UNION:

OPERATING ENGINEERS LOCAL UNION
NO. 3 of the International Union of Operating Engineers, AFL-CIO

Steve Ingersoll, President
Justin Diston, Vice President
Dave Harrison, Financial Secretary
Nate Tucker, Treasurer

July 20, 2020-vs-gl-sac
Non-mandatory training

CONTRACTS
JUL 22 2020