

SCHEDULE “A”

1. Frankfurt Investments (1985) Limited (“Frankfurt”) files this Intervention in the Application for Accreditation – Construction Industry filed by the Crane Rental Association of Ontario (the “CRAO” or the “Applicant”) in which the International Union of Operating Engineers Local 793 (“Local 793”) is the responding party and bearing OLRB Case No. 2973-24-R (the “Application”). Frankfurt was not provided notice of the Application and is not included as an employer in the List of Employers (Tab 8 of the Applicant’s Book of Document), but it submits that it has a clear legal interest in the proceeding and ought to participate as an intervenor for the reasons described below.
2. Frankfurt is a construction employer that specializes in the construction of high-rise residential developments. Frankfurt is bound to a Collective Agreement with Local 793 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 engaged as surveyors while working in 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 Trafalger, the Regional Municipality of Durham and Simcoe County, Labour Relations Board Area #9”, in all sectors excluding the industrial, commercial and institutional (“ICI”) sector of the construction industry (the “Local 793 Collective Agreement”).
3. Article 2.2 of the Local 793 Collective Agreement states that it “shall apply to all residential construction” described in Schedules A and B attached thereto and that for all other work, Frankfurt shall apply and be bound by the “current terms and conditions of employment of the Unions appropriate area/sector collective agreement”. Article 2.4 of the Local 793 Collective Agreement further states that for “excavation & backfill” of residential apartment and condominium buildings, the Local 793 Provincial Collective Agreement shall apply.
4. Frankfurt notes that the proposed bargaining unit in the Application is defective and inappropriate in that it attempts to describe work that is clearly the subject of other accreditation certificates, is not itself reflected in the Employer Authorizations attached to

the Application, and attempts to cover the supply and rental of equipment, which includes work that is clearly not within the construction industry.

5. Frankfurt further states that the proposed bargaining unit description does not include an exception for collective agreements to which employers not listed in the List of Employers may already be bound with Local 793, such as the Local 793 Collective Agreement with Frankfurt. Frankfurt states that the proposed bargaining unit ought to be amended to exclude employers such as Frankfurt for whom Local 793 holds bargaining rights, or alternatively that *all* employers for whom Local 793 holds bargaining rights for work that is covered by the proposed bargaining unit should be included for the purposes of calculating the double majority test.
6. Frankfurt submits that the Application ought to be dismissed or, in the alternative, that the proposed bargaining unit description ought to include an exception for all work covered by existing accreditation certificates held by other accredited employer association. Frankfurt further submits that the description of the proposed bargaining unit description is inappropriately overly broad in regards to specific work that is included on its face (and, in turn, does not properly exempt Frankfurt as an employer bound to Local 793), is overly broad in the equipment that is listed, and that it should also not include “manned crane and rental equipment business”, which includes work that does not fall within the construction industry.
7. In the alternative, should the Board proceed with this Application and/or the Applicant not provide clarification regarding the scope of work to which the Application applies, then all employers that are bound to Local 793 for construction work in the non-ICI sectors ought to be included for the purpose of the double majority count given the broad nature of the proposed bargaining unit description.

I. THE APPLICANT’S BARGAINING UNIT DESCRIPTION IS INAPPROPRIATE

8. Frankfurt states that the proposed bargaining unit is inappropriate on the basis that it interferes with representational rights held by other accredited employer associations with Local 793 and/or the Formwork Council of Ontario, of which Local 793 is a member, *i.e.* the same union as the Responding Party in this Application.

9. The Application has defined the proposed bargaining unit in such a way that covers work clearly set out and covered by other accreditation certificates. The proposed bargaining unit in the Accreditation has been defined as follows (the “Proposed Bargaining Unit Description”):

all employers of employees engaged in the **operation of hoisting equipment, concrete pumps, placing booms, and similar equipment**; the **on-site repair, maintenance and servicing of all equipment identified herein**; the **assembly and dismantling of said equipment** (and any equipment used to erect and dismantle the equipment listed above); and **the work necessary to put the equipment identified within into production or preparation for removal from operations** for whom the International Union of Operating Engineers, Local 793 (“Local 793”) has bargaining rights and who are engaged in the manned crane and equipment rental business in all sectors of the construction industry, excluding the ICI sector, in the Province of Ontario, save and except employers bound by and performing work under any of the following collective agreements [...] [Emphasis added]

10. To the extent this work in the Proposed Bargaining Unit Description is performed work in all non-ICI sectors that falls under existing accreditation certificates, then it is clearly inappropriate. Frankfurt states that any matters related to the “operation of hoisting equipment, concrete pumps, placing booms, and similar equipment”, the “on-site repair, maintenance and servicing of all equipment identified herein”, and the “work necessary to put the equipment identified within into production or preparation for removal from operations” used in certain construction work is already covered by existing and longstanding accreditation certificates with other accredited employer organizations.
11. Therefore, if granted, the Application using the Proposed Bargaining Unit Description would result in competing accredited collective agreements that cover the same type of work in the same sector(s) and with the same union. This result is not only inappropriate but is also prohibited by section 140 of the *Labour Relations Act, 1995* (the “Act”).
12. Frankfurt also notes that the Proposed Bargaining Unit Description excludes “employers bound by and performing work under” specified accredited collective agreements. However, this stated exclusion is insufficient. Firstly, the listed exemptions do not include *all* of the accredited collective agreements that include work described in the Proposed

Bargaining Unit Description. Further, although the Proposed Bargaining Unit Description excludes employers bound by and performing work under the listed accredited collective agreements, Frankfurt states that if there is work in the Proposed Bargaining Unit Description that overlaps with work falling under any existing accreditation certificate held with the same union (*i.e.* Local 793), then these are matters that must already be negotiated exclusively and directly by Local 793 with that accredited employers' association and not any other employer association. It should not, and could not, be negotiated with any other employer association (s. 140 of the *Act*). In other words, if work falls under an accreditation certificate, and not just the accredited collective agreement, then Local 793 must negotiate any such matters with that accredited employers' association only. It should not be open for Local 793 to negotiate such matters with a different employer association.

13. Accordingly, the Proposed Bargaining Unit Description of the Application is inappropriate because it ought to exclude all work that falls under an existing accreditation certificate and not just the listed accredited collective agreements. Frankfurt opposes the Application to the extent the Proposed Bargaining Unit Description does not recognize or overlaps with any existing accreditation orders with Local 793 and to which Frankfurt may already be bound.
14. Accordingly, Frankfurt is intervening in this Application given the broad nature of the Proposed Bargaining Unit Description (as outlined below) to ensure that its legal interests affected by the Application as an employer bound to Local 793 is protected and/or clarified regarding the appropriate accredited employers' association, accreditation certificate, and, accordingly, the accredited collective agreement to which Frankfurt may be bound.

III. THE APPLICATION IS IN ANY EVENT DEFECTIVE

15. Frankfurt further states that the Application is in any event defective on the basis that the Employer Authorizations relied upon in support of the Application do not specifically include "manned crane and equipment rental business", which is work that clearly does not fall within the construction industry. The Application also expands upon the type of equipment that is included in the Proposed Bargaining Unit Description in that the Employer Authorizations do not explicitly include hoisting equipment, placing booms, or "similar equipment".

16. Frankfurt states that these defects demonstrate the underlying issue with the Proposed Bargaining Unit Description in that it is an overly broad description of tasks without properly defining or identifying the construction work to which those tasks apply or the codification of bargaining rights held by Local 793. By way of examples, the Utility Contractors' Association of Ontario accreditation certificate covers the operation of certain equipment engaged in utility construction in the non-ICI sectors of the construction industry. The Central Southwest Ontario Heavy Civil Construction Association's accreditation certificate with Local 793 employees covers the operation of certain equipment for employers "engaged in road construction, parking lot construction, sewer and watermain construction, common excavation and building site preparation". The Greater Toronto Sewer and Watermain Contractors Association's accreditation certificate with Local 793 employees specifically describes the "work described below", *i.e.* "all sewer and watermain work, including drainage, in the sewer and watermains sector of the construction industry, on private property more than three feet from any building, [...]", and it goes on.
17. It is clear that accreditation certificates for employers of employees engaged in, *inter alia*, equipment operation with Local 793 employees generally define not just the *task*, *e.g.* the operation of equipment, but also the *construction work* in which the equipment operation is being completed, *i.e.* utility construction, certain defined sewer and watermain work, road construction, parking lot construction, *etc.* This level of detail is required for an employer bound to Local 793, such as Frankfurt, to have a degree of certainty over which, if any, accredited collective agreement applies to any given construction work.
18. This Application, however, does no such thing. The Application does not attempt to define the actual construction work in which the equipment is being operated. The Proposed Bargaining Unit Description is then so broad enough to include, *inter alia*, all of the operation, repair, maintenance, servicing, assembly, and disassembly of certain or similar equipment, or even the "work necessary to put the equipment into operation", without specifying the particular construction work in which such equipment is engaged. The result is that the proposed description could cover conceivably *all* operation of such equipment (and the other listed tasks), even if such operation (or tasks) are already covered by other accreditation certificates held by another accredited employer association with the same

union. It also provides lack of clarity over which accredited collective agreement may apply to any given work, particularly given that not all accredited collective agreements with Local 793 is listed in the Proposed Bargaining Unit Description.

19. The result of this broad bargaining unit description is that it could theoretically apply to employers such as Frankfurt, despite being bound to an existing Collective Agreement with Local 793 setting out the applicable terms and conditions to work in the residential sector. In that case, the Applicant ought to provide notice to all employers who are bound to Local 793 for construction work in all non-ICI sectors and allow for such employers to be included in the application to make representations and to be included in the double majority test. The Applicant has not done so.
20. Indeed, the Employer Authorization(s) filed in support of the Application also do not support the broad nature of the Proposed Bargaining Unit Description. The Employer Authorization(s) state that the undersigned Employer acknowledges that the Applicant is seeking accreditation to become the accredited bargaining agent for “employers engaged in the operation of concrete pumping equipment and the operation of cranes” which employ members of Local 793 in non-ICI sectors. That is the extent of the authorization, at least explicitly.
21. As noted above, however, the Proposed Bargaining Unit Description seeks to cover not just the operation of pumping equipment or cranes, but also the operation of hoisting equipment, placing booms, and “similar equipment”, the on-site repair, maintenance, and servicing of all such equipment, and employers “who are engaged in the manned crane and equipment rental business”. The Proposed Bargaining Unit Description not only far exceeds the *type* of equipment that is set out in the employer authorizations but also the *type of work* to be included in a manner that conceivably seeks to include *all* equipment operation in the non-ICI sectors of the construction industry, unless otherwise performed by one of the listed collective agreements.
22. Finally, the Application that is being filed in accordance with the construction industry provisions of the *Act* seeks accreditation for work that is clearly not within the construction industry. Specifically, the Proposed Bargaining Unit is further inappropriate on the basis that it includes the “manned crane and equipment rental business”. The supply and rental

of equipment is not construction work. For example, equipment that is rented in order to deliver materials to a construction site has repeatedly been found to not constitute construction work. Such rental activities do not fall under the construction provisions of the *Act*, including the accreditation provisions. It is therefore inappropriate to grant accreditation pursuant to the construction provisions of the *Act* for work that clearly does not fall within the construction industry and the term “manned crane and equipment rental business” should therefore be removed.

IV. CONCLUSION

23. For these reasons, Frankfurt seeks status to participate in these proceedings in order to protect and preserve its legal interests as an employer for whom Local 793 holds bargaining rights.
24. Frankfurt submits that the Proposed Bargaining Unit pursuant to subsection 135(1) of the *Act* in that it is overly broad so as to create ambiguity and conflict over the scope of the requested accreditation order regarding the *specific* construction work to which it applies, which makes it particularly prejudicial for employers who are bound to Local 793, and the Application filed under the construction provisions seeks to apply to work that does not fall within the construction industry.
25. Frankfurt further submits that the Proposed Bargaining Unit Description is not appropriate pursuant to subsection 135(1) of the *Act* in that it seeks to cover work that already falls under existing accreditation certificates.
26. The Application should therefore be dismissed or, in the strict alternative, the Proposed Bargaining Unit Description ought to contain a carve out such that any granted accreditation certificate in this Application does not apply to employers of employees for whom Local 793 holds bargaining rights for work already covered by an existing accreditation certificate. The Proposed Bargaining Unit should also be amended to appropriately narrow the specific construction work to which the identified tasks apply, so as to provide clarity over the employers bound to Local 793 who are affected by the Application.

27. In the strict alternative, if the Board proceeds with the Application and finds that the Proposed Bargaining Unit Description is appropriate, then for the purposes of the double majority test, the Application ought to include all employers who employed employees for whom Local 793 holds bargaining rights in all non-ICI sectors in the construction industry in the year prior to the Application being filed. To this end, but on a strictly without prejudice basis, Frankfurt has provided an estimate of Local 793 members performing work within the Proposed Bargaining Unit Description (*i.e.* employees engaged in the operation of hoisting equipment in the residential sector) and has filed an Employer Filing with a List of Employees so as to provide the information requested in these types of proceedings. However, Frankfurt does so without prejudice to its position that the Proposed Bargaining Unit Description is inappropriate, overly broad, and should be amended to exclude Frankfurt and employers who are otherwise bound to Local 793 with existing collective agreements in the non-ICI sectors as it is not an employer that was listed in the List of Employers (Tab 3 of the Applicant's Book of Documents).
28. For clarity, Frankfurt submits that the Application ought to be dismissed on its face and/or the Proposed Bargaining Unit Description ought to specify the specific construction work to which it applies and then remove all other employers bound to Local 793 from the Proposed Bargaining Unit Description (including Frankfurt) accordingly.
29. Frankfurt reserves its right to provide further information should it be or become necessary to do so. If the Board proceeds with the Application in a manner that continues to affect Frankfurt's legal rights and to provide notice to all affected employers bound to Local 793 accordingly, then Frankfurt reserves its right to provide additional information related to its employees as it may be or become necessary.
30. Frankfurt reserves its right to raise and/or rely upon any position in this proceeding, as it may be or become appropriate and/or permitted by the Board.

All of which is respectfully submitted.