

STIPULATION OF AGREEMENT

AGREEMENT made on the 31st day of December, 2014 between the Realty Advisory Board on Labor Relations, Inc. (the "RAB") and Local 94-94A-94B, International Union of Operating Engineers, AFL-CIO (the "Union" or "Local 94").

WHEREAS, the 2011 Engineer Agreement between the parties by its terms is set to expire on December 31, 2014 (the "Agreement");

WHEREAS, the RAB through its committee representing certain employers in associational bargaining, has now negotiated an Agreement with the Union to which RAB members may assent; and

WHEREAS, the parties wish to include these terms in a written renewal Agreement;

NOW THEREFORE, the parties in consideration of the mutual covenants herein contained, and subject to ratification by the Union's membership, approval by the RAB's negotiating committee, and ratification by the RAB's Board of Directors, do hereby agree to extend the Agreement through December 31, 2018 and to amend the Agreement in accordance with the following stipulation:

1. **ARTICLE I – RECOGNITION AND UNION SECURITY**

Revise the first sentence of Section 5 (p. 4) to state as follows:

The Employer shall give written notice, including through email, to the Business Manager and Business Agent of the Union, for all vacancies in the staff . . .

2. **ARTICLE II – WAGES, HOURS AND WORKING CONDITIONS (pg. 5)**

a) **Section 1**

Wage Increases:

Engineers shall receive a wage increase of:

\$1.10 per hour effective January 1, 2015;

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\$1.13 per hour effective January 1, 2016;
\$1.17 per hour effective January 1, 2017; and
\$1.20 per hour effective January 1, 2018.

Helpers shall receive a wage increase of:

\$ 0.86 per hour effective January 1, 2015;
\$ 0.88 per hour effective January 1, 2016;
\$ 0.91 per hour effective January 1, 2017; and
\$ 0.94 per hour effective January 1, 2018.

Employees in pay scales other than Engineer and Helpers shall receive wage increases on the same dates based on their rate of pay, i.e.,

3.0% per year effective January 1, 2015;
3.0% per year effective January 1, 2016;
3.0% per year effective January 1, 2017; and
3.0% per year effective January 1, 2018.

Add new language (p. 8) stating as follows:

An employee promoted to Engineer or newly hired into the industry as an Engineer shall have a starting rate of pay of 85% of the then current Engineer rate for his/her first year of employment.

b) Revise Subsection 6(c) (p. 12) to increase the meal allowance as follows:

\$16.00 per hour, effective January 1, 2016

\$17.00 per hour, effective January 1, 2018.

c) Revise the last sentence of Subsection 7(b) (p. 14) to read that "The Employer shall post a change of schedule at least twelve (12) days in advance of the effective date thereof."

3. **ARTICLE VI – ARBITRATION (pg. 20)**

Revise Section 2(a) to delete the name of Ray Fleishman.

Move Section 4 to Section 5 and add new Section 4 (p. 21) stating:

Employees' rights under the National Labor Relations Act are hereby incorporated by reference into this Agreement, and Arbitrators shall have the authority to adjudicate claims for unfair labor practices under the National Labor Relations Act in accordance with the Procedure set forth herein and applicable National Labor Relations Act principles and powers.

Add new Section 6 (p. 21) stating:

Pursuant to 12 N.Y.C.R.R. Section 195-5, all disputes over wage advancements and/or overpayments shall be subject to the grievance and arbitration procedures set forth in Articles V and VI.

4. **ARTICLE XI – EMPLOYER FUND CONTRIBUTIONS (pg. 23)**

a) Section 1 – Health and Benefits (pg. 23):

The Employer contribution to the Local 94 Health and Benefit Fund shall be increased by \$0.00 per hour effective January 1, 2015; \$0.20 per hour effective January 1, 2016; \$0.46 per hour effective January 1, 2017; \$0.30 per hour effective January 1, 2018.

Revise Paragraph 1(g) (pgs. 25-26) to state as follows (new language underscored):

The parties agree that if there is governmental health care reform mandating payment in full or part, by a contributing Employer for some or all of the benefits already provided for in the Health Fund to participants, the parties shall meet to discuss what steps, if any, might be appropriate to minimize, and if possible eliminate, any adverse impact on the Fund, its participants and Employers.

The parties agree that if the recently passed healthcare reform legislation or any future governmental healthcare reform legislation requires (i) any payment by contributing Employers for some or all of the benefits already provided for in the Health Fund to participants, or (ii) any contributing Employers to pay any excise or other tax, penalty (including assessable payments), fee or other amount relating to or resulting from the eligibility requirements of, or the level of benefits provided by the Health Fund or otherwise relating to the Health Fund, the parties shall meet as soon as practicable thereafter to discuss what steps, if any, are appropriate to minimize, and if possible eliminate, any adverse impact that such payments, excise or other tax, penalty (including assessable payments), fee or other amount has on the Health Fund, its participants and the contributing

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Employers.

b) Section 2 – Pension (pg. 26)

The Employer contribution to the Central Pension Fund shall be increased by \$0.10 per hour effective January 1, 2015; \$0.10 per hour effective January 1, 2016; \$0.10 per hour effective January 1, 2017; and \$0.10 per hour effective January 1, 2018.

Revise Paragraph 2(e) (pg. 27) to state as follows (new language underscored):

The parties agree that if there are new governmental regulations issued that implement the excise tax provisions of the Pension Protection Act (PPA), or there is further governmental reform relating to the funding of pension funds, the parties shall meet to discuss what steps, if any, might be appropriate to minimize, and if possible eliminate, any adverse impact on the Fund, its participants and employers.

To the extent that during the term of this Agreement, any contributing Employer becomes subject to, with respect to employees covered by this Agreement, the automatic employer surcharge under Section 432 of the Internal Revenue Code of 1986, as amended (“Code”) or any excise tax, penalty, fee, increased contribution rate or other amount relating to the funding of the Pension Fund, including without limitation those under Section 4971(g), 412 or 432 of the Internal Revenue Code (collectively “Surcharge/Penalty Amounts”), then the parties agree to meet as soon as practicable thereafter to discuss what actions are appropriate to minimize, and if possible eliminate, any adverse impact that such Surcharge/Penalty Amounts may have on the contributing Employers.

c) Section 4 – Annuity (p. 28)

The Employer contribution to the Local 94 Annuity Fund shall be increased by \$0.10 per hour effective January 1, 2015; \$0.10 per hour effective January 1, 2016; \$0.10 per hour effective January 1, 2017; and \$0.10 per hour effective January 1, 2018.

d) Section 7 – Sick Pay (p. 29)

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Add new Subsection 7(f) (p. 31) to state as follows:

“The parties agree that on an annual basis the paid leave benefits provided regular employees under this Agreement are comparable to or better than those provided under the New York City Earned Sick Time Act, N.Y.C. Admin. Code § 20-911 *et seq.* Therefore, the provisions of that Act are hereby waived.”

- e) Section 7 – Training (p. 31) (section number in printed collective bargaining agreement to be renumbered appropriately)

Revise Paragraph 7(a) to restore the Employer contribution to the Local 94 Training Fund at twenty-one cents (\$0.21) per hour paid per employee (except for sick pay contributions and benefits) effective January 1, 2015.

Effective January 1, 2017 the Employer will cease to contribute to the Local 94 Training Fund.

- f) Add new Section to Article XI stating that the Employer will notify the Union when hiring Summer Helpers.

5. **ARTICLE XII – GENERAL CLAUSES:**

- a) Section 10 – Reducing Force (p. 46)

Revise Section 10 to state that employees who have been employed for one (1) year shall receive at least three (3) weeks notice of lay-off or discharge, or in lieu thereof, an additional three (3) weeks pay.

- b) Section 11 – Jury Duty (p. 46)

Revise Section 11 to state as follows:

An employee performing jury duty shall receive his/her full pay less jury duty compensation, not more than once in any contract period.

c) Section 12 – Termination Pay (p. 46)

Add Subsection 12(d) (p.47) stating:

In order to receive any termination pay, Employees must enter into a general release and separation agreement in the form acceptable to the Employer and Union.

d) Section 15 – Trial Period (p.49)

Revise Section 15 to state as follows:

All newly hired employees in the industry shall have a ninety (90) day trial period. Any employee moving to another position shall have a trial period of forty-five (45) days at such new position.

e) Section 18 – Uniforms and Other Apparel (p. 50)

Revise Section 18 to state that the reimbursement of safety shoes shall be increased to a maximum of:

One hundred and thirteen dollars (\$113) per year effective January 1, 2016.

One hundred and twenty-five dollars (\$125) per year effective January 1, 2018.

f) Section 21 – Emergency Calls (p. 50)

Add Subsection (c) to state as follows:

Employees shall be compensated for time spent answering emergency phone calls and responding to emergency emails, provided that such time is more than *de minimis*. The Union and RAB agree that due to the administrative impracticability of recording such time and the infrequency of emergency calls and emails, time spent answering emergency calls and emails that amounts to fifteen (15) minutes or less per day shall be considered *de minimis*. If more than fifteen (15) minutes per day is incurred then the first fifteen (15) minutes shall be



counted as paid time and no longer *de minimis*. In such cases, all time recording and pay practices as specified by the Employer shall be followed in connection with payments under this provision (i.e., hours must be recorded in a timely manner).

g) Section 24 - Employment and Discrimination (p. 52)

Revise Section 24 to state as follows (new language in bold):

- (a) No employee shall be employed through fee charging agencies except where the Employer shall pay the full amount of the fee.
- (b) There shall be no discrimination against any present or future employee by reason of race, creed, color, age, disability, national origin, sex, union membership or any characteristic protected by law, including, but not limited to, claims made pursuant to Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, 42 U.S.C. § 1981, the Family and Medical Leave Act, the New York State Human Rights Law, the New York City Human Rights Code, or any other similar laws, rules or regulations. All claims alleging illegal discrimination under any of the above authorities, as well as all claims alleging violations of the federal Fair Labor Standards Act, the New York State Labor Law, and any other federal, state or local wage payment statutes or regulations, shall be subject to the Agreement's grievance and arbitration procedure as the final, binding, sole and exclusive remedy for such violations, and employees covered by this Agreement shall not file suit or seek relief in any other forum. This provision shall apply to allegations arising out of events occurring before and/or after the effective date of this Agreement. Arbitrators shall apply applicable law as it would be applied, and shall have such powers as would be exercised, by the appropriate court in rendering decisions on the claims covered by this paragraph.
- (c) The claims subject to resolution in accordance with paragraph 24(b), above, shall not be litigated or arbitrated by way of a class or collective action. All claims between an employee and an employer must be decided individually. Neither an employee nor an employer will have the right, with respect to any claim, to do any of the following before an arbitrator:
- a. Obtain relief from a class or collective action, either as a class representative, class member or class opponent; or

b. Join or consolidate claims with the claims of any other person.

The arbitrator shall have no authority or jurisdiction to process, conduct or rule upon any class or collective proceeding, or to consolidate any individual claims in one proceeding absent mutual consent of the parties hereto.

h) Add a new Section to Article XII stating:

The parties agree to establish a committee to study and encourage the hiring of Helpers in the industry in order to ensure the career progression from Helpers to Engineers.

i) Add new Section to Article XII on New Development stating as follows:

The Union and the RAB recognize (1) that real estate development strengthens communities and enhances New York's economy; (2) that the economics of developments are complex and not uniform; and (3) that successful development is important to all stakeholders, and to the people of the City of New York. Therefore, the parties shall establish a sitting New Development Committee whose members shall determine, on a project-by-project basis, wage and benefit standards that accord with the needs of the parties and are consistent with applicable law for employees in newly constructed buildings. Any such standards shall be determined only upon the mutual agreement of the Union and the RAB. Any action or inaction of the committee shall not be reviewable in any forum. The committee shall be comprised of an equal number of persons appointed by the President of the Union and the President of the RAB.

6. The side letters agreed to by the parties are attached hereto and are fully incorporated into this Agreement by reference.
7. Dates to be changed as necessary throughout the Agreement, e.g., holidays, COLA updated, etc.
8. Counsel for the parties may make ministerial or non-material modifications to the Agreement and such language shall be agreed to and incorporated in the Agreement.

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This Agreement is subject to ratification by the membership of the Union, the RAB Negotiating Committee and the Board of Directors of the RAB.

AGREED to this 31st day of December 2014:

Local 94-94A-94B INTERNATIONAL
UNION OF OPERATING ENGINEERS AFL-
CIO

By: 

KUBA J. BROWN,
BUSINESS MANAGER / PRESIDENT

REALTY ADVISORY BOARD ON
LABOR RELATIONS, INC.

By: 

HOWARD ROTHSCHILD,
PRESIDENT