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COLLECTIVE BARGAINING AGREEMENT

between the

Town of Boston

and the

**INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL UNION No. 17**

1/1/04 - 12/31/07

**DATED:
JANUARY 1, 2005**

RECEIVED

JUN 20 2005

NYS PUBLIC EMPLOYMENT
RELATIONS BOARD

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Table of Contents

Article	Title	Page No.
I.	Legislative Requirement	1
II.	Recognition	1
III.	Management Rights	1
IV.	Agency Shop and Dues Check-off	2
V.	Grievance and Arbitration	3
VI.	Discipline and Discharge	4
VII.	No Strike No-Lockout	5
VIII.	Union Business and Visitation	5
IX.	Bulletin Board	6
X.	Residency Requirement	6
XI.	Seniority	6
XII.	Eligibility for Benefits	7
XIII.	Hours of Work	7
XIV.	Layoff and Recall	7
XV.	Overtime and Premium Pay	8
XVI.	Holidays	9
XVII.	Vacation	10
XVIII.	Personal Leave	11
XIX.	Bereavement Leave	11
XX.	Jury Duty	12
XXI.	Sick Leave	12
XXII.	Sick Leave Bank	13
XXIII.	Leave of Absence Without Pay	15
XXIV.	Military Leave	15
XXV.	Health Insurance	15
XXVI.	Work Clothing	16
XXVII.	Personnel Files	17
XXVIII.	Deferred Compensation	17
XXIX.	Workers Compensation	17
XXX.	Retirement	17
XXXI.	Compensation	17
XXXII.	Retroactivity	19
XXXIII.	Longevity	19
XXXIV.	Total Agreement	19
XXXV.	Savings Clause	19
XXXVI.	Termination and Modification	20
	Memorandum of Understanding	21
	Signature Page	22

THIS AGREEMENT is made and entered into this 1st day of January, 2005 by and between THE TOWN OF BOSTON (hereinafter called the TOWN), and the INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION NO. 17 (hereinafter called the UNION): and has as its purpose the promotion of harmonious relations between the TOWN, the employees, and the UNION, the establishment of an equitable and peaceful procedure for the resolution of disputes, and the establishment of wages, hours, and other conditions of employment

This Agreement has been negotiated pursuant to the provisions of the Public Employees Fair Employment Act and is governed by the provisions of the Laws of the State of New York and non-conflicting local laws and ordinances of the TOWN.

The use of the personal pronoun of one gender in this Agreement is intended and shall be construed to apply to both genders.

ARTICLE I LEGISLATIVE REQUIREMENT

IT IS AGREED BY AND BETWEEN THE PARTIES HERETO THAT ANY PROVISION OF THIS AGREEMENT REQUIRING LEGISLATIVE ACTION TO PERMIT ITS IMPLEMENTATION, BY AMENDMENT OF LAW OR BY PROVIDING THE ADDITIONAL FUNDS THEREFOR, SHALL NOT BECOME EFFECTIVE UNTIL THE APPROPRIATE LEGISLATIVE BODY HAS GIVEN APPROVAL.

ARTICLE 11 RECOGNITION

The TOWN recognizes the UNION as the sole and exclusive representative for the purposes of collective bargaining in respect to wages, hours and all the terms and conditions of employment for all of the full time TOWN Highway Department employees employed in the MEO, Truck Driver and Laborer classifications, excluding Highway Superintendent, Deputy Highway Superintendent, and all clerical employees.

ARTICLE III MANAGEMENT RIGHTS

Except as expressly limited by specific provision of this Agreement, all of the authority, rights, functions, and responsibilities already possessed by the TOWN are retained by it, including but not limited to the right to determine the nature, mix and extent of services and raw materials to be contracted for and/or purchased by the TOWN; to determine the purposes, objectives, and policies of the TOWN; to determine the number and location of its facilities and the manner, methods, means, number and qualifications of personnel for the conduct of the TOWN'S business, to change existing or introduce new equipment, operations, methods, processes, or facilities-, to hire, retain, promote, to assign and reassign work within a classification, to determine when and to what extent the work required in operating its business and supplying its services to be performed by employees governed by this Agreement, to direct, deploy and utilize the work force (assign employees to work in other departments than the department they are normally assigned to by job title); to establish specifications for each class of positions; to schedule operations and change work schedules; to layoff and recall; terminate, discipline, or demote employees for just cause.

Due to the difficulty in determining work load requirements, emergencies, lack of necessary parts and equipment, expertise, capability, capacity and personnel, etc., the TOWN retains the right to subcontract bargaining unit work in order to provide services to the community, provided, however, that if any employee laid off in the last six (6) months can perform this work the TOWN may not subcontract when to do so would cause an employee subject to this agreement to be laid off.

It is understood and agreed that the TOWN shall have the right, from time to time, to publish work and/or safety rules and other regulations necessary to effect its management rights heretofore expressed, provided that such rules and regulations shall be reduced to writing, and publishing to employees prior to the effective date of such regulations, provided these rules and regulations shall not be contrary to the specific provisions of the Collective Bargaining Agreement.

It is understood that the exercise or non-exercise of rights hereby retained by the TOWN shall not be deemed a waiver of any such right or prevent the TOWN from exercising such rights in any way in the future.

It is understood the TOWN may supplement the workforce with part time, seasonal, temporary or full time non-unit employees.

ARTICLE IV AGENCY SHOP AND DUES CHECK-OFF

The UNION having been recognized or certified as the exclusive representative of employees within the negotiating unit, shall be entitled to have deductions made from the wage or salary of employees of said bargaining unit who are not members off the UNION, the amount equivalent to the dues levied by the UNION and the fiscal or disbursing officer shall make such deductions and transmit the sum so deducted to the UNION. The fiscal officer making such deductions will transmit these amounts to the UNION, at 5959 Versailles Road, Lakeview, New York 14085. This deduction will be accompanied by a listing indicating the name and address of those employees who are not members of the UNION. The UNION agrees to hold the TOWN safe and harmless from any liability for making such deductions.

The TOWN will deduct from the salary of any member of the unit who so authorizes individually and voluntarily, in writing, the dues, and fees of the UNION, and will transmit these monies to the UNION at 5959 Versailles Road, Lakeview, NY 14085.

No deduction of dues or fees shall be made until and unless the amount of dues and fees to be deducted and any changes thereto are certified to the TOWN by an authorized officer of the UNION.

An authorization on file with the TOWN shall be honored until and unless it has been revoked or amended pursuant to the terms and conditions of the signed authorization and by written notice received by the TOWN.

As to any disputes between the TOWN and any employee or employees or third parties, the UNION shall defend and save the TOWN harmless against any and all claims, suits, or other forms of liability that shall or may arise by reason of action taken or not taken by the TOWN to comply with the terms of this Article or in reliance on a certification issued by the UNION. The TOWN agrees to deduct monthly dues from members' wages and submit with working dues.

ARTICLE V GRIEVANCE & ARBITRATION

Grievance Procedure

For the purpose of this Agreement, a grievance is defined as any dispute arising, over the interpretation, application, or meaning of any provision of this Agreement. In the event of any such dispute, the matter shall be settled in accordance with the following procedure.

All written grievances shall be submitted on a grievance form approved by the TOWN and the UNION, and shall state the name and position of the aggrieved party, a concise statement of the complaint, supporting facts and the provisions of the agreement to which the grievance applies.

If a decision at one step is not appealed to the next step of the procedure within the time limits specified, the grievance shall be deemed to be discontinued and further appeal under this agreement, or otherwise, shall be barred.

Failure at any step of the grievance procedure to communicate a grievance answer to the aggrieved party within the specified time limits shall permit the lodging of an appeal at the next step of the procedure within the time which would have been allocated had the decision been communicated on the last day of the specified time period.

The time within which an appeal may be filed at a higher step of this procedure shall be measured from the date of receipt of the grievance answer.

Time limits within the grievance procedure may be extended by mutual agreement.

No grievance will be entertained, and such grievance will be deemed waived, unless the grievance is presented at Step One within five (5) work days after the employee knew or should have known of the act or condition on which the grievance is based.

PROCEDURE:

1. An aggrieved employee shall present his grievance to his immediate supervisor. Such aggrieved employee shall be permitted to be accompanied by the UNION Steward if the aggrieved employee so desires.
2. If no satisfactory settlement is reached at step one, then the grievance shall be reduced to writing and submitted directly to the Highway Superintendent within five (5) workdays after the step one meeting. The Highway Superintendent shall meet with the aggrieved employee regarding the merits of the grievance. The aggrieved employee shall be permitted to be accompanied by the Steward if the aggrieved employee so desires. The Highway Superintendent shall submit an answer in writing within five (5) work days after receipt of the written grievance, a copy of which will be provided to the aggrieved employee and to the UNION Steward.
3. Should the grievance remain unresolved, within five (5) work days after the Step 2 answer, the matter may be submitted to a designated UNION representative and the TOWN Board or its representative who shall meet within twenty (20) work days after such submission and earnestly attempt to adjust the grievance. An answer shall be made within twenty (20) workdays after such meeting.

4. If the grievance is not resolved at Step 3 and is not subject to arbitration, then the UNION shall have the right to submit the grievance to mediation within ten (10) days. The request for mediation may be made to either, PERB, FMICS or NYS Mediation. The mediator shall provide both parties with an opportunity to present their position regarding the grievance. The mediator will make a written recommendation to the Boston TOWN Board, which shall make the final decision regarding the grievance.

If the grievance is not resolved at Step 3 and the grievance involves a disciplinary suspension of three (3) days or more, or discharge, the UNION shall have the right to submit the dispute to arbitration by serving a Demand For Arbitration on the TOWN within ten (10) working days after its receipt of the TOWN'S written answer.

Arbitration Procedure

Within ten (10) work days after receipt of such a Demand For Arbitration, the TOWN and the UNION shall attempt to select an arbitrator by mutual consent. Failing that, the UNION shall forthwith request a panel of seven (7) arbitrators from the Federation Mediation and Conciliation Service. Upon receipt thereof, the parties shall alternately strike names from the list until one remains who shall arbitrate the dispute. Each party has the right to reject one list of arbitrators.

The arbitrator so chosen shall have jurisdiction and authority to render a decision on the grievance, but shall not have the jurisdiction or authority to add to, subtract from, or alter in any way the provisions of the Agreement.

The decision of the arbitrator shall be final and binding upon the parties and the cost of the arbitrator's services shall be shared equally by the UNION and the TOWN.

The expense of witnesses and representatives of either side shall be paid for by the parties producing such witnesses or representatives.

Any time limitation in the grievance and arbitration procedures may be extended by mutual consent.

ARTICLE VI DISCIPLINE AND DISCHARGE

The Union hereby agrees to waive all rights of current or future employees within the bargaining unit in processing disciplinary action through §§ 75 and 76 of the Civil Service Law. The TOWN and the UNION agree to substitute the rights for such employees under §§ 75 and 76 of the Civil Service Law, with the Grievance and Arbitration procedure of this Agreement.

An employee shall only be disciplined or discharged for just cause. An employee shall not be disciplined or discharged for acts which occurred more than twelve (12) months prior to the notice of discipline or discharge, unless such acts of misconduct or incompetency would constitute a crime pursuant to the laws of the State of New York; provided however that notice of discipline or discharge may be brought within twelve (12) months of the discovery of an act of incompetency or misconduct by the TOWN. Records of disciplinary actions shall remain in the employees personnel file but the TOWN shall not take into account any disciplinary action that was taken against the employee occurring more

than three (3) years prior to the date of discipline. At the time the action is taken, the employee may request the presence of an appropriate union representative, if the employee so desires.

ARTICLE VII NO-STRIKE NO-LOCKOUT

The UNION recognizes the status of the TOWN of Boston employees as "public employees" and the provisions of the law applicable thereto.

The UNION or employees shall not engage in a strike, nor cause, instigate, encourage, or condone one or interfere with the operations of the TOWN, such as work stoppage, sick-out, curtailment of work, or interruption of work of any kind. The UNION shall use every effort to have any of the foregoing prohibited practices terminated, including the prompt direction of its members to return to normal work.

Any employee doing the foregoing prohibited practices shall be subject to discipline through and including discharge.

During the life of this Agreement, the TOWN shall not lock out any of its employees for any reason.

ARTICLE VIII UNION BUSINESS AND VISITATION

The TOWN agrees to permit the steward or his designee in his absence, a reasonable amount of time from their work duties for the purpose of grievance investigation or the administration of the Collective Bargaining Agreement. Prior approval will be requested from the Highway Superintendent or his designee prior to the investigation.

A representative of the International UNION of Operating Engineers shall request permission from the department head prior to visiting employees in the unit covered by this Agreement during work hours.

It is understood between the TOWN and the UNION that TOWN work duties and services hold a priority over grievance investigation or contract administration during working hours.

**ARTICLE IX
BULLETIN BOARD**

It is agreed that the UNION may use one bulletin board in the Highway Department lunchroom, provided by the TOWN, for the purpose of posting official UNION notices. Such notices will have the approval of the UNION Steward and Highway Superintendent or his designee.

**ARTICLE X
RESIDENCY REQUIREMENT**

At all times employees employed in the unit covered by this Agreement must maintain their principal place of residence within the corporate limits of the TOWN of Boston, as a condition of continued employment.

**ARTICLE XI
SENIORITY**

Probationary Period:

All new employees shall be considered as probationary employees during their first twenty-six (26) weeks of employment or as provided by Civil Service Laws, Rules, and Regulations. Such employees may be dismissed or disciplined by the TOWN, which shall not be subject to the grievance procedure within this Agreement or protection under Civil Service Laws, Rules, and Regulations. Probationary employees do not have seniority.

Seniority:

Upon satisfactory completion of the probationary period, an employee shall be placed on the regular seniority roster for employees covered by this Agreement in which seniority shall be defined as the length of an employee's continuous full time service with the TOWN. Seniority shall not accrue during periods of layoff or unpaid leave of absence.

Termination of Seniority:

Seniority shall be broken for the following reasons:

- a) If the employee resigns, including retirement.
- b) If the employee is discharged.
- c) If an employee is absent for three (3) consecutive work days without the proper notification or satisfactory reason, accepted solely by the TOWN, for not notifying or reporting.
- d) If an employee fails to report for work within five (5) consecutive days of mailing of notice of recall from layoff by certified mail.
- e) If an employee is laid off for a period which exceeds his recall rights, if any, as provided for in this Agreement.
- f) If an employee fails to return to work from a leave of absence without pay in accordance with the leave of absence without pay provisions provided for in this Agreement.
- g) If an employee intentionally furnishes false information.

- h) Exempt class employees shall not have access to the grievance procedure within the Agreement for termination of employment.

ARTICLE XII ELIGIBILITY FOR BENEFITS

Unless provided to the contrary within this Collective Bargaining Agreement, eligibility for benefits contained within this Agreement shall begin the first (1s) of the month following the completion of their probationary period. Benefits as provided in this Collective Bargaining Agreement will, unless otherwise provided herein, continue provided an employee is working and receiving their normal pay from the TOWN.

ARTICLE XIII HOURS OF WORK

The normal workweek shall be forty (40) hours per week, consisting of five (5) consecutive eight (8) hour days or, when mutually agreed to, four (4) ten (10) hour workdays. The normal work shift shall be 7:30 A.M. to 4:00 P.M.

All employees shall have an unpaid lunch period of one-half (1/2) hour. It is understood when working in another TOWN, employees will bring their lunch with them.

Employees shall be entitled to two (2) fifteen (15) minute break periods each work day. The department head will determine the location of the break period.

The TOWN may establish other start times, break times and/or shifts. The TOWN shall have the ability to change an employee's shift with two week notice, unless the employee and the department head agree in writing to a shorter period.

Employees shall be granted a fifteen (15) minute personal clean-up period, including travel time, prior to the end of the work day.

Volunteer firefighters shall be allowed to respond to an emergency call within the Town of Boston without loss of pay or benefits. An employee who is a volunteer firefighter shall return to work as soon as possible after the emergency is resolved. Emergency Squad members may leave work if the squad member is toned out.

ARTICLE XIV LAYOFF AND RECALL

When a permanent employee in the competitive class of Civil Service is to be laid off on a long-term layoff, one (1) week or more, Civil Service Law, Rules and Regulations will govern the layoff procedure of such employee.

When an employee is in the non-competitive class or labor class of civil service and is to be laid off on a long term, layoff, one (1) week or more, he/she shall be permitted to replace an employee with less TOWN seniority in the same classification (job title) as follows.-

1. The employee with the lowest seniority in that classification (job title) shall be laid off first, provided the remaining employees meet or exceed the job requirements of the TOWN and are qualified and have the ability to perform the duties of the remaining employees in the position.
2. Where the employee is the least senior employee in a particular classification (job title) and is scheduled to be laid off, he/she shall be permitted to bump an employee in a lower rate job classification (job title) with less seniority, provided he/she meets or exceeds job requirements of the TOWN and is qualified and has the ability to perform the duties of said position. An employee who bumps in accordance with the above procedure shall be paid the comparable step of the lower paying job.
3. If the above fails to produce a bumping opportunity for said employee then he/she shall be laid off. The employee with a bumping opportunity shall have the discretion as to whether to exercise this option.
4. Employees who are on layoff shall have a right to be recalled to work in the reverse order of their layoff provided they meet or exceed job requirements for the vacancy and are qualified and have the ability to perform the duties of said position. Recall rights for employees on layoff will be equal to their length of seniority or eighteen (18) months, whichever is shorter.

Recall for competitive class employees will be in accordance with Civil Service Law, Rules, and Regulations.

For a temporary layoff, less than one (1) week, employees shall be laid off on the basis of length of TOWN service within a classification (job title), provided the remaining employees can perform the required work. Such employee affected by the foregoing shall be permitted to work in a lower paying classification (job title), and paid the appropriate rate, provided that in the sole discretion of the Highway Superintendent or his designee, there is sufficient additional work to be performed in such lower classification and the employee(s) involved possess(es) the ability to perform the job involved.

ARTICLE XV OVERTIME AND PREMIUM PAY

All employees are expected to work overtime, and to be available to work in times of emergency declared by the Highway Superintendent or the TOWN Supervisor.

All overtime must have prior approval from the Highway Superintendent or his designated representative.

All hours actually worked in excess of forty (40) hours in a work week and/or eight (8) hours in a work day shall be compensated at the rate of time and one-half (1 1/2) the employee's regular hourly rate of pay. Paid holidays, vacations, personal leave, bereavement leave and jury duty (jury duty shall be limited to a ten day maximum) shall be considered time worked for the purpose of calculating overtime. Sick time shall also be considered time worked for the purpose of calculating overtime, subject to the approval of the Highway Superintendent. There shall be no pyramiding of overtime.

Overtime may be offered to the employees normally engaged in the performance of the work and/or assignment that is to be done on any overtime basis. There will be an attempt to equalize the

distribution of overtime offered by occurrence. However, the Highway Superintendent will determine the length of time an employee can work overtime.

Employees will be required to work overtime during any declared snow emergency and at all other times when requested by the Highway Superintendent, with the following exception (not applicable to declared snow emergencies). At the beginning of each calendar year, each employee will be given nine (9) overtime credits. Each overtime credit can be used at the discretion of the employee to decline overtime for one (1) twenty-four (24) hour period. Only one (1) overtime credit can be used during any twenty-four (24) hour period, unless agreed to by the Highway Superintendent. No credits may be utilized during a snow or other highway emergency (e.g. flood emergency) declared by the TOWN Supervisor or Highway Superintendent. If more than one (1) employee submits an overtime credit for the same twenty-four (24) hour period, the most senior employee will be allowed to decline overtime.

When an employee is called into work compensable overtime, the employee shall be paid thirty (30) minutes for travel time provided that the employee arrives within thirty (30) minutes from the time of the call out. Such travel time shall be included as part of the three (3) hour guarantee for being recalled to work. There shall only be one thirty (30) minute call in travel time permitted per day 12:00am to 11:59pm on any said day all other call ins will allow two (2) hours to show up.

The premium for being recalled to work is a guarantee of three (3) hours of work.

An employee may request to be paid for overtime hours worked by accruing compensatory time. Each hour of overtime worked will result in the accrual of one and one half hours of compensatory time. An employee may accrue compensatory time up to a maximum of forty (40) hours. Employee must advise the TOWN no later than December 1st of intention to take compensatory time. The scheduling of compensatory time will be subject to the approval of the Superintendent. Employee will be paid for overtime unless the time is reported as compensatory time by December 1". Payment shall be made by Dec. 31.

Employees may be required to carry a pager.

**ARTICLE XVI
HOLIDAYS**

Employees shall be entitled to the following paid holidays at their normal daily rate.

- | | |
|------------------------|------------------|
| New Year's Day | Columbus Day |
| Martin Luther King Day | Veterans' Day |
| Patriot's Day | Thanksgiving Day |
| Memorial Day | Independence Day |
| Labor Day | Christmas Day |
| Good Friday | Election Day |

- a) When any of the above holidays fall on Saturday, the preceding Friday shall be observed as the holiday. When one of the above holidays falls on Sunday, the succeeding Monday shall be observed as the holiday.

- b) Whenever any of the above holidays shall fall during an employee's vacation period, then the employee shall, in addition to his pay for such a day, receive a lieu day, to be taken at the employee's option provided two (2) weeks notice is given to the Highway Superintendent.
- c) When an employee is required to work on Christmas, he/she shall receive double time. Christmas shall include the twenty-four hour period starting at 12:01 a.m. on December 25. When an employee is required to work on any of the other above-observed holidays, he/she shall receive time and one-half (1/1/2) for all hours worked during that holiday.
- d) Employees must work their scheduled day before and after a holiday in order to receive holiday pay, except for vacation days or personal days and extenuating circumstances.

**ARTICLE XVII
VACATION**

Vacations will be granted to employees according to the following provisions:

The vacation year shall be the calendar year.

Length of continuous full time service with the TOWN of Boston at the employee's anniversary date will determine vacation entitlement for that anniversary year.

<u>Continuous F/T Service</u>	<u>Vacation Entitlement</u>
One (1) year	Five (5) days
Two (2) years	Ten (10)days
Five (5) years	Fifteen (15) days
Fifteen (15) years	Twenty (20) days
Twenty (20) years	Twenty-one (21) days
Twenty-one (21) years	Twenty-two (22) days
Twenty-two (22) years	Twenty-three (23) days
Twenty-four (24) years	Twenty-four (24) days
Twenty-five (25) years	Twenty-five (25) days

In calculating the time allowed for vacation, intervening holidays will not be counted as vacation days.

The Highway Superintendent shall post the vacation calendar on or about January 1st of each year. Employees may designate their vacation time on the calendar and seniority shall apply if designated by February 15. Time requested after February 15 shall be on a first come - first serve basis. The Highway Superintendent will post the employees' designated vacation time by the end of February. It is agreed that one (1) employee will be allowed off on vacation during any period of time. The Highway Superintendent will determine how many employees will be off for any reason over the one (1), or may deny scheduled vacation time when, in his/her determination, the vacation time will adversely affect the operation of the department. Employees shall be able to take vacation in one (1) day increments provided they give forty-eight (48) hours notice and receive the approval of the Highway Superintendent. Vacation time may not be requested prior to the date when such vacation has been actually earned.

Vacation time shall not be cumulative, and if not taken, expires at the end of the employee's anniversary date.

In the event of the death of an employee, payment for unused vacation shall be made to the employee's estate.

An employee who voluntarily leaves TOWN employment, retires, or resigns, must give two (2) weeks notice to the Highway Superintendent prior to termination in order to be eligible for unused vacation pay. Any unused vacation shall be held by the TOWN until all TOWN equipment and apparel has been returned. A discharged employee will not be entitled to unused vacation.

Should an employee become sick or injured during a vacation period, the vacation will not be rescheduled. The Highway Superintendent may consider rescheduling an employee's vacation time due to the circumstances involved. The decision rests solely with the Highway Superintendent.

ARTICLE XVIII PERSONAL LEAVE

Employees shall be permitted five (5) personal days per anniversary year, non-cumulative, under the following conditions:

- a) Employees who have completed their employment probationary period shall be entitled to two (2) personal leave days within that anniversary year. Following, that anniversary year they shall be entitled to five (5) days per anniversary year.
- b) Requests for personal leave must be submitted in writing to the Highway Superintendent as soon as possible, but at least seventy-two (72) hours in advance of the time off. The Department Head may waive the seventy-two hour requirement due to extenuating circumstances.
- c) An employee will not use personal leave in less than one (1) hour increments.

ARTICLE XXIX BEREAVEMENT LEAVE

Employees will be granted bereavement leave, with pay, not to exceed five (5) consecutive working days due to the death of the employee's husband, wife, parent, child, brother or sister.

Leave with pay, not to exceed three (3) consecutive work days due to the death of the employee's grandparent, father-in-law, mother-in-law, brother-in-law, sister-in-law, or any blood relative residing in the employee's household.

Provided:

- a) The employee attends the funeral or memorial service.
- b) The above days must include the day of the funeral or memorial service.
- c) With the exception of scheduled vacation time, bereavement leave shall not apply during periods when the employee involved is absent from work within the language of the Collective Bargaining Agreement.
- d) Bereavement leave shall not be extended by any provision of the Collective Bargaining Agreement.

ARTICLE XX JURY DUTY

A full time employee who has received notice of jury duty in either state or federal court shall be compensated by the TOWN of Boston, in an amount of money equal to the difference, minus taxes, between the employee's regular pay and the compensation such employee receives for jury duty. Compensation for such jury service shall not include any reimbursement for mileage paid to the employee in the course of his/her service as a juror.

When an employee is excused from jury service on any day during his/her term on jury duty, they shall report for work.

The employee shall present proof of service by a jury duty notice summons, certificate of jury service, and the amount of pay received for such service.

When an employee receives notice that he/she is to report for jury duty, he shall notify the Highway Superintendent immediately. An employee shall be requested by the TOWN to make every reasonable effort to obtain a postponement of jury service if such service time interferes with the normal operation of the department (i.e. winter months or emergencies requiring the employee's presence).

The amount of time that an employee spends on jury duty shall be considered to be actual working time, except for purposes of worker's compensation and overtime pay.

The above terms shall not apply to any employee who volunteers to serve as a juror.

ARTICLE XXI SICK LEAVE

Employees shall earn sick leave at the rate of one (1) day per full calendar month of completed working service. Employees shall earn an additional one-quarter (1/4) day of sick leave for every calendar month of completed working service in which the employee does not use sick leave and is not tardy. Paid holidays, personal leave, vacation, bereavement leave, and jury duty, as set forth in the contract, shall be considered as time worked.

Probationary employees shall not earn sick leave days.

Sick leave days may be accumulated for a total of not to exceed one hundred and sixty-five (165).

Sick leave days may not be used in intervals of less than one (1) hour,

Sick leave shall not be used for any purpose other than legitimate illness or injury. Employees shall contact the office of the Highway Superintendent by telephone at least two (2) hours prior to their scheduled starting time and report the reason for the absence.

The Highway Superintendent shall be required to maintain a record of all absences and shall have the responsibility to determine whether or not such lost time shall be paid for.

Sick leave may be used, provided the employee can be released by the Highway Superintendent, for a serious illness in the employee's immediate family requiring care and attendance of the employee. Immediate family shall include the parent, spouse brother, sister, son, daughter, or grandparent who is and has been an actual member of the employee's household for at least six (6) months.

Sick leave may also be used in the event the employee is quarantined or has medical or dental visits. Employees may be required to provide a physician's statement setting forth the reasons for sick leave absence however it will be required for absences of three (3) days or more.

Employees who are unable to perform the duties of their employment because of injuries arising out of or in the cause of employment and who receive workers' compensation benefits, shall receive a supplemental sum equal to the difference between their wages and their compensation benefits, for actual lost time, chargeable to sick leave on a pro-rata basis. The Town of Boston will provide health insurance coverage for six (6) months if an employee has a minimum of one hundred (100) days of accumulated sick leave at the time of retirement.

**ARTICLE XXII
SICK LEAVE BANK**

In the event an employee has exhausted all of his sick leave credit, vacation and personal leave, he may then apply for further sick leave from the sick bank created herein, providing, he is a member of said sick bank.

CREATION:

A sick leave bank will be established effective January 1, 2001.

CONTRIBUTION:

1. An employee must, in order to join the sick leave bank, contribute two (2) sick leave days from their current accumulated sick leave beginning January 1, 2001. There will be no contribution made by the TOWN.
2. Every year thereafter a member of the sick bank must contribute one (1) sick leave day between January 1 and January 31, in order to continue as a participant in the sick leave bank.
3. Contribution to the sick bank (except for contributions from new participants in the bank) shall be suspended in any year that the total accumulated number of sick days in the bank exceeds three hundred (300) sick days. Contributions will be resumed at any time that the accumulated total number of sick days in the sick bank falls below two hundred fifty (250) sick days. An employee may contribute additional sick days to the sick leave bank without limitation.

PURPOSE:

The establishment of said sick leave bank is to aid the employees who suffer a prolonged illness or injury, have not abused sick leave in the past, and whose regular sick leave, vacation and personal leave days have been exhausted and is to be administered in that fashion and the provisions contained herein shall be interpreted to benefit the employees designed to be protected.

QUALIFICATIONS:

To be a member, an employee must be a current contributor to the sick leave bank in accordance with the terms noted above. Contributions are to be made automatically between January 1 and January 31 in each year. An employee entering the bank after January 2001, other than a new employee (covered by Membership below) must match an initial member's total contribution of days in the year that said employee joins the sick leave bank. Once you have joined the sick bank, you must give written notification to withdraw from the bank.

LIMITATIONS:

An employee may, in writing, make application to the sick leave bank committee with adequate substantiation, to request an extension of sick days from the sick bank, after their own sick leave days accumulation, vacation, and personal leave days have been exhausted because of illness or injury of a prolonged nature.

MEMBERSHIP:

One (1) full year of employment will be required for membership in the sick leave bank and in order to join, a new member must initially contribute two (2) sick leave days.

APPLICATIONS

All applications for extended sick leave from the sick leave bank must be filed with the sick leave bank committee who shall render their decision. The sick leave bank committee, when convened, will consist of two (2) members appointed by the TOWN and two (2) members appointed by the UNION. The approval of extended sick leave must receive a majority vote of the sick leave bank committee. Their decision is final and binding and not subject to the grievance procedure within this Collective Bargaining Agreement.

ACCOUNTING:

The Supervisor of the TOWN of Boston will provide the Steward of the bargaining unit with an accounting of the number of days in the sick leave bank, in writing, on or about February 15 of each year.

ABOLISHMENT:

In the event the sick leave bank should be abolished, all sick leave days remaining in such bank shall be divided equally among those employees who are participants in the bank on the date the abolishment occurs.

ARTICLE XXIII LEAVE OF ABSENCE WITHOUT PAY

Employees covered by this Agreement may request in writing a leave of absence without pay, not to exceed one (1) year. The determination of whether a request for leave of absence without pay shall be granted rests solely in the discretion of the TOWN; except for leave requested for reasons of illness or disability that, prevents the employee from performing the usual and customary duties of his employment based upon an opinion by a licensed physician so certifying. Said opinion shall provide a projected date for the employee's return to work. A leave of absence based upon illness or disability shall not extend beyond the date when the employee is medically cleared to return to work. The TOWN shall have the right

to an independent medical examination at TOWN expense to verify any application for a leave of absence based upon illness or disability. The TOWN shall render determinations on requested leave of absence without pay within thirty (30) calendar days.

Employees shall not earn or accrue seniority and / or other benefits under this Agreement during a period of leave of absence without pay. Upon return to work upon completion of leave of absence without pay, such employee shall have such seniority rights enjoyed at the time such leave commenced.

An employee shall notify the TOWN at least two (2) weeks prior to his scheduled return to work to confirm the date that he will report.

The failure of an employee to return to work within three (3) consecutive working days after expiration of the leave shall be considered as a voluntary quit.

A leave of absence without pay may be extended only by mutual agreement of the parties.

ARTICLE XXIV MILITARY LEAVE

Military leave benefits shall be available to all employees to the extent that such benefits are mandated by law.

ARTICLE XXV HEALTH INSURANCE

The TOWN shall offer the following health insurance coverage:

The TOWN will be required to contribute into the Engineers Joint Welfare Fund on behalf of each Employee covered by this Agreement, the amounts set forth in Article XXV Contributions shall be per hour for each actual hour paid to the employee.

Effective January 1, 2005 and continuing to and including December 31, 2007 the TOWN shall contribute to a mutually agreed and jointly trustee Health and Welfare Plan of the Operating Engineers Local Union No 17, 17A, 17B, 17C, and 17RA. Beginning January 1, 2005 and continuing through December 31, 2005 the rate of contribution shall be in the amount of three dollars and thirty cents (\$3.30) per hour paid to the Employee. Beginning January 1, 2006 and continuing through December 31, 2006 the rate of contribution shall be in the amount of three dollars and seventy cents (\$3.70) per hour for each hour paid to the Employee. Beginning January 1, 2007 and continuing through December 31, 2007 the rate of contribution shall be in the amount of four dollars and ten cents (\$4.10) per hour for each hour paid to the Employee.

The TOWN will pay health insurance premiums for employees hired prior to January 1, 2005.

For employees hired on or after January 1, 2005, the TOWN will pay \$600.00 per month for health insurance. Mark Chiddy will not be subject to the health insurance cap so long as the Town of Boston is utilizing the Operating Engineer's health care plan. This will, however, not remove his status of new employee under the old contract that did subject him to a health care cap. At anytime the Town resumes carrying the highway employees on the Towns health care; Mark Chiddy will resume his status of new employee under the previous contract and be subject to the negotiated contract language which stipulated that employees hired on or after January 1, 2000 the Town will pay \$600.00 per month for health insurance.

The TOWN agrees that all contributions contributed to the Health and Welfare Fund in the excess of 2080 hours in any calendar year contributed will be to a Personal Account Plan for each Employee covered under this agreement.

Contributions are to be deposited regularly into said Welfare Fund in such time and manner as is prescribed by the Trustees for the Engineers Health and Welfare Fund. Contribution shall be calculated in minimums of not less than quarter hour increments. Contribution shall be accompanied by completed Trust Fund contribution forms to be supplied by the Engineers Welfare Fund.

Once the TOWN becomes a contributing Employer to the Engineers Joint Welfare Fund, the benefits provided shall be the only benefits provided for the Employees covered under this Agreement and will replace any health and welfare plans now existing.

The Employer signatory to this Agreement agrees, that upon signing this Agreement, it has become a party in the same manner and form as any other Participating Employer and does hereby bind itself to the terms and conditions of the respective Agreements and Declarations of Trust of the Engineers Joint Benefit Funds viz., the presently established Health and Welfare Fund. Said Trust Agreement, together with any amendments thereto, of the named Fund is fully incorporated herein and made a part hereof, and the TOWN agrees to be considered as an Employer, as the same is defined, under each of the said Agreements and Declaration of Trust.

The parties signatory to this Agreement empower and authorize the Trustees, to delegate, in a prudent and lawful manner, the investment powers granted unto said Trustees by the said Agreements and Declarations of Trust. The delegation of such investment and reinvestment powers, to the extent that the Trustees deem desirable, may be to any bank, trust company, investment advisor, financial investment and management institution and/or investment institutions provided they are registered with the Securities and Exchange Commission under the Investment Advisors Act and with the New York State Insurance or Banking Department.

In such delegation of investment authority or power, by way of specification and not limitation, the authority to invest and reinvest the assets of the trust of such Funds on a discretionary basis or otherwise, and the Trustees may enter into such Agreements in connection therewith, with any such party so selected, and provided such Agreements shall be revocable by the Trustees at any time.

ARTICLE XXVI WORK CLOTHING

The TOWN agrees to furnish each employee with the following:

- a) One (1) pair of gloves
- b) One (1) hard hat
- c) Three (3) pairs of coveralls and a cleaning service.

Additional equipment or clothing shall be at the discretion of the Department Head or designee. Damaged or worn out articles shall be replaced on an as needed basis, as determined by the Department Head. Damaged or worn out articles must be turned in before a replacement could be considered. Each employee shall be responsible to maintain such equipment and clothing in good condition. If abused, the employee will be responsible for the replacement articles.

**ARTICLE XXVII
PERSONNEL FILES**

Employees, upon request, shall be permitted to review their personnel file, provided that the examination of the file shall be by appointment only; shall take place only in the office designated by the Highway Superintendent; and shall take place in the presence of a designated representative of the TOWN. The employee may be accompanied by a representative of their choice.

Nothing can be removed from the file and employees may submit materials for inclusion in their file which are pertinent to performance and qualification.

**ARTICLE XXVIII
DEFERRED COMPENSATION**

The TOWN will offer a deferred compensation plan. The continuation or termination of such plan, and the company to provide investment, trust, and administrative services, shall be at the complete discretion of the TOWN of Boston TOWN Board.

**ARTICLE XXIX
WORKERS COMPENSATION**

Workmen's Compensation benefits shall be available to employees covered by this Agreement to the extent mandated by law.

**ARTICLE XXX
RETIREMENT**

Provided such a retirement program is available, the TOWN agrees to provide and maintain a retirement plan for all employees represented by this Agreement pursuant to Section 75-i for Tier I and 2 employees and Article 14 and 15 for Tier 3 and 4 employees.

As soon as practical following the execution of this Agreement, the TOWN shall provide 4 1-j (application of unused sick leave as additional service credit upon retirement) of the New York State Retirement and Social Security Law.

**ARTICLE XXXI
COMPENSATION**

Job titles and the hourly rate of pay for the term of this Agreement shall be as follows:

	MEO I	MEO 11	MEO III	MEO IV	MEO V
2004	\$ 14.85	\$ 15.70	\$ 16.54	\$ 17.39	\$ 18.23
2005	\$ 15.30	\$ 16.17	\$ 17.04	\$ 17.91	\$ 18.78
2006	\$ 15.76	\$ 16.66	\$ 17.55	\$ 18.45	\$ 19.34
2007	\$ 16.23	\$ 17.16	\$ 18.08	\$ 19.00	\$ 19.92

	Truck Driver I	Truck Driver 11	Truck Driver III	Truck Driver IV	Truck Driver V

2004	\$ 11.06	\$ 11.74	\$ 12.41	\$ 13.09	\$ 13.78
2005	\$ 11.39	\$ 12.09	\$ 12.78	\$ 13.48	\$ 14.17
2006	\$ 11.73	\$ 12.45	\$ 13.16	\$ 13.88	\$ 14.60
2007	\$ 12.08	\$ 12.82	\$ 13.55	\$ 14.30	\$ 15.04
	Laborer I	Laborer II	Laborer III	Laborer IV	Laborer V
2004	\$ 8.81	\$ 9.31	\$ 9.82	\$ 10.32	\$ 10.83
2005	\$ 9.07	\$ 9.59	\$ 10.11	\$ 10.63	\$ 11.15
2006	\$ 9.34	\$ 9.88	\$ 10.41	\$ 10.95	\$ 11.48
2007	\$ 9.62	\$10.18	\$ 10.72	\$ 11.28	\$ 11.82

There is a \$1.00 2nd shift premium.

No current employee shall be demoted in title or suffer any reduction in pay pursuant to the execution of this Agreement. Employees shall receive their pay checks on or before Noon of each regular payday as established by the TOWN Board. The TOWN may offer direct deposit to the Employees.

The Highway Superintendent or his designee may assign an employee to perform the duties of acting supervisor for a period of eight (8) hours or more. The person so assigned shall receive forty cents (\$.40) per hour in addition to the employee's normal hourly rate of pay for the hours worked.

The Highway Superintendent within his sole discretion may assign an employee from time to time to be the Lead Man. Such Lead Man will receive an additional premium of \$1.00 per hour for the each hour paid while so designated.

An employee may be hired at any step of the pay grade.

Employees shall be moved from one (1) step to the next higher step within their classification, on their anniversary date, unless the Highway Superintendent shall advise the TOWN Board in writing prior to the employee's anniversary date, (a copy of which shall be forwarded to the employee) that the employee should not be allowed a step increase. In the event of such action by the Highway Superintendent the Employee may petition the TOWN Board, within 15 days of his/her anniversary date, for a hearing at which the TOWN Board shall, by majority vote, either affirm the action of the Highway Superintendent or grant the Employee a step increase. The decision of the Town Board shall be final and binding.

Upon written recommendation of his/her Department Head and subsequent approval of the TOWN Board an employee may be granted a one (1) or more step increase prior to his/her anniversary date. An Employee is limited to one (1) such additional move in any one (1) fiscal year.

Moving on steps would be on the employee's anniversary date.

An employee moving from one job title to another job title shall receive the next higher hourly rate in the new job title's pay group that would give the employee a rate increase. The effective date of starting in this new job title would now become the annual date for movements in steps in that pay group.

**ARTICLE XXXII
RETROACTIVITY**

The TOWN shall pay the difference between the wages actually paid and the wages scheduled in this Agreement retroactively from January 1, 2004. This payment shall be made to the employees no later than the end of the next full pay period after the Board adopts this Agreement. The \$1.00 premium for the Lead Man will also be retroactive to January 1, 2004, subject to the date or dates of appointment.

**ARTICLE XXXIII
LONGEVITY**

Starting on January 1, 2004 all union highway department employees shall receive a longevity payment which will be payable on the anniversary of the employee's employment with the TOWN. The amount of this benefit will equal fifteen dollars (\$15.00) for each year of service. The longevity payment will be included in the first paycheck after the employee's anniversary date.

**ARTICLE XXXIV
TOTAL AGREEMENT**

The parties acknowledge that during negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter of collective bargaining and that the understanding and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the TOWN and the UNION, for the life of this agreement, each voluntarily and unequivocally waives the right and each agree that the other shall not be obligated to bargain collectively with respect to any subject matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.

The foregoing constitutes the entire Agreement between the parties, except an amendment mutually agreed upon between the parties and in writing annexed hereto designated as an amendment to the Agreement, shall supercede or vary the provisions herein.

**ARTICLE XXXV
SAVINGS CLAUSE**

If any provision of the Agreement is or shall be at any time contrary to law or determined by an administrative agency or court of competent jurisdiction to be invalid, such provision shall not be applicable, performed, or enforced, except to the extent permitted by law. In the event that any provision of this Agreement is or shall at any time be contrary to law, all remaining provisions of this Agreement shall be maintained in full force and effect to the extent not invalidated by such determination.

**ARTICLE XXXVI
TERMINATION AND MODIFICATION**

This Agreement shall be effective as of the 1st day of January 1, 2004 and shall remain in full force and effect until the 31st day of December, 2007. It shall be automatically renewed from year to year thereafter unless either party shall notify the other in writing one hundred eight (180) days prior to the termination date that it desires to modify this Agreement. Such notice shall be provided by certified mail.
qualified engineers

IN WITNESS WHEREOF, the parties hereto have set their hands this 1st day of January, 2005.

MEMORANDUM OF UNDERSTANDING BETWEEN
THE TOWN OF BOSTON
and
THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL UNION NO. 17

Currently, William A. Dzierzanowski, is a full time employee of the TOWN of Boston who works for the Parks Department in the Summer and for the Highway Department during the remainder of the year. Mr. Dzierzanowski was designated as a member of the bargaining unit when it was certified by PERB.

By this Agreement, the parties waive any right to challenge or contest Mr. Dzierzanowski's status as a member of the bargaining unit.

DATE

TOWN

DATE

UNION