

**AGREEMENT
BY AND BETWEEN**

PEMBROKE, NH

AND

**INTERNATIONAL UNION OF
OPERATING ENGINEERS
LOCAL 98**

April 1, 2011 – March 31, 2014

Agreement made and entered into by the Town of Pembroke, New Hampshire hereinafter referred to as "THE TOWN", through its representative duly authorized to act for said Town, and Local 98 of the International union of operating Engineers, hereinafter referred to as "THE UNION", through its representative duly authorized to act on behalf of said Union, hereby agreed as follows:

PREAMBLE

It is the purpose of this Agreement to achieve and maintain harmonious relations between the Town and the union, to secure prompt and peaceful disposition of grievances, to prevent interruption of service, to promote the efficient operations of the Town's business, and to establish proper standards of wages, hours and working conditions of employment for employees covered by this Agreement.

ARTICLE 1
RECOGNITION

The Town of Pembroke (Town) Board of Selectmen recognizes the International Union of Operating Engineers Local 98 (Union) as the exclusive representative for all full-time, non-probationary employees in the following positions in the Town's Public Works Department: Truck Driver, Fleet Mechanic, Janitor, Laborer, Department of Public Works secretary, Senior Foreman and Foreman. (Reference in this Agreement to employee, unless the context requires otherwise, refers to a member of the bargaining unit as stated in this Article). Excluded: Director of Public Works.

ARTICLE 2
MANAGEMENT RIGHTS

The Union recognizes the following responsibilities, rights, authority, and duties of the Board, except as they are modified by provisions of this Agreement. The Board hereby retains and reserves unto itself, without limitations, all power, rights, authority, duties and responsibilities conferred upon and vested in it by the Laws and Constitution of the State of New Hampshire, including but not limited to the following:

- (1) To the executive management and administrative control of the Town and its properties and facilities;
- (2) To hire, determine the length and all conditions of probationary status, schedule work hours and days, promote, transfer, assign and retain employees in positions with the Town and to suspend, demote, discharge or take other disciplinary action against employees, and to relieve employees from duty because of lack of work or funds;
- (3) To determine the basic means and methods of operation and the duties, responsibilities, and assignments of employees with respect thereto, and with respect to administrative and law enforcement activities, and the terms and conditions of employment.
- (4) To issue and modify any and all rules of employment, including but not limited to regulations, general orders, standard operating procedures and the like governing the terms and conditions of employment of members of the bargaining unit.

ARTICLE 3
DUES CHECK OFF

Upon an individual written authorization form signed by the employee and approved by the Union, the Town agrees to deduct from each employee's regular paycheck, a sum for the Union dues to be paid to the Union monthly. The Union agrees to hold the Town harmless from any claim or liability arising out of the deduction of dues and payment to the Union under this Article.

ARTICLE 4
COLLECTIVE BARGAINING ISSUES COVERED BY CONTRACT

The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to all subjects (mandatory) of collective bargaining and that all such subjects have been discussed and negotiated upon and that the contract shall not be subject to reopening for any issue whatsoever during the term of the contract. Further, the Union, for the life of this Agreement, voluntarily and unqualifiedly waives the right and agrees that the Town shall not be obligated to bargain collectively with respect to any subject or matter not specifically referred to or covered in the Agreement, even though such subject or matter 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.

ARTICLE 5
NO STRIKE, NO LOCKOUT

The Town and the union subscribe to the principle that differences shall be resolved by peaceful and appropriate means without interruption of work. Therefore, during the life of this Agreement, and during continuing negotiations or the statutory impasse proceedings following the expiration of this Agreement, employees shall not strike (withhold service), nor shall the union encourage or condone any such strike. The town agrees there will be no lockout of employees during the term of this Agreement.

Action taken by the employer in response to such violation, including termination of health insurance or other insurance, forfeiture or accrued sick leave, vacation leave or seniority, or termination of employment is presumed to be for just cause. In the event of a grievance under this Article, the burden shall be on the grievant to establish that he/she did not participate in a strike.

ARTICLE 6
SENIORITY

(A) For purposes of vacation selection and job posting and bidding, seniority shall mean continuous length of service in the bargaining unit. For the purpose of lay-off and recall, seniority shall mean bargaining unit seniority within each position.

(B) Seniority shall be broken and an employee is considered to have voluntarily quit:

(1) If absent without notifying his/her supervisor's office within three (3) working days or, for false reasons of leave of absence due to other employment. It is understood that an employee should notify his/her supervisors office prior to any absence unless it is not possible for him/her to give such prior notice; and

(2) Failure to return to work within three (3) working days after the expiration of a leave of absence.

(C) A new employee shall serve a probationary period of not less than six (6) months or longer than twelve (12) months during which time he/she shall have zero seniority and no seniority rights. At the end of his/her probationary period, his/her seniority shall be computed back to his/her first day of employment.

(D) On the successful completion of his/her probationary period, an employee that was previously the participant of a funding/training program, e.g., C.E.T.A., for the purpose of calculating seniority for vacation accrual scheduling and lay-off shall be entitled to include time as a funded employee as time as a Town employee.

ARTICLE 7 JOB POSTING AND BIDDING

(A) When the employer decides to permanently fill a vacancy within the bargaining unit, such vacancy shall be posted in a conspicuous place listing the pay, duties and qualifications. This notice of vacancy shall remain posted for seven (7) days unless waived by the union. Employees interested shall apply in writing within the nine (9) days following the initial posting inclusive of the posting period.

(B) The employer will normally make decisions on selection within thirty (30) days after the expiration of the posting period. When, in the sole judgment of the employer, qualifications, ability and reliability of all applicants including persons from outside the bargaining unit, are relatively equal, bargaining unit seniority shall be a determining factor.

ARTICLE 8 LAYOFF AND RECALL

(A) Order of Layoff

In the event of a layoff within any job position covered by this Agreement, the order of layoff within such position shall be as follows:

(1) Temporary and probationary employees will be laid off before permanent employees; and

(2) Permanent employees will be laid off by reverse bargaining unit seniority within the position.

(B) Bumping

An employee who is laid off from his/her position, in lieu of layoff may bump a junior employee with the least bargaining unit seniority in a lower position in which he/she has previously worked in the bargaining unit and is qualified to work, or in which the employer, in its sole judgment, not eligible for arbitration, judges the employee qualified to perform even if he/she has not previously worked therein.

(C) Recall

Employees shall retain recall rights on a recall list for not more than one (1) year or until refusal of a job offer within the position from which he/she was laid off, whichever first occurs. Employees shall be recalled to their position in reverse order of layoff. The employer may recall but shall not be obligated to recall an employee to a position within the bargaining unit which the employer, in its sole judgment, judges the employee qualified to perform. When more than one (1) employee out of position is considered qualified for such a recall, the recall shall be offered to the employee in order of bargaining unit seniority. Seniority shall not accrue for time spent on a recall list.

ARTICLE 9
HOURS OF WORK AND OVERTIME

(A) Normal Work Week

The normal work week shall be forty (40) hours consisting of five (5) work days.

(B) Normal Work Day

The normal work day, on the day shift, shall be eight (8) hours between 6:00 a.m. and 4:00 p.m. plus an unpaid meal period of thirty minutes.

(C) Overtime

(1) An employee who is called back to work after having left his/her regular place of work shall receive no less than three (3) hours pay (between November 15 to April 15), except that their minimum guarantee shall not apply when a employee is called in early and works through to the start of his/her regular shift.

(2) Overtime work shall be divided as equitably as practical within each division.

(3) It is clearly understood that management has the right to require employees to be called back for overtime or to be held over for overtime and to require employees to report to work on an overtime call back within one (1) hour after callback. Failure to cooperate shall be grounds for discipline or discharge. After working sixteen (16) consecutive hours an employee will be entitled to an eight (8) hour rest period if so requested by the employee.

(4) The employer may implement 4- 10 hour work weeks at its discretion.

ARTICLE 10
COMPENSATION & BENEFITS

(A) Cost of Living:

- (1) Effective April 1, 2011 all members of the bargaining unit shall receive a 0% wage increase
- (2) Effective April 1, 2012, all members of the bargaining unit shall receive a general increase to base wages equal to the average annual increase in the North East Urban Consumer Price Index for the twelve month period ending with August 2011.
- (3) Effective April 1, 2013, all members of the bargaining unit shall receive a general increase to base wages equal to the average annual increase in the North East Urban Consumer Price Index for the twelve month period ending with August 2012.
- (4) All members of the bargaining unit shall receive general increases (CPI's) added to base wages in accordance with Article 10 Sections (A) (2) and (3). Said general increase (CPI's) shall not exceed 5% when combined with the employees Annual Merit Pay Increase.

(B) Merit Increase:

The employer shall guarantee funding for an average annual merit based wage increase of 2% with all bargaining unit members eligible for a merit increase on their anniversary date ranging from 0% to 2.5% based on an annual performance review.

(C) Health Insurance Coverage

The employer shall provide a medical insurance plan or plans with benefits and a local provider network at least comparable to the plan or plans made available as of December 31, 2010, to members of the bargaining unit. The employee share of premiums for health insurance coverage for all bargaining unit employees shall remain at 15% of the annual premium.

ARTICLE 11
RESPONSIBILITIES OF EMPLOYEES

(A) An employee shall not disclose confidential information gained by him/her by reason of his/her official position except as authorized or required by law, nor shall he/she otherwise use such information for his/her personal gain or benefit.

(B) Employees will be responsible for their own transportation to and from work.

ARTICLE 12
SHOP STEWARD

(A) One of the employees will be elected shop steward by the members of the bargaining unit to attend to the interest of the Union.

(B) The employer shall be furnished the name of each steward immediately after his/her designation, and the union shall notify the employer of any change.

(C) In the event it is necessary to investigate or process a grievance during working hours, the steward may be granted reasonable time off with pay at the discretion of management. Whenever practical grievances shall be investigated or processed outside of working hours.

(D) The parties agree that they will try to process and settle all grievances as quickly as possible.

ARTICLE 13 MISCELLANEOUS

(A) Bulletin Board

Announcements shall be posted in conspicuous places. Parties to this Agreement, both of whom may use the bulletin boards for notices of a routine nature, agree that it would be improper to post denunciatory or inflammatory written material on such bulletin boards:.

(B) Access to Premises

The employer agrees to permit representatives of the International Union of Operating Engineers, Local 98, to enter the premises at reasonable times for individual discussion of working conditions with employees, provided such representatives notify the Town prior to their arrival as to when they will be present on the premises and do not interfere with the performance of duties assigned to the employees.

(C) Coffee Breaks

There shall be a fifteen (15) minute coffee break each day, normally at mid morning, working conditions and schedule permitting, between the hours of 9:00 a.m. and 10:00 a.m.

(D) Suspended Drivers License

An employee whose motor vehicle operator's license is suspended for up to and including ninety (90) days for off-duty conduct which is not job related and whose operator's license is determined by management to be necessary for the performance of his/her job, shall be given the opportunity to work in the laborer's position in his/her current step, provided he/she has enrolled in an alcoholic rehabilitation program or other available employee assistance program.

(E) Light Duty

Each situation will be reviewed and decided on a case by case basis.

ARTICLE 14

CLOTHING & UNIFORMS

(A) If a unit member is required to wear a uniform to perform his/her job responsibilities and functions, the Town will provide the initial uniform. The required uniform shall be specified by the Public Works Director who shall maintain a list of approved uniform clothing items. Damaged and unserviceable clothing shall be replaced as necessary subject to approval by the Public Works Director.

(B) The Town shall provide unit members with an annual boot allowance of up to \$200.00 toward the cost of replacing worn and unserviceable safety boots. Replacement of boots shall be determined by the Public Works Director. Unit members may purchase more than one pair of boots during the year. However, the total reimbursement shall not exceed the \$200.00 annual allowance. Unit member shall turn in a receipt for the boots and verify that the boots meet or exceed "ANSI-75" rating to be eligible for reimbursement.

(C) For Public Works Employees:

(1) During the first year of employment, the Town will provide each full time unit employee: five (5) T shirts, eleven (11) long sleeve shirts, eleven (11) pairs of pants and two (2) sets each of winter coveralls. All clothing will be replaced on an as needed basis as determined by the Director of Public Works.

(2) During the first year of employment, the Town will provide two (2) winter jacketd to all full time unit employees. The jacket will be replaced on an as needed basis as determined by the Director of Public Works.

ARTICLE 14A GRIEVANCE PROCEDURE

(A) Purpose: This Article sets for the sole and exclusive means of resolving grievances which may be brought under this agreement.

(B) General Scope & Definition.

(1) The purpose of this section is to provide a methodology to attempt to resolve grievances expeditiously.

(2) Definition. A grievance means a disagreement over the meaning, interpretation or application of a term or condition of this agreement, except that matters involving the meaning, interpretation or application of Article 2 (Management Rights) are not subject to this grievance procedure.

(3) Prior to filing a claim for Unfair Labor Practice (ULP) with the PELRB, if the matter involves the meaning, interpretation or application of this Agreement (other than Article 2) that is subject to this Article 14-A, the party asserting the grievance shall first utilize the grievance procedure under this Article as a condition precedent to filing the ULP complaint.

- (4) Matters that do not involve the meaning, interpretation or application of this Agreement are not subject to this Article or the grievance procedure.

(C) General Provisions:

- (1) **Who May File:** A grievance may be filed in accordance with this Article by a member of the represented bargaining unit or, with the consent of such member, by the Union as a representative of such member (hereinafter "Grievant"). The Union may file a grievance on its own behalf only with the concurrence of at least one current member of the bargaining unit. If a member files a grievance on his or her own behalf without Union representation, the member shall file a copy of the grievance with the Union Shop Steward. If the Union does not represent the Grievant, a Union representative may attend all grievance proceedings but does not have the right to participate in the grievance proceeding unless requested to do so by the Grievant or the Town. However, the Union on its behalf, may file an appeal seeking resolution at the next step if it disagrees with the resolution of a grievance at a prior step.
- (2) **Manner, Content and Timing of Filing.**
- (a) An application for a grievance must be filed in writing and be signed by the Grievant filing it. The grievance must identify the particular provision of this Agreement that is involved and shall describe in detail the decision or other action which it is claimed constitutes a violation of this Agreement. If the Union represents the Grievant, a responsible agent of the Union shall sign the grievance application along with the employee.
- (b) An application for a grievance covered by this Article must be filed in accordance with paragraph (C)(2)(a) promptly within ten (10) Town business days (not including Saturdays and Sundays) after the Grievant or Union knew or should have been aware of the reason for the grievance, but in no case more than thirty (30) calendar days from such event. The Town may decide not to proceed with consideration of a grievance if it is not filed in accordance with this Article.
- (3) **Deadlines:** Time limits established under this Article are mandatory and jurisdictional. The parties recognize that the prompt settlement of grievances is important to a sound and harmonious relationship between the Union, the Town and Employees. The time limits prescribed herein may be waived by mutual agreement in writing by the Grievant and the Town Administrator. The parties may, by mutual agreement, waive certain steps and/or extend stated time frames. Such mutual agreement shall be reduced to writing and signed by the Grievant and Town Administrator prior to the expiration of any applicable time frames. In no event may waiver or extension of any time limit be implied by any action or inaction of the Grievant, Town or Union. Any such waiver or extension shall not constitute precedent nor apply in any other matter.

(D) Procedure: The grievance procedure involves steps as established in this section. All grievances must be initiated at Step 1, except that any grievance involving suspension or discharge shall begin at Step 2. In any instance, proceeding to further steps may occur only in compliance with this Article.

(1) Step 1.

(a) All grievances (except as stated in the preceding subparagraph) shall be presented at step 1 of the grievance procedure by the aggrieved employee(s) or the Union (when permitted under this Article) within the time limit stated in Section (C) (2) or they shall be waived. Two copies of the application for grievance shall be presented to the Public Works Director.

(i) Upon receipt of a properly filed grievance application, the Public Works Director shall forward one copy to the Town Administrator. The Public Works Director shall promptly commence review of the alleged grievance, and within 5 working days after receipt of the application, schedule a meeting to discuss the grievance with the Grievant and reply to the Grievant (with a copy to the Union and Town Administrator) in writing, within 10 working days after the meeting.

(ii) If the Grievant is satisfied with the Step 1 resolution, the Grievant shall notify the Public Works Director in writing of acceptance, and the resolution shall be final and binding unless the town Administrator, in writing, amends the Public Works Director's decision, which shall then become the Step 1 resolution. If the Grievant is not satisfied with the Step 1 resolution, or if the Town fails to respond in a timely manner, the Grievance may proceed to Step 2, solely in accordance with paragraph (D)(2).

(2) Step 2

(a) Step 2 may be initiated solely by filing, in writing, an application to initiate Step 2. The application must be filed within five (5) working days after receipt of the Step 1 resolution. The application must state in detail all aspects of the resolution that are disputed and which constitute the basis for seeking further review. If any basis or ground is not stated in this application, it shall be deemed waived and may not be used in any manner in any further Step or appeal, or in any related proceeding, including ones that do not involve the same employee, but arise out of the same or similar actions or decisions. The application for Step 2 shall be filed with the Town Administrator, unless it arises from a determination by the Town Administrator to amend the Public Works Director's resolution of Step 1, in which case, the application shall seek to initiate Step 3.

(i) The Town Administrator shall review the application and if it is found to meet the requirements of paragraphs (C)(2) and (D)(2)(a) shall begin review and shall meet with the Grievant within five (5) working days after receipt of the grievance, and shall reply to the grievance in writing to the Grievant and Union within five (5) working days after the meeting.

(ii) If the Grievant is satisfied with the Step 2 resolution, the Grievant shall notify

the Town Administrator in writing of acceptance, and the resolution shall be final and binding. If the Grievant is not satisfied with the Step 2 resolution, or if the Town fails to respond in a timely manner, the Grievance may proceed to Step 3, solely in accordance with paragraph (D)(3).

(3) Step 3.

(a) Step 3 may be initiated solely by filing, in writing, an application to initiate Step 3. The application must be filed within five (5) working days after receipt of the Step 2 resolution. The application must state in detail all aspects of the resolution that are disputed and which constitute the basis for seeking further resolution. If any basis or ground is not stated in this application, it shall be deemed waived and may not be used in any manner in any further Step or appeal, or in any related proceeding, including ones that do not involve the same employee, but arise out of the same or similar actions or decisions. The application for Step 3 shall be filed with the Board of Selectmen. The Grievant shall indicate in the application if a public meeting with the Board is requested under RSA 91-A.

(i) The Board of Selectmen shall review the application and, if it is found to meet the requirements of paragraphs (C)(2) and (D)(3)(a) shall begin review and shall meet with the Grievant within fifteen (15) working days after receipt of the grievance, and, if practicable, shall reply to the grievance in writing to the Grievant and Union within five (5) working days after the meeting.

(ii) The decision of the Board of Selectmen shall be final and binding, with the exception of Grievances that involve termination, suspension without pay, or any matter involving loss of pay or benefits. The Grievant and/or Union may request that the board reconsider its decision by filing an application for reconsideration, stating in detail the grounds therefor, within five (5) working days after the date of decision. Within fifteen (15) working days after receiving the application the Board of Selectmen shall review the application and respond by either denying the application, agreeing to meet with the Grievant and/or the Union, or modifying their decision. If a meeting is held, the Board shall issue a final decision within five (5) working days after the meeting, unless the parties agree to an extension of time.

(4) Step 4.

(a) For Grievances remaining unresolved that include termination, suspension without pay, or any matter involving loss of pay or benefits following the action taken by the final decision of the Board of Selectmen, the Grievant/Union may within ten (10) calendar days following the decision submit the grievance to arbitration under the Rules of the Public Employee Labor Relations Board (PELRB).

(i) The Arbitrator shall convene a hearing at the earliest possible date for the purpose of hearing the grievance.

(ii) The Arbitrator shall have no authority to amend, modify, nullify, ignore, add to, or subtract from the specific provisions of this Agreement. The Arbitrator shall consider and make decisions only with respect to the specific issue submitted by the Parties, and shall have no authority to make a decision on any other issue not so submitted.

(iii) The Arbitrator's decision shall be final and binding in matters involving termination, suspension or any matter involving loss of pay or benefits.

(iv) The Town and the Union shall pay the expenses of their own representative, and shall equally share the cost of the Arbitrator.

ARTICLE 15 SEPARABILITY

In the event that any provision of this Agreement shall, at any time, be declared invalid by any court of competent jurisdiction or by any legislative enactment, neither such decision nor legislative enactment shall invalidate the entire Agreement, it being the express intention of the parties hereto that all other provisions, not so declared invalid, shall remain in full force and effect.

ARTICLE 16 RELATIONSHIP OF CONTRACT TO OTHER TOWN DOCUMENTS

In case a specific provision of this Agreement conflicts with a provision of the Departmental Job Descriptions, Departmental Rules and Regulations, or with a provision of the Town's Personnel Rules and Regulations, the contract provision prevails. In the absence of such conflict, the Job Descriptions, Departmental Rules and Regulations, and the Town's Personnel Rules and Regulations remain in force except as may be modified by the Town during this Agreement pursuant to Article 2, Management Rights.

ARTICLE 17 DURATION

(A) If cost items in this Agreement are ratified by the 2011 Pembroke Annual Town Meeting as required by RSA 273-A, this Agreement shall be effective on April 1, 2011, and shall expire on March 31, 2014.

(B) On or after June 1, 2013, pursuant to a written request by either party, negotiations for a successor Agreement shall commence as soon as practical with a view toward completion prior to November 1, 2013.

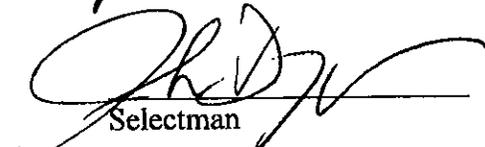
FOR THE TOWN OF PEMBROKE, NEW HAMPSHIRE

Dated at Pembroke, County of Merrimack and State of New Hampshire, this 21st day of March, 2011.


Selectman, Chair


Selectman, Vice Chair

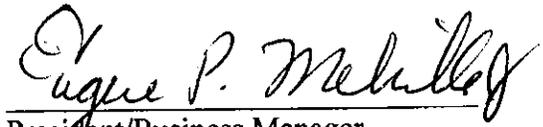

Selectman


Selectman


Selectman

FOR THE UNION

Dated at Pembroke, County of Merrimack and State of New Hampshire, this 31st day of March, 2011.


President/Business Manager


Recording/Correspondence Secretary