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Union: Town of Rose Highway Department Unit, International Brotherhood of Teamsters (IBT)

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COLLECTIVE BARGAINING AGREEMENT

by and between the

TOWN OF ROSE

and

TEAMSTERS LOCAL 118

January 1, 2012 – December 31, 2012
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1  PREAMBLE

1.1  Notice of Agreement

1.1.1  Parties to Agreement: This Collective Bargaining Agreement is made pursuant to Article XIV of the Civil Service Law of the State of New York by and between the Town of Rose, hereinafter referred to as the “Town”, and the International Brotherhood of Teamsters Local 118, hereinafter referred to as the “Union.”

1.1.2  This Collective Bargaining Agreement shall be construed in accordance with the Laws of the State of New York.

2  MANAGEMENT RIGHTS

2.1  Management Rights Clause

2.1.1  To the extent permitted by law, the Town retains the right to manage its business and services and to direct the working force and the Town not exercising any of these rights shall not be construed as a waiver of them. These rights and responsibilities include, by way of illustration and without being limited by past practice or otherwise, the right to decide, control, and change the number and location of its business and service operations, the business and service operations to be conducted and rendered, and the methods, processes and means used in operating its business and services; to control of the buildings, real estate, materials, parts, tools, machinery and all equipment which may be used in the operation of its business or in supplying its services; to introduce new or improved methods, equipment, techniques and processes; to contract and subcontract for materials, supplies, equipment, and services and determine whether, and to what extent, the work required in operation its business and supplying its services shall be performed by employees covered by this Collective Bargaining Agreement; to maintain order and efficiency in all its departments and operations, including the right to discipline, suspend, and discharge employees for just cause; to hire, layoff, assign, transfer, promote, and determine the qualifications of employees; to implement and comply with regulations and requirements issued by any government agency; make, modify and enforce reasonable rules of employee conduct and safety; to determine, control, and change work practices and schedules, work and shift assignments, the starting and quitting time, and the number of hours to be worked; to determine, control, and change, the size, composition and organization of the workforce, and job classifications, descriptions, content and standards; and all other rights pertaining to the operation and management of the business and affairs of the Town unless expressly provided otherwise in this collective bargaining agreement and subject to such regulations governing the exercise of these rights as are provided by law.

The above rights of the Town are not all-inclusive, but indicate the type of matters or rights, which belong to and are inherent to the Town. Any and all rights, powers and authority the Town had prior to entering this Collective Bargaining Agreement are retained by the Town. The above rights apply to all special districts including but not limited to Water, Drainage and Highway districts.
3 UNION RIGHTS

3.1 Recognition

3.1.1 Recognition: The Town hereby recognizes the International Brotherhood of Teamsters Local 118 as the sole and exclusive bargaining agent for those employees of the Town of Rose identified in 3.2.1, below.

3.2 Definition of Bargaining Unit

3.2.1 Included: Included in the bargaining unit are all regular full-time laborers, motor equipment operators, mechanics, and working foremen employed in the Highway Department who regularly perform year-round work operating, repairing, or maintaining Highway Department vehicles, equipment, or highway facilities.

3.2.2 Excluded: Excluded from the bargaining unit are the Superintendent of Highways, Deputy Superintendent of Highways ("non-working"), temporary employees, part-time employees, seasonal employees, and clerical employees.

3.2.3 Full-time Employee: For the purpose of this Collective Bargaining Agreement, a “full-time employee” will mean and refer to an employee who is regularly scheduled to work forty hours per week throughout the year.

3.2.4 Part-time Employee: For the purpose of this Collective Bargaining Agreement, a “part-time employee” will mean and refer to an employee who is regularly scheduled to work thirty hours or less per week throughout the year. The Town will not use the hiring of part-time employees to circumvent the full-time workforce.

3.2.5 Temporary Employee: For the purpose of this Collective Bargaining Agreement, a “temporary employee” will mean and refer to someone who is called in to work on an “as-needed” basis or to replace an employee who is on an approved leave of absence.

3.2.6 Seasonal Employee: For the purpose of this Collective Bargaining Agreement, a “seasonal employee” shall mean and refer to someone employed to work for a given season for the purpose of mowing, collecting yard waste or other traditional summer duties, or to assist in snow removal.

3.3 Union Membership/Agency Shop

3.3.1 Union Membership: The Town agrees not to discriminate against any employee due to his or her membership in or activities on behalf of the Union. An employee who chooses to become a member of the Union shall sign an authorization card for dues deduction and submit it to the Union. Thereafter, the Union will forward the authorization to the Town and the Town will deduct and remit the dues, initiation fees, and/or assessments in accordance with 3.3.3, below.

3.3.2 Agency Shop: An employee who does not become a member of the Union by signing a membership card and an authorization card for dues deduction within thirty calendar days of initial employment, or an employee who does not remain a member of the Union in good standing, shall be required to pay a service fee (agency shop fee) in an amount equivalent to the membership dues and initiation fees levied by the Union. The Town will deduct and remit the service fee in accordance with 3.3.3, below.
3.3.3 **Dues/Fees:** The Town will deduct membership dues or agency shop fees, as the case may be, from the pay of each employee at the close of each pay period and remit the sum to the Union at the end of each month. The Union shall notify the Town of the amount to be deducted.

3.3.4 **Indemnification Clause:** The Town assumes no obligation with respect to the obtaining of authorization cards. In the event an action or proceeding is commenced in a court of competent jurisdiction or before an administrative agency regarding such fee, the Union agrees to indemnify and save harmless the Town from and against the cost of such action or proceeding and to pay any judgment entered against the Town in such action or proceeding and to pay all costs upon demand and the cost of complying with any interim order or final judgment that may be entered therein, reimbursement of expedient witness fees, attorneys fees, arbitration fees, and all court and filing fees incurred by the Town.

3.4 **Leave for Contract Administration**

3.4.1 **Union Stewards:** The employer recognizes the right of the Union to designate Shop Stewards. Stewards shall have the right to investigate and present grievances and transmit messages and information, which originates and is authorized by the Local Union.

3.4.2 **Investigation and Presentation of Grievances:** At any one time only one Shop Steward will be allowed release time, without loss of pay or leave credits, for the following activities: to present grievances to management; to attend grievance arbitration hearings; and, to attend conferences and hearings of the New York State Public Employment Relations Board. The investigation of grievances may only be conducted during non-working hours (e.g. before and after the workday, meal periods, rest periods).

3.4.3 **Meetings with Management:** The Shop Steward will be allowed release time during working hours, without loss of pay or leave credits, to meet with management only when the Superintendent of Highways or Town Supervisor has requested the meeting.

3.4.4 **Requests for Release Time:** Requests for the use of release time shall be made to the Superintendent of Highways as far in advance as possible. Requests will not be unreasonably denied. An employee requesting such leave shall not leave the employee’s duty station until it has been approved by the Superintendent of Highways or Town Supervisor.

3.5 **Leave for Negotiations**

3.5.1 **Eligible Employees:** One employee designated by the Union will be allowed release time, without loss of pay or leave credits, for the sole purpose of attending negotiations scheduled by the Town.

4 **EMPLOYEE RIGHTS**

4.1 **Probation**

4.1.1 **Length of Probationary Period:** An employee’s original appointment to a position in the non-competitive or labor class shall be for a probationary period of fifty-two consecutive weeks.

4.1.2 **Failure to Successfully Complete Probationary Period:** The Town may dismiss the employee from employment at any time on or before completion of the maximum probationary period. Such action shall not be subject to the Grievance Procedure or Disciplinary Procedure.

4.1.3 **Temporary or Seasonal Employees:** In the event a temporary, part-time, or seasonal employee is hired as a regular full-time employee, such individual shall serve the full probationary period.
4.2 Seniority

4.2.1 Service Seniority: Seniority shall be determined by the employee’s length of continuous service in the bargaining unit.

4.2.2 Same Length of Service: In the event two or more employees have the same length of service, the employee with the earliest day of hire will have greater seniority. In the event two or more employees have the same date of hire, such employees will have their individual seniority determined by lot.

4.2.3 Leave of Absence: An employee will not accrue seniority while the employee is on an approved unpaid leave of absence or while the employee is in layoff status. Such leave will not be considered as a break in "continuous service".

4.2.4 Disability Leave: An employee who is on disability leave (on-the-job or off-the-job) and is not drawing on paid leave credits will continue to accrue seniority as if the employee was in regular pay status.

4.2.5 Military Leave: An employee who is involuntarily called up for military duty will continue to accrue seniority as if the employee was in regular pay status.

4.2.6 Loss of Seniority: Seniority may be broken on the following circumstances: 1) Voluntary resignation; 2) Termination for just cause; 3) Layoff due to lack of work for a period of two years.

4.3 Layoff and Recall Procedure

4.3.1 Layoff: In the event of a reduction in the number of positions in a job title within the bargaining unit, layoffs shall be by order of seniority so that the Town will lay off the least senior employee in the affected job title. Part time employment shall not necessitate the need to layoff any full time workers.

4.3.2 Recall: In the event there is a vacancy in the job title where a layoff occurred, the most senior employee not working will be the first employee to recalled, with the remaining employees on layoff to be recalled in the same manner. The Town will notify the laid-off employee of the vacancy by means of certified mail sent to the employee’s last known address. In the event the employee does not respond within seven calendar days, either in person or in writing, it will be assumed that the employee has rejected the offer and, thereafter, will no longer be notified of vacancies within the bargaining unit nor have any recall rights to a position within the bargaining unit.

4.3.3 Duration of Recall Rights: An employee in the non-competitive or labor class who is laid off will be eligible for recall under 4.3.2, above, for up to two years from the date the employee was laid off. Thereafter, the employee will no longer be notified of vacancies within the bargaining unit nor have any recall rights to a position within the bargaining unit.

4.4 Performance Appraisal

4.4.1 Purpose and Criteria: The purpose of performance appraisal is to evaluate an employee’s past performance and potential. The performance appraisal will take into consideration the employee’s work quality, job knowledge, initiative, attendance, teamwork, conduct, communication skills and such other criteria that properly reflect the employee’s performance. Performance appraisals shall not be considered to be discipline, but may be used as evidence in a disciplinary hearing.

4.4.2 Frequency: An employee will be formally evaluated at least once each year on a date determined by the Superintendent of Highways. Informal evaluations will occur on an as needed basis.
The Town’s failure to formally evaluate an employee, or group of employees, on an annual basis shall not constitute a waiver of its right to perform such evaluations at any time in the future.

4.4.3 Evaluation Conference: After an evaluation form has been completed, the Superintendent of Highways, or designee, and a member of the Town Board will meet with the employee to review the employee’s performance appraisal report. Should deficiencies be recorded in the performance of the employee, the employee will receive specific, reasonable, written recommendations for improvement. An employee’s written reply, if any, will be attached to the performance appraisal report.

4.5 Personnel File

4.5.1 Location of Files: All original personnel records for current employees will be kept in a location designated by the Town Supervisor and will be maintained and controlled by the Town Supervisor. All employee medical records will be kept in a separate locked file apart from the employee’s personnel file and will be maintained and controlled by the Town Supervisor. All employee substance testing records will be kept in a separate locked file apart from the employee’s personnel file and will be controlled by the Town Supervisor.

4.5.2 Employee Access: Access to personnel files is limited. A current employee may review the contents of the employee’s own personnel file by submitting a written request to the Town Supervisor. An authorized official must be present when the employee inspects the file. An employee may not copy, remove, or place any material in the employee’s personnel file without the approval of the Town Supervisor. With the employee’s authorization, the Union representative will have the same access.

5 VACANCIES

5.1 Notification of Vacancies

5.1.1 Posting: In the event there is a vacancy in a new or existing position within the bargaining unit that the Town intends to maintain, the vacancy will be posted for at least ten calendar days on the Highway Department bulletin board. In the event that operational needs require the immediate filling of the vacancy, the Town may make a temporary appointment.

5.2 Appointment to Vacancies

5.2.1 Application & Physical Examination: All applicants for a position shall, when requested by the Superintendent of Highways, furnish a certified birth certificate. In addition to this, a physical examination will be required as well as pre-employment drug/alcohol testing.

6 HOURS OF WORK

6.1 Work Schedule

6.1.1 Workday: The Superintendent of Highways will establish an employee’s scheduled hours of work, which may differ from the normal hours of operation to meet the particular needs and requirements of the department. Once established, the beginning and ending of an employee’s normal workday shall not be changed without an advance written notice of at least seven calendar days.

6.1.2 Workweek: The general workweek of employees shall be forty hours per week. Once established, the scheduled days of work shall not be changed without mutual agreement between the Town and the Union.

(2012)
6.1.3 **Time Records:** An employee must record all hours worked in each workday in a manner to be determined by the Town Board.

6.2 **Additional Hours of Work**

6.2.1 **Requirement/Approval:** The Superintendent of Highways may require an employee to work beyond the employee’s scheduled work hours. An employee may not work additional hours beyond the employee’s scheduled work hours without the authorization from the Superintendent of Highways, or designee.

6.2.2 **Availability During Inclement Weather:** Given that the Highway Department is responsible for the maintenance of the roadways, each employee must be informed about the potential of inclement weather during non-work hours (excluding pre-approved vacation periods). In the event there is a forecast for inclement weather that may require snow removal or other emergency responses by the Highway Department, each employee must be ready, willing, and able to work. Being “able” includes being in compliance with Department of Transportation regulations pertaining to the consumption of alcohol. If an employee cannot be at the employee’s home to receive the call to report for snow removal or other emergency duties, the employee must leave a message on the Department’s answering devise as to where the employee may be contacted.

6.2.3 **Equalization of Overtime:** Overtime hours shall be distributed as equally as practical throughout the year amongst the able qualified employees. In the event there is an opportunity in a given title to work additional hours beyond the normal workday or workweek, the opportunity shall first be offered to the employee in that job title with the least number of overtime hours. An employee who refuses the opportunity, or is not available, will be charged as if the employee had worked the assignment. In the event no employee volunteers, the work shall be assigned to the employee in that job title with the least number of overtime hours. Notwithstanding the above, if the opportunity is “unplanned” and is anticipated to require less than one hour to complete, the Superintendent of Highways may perform the work.

6.2.4 **Errors in Assigning Additional Hours:** In the event the Town makes an error in the assignment of additional hours, the Town will offer the next opportunity to work additional hours to the employee who should have been offered the additional hours.

6.3 **Absences**

6.3.1 **Tardiness:** All employees are required to report to work at the scheduled time. Any tardiness shall be regarded as a violation to these rules. An employee, tardy three times, shall be subject to a written warning. Continued unexcused tardiness may be considered cause for suspension. If tardiness continues after such disciplinary action, the employee shall be subject to dismissal.

6.3.2 **Notification of Sick Leave:** In the event an employee must take sick leave, the employee must, when possible, notify the Superintendent of Highways at least thirty minutes before the employee’s scheduled reporting time. The notification must, when possible, be made personally to the Superintendent of Highways, unless the Superintendent of Highways authorizes the use of an answering device for this purpose. Unless the absence was pre-authorized, the employee must give notice each day of the absence. Failure to follow these procedures will render the employee ineligible to use sick leave credits for the absence.

Any absence not reported within one hour of time employee is supposed to commence work and any absence not chargeable to vacation or bereavement leave shall be designated as authorized leave without pay. Two more days of unauthorized leave shall be subject to a written warning. Further unauthorized leave
shall be subject to dismissal. This policy does not apply in cases where there is a bona fide excuse that cannot be reported in advance.

6.4 Meal & Rest Periods

6.4.1 Meal Period: An employee who works more than six hours in a given day will receive an unpaid, duty-free meal period not to exceed thirty minutes. Meal periods must be approved by the Superintendent of Highways in accordance with the needs and requirements of the department. Meal periods will normally be in the middle of the employee's workday. Unless otherwise directed by the Superintendent of Highways, an employee may leave the work-site during the meal period.

6.4.2 Rest Periods: An employee will normally receive a paid, duty-free rest period of up to fifteen minutes to be taken approximately in the middle of the first half of the employee's workday and again during the middle of the second half of the workday. In the event an employee works beyond the employee's normal workday, the employee will normally receive an additional paid, duty-free rest period of up to fifteen minutes to be taken approximately in the middle of each four hours of work that is not interrupted by a meal period. An employee who chooses not to take a rest period will not be entitled to leave before the normal quitting time and will not receive extra pay for the time worked. Rest periods must be approved by the Superintendent of Highways in accordance with the needs and requirements of the department. Unless otherwise directed by the Superintendent of Highways, all rest periods must be taken at the work-site and may not exceed the time allowed.

7 COMPENSATION

7.1 Wage Rates

7.1.1 Base Wage: The schedule set forth below will be the applicable schedule for the period January 1, 2012 through December 31, 2012, which reflects an increase of one percent on January 1, 2012

<table>
<thead>
<tr>
<th></th>
<th>2012</th>
</tr>
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<tbody>
<tr>
<td>HMEO</td>
<td>$19.24</td>
</tr>
</tbody>
</table>

An employee will receive 90% of the base wage during the first twelve months of employment. Upon completion of twelve months of continuous employment, an employee will receive 95% of the base wage. Upon completion of eighteen months of continuous employment, an employee will receive the full base wage.

7.1.2 Working Foreman Differential: An employee appointed to serve as the “Working Foreman” for a full work day, in the absence of the Superintendent of Highways, will receive a differential of $0.50 per hour over the base wage rate for HMEO.

7.2 Premium Pay for Overtime

7.2.1 Authorization: All hours worked in excess of the regularly scheduled workweek of the employee shall be overtime provided that such work was duly and actually authorized by the Superintendent of Highways, or deputy, prior to the actual performance of the overtime work.

7.2.2 Overtime Rate: An employee shall be paid at one and one-half times the employees' regular hourly rate for all authorized time worked over forty hours in a given workweek. There shall be no pyramiding or duplication of overtime hours. All Sunday work authorized by the Superintendent of Highways will be paid at one and one-half times the regular rate for actual authorized hours worked.
7.2.3 **Credit for Paid Leave:** Holidays, vacation leave, sick leave, personal leave, bereavement leave, and jury duty leave will be included as time worked in the computation of overtime.

7.3 **Call-In Pay**

7.3.1 **Emergency Call-In:** Employees called in to work for emergency duty which is in addition to, and does not attach to, the employee’s regular working hours, shall receive a minimum of three hours pay or pay for all hours from the time called until completion of assignment, whichever is greater. In the event the employee does not work for the full three hours, the employee will be compensated for the remaining time at one and one-half times the employee’s regular rate of pay. At the discretion of the Town, employees may be required to work the entire aforementioned three hours.

7.4 **Pay Period**

7.4.1 **Pay Date:** All Employees shall be paid every two weeks on the 6th day following the end of the payroll period. In the event the pay date is a designated holiday, paychecks will be distributed on the previous workday.

8 **PAID LEAVE**

8.1 **Holidays**

8.1.1 **Designated Holidays:** In consultation with the Union, the holidays listed below will be observed on the day designated by the Town Board at the organizational meeting in January of each year.

- New Year's Day
- Presidents' Day
- Martin Luther King Day
- Good Friday
- Memorial Day
- Independence Day
- Labor Day
- Columbus Day
- General Election Day
- Veterans' Day
- Thanksgiving Day
- Day before Christmas
- Christmas
- Day before New Year's

8.1.2 **Holiday Pay (Not Assigned to Work):** An employee who does not work on a designated holiday will be paid for the day at the employee's regular daily rate of pay.

8.1.3 **Holiday Pay (Assigned to Work):** An employee who does work on a designated holiday will be paid for all hours worked at one and one-half times the employee’s regular rate of pay plus “holiday pay”.

8.1.4 **Holiday Pay during Paid Leaves:** In the event a designated holiday occurs on an employee’s regularly scheduled workday and the employee is on a paid leave of absence, the employee will receive holiday pay for the day and the employee’s leave credits will not be charged for that day.

8.2 **Vacation Leave**

8.2.1 **Allowance (Accrual System):** All employees will be credited with paid vacation time on a monthly basis starting from the date of hire in accordance with the following schedule:
<table>
<thead>
<tr>
<th>Event</th>
<th>Credits per Month</th>
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<tbody>
<tr>
<td>Upon hire</td>
<td>3.33 hours</td>
</tr>
<tr>
<td></td>
<td>(equals 40 hours/year)</td>
</tr>
<tr>
<td>Upon start of 3^{rd} year of service</td>
<td>7.33 hours</td>
</tr>
<tr>
<td></td>
<td>(equals 88 hours/year)</td>
</tr>
<tr>
<td>Upon start of 10^{th} year of service</td>
<td>10.66 hours</td>
</tr>
<tr>
<td></td>
<td>(equals 128 hours/year)</td>
</tr>
<tr>
<td>Upon start of 16^{th} year of service</td>
<td>14.00 hours</td>
</tr>
<tr>
<td>(only employees hired before 1-1-2007)</td>
<td>(equals 168 hours/year)</td>
</tr>
<tr>
<td>Upon start of 21^{st} year of service</td>
<td>16.66 hours</td>
</tr>
<tr>
<td></td>
<td>(equals 200 hours/year)</td>
</tr>
</tbody>
</table>

For example, an employee who has completed nine years of continuous service on February 28^{th} will see an increase in the number of hours credited from 7.33 hours per month to 10.66 hours per month on March 1^{st}; similarly, an employee who has completed fifteen years of continuous service on September 5^{th} will see an increase from 10.66 hours per month to 14 hours per month on October 1^{st}.

8.2.2 New Employees: A newly hired employee may not use accumulated vacation leave credits until completion of six months of continuous employment.

8.2.3 Accrual During Leaves of Absence: An employee will be credited with vacation leave credits while on a paid leave of absence, but not while on an unpaid leave of absence in excess of twelve days in the calendar month, excluding an unpaid leave of absence due to a Workers’ Compensation claim.

8.2.4 Accumulation: An employee may accumulate vacation leave credits to a maximum of one-hundred and sixty hours. Any vacation credits in excess of one-hundred and sixty hours will be cancelled. However, in the event an employee is unable to take vacation leave due to no fault of the employee, the employee may “carry” the excess for ninety calendar days.

8.2.5 Scheduling: An employee must receive prior approval from the employee’s Superintendent of Highways to take vacation leave. The request must be submitted, in writing, to the employee’s Superintendent of Highways as far in advance as possible. The Superintendent of Highways will have total discretion in the approval of vacation leave. In the event more employees request vacation leave than minimum coverage permits, preference in the selection of a vacation period shall be given to the employee with the most service seniority. Vacation leave may not be used in increments of less than four hours. An employee may take vacation leave only after it has been credited.

8.2.6 Termination of Employment: An employee who resigns, retires or is laid off will receive payment for unused vacation leave to which the employee is properly entitled at the employee’s then current rate of pay. In the event an employee leaves employment due to disciplinary action for fraud, theft, or violence, such employee will not receive a settlement for unused vacation leave. In case of the death of the employee, the Town will pay the employee’s estate for any unused vacation leave.
8.3 Sick Leave

8.3.1 Allowance (Monthly Accrual): All employees will be credited with eight hours of paid sick leave after completion of each month of employment.

8.3.2 New Employees: A newly hired employee will not be credited with sick leave credits prior to completing six months of continuous employment, at which time the employee will be credited with forty-eight hours of paid sick leave.

8.3.3 Accrual during Leaves of Absence: An employee will be credited with sick leave credits while on a paid leave of absence, but not while on an unpaid leave of absence in excess of twelve days in the calendar month, excluding an unpaid leave of absence due to a Workers' Compensation claim.

8.3.4 Accumulation: There is no maximum accumulation of sick leave credits.

8.3.5 Use of Sick Leave: Sick leave is provided to protect an employee against financial hardship during an illness or injury. An employee may use sick leave credits for an illness or injury that inhibits the ability to perform the duties of the employee’s job. An employee may use sick leave credits for medical and dental appointments that cannot be scheduled during non-work hours. Sick leave credits may not be used in increments of less than one hour. An employee may take paid sick leave only after it has been credited.

8.3.6 Family Sick Leave: An employee may use sick leave credits for family illness or injury only if the employee must provide direct care to an immediate family member. For purposes of family sick leave, “immediate family member” will mean the employee’s parent, spouse, or child, including step-child and foster child.

8.3.7 Notification of Sick Leave: In the event an employee must take sick leave, the employee must, when possible, notify the Superintendent of Highways at least thirty minutes before the employee’s scheduled reporting time. The notification must, when possible, be made personally to the Superintendent of Highways, unless the Superintendent of Highways authorizes the use of an answering device for this purpose. Unless the absence was pre-authorized, the employee must give notice each day of the absence. Failure to follow these procedures will render the employee ineligible to use sick leave credits for the absence.

8.3.8 Medical Verification: The Town may require medical verification of an employee’s absence if the Town perceives the employee is abusing sick leave or has used an excessive amount of sick leave. The Town may require medical verification of an employee’s absence to verify that the employee is able to return to work with or without restrictions.

8.3.9 Retirement Credit: The Town will make available Section 41-j of the Retirement and Social Security Law, which allows credit for up to one hundred sixty five days of accumulated sick leave at the time of retirement. The additional service credit is determined by dividing the total unused, unpaid sick leave days (not to exceed 165 days) by 260. For example: 130 unpaid sick leave days ÷ 260 = .50 or 6 months additional service credit. To be eligible, an employee must retire directly from covered employment or within one year of leaving covered employment.

8.3.10 Termination of Employment: An employee who resigns, retires, is laid off, or leaves employment due to disciplinary action will not receive a settlement for unused sick leave.
8.4 Personal Leave

8.4.1 Allowance (front-loaded): All employees will be credited with twenty-four hours of paid personal leave on January 1st of each year for use during the following twelve months.

8.4.2 New Employees: An employee who is hired after January 1st in any given year will be credited with paid personal leave prorated by the number of months to be worked in the remainder of that calendar year.

8.4.3 Accumulation: Personal leave is not cumulative. Any personal leave credits remaining unused at close of business on the last day of the calendar year will be added to the Accumulated Sick Leave.

8.4.4 Use of Personal Leave: An employee may use personal leave credits to conduct personal business that cannot be conducted outside of normal working hours and for personal emergencies.

8.4.5 Scheduling: An employee must receive prior approval from the Superintendent of Highways to take personal leave. The request must be submitted, in writing, to the Superintendent of Highways in advance. In the event there is an unforeseen emergency, the requirement for advance notice will be waived. The Superintendent of Highways will have total discretion in the approval of personal leave. Personal leave credits may not be used in increments of less than one hour. An employee may take personal leave only after it has been credited.

8.4.6 Termination of Employment: An employee who resigns, retires, is laid off, or is terminated from employment due to disciplinary action will not receive payment for unused personal leave.

8.5 Bereavement Leave

8.5.1 Immediate Family: In the event of a death of an employee’s immediate family member, the employee may take a leave of absence without loss of pay or leave credits for up to five scheduled workdays between date of the death and the day after the burial. For purposes of bereavement leave, “immediate family member” will mean the following:
- Spouse or Domestic Partner
- Child (including step & foster)
- Parent or Legal Guardian

8.5.2 Extended Family: In the event of a death of an employee’s extended family member, the employee may take a leave of absence without loss of pay or leave credits for up to three scheduled workdays between date of the death and the day after the burial. For purposes of bereavement leave, “extended family member” will mean the following:
- Sibling
- Grandchild
- Grandparent
- Spouse’s Parent
- Child’s Spouse
- Relative who is member of employee’s household

8.5.2 Additional Bereavement Leave: An employee may receive an unpaid leave of absence or use vacation leave credits and/or personal leave credits to extend bereavement leave due to the death of an immediate or extended family member. The request must be submitted, in writing, to the Superintendent of Highways. The Superintendent of Highways shall have total discretion in the approval of such additional bereavement leave.
8.6 Jury Duty

8.6.1 Leave of Absence: In the event an employee is required to perform jury duty on a day the employee is scheduled to work, the employee will receive a paid leave of absence without loss of pay or leave credits.

8.6.2 Notification of Jury Duty: When an employee receives notice to report for jury duty, the employee must immediately submit a copy of the notice to the Superintendent of Highways.

8.6.3 Return to Duty: In the event the employee is released from jury duty on a given day and there are four or more hours remaining in the employee’s scheduled workday, the employee must report to work.

9 UNPAID LEAVE

9.1 Leaves of Absence without Pay

9.1.1 General Terms: Absences taken beyond an employee’s leave accruals shall be considered unauthorized (AWOL) unless prior written approval has been received from the Town Board. Subject to the approval of the Town Board, unpaid leaves of absence may be available to an employee for personal reasons including, but not limited to, family responsibilities and education.

9.1.2 Request for Unpaid Leave: The employee must submit such request and the reasons for the leave, in writing, to the Town Board prior to commencement of the requested leave. The Town Board has sole discretion in approving such leave.

9.1.3 Conditions of Leave: The Town Board will specify the duration of an unpaid leave of absence and to impose such other terms, conditions and restrictions on the employee as the Town Board deems appropriate.

9.1.4 Continuation of Benefits: An employee on an approved unpaid leave of absence may continue to be eligible for medical insurance coverage in accordance with COBRA. Disability benefits and accruals for leave benefits shall be suspended.

9.1.5 Return to Work: An employee who fails to return from an unpaid leave of absence at the scheduled expiration date without giving proper notice or receiving proper authorization shall be conclusively presumed to have voluntarily resigned from employment.

9.1.6 Change in Status: If the reason for the unpaid leave of absence changes, the employee must reapply or return to work.

10 INSURANCE

10.1 Medical Insurance

10.1.1 Insurance Plan: A medical insurance plan and prescription drug plan will be made available to each full-time employee and the employee’s eligible family. The effective date of coverage will begin in accordance with the rules and procedures established by the plan. In no event shall the Town be required or obligated to pay or reimburse an employee or the employee’s spouse or other dependent for any portion of any medical or dental bill or other expense not covered or reimbursed by the plan.

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10.1.2 Change in Insurance Plans: The Town may change the insurance carrier and/or offer alternative plans in place of the then current plan, provided the alternative plan's benefit structure and provider network are substantially equivalent to the then current plan.

10.1.3 Medical Premium: For calendar year 2012, the Town will make available a total of $43,386.24 toward the annual premium costs for the four employees currently in the bargaining unit (Dennis Smolinski, Donald Watson, Adam Ufholz, and Jeff Jay). This amount is based on what was the "2010 composite rate" of $977.17 per month for employees Dennis Smolinski and Donald Watson and $830.59 (85% of $977.17) for employees Jeff Jay and Adam Ufholz.

Teamsters Local 118 will be solely responsible for the allocation of this contribution and the administration of any Health Reimbursement Account.

In the event the family status (or employment status) change for any of these four employees, then the Union and the Town will meet to review the appropriate allocation of the Town’s contribution.

Similarly, in the event a new hire enters the bargaining unit, the Town will make available eighty-five percent of the Town’s contribution of $977.17 ($830.59) per month and, if necessary, the Union and the Town will meet to review the appropriate allocation of the Town’s contribution.

10.2 Workers’ Compensation Insurance

10.2.1 Coverage: In accordance with New York State law, the Town will make available a Workers’ Compensation plan for job-related injuries or illnesses. The New York State Workers’ Compensation Board makes the determination of whether an employee is eligible for Workers’ Compensation benefits.

10.2.2 Plan: The Town may, at its discretion, change carriers and/or offer an alternative Workers’ Compensation plan.

10.2.3 Reporting of Injury: To ensure prompt coverage of the claim, the employee should submit a report of the injury or illness to the Superintendent of Highways, on the proper form, within twenty-four hours of the occurrence.

10.2.4 Use of Leave Credits: An employee may draw from the employee’s sick leave, then personal leave, then vacation leave credits in conjunction with Workers’ Compensation payments to equal, but not exceed, the employee’s regular daily rate of pay. When the insurance company makes payment, the Town shall be reimbursed for that portion of leave covered by insurance and the employee will be re-credited with the proportional amount of leave.

10.2.5 Continuation of Medical Insurance: An employee should refer to the New York State Teamsters Council Health and Hospital Fund documents as it pertains to the continuation of medical insurance benefits while an employee is receiving benefits for an on-the-job disability.
11 Transitional Duty

11.1 Transitional Duty Program

11.1.1 Preamble: The purpose of this Transitional Duty Program is to allow an employee who is temporarily partially disabled to return to work in an assignment that meets both the needs of the Town and the medical limitations of the employee. In the event an employee is unable to perform the full duties and responsibilities of the employee’s regular position as set forth in the job description established by the Town, the Superintendent of Highways may, on a case-by-case basis, require such employee to return to work in a Transitional Duty assignment. The exercise of this Transitional Duty Program shall not establish any precedent or commitment to provide Transitional Duty assignments to any other employee at any time in the future.

11.1.2 Eligibility: The employee must be classified as partially disabled at fifty percent or less by the insurance carrier and the employee must have a prognosis of full recovery within six months. For the purpose of this program, full recovery is defined as the ability to perform the full duties of the job the employee held when injured. These medical findings may occur as a result of an examination by a State Insurance Fund consulting physician or by a medical examination ordered by the Town. The Town shall determine what documentation will be acceptable for establishing the employee’s eligibility and determining the employee’s physical limitations. An employee who refuses to submit to a medical examination ordered by the Town will be subject to appropriate disciplinary action.

In the event there is a dispute between the physician designated by the Town and the employee’s physician as to the employee’s ability to perform the transitional duty assignment, the matter will be submitted to a third physician mutually agreed to by the Union and the Town.

11.1.3 Transitional Duty Assignment: The assignment may not necessarily correspond with the employee’s regular job duties. The assignment may involve performing some duties of the employee’s regular position, some duties of another position, or a combination of tasks from several positions. The assignment may be at a different work location and/or have a different schedule than the employee’s regular position.

11.1.4 Wages and Benefits: While performing a Transitional Duty assignment, the employee shall receive the employee’s regular hourly rate of pay and receive those benefits provided to employees set forth in this collective bargaining agreement.

11.1.5 Duration of Assignment: A Transitional Duty assignment shall not exceed six months or the date of full recovery, whichever comes first. The Town may require a medical examination ordered by the Town as a condition of allowing the employee to return to full duties.

11.1.6 Refusal of Assignment: In the event the employee refuses a Transitional Duty assignment, the matter will be referred to the Workers’ Compensation insurance carrier or NYS Disability insurance carrier, as the case may be, for a benefit determination and may be subject to appropriate disciplinary action.
12  GENERAL PROVISIONS

12.1  Work Accouterments

12.1.1  Work Clothes: The Town will furnish and launder five sets of work clothes for each employee. The Town will purchase one pair of bib overalls and jacket for wintertime use for each newly hired employee, which will be replaced when necessary.

12.1.2  Work Shoes: The Town will reimburse each employee for up to one hundred and fifty dollars ($150) per calendar year for approved safety work shoes or work boots. The employee will choose the shoe/boot. All required corresponding receipts must be submitted to the Superintendent of Highways prior to reimbursement.

12.2  Driver’s License

12.2.1  Requirement to Possess a Driver’s License: An employee who is required to drive either a Town-owned vehicle or the employee’s own personal vehicle to conduct business on behalf of the Town, must possess a valid New York State driver’s license at the time of appointment and must maintain a valid license throughout employment. An employee who is required to possess a driver’s license in order to perform certain job duties and responsibilities must immediately notify the Superintendent of Highways in the event the license is suspended, revoked, or if the employee is otherwise disqualified from driving. The loss or suspension of the driver’s license may affect the employee’s employment with the Town.

12.2.2  Requirement to Possess a Commercial Driver’s License: An employee who operates a vehicle that requires a Commercial Driver’s License (CDL) must maintain such license throughout employment. An employee who is required to possess a Commercial Driver’s License in order to perform certain job duties and responsibilities must immediately notify the Superintendent of Highways in the event the employee’s driver’s license is suspended, revoked, or if the employee is otherwise disqualified from driving. The loss or suspension of the employee’s driver’s license may affect the employee’s employment with the Town. In accordance with the federal Commercial Motor Vehicle Safety Act, an employee who is required to possess a Commercial Driver’s License must notify the Superintendent of Highways within thirty calendar days of a conviction of any traffic violation (except parking) no matter where or what type of vehicle the employee was driving.

12.2.3  Reimbursement for CDL: Effective October 1, 2009, the Town will reimburse an employee for the difference in the cost between a regular driver’s license and a commercial driver’s license up to a maximum of $135.00.
13 DUE PROCESS PROCEDURES

13.1 Grievance Procedure

13.1.1 Preamble: It is the policy of the Town and the Union that all grievances be resolved informally or at the earliest possible stage of this grievance procedure. Both parties recognize that the procedure is available without fear of discrimination because of its use. Informal settlements at any stage shall bind the immediate parties to the settlement but shall not be precedents in later proceedings.

An employee and/or the designated Union Representative shall have the right to observe the progress of any grievance procedure after the second stage and through final decision. No provision of this Collective Bargaining Agreement shall be interpreted as to require the Union to represent any employee at any stage of the grievance procedure if the Union considers the grievance to be without merit or in contradiction to any law, policy or regulation.

13.1.2 Definitions: For the purposes of this collective bargaining agreement, a grievance shall mean and refer to any alleged violation of an expressed provision of this Collective Bargaining Agreement or any dispute with respect to the meaning or application of an expressed provision of this Collective Bargaining Agreement.

13.1.3 Stage One - Informal Grievance: The aggrieved employee may informally discuss the grievance with the Superintendent of Highways. The Superintendent of Highways will answer the employee, in writing, within three working days.

13.1.4 Stage Two - Formal Grievance: If the aggrieved party is unsatisfied with the results of Stage One, the Union may file a written grievance on behalf of an aggrieved employee(s) with the Town Supervisor. The grievance must be submitted within seven calendar days after the determination has been received in Stage One, or when the response should have been received. In the event the grievance was not initiated at Stage One, the Union must submit the grievance within thirty calendar days from knowledge of the occurrence, or when the Union should have had knowledge.

The grievance shall specify the nature of the grievance, including the section of the collective bargaining agreement that was allegedly violated, a statement of facts, times and dates, and the remedy sought.

Within seven calendar days after receiving the grievance, the Town Supervisor will hold an informal hearing with the designated representative of the Union, the aggrieved party, and Superintendent of Highways. The parties may present oral and written statements supporting their position on the grievance. The Town Supervisor shall, within seven calendar days after the hearing, render a written decision, which shall be given to the Shop Steward and the Teamsters Business Agent.

13.1.5 Stage Three – Appeal to Town Board: If the grievance remains unresolved following the written decision of the Town Supervisor, the Union may submit in written form a request for final review and determination by the Rose Town Board. The appeal must be submitted within seven calendar days of receiving the final determination of the Town Supervisor, or when the response should have been received.

All written statements and records of the grievance procedure shall be submitted to and filed with the Clerk of the Rose Town Board, signed by the person submitting same. The Rose Town Board will review the grievance at the next regularly scheduled Board meeting in the form of a hearing and shall render its decision within thirty calendar days thereafter, which shall be given to the Shop Steward and the Teamsters Business Agent.
13.1.6 Stage Four - Binding Arbitration: If the grievance remains unresolved following the written decision of the Town Board, the Union may, within seven calendar days of the final determination of the Town Board, or when the response should have been received, submit a written demand to proceed to arbitration with the Federal Mediation and Conciliation Services in accordance with its rules and regulations.

The conduct of the arbitration shall be under the exclusive jurisdiction and control of the arbitrator, which shall conform to applicable law. The decision of the Arbitrator shall be final and binding upon all parties. No arbitrator functioning under these procedures shall have any power to amend, modify, or delete any provisions of this Collective Bargaining Agreement. The Town and the Union shall share the fees of the arbitrator equally.

13.1.7 Time Limits: The Union must adhere to the time limits set forth in this grievance procedure. In the event the Union does not advance the grievance to the next step within the established time limit, the grievance will be considered withdrawn and no further appeal will be accepted. The time limits may be extended by mutual agreement provided the extension is in writing, dated, and signed by the Union and the official who is to receive the grievance.

13.2 Disciplinary Procedure

13.2.1 Discipline for Just Cause: The Town shall not subject an employee who has completed the probationary period, as defined in 4.1 above, to any disciplinary action or penalty except for just cause.

Causes for immediate discharge of an employee shall include, but not be limited to the following:

Harassing (including sexual harassment), intimidating, coercing, threatening, assaulting, or creating a hostile environment against another employee, Elected Official, resident of the Town, supplier, visitor, or any other person;

Possession of weapons, including but not limited to firearms and explosives, on Town property or in Town vehicles;

Possession or use of alcohol or controlled substances on Town property or in Town vehicles; any employee suspected by the Superintendent of Highways of reporting for work or being under the influence of drugs or alcohol during work hours will be subject to testing as specified by the Omnibus Transportation Employees Testing Act of 1991.

Willful or deliberate abuse, destruction, defacement, or misuse of Town property or the property of another employee, Elected Official, resident of the Town, supplier, visitor, or taxpayer;

Theft or unauthorized possession, use, or removal of Town property or the property of another employee, Elected Official, resident of the Town, supplier, visitor, or taxpayer;

Falsification or alteration of any records or reports including but not limited to employment applications, time records, work records, medical reports, absence reports, work-related injury reports, and claims for benefits provided by the Town;

Preparation or manipulation of another employee’s time record;

Acts of sabotage, including the work of another employee;

Gross insubordination or willful refusal to comply with the lawful order or instruction of the Superintendent of Highways; or
Violation and/or disregard of safety rules or safety practices in such a way that jeopardizes the safety of the employee, another employee, Elected Official, resident of the Town, supplier, visitor, or any other person.

13.2.2 Notice of Discipline: The Town shall provide the employee with a written Notice of Discipline, which shall contain all charges and specifications and the proposed penalty. Simultaneously, a copy of the notice shall be sent to the Shop Steward and to the Business Agent of Teamsters Local 118.

13.2.3 Disciplinary Hearing: If the Union disagrees with the disciplinary action, the Union may appeal the matter, in writing, to the Town Supervisor. The appeal must be submitted in writing, within fourteen calendar days from receiving the Notice of Discipline.

Within seven calendar days after receiving the appeal, the Town Supervisor shall meet with the disciplined employee and the designated representative of the Union. Within seven calendar days after said meeting, the Town Supervisor shall issue a written response which shall be given to the Business Agent of Teamsters Local 118.

13.2.4 Appeal of Disciplinary Action: If the Union is not satisfied with the response of the Town Supervisor, the Union may submit the matter to arbitration by filing a demand for arbitration with the Federal Mediation and Conciliation Services in accordance with its rules and regulations. The demand for arbitration must be filed within fourteen calendar days of receiving the response from the Town Supervisor or when the response should have been received.

The fees of the arbitrator shall be shared equally by the Town and the Union. The conduct of the arbitration shall be under the exclusive jurisdiction and control of the arbitrator which shall conform to applicable law. All decisions rendered by the arbitrator shall be final and binding upon all parties.

13.2.5 Civil Service Rights: The procedure set forth above shall serve as the only method of resolving challenges to disciplinary action and wholly replaces the statutory provisions set forth in Section 75 and Section 76 of New York State Civil Service Law.

14 APPLICATION OF AGREEMENT

14.1 Duration of Agreement

14.1.1 This Collective Bargaining Agreement shall be effective from January 1, 2012 through December 31, 2012, unless otherwise agreed to by the parties.

14.2 Complete Agreement

14.2.1 This Collective Bargaining Agreement will constitute the entire agreement between the parties. Any past practice that existed up until the date of the signing of this Collective Bargaining Agreement will not be binding on the Town and may not be submitted to the grievance and arbitration procedure, however, the Town recognizes the right of the Union to file an improper practice charge against the Town for a unilateral change in an established term or condition of employment.
14.3 Savings Clause

14.3.1 If the enactment of legislation or the determination of a court of final jurisdiction renders any provisions, portions, or applications of this Collective Bargaining Agreement invalid or unenforceable, it shall not affect the validity of the balance of this Collective Bargaining Agreement, which shall remain in full force and according to the terms and in the same manner and with the same effect as if such invalid portion had not originally been included.

14.3.2 Upon the issuance of such decision, the Town and the Union shall negotiate an adjustment in the affected provisions, portions or applications with the intention of effecting the purpose of the provisions, portions or applications.

14.4 Legislative Action

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

14.5 Execution of Agreement

IN WITNESS WHEREOF, the parties have caused this collective bargaining agreement to be signed by their respective representatives on November __, 2011.

TOWN OF ROSE

Lucinda Collier
Town Supervisor

Michael A. Richardson
Labor Relations Consultant

TEAMSTERS LOCAL 118

Paul Markwitz
Business Agent

Dennis Smolinski
Steward