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Union: **United Public Service Employees Union (UPSEU)**

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ARTICLES OF AGREEMENT

Made this 8th day of January, 2009, by and between the Town of Constable, (herein after called the "Town") and United Public Service Employees Union, (herein after called the "Union") acting as representative for and on behalf of bargaining unit employees of the Town of Constable.

ARTICLE 1 APPLICABLE LAW

In the event any of the provisions of this Agreement shall be in conflict with any state or federal statute, such state or federal statute shall govern, but the remainder of the Agreement shall not be affected thereby.

ARTICLE 2 RECOGNITION

The Town recognizes the Union as the sole and exclusive collective bargaining representative for all full-time and part-time Highway Department employees except the Highway Superintendent and seasonal workers.

ARTICLE 3 PURPOSE

It is the intent and purpose of the parties hereto by this agreement to promote and improve labor and economic relationships between the Town and its employees as represented by the Union and to set forth herein the basic Agreement covering areas of pay, hours of work, adjustment of grievances, and terms and conditions of employment to be observed between the parties hereto. The parties desire to achieve the highest level of employee performance consistent with safety, good health and sustained effort.

ARTICLE 4 MANAGEMENT RIGHTS

Section 1 The Town retains the sole right to manage its business affairs and services and to direct the working force, including the right to decide 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, and the 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 determine how the work required in operating its business and supplying its services shall be performed by employees covered by this

agreement; to maintain order and efficiency in all its departments and operations; including the sole right to discipline, suspend and discharge employees for cause, to hire, lay off, assign, transfer, promote and determine various departments, and the right to establish rules pertaining to the operation of its business.

Section 2 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.

Section 3 Nothing contained in this article shall be construed as a waiver of the Union's right to bargain pursuant to the Taylor Law.

ARTICLE 5 UNION SECURITY

Section 1 Membership in the Union shall be voluntary, but since both parties to this agreement recognize that a strong and active Union with full membership participation is desirable to the collective bargaining process, the Town agrees that there shall be no discrimination, interference, restraint or coercion by the Town or any of its agents or employees against any employee because of their membership or non-membership in the Union.

Section 2 The Union shall have the right to represent employees in the defined bargaining unit in any and all proceedings under the Public Employees' Fair Employment Act, and under any other applicable rule, regulation or statute, under the terms and conditions of the Agreement, to designate its representative and to appear on their behalf to effect such representation; to direct, manage and govern its own affairs, to determine those objectives free from any interference, restraint, coercion or discrimination by the Town.

Section 3 The above rights of the Union are not all inclusive, but do indicate the type of matters or rights which are inherent as a bargaining agent.

Section 4 The Union shall have the right to post notices of official business, appropriate state law, non-political notices or communications on bulletin boards maintained on the premises by the Town. Such notices will be in good taste and not be derogatory.

Section 5 The Union shall have the right to confer with employees on the job for purposes of administering, adjusting or interpreting the terms of this Agreement provided prior notification has been given to the appropriate Town management designee.

Section 6 The Town agrees that it will permit and pay one representative of the Union who is a regular Town employee, time while on the job to resolve grievances and time to meet with an Town representative to resolve and/or discuss differences of opinion regarding the interpretation of the terms of this Agreement.

Section 7 The Town agrees to provide the Union a list of Town bargaining unit employees upon request.

ARTICLE 6 DUES DEDUCTIONS

Section 1 The Town shall deduct from the wages of the employees and remit regular membership dues for all employees as who have signed the appropriate authorization permitting such deduction. The Town agrees to authorize deductions and remittance of such monies exclusively for the Union as the recognized bargaining agent for the employees in Article 2.

Section 2 The Town agrees to deduct from the wages of all employees and who are not members of the Union, an agency shop fee in the amount of the dues levied by the Union. Such sum shall be remitted to the Union.

Section 3 Deductions and membership dues and agency shop fees shall be made uniformly and consistently on each pay day of the month. Said funds shall be remitted to the United Public Service Employees Union, 3555 Veterans Highway, Suite H, Ronkonkoma, New York 11779-3020.

Section 4 The Town shall not be liable by reasons of the requirements of this Agreement for remittance or payment for any sum other than that constituting actual deductions made from wages earned by employees.

Section 5 The Union hereby agrees to indemnify the Town and hold harmless the Town regarding any claims and suits pertaining to any deductions as set forth in Section 1 and 2 above.

ARTICLE 7 STRIKES

Pursuant to Section 210, Subdivision (1) of the Taylor Law, the Union hereby affirms that it does not assert the right to strike against the Town, to assist or participate in any such strike or to impose an obligation on its membership to conduct, assist or participate in any such strike.

**ARTICLE 10
OVERTIME PAY**

Section 1 Employees will be paid time and one-half (1 ½) for all hours over forty (40) hours in any one week.

Section 2 All paid leave shall be considered as work time for the purposes of calculating overtime.

**ARTICLE 11
RETIREMENT**

The Town shall deposit the following amounts into an IRA of the employees choice in July of each calendar year.

July 2008	\$1,500
July 2009	\$2,000
July 2010	\$2,000

**ARTICLE 12
LEAVE OF ABSENCE WITH PAY**

Section 1 Each employee shall earn twelve (12) days paid sick leave for the year accruing from January through December. No more than twelve (12) days may be carried over to the following year.

It is understood that sick leave shall be used for personal or immediate family illness.

It is understood that if an employee takes sick leave for four (4) or more consecutive days, the Town may require the employee to justify the sick leave by submitting medical certification.

Section 2 The following paid vacation schedule shall be in effect:

After one (1) to three (3) years' service	Five (5) Days
After four (4) to six (6) years' service	Ten (10) Days
After seven (7) to twenty (20) years' service	Fifteen (15) Days
After twenty (20) years' service	Twenty (20) Days

The employee shall have the right to carry a maximum of five (5) days vacation time from one year into the next year. Vacation to be taken at a time mutually agreeable to the Town and employee.

Section 3 The following paid holiday schedule will be in effect:

New Year's Day	President's Day
Martin Luther King Day	Memorial Day
Independence	Thanksgiving Day
Labor Day	Christmas Day
Columbus Day	Floating Holiday
Veteran's Day	

When an above listed holiday falls on a Sunday, the Monday following shall be observed as the holiday.

If an employee works on an above listed national holiday, he/she shall be compensated at a rate of one and one half times (1 1/2x) their hourly rate, in addition to the paid holiday.

Section 4 Employees shall receive six (6) days of paid personal leave per anniversary year. For purpose of this section, an employee shall apply for personal leave at least one (1) working day in advance whenever practicable.

Section 5 Paid bereavement leave shall be granted for a period not to exceed three working days, including the date of the funeral, because of death in the employee's immediate family. Immediate family is defined as including spouse, parent, grandparent, spouse's parent and/or grandparent, child, brother, sister, brother-in-law, sister-in-law, aunt, uncle, niece, nephew or any other relative who is a member of the household. Step or foster relatives shall be considered immediate family.

ARTICLE 13 JOB SECURITY

Section 1

- (a) Employees will acquire seniority upon the completion of a probationary period of six (6) months. Seniority will then retroactively accrue from the initial date of employment.
- (b) Town seniority is defined as the length of continuous service in the bargaining unit. An employee's effective seniority date is as recorded on their personnel record which is available upon request.
- (c) Loss from Seniority. An employee shall lose his seniority and right to be on a seniority list if:
 - 1. The employee quits.
 - 2. The employee is discharged.
 - 3. The employee is absent for three (3) consecutive working days while regularly employed without notifying the Town.

4. The employee fails to return to work within five (5) working days of recall from lay-off or following any authorized absence.
 5. The employee is transferred to a position not covered by this Agreement for a period of six (6) months.
- (d) An employee permanently displaced from his job may exercise his seniority in the following manner:
1. The employee may be assigned to an open job.
 2. The employee may be assigned to a job held by a less senior employee provided he has the ability to satisfactorily perform the job.
 3. The employee may displace the employee with the least Town seniority, provided he has the ability to satisfactorily perform the job.
- (e) Where the ability of two (2) or more employees is considered to be equal, seniority shall be the deciding factor.
- (f) An employee's ability as used in this Section means an employee's immediate capability to perform the job satisfactorily. In determining an employee's capability, the Town will consider the requirements of the job, the employee's past performance on the jobs he has performed, his dependability, physical fitness and skill.
- (g) Seniority is the sole factor in cases of temporary lay-off. Lay-off is considered temporary if the known duration is fourteen (14) working days or less.
- (h) Employees shall be given at least five (5) working days' notice of any permanent lay-off and employees shall be recalled in reverse order of the layoff, provided the employee to be recalled has the ability to do the available work.
- (i) A promoted or provisionally appointed employees position shall not be filled, except on a temporary basis during the required probationary period. Such an employee shall have the right to his former position at any time during the probationary or provisional period.

Section 2 The Town agrees to post on the Town facilities' bulletin boards, openings for any permanent positions for a period of ten (10) days.

The Highway Superintendent will meet with a representative of the Union to review any departmental promotions that were not awarded to the most senior eligible employee, if such meeting is requested within five (5) working days of the assignment.

ARTICLE 14 WORK SHOES

- Section 1** The Town shall provide up to one hundred dollars (\$100) per year toward the purchase of safety shoes for each employee.
- Section 2** Payment for workplace safety shoes as set forth in Section 1 above shall be on a reimbursement basis.

ARTICLE 15 DRESS CODE

Appropriate dress shall be worn on all normal working days. Appropriate dress shall include the wearing of hard hats, safety glasses, ear protection, and safety shoes as required by the Employer.

ARTICLE 16 HOSPITALIZATION

- Section 1** All employees hired prior to 2005 shall have all premiums paid for single or two person health insurance. Employees hired after 2005, the Town will pay for single coverage, however if the employee elects two person coverage, the employee will pay ten percent (10%) of the premium. An employee may elect to change to two person coverage prior to October 1st of each year to take effect on January 1st of the subsequent year.
- Section 2** The Town will pay to an employee who does not take healthcare coverage \$2,000 on or before December 1 of the year coverage was declined.

ARTICLE 17 GRIEVANCE AND ARBITRATION

If any difference should arise between the Town and the Union or an employee as to the meaning or application of the terms of this Agreement, an earnest effort will be made to settle such differences in the following manner.

Section 1 Definitions

As used herein, the following terms shall have the following meanings:

- (a) "Employee" shall mean any person directly employed and compensated by the Town who is represented by the Union.

- (b) "Grievance shall mean any claimed violation, misinterpretation or equitable application of the existing laws, rules, procedures, regulations, administrative orders or work rules of the Town or a department thereof, which relate to or involve employee health or safety, physical facilities, materials or equipment furnished to employees, supervision of employees or rate of compensation (meaning basic salary, longevity, overtime, call-out, shift differential, and out of title pay) provided, however, that such term shall not include any matter involving retirement benefits or any other matter which is otherwise reviewable pursuant to law or rule or regulation having the full force and effect of law.
- (c) "Department" shall mean any office, or department of the Town.
- (d) "Immediate Supervisor" shall mean the employee or officer on the next higher level of Town above the employee in the department wherein the grievance exists and who normally assigns and supervises the employee's work and approves his/her time record and evaluates his/her work performance.
- (e) "Days" shall mean all days other than Saturdays, Sunday, and legal holidays. Saturdays, Sundays, and legal holidays shall be excluded in computing the number of days within which action must be taken or notice given within the terms of this Article.
- (f) Union representatives shall be present at each level of discipline and at each level of the grievance procedure.
- (g) The grievance and arbitration procedures set forth herein shall be the method of resolving challenges to disciplinary action for those employees not covered by Civil Service Law Section 75 and 76.

Section 2 Initial Presentation

- (a) An employee who claims to have a grievance shall present the grievance to the immediate supervisor.
- (b) The immediate supervisor shall discuss the grievance with the employee and shall take such investigation as is appropriate.
- (c) The supervisor shall answer the grievance, in writing, within three (3) days of receiving the grievance from the employee.

Section 3 Second Stage

- (a) If an employee presenting a grievance is not satisfied with the decision made by the immediate supervisor, the employee may, within ten (10) days thereafter, request, in writing, a review and determination of the grievance by the Town Supervisor.

- (b) The Town Supervisor, may, and at the request of the employee shall, hold a hearing, within ten (10) days after receiving the written request from the employee. The employee and the employee representative may present oral and written statements or arguments.
- (c) Within five (5) days after the close of the hearing, or when a hearing should have occurred, the Town Supervisor shall communicate the response in writing to the grievant, and to the employee's representative.

Section 4 Third Stage

- (a) If the grievance is not resolved in the second stage above, either the Town or the Union may refer the matter to the Public Employment Relations Board (PERB) for appointment of an arbitrator in accordance with its rules. The party desiring advisory arbitration shall give written notice to PERB with a copy to the other party no later than ten (10) working days from the Town Supervisor reply.
- (b) The arbitrator shall have no authority to add to, subtract from, or in any way modify the terms of this Agreement provided, however, that in the event a dispute arises as to the issues to be determined in the arbitration, said arbitrator is hereby empowered not only to resolve the dispute, but to determine the issues to be decided. The arbitrator's decision shall be final and binding.
- (c) Written briefs may be submitted by either party to the Arbitration.
- (d) All fees and expenses of the arbitrator shall be borne equally by the parties. Each party to the arbitration is responsible for the expenses of presenting and defending its own case.

Section 5

- (a) Generally, the concept of progressive and corrective disciplinary action shall be followed when imposing discipline. That is, discipline is designed to correct the employee's behavior, not merely to punish. Progressive discipline considers lesser punishment for minor infractions with harsher penalties for greater offenses. However, proven theft or unapproved removal or possession of Town property shall be grounds for termination. The process of progressive discipline shall include counseling, oral reprimand, written reprimand, suspension or discharge.
- (b) Prior to any disciplinary interrogation, the employee shall be advised they are the subject of an investigation and shall be given written notice of their right to Union representation.
- (c) No employee shall be disciplined except for just cause. Such employee shall be served with written notice of the proposed action

and the reason for it. Simultaneously, a copy of the notice shall be sent to the Union.

- (d) No disciplinary action shall be commenced more than six months after the Town Board has knowledge of the alleged acts of incompetency or misconduct.

**ARTICLE 18
LETTERS OF REPRIMAND**

Section 1 An employee who receives a letter of reprimand must be given the opportunity to initial said letter before it is placed in the personnel file. The employee may appeal said letter by written, signed response. This response shall be placed on the employee's official personnel file along with the original letter of reprimand and shall be a part of that file for one year from the date of the original letter of reprimand whereupon both the letter of reprimand and the response shall be removed. A copy of the letter is forwarded to the Union.

Section 2 After presentation of a letter of reprimand to any employee, whether initialed or not by the employee, the department head shall send a copy of said letter to the employee's last known home address and a copy to the Union.

**ARTICLE 19
MISCELLANEOUS**

Section 1 Copies of Contract
The Town agrees to supply the Union with copies of the contract for distribution to each employee.

Section 2 Bulletin Boards
The Town will authorize current bulletin boards for Union use.

Section 3 Jury Duty
Any Town employee who is required to serve as a juror or to appear in court as a witness or to attend court pursuant to subpoena or other order of the court, shall be granted a leave of absence with pay provided that any fees, excluding mileage allowances, received, shall be paid to the Town in a daily amount not to exceed the daily rate of compensation paid as juror's fees.

Section 4 Health and Safety
The Town and the Union shall continue to make reasonable provisions for the health and safety of its employees during the hours of their employment. A committee will be appointed to meet quarterly or as necessary to periodically review health and safety factors. The committee will be composed of two (2) representatives of the Town and two (2) representatives for the Union.

Section 5 Certifications and Seminars

The Town will continue to pay for all certifications, recertifications and seminars as required by any/all federal state, local or other agency.

**ARTICLE 20
GENERAL CONSIDERATIONS**

Section 1 No article or section in this Agreement shall be in violation of Civil Service Law, the rules and regulations of the New York State Department of Civil Service, or the Judicial Conference of the State of New York, or any other law, local, state or federal.

Section 2 Established work breaks shall be continued as the current practice.

Section 3 In the event that any article or section of this Agreement will be determined by a Court of competent jurisdiction to be null, void or unenforceable, such decision shall not affect any of the other provisions. It is further agreed that the parties to this Agreement will meet within thirty (30) days to negotiate negated clauses.

Section 4 Neither party to this Agreement shall make or attempt to make any alteration, modification, change or variation in any of the items expressly and specifically covered by this Agreement without written mutual consent.

Section 5 Each employee has the right to examine their personnel file upon application in writing to the Town Supervisor.

Section 6 Any reference herein to the masculine or feminine gender shall be read to include the opposite gender as well.

**ARTICLE 21
MAINTENANCE OF STANDARDS**

All existing rules, regulations, practices, benefits, and general working conditions previously granted and allowed by the Town, unless specifically excluded by this Agreement, shall remain in full force and effect.

**ARTICLE 22
SUCCESSORS**

This Agreement shall be binding upon the parties hereto, their successors, administrators, executors and assigns.

**ARTICLE 23
LEGISLATIVE APPROVAL**

IT IS AGREED BY AND BETWEEN THE PARTIES THAT ANY PROVISION OF THIS AGREEMENT REQUIRING LEGISLATIVE ACTION TO PROMOTE 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.

**ARTICLE 24
DURATION**

This Agreement is for a term of three (3) years commencing January 1, 2008 and continues in full force and effect until December 31, 2010 or until a new contract is negotiated. Furthermore, the parties thereto agree that either party may, on or after January 1, 2010 serve notice in writing upon the other party of its desire to begin negotiations for a successor Agreement. In such event the parties and/or their representatives shall commence negotiations.

In witness whereof the parties set their hands and seals in Agreement on the date first set forth above.

TOWN OF CONSTABLE

**UNITED PUBLIC SERVICE
EMPLOYEES UNION**

Harold Phillips
Harold Phillips, Supervisor

Kevin E. Boyle, Jr.
Kevin E. Boyle, Jr., President

01-18-09
Date

Gary M. Hickey
Gary M. Hickey
Executive Vice President/Regional Director

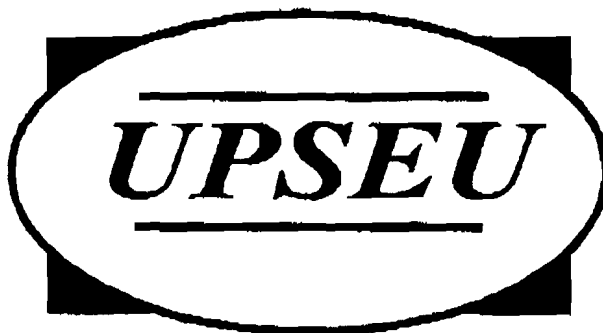
Philip J. Sedlock
Philip J. Sedlock
Labor Relations Representative

1-12-09
Date

COLLECTIVE BARGAINING AGREEMENT

TOWN OF CONSTABLE

and



**UNITED PUBLIC SERVICE EMPLOYEES UNION
January 1, 2008 - December 31, 2010**



UNITED PUBLIC SERVICE EMPLOYEES UNION
1707 Central Avenue Suite 202 • Albany • NY • 12205
(518) 464-9114 • Fax: (518) 464-1116

Dear United Public Service Employees Union Member:

This is the negotiated and ratified Collective Bargaining Agreement between your Union and your Employer.

Please familiarize yourself with this Agreement. In the event you have a problem or grievance concerning any portion of this Agreement, it is important that you immediately contact your Union, either through your Shop Steward/Unit Officer or your Labor Relations Representative.

Fraternally,

Kevin E. Boyle, Jr.
President

TELEPHONE NUMBERS

- Headquarters . . . Ronkonkoma, NY . 631-738-8773
- Capital Region . . Albany, NY 518-464-9114
- Northern Region . Malone, NY 518-481-4240
- Central Region . . Utica, NY 315-798-8934
- Southern Region . Goshen, NY 845-294-7894

**ARTICLE 8
COMPENSATION**

Section 1

	Effective 1-1-08 \$.33 per hr. increase	Effective 1-1-09 \$.55 per hr. increase	Effective 1-1-10 \$.65 per hr. increase
Motor Equipment Operator	13.46	14.01	14.66
<p>Probationary Employees: New probationary employees shall receive fifty cents (.50) per hour less than the applicable wage rate listed above. After the six (6) month probationary period, the employee shall receive the applicable wage rate listed above.</p>			

Section 2 All new employees shall be subject to a six (6) month probationary period and compensated as noted in Section 1.

Section 3 Employees called back to work at a time other than their regular shift shall be paid a minimum of three (3) hours pay at a rate of time and one-half (1 1/2).

Section 4 Employees shall receive an additional longevity payment in accordance with the following schedule:

Completion of five (5) years of service	=	\$250
Completion of ten (10) years of service	=	\$375
Completion of fifteen (15) years of service	=	\$500

The annual payment shall be made by the employer in the first pay period in December.

**ARTICLE 9
HOURS OF WORK AND WORK WEEK**

Section 1 The regularly scheduled work week shall be Monday through Friday consisting of forty (40) hours.

Section 2 The regularly scheduled work day shall be 6:00 AM - 2:30 PM for winter hours and 6:00 AM - 4:30 PM for summer hours.