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# **COLLECTIVE BARGAINING AGREEMENT**

by and between the

**TOWN OF GARDINER**

and the

**UNITED PUBLIC SERVICE  
EMPLOYEES UNION**

January 1, 2014 – December 31, 2016

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# **1 PREAMBLE**

## **1.1 Notice of Agreement**

**1.1.1 Parties to Agreement:** This Collective Bargaining Agreement is made by and between the United Public Service Employees Union, hereinafter referred to as the "Union", having its principal offices in the State of New York, and the Town of Gardiner, hereinafter referred to as the "Town".

# **2 MANAGEMENT RIGHTS**

## **2.1 Management Rights Clause**

**2.1.1** The rights and responsibilities to operate and manage the business and affairs of the Town are vested exclusively in the Town and the Town not exercising any of these rights will not be construed as a waiver of them. These rights and responsibilities include, by way of illustration, the right to: hire, assign, promote, transfer, layoff, evaluate, and discipline employees; select, test, train and determine the ability and qualifications of employees; determine, control and change work practices and schedules, work and shift assignments, hours of work, the size, composition and organization of the workforce, and job classifications, descriptions, content and standards; implement and comply with regulations and requirements issued by any government agency; make, modify and enforce reasonable rules of employee conduct and safety; determine, control and change the quality and nature of products, materials and services; introduce new or improved methods, equipment, techniques and processes; contract and subcontract for materials, services, supplies and equipment; 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.

**2.1.2** There will be no lay-off of current employees as a direct result of the Town's decision to contract or subcontract bargaining unit work.

# **3 UNION RIGHTS**

## **3.1 Recognition**

**3.1.1 Recognition Clause:** The Town recognizes the Union as the sole and exclusive representative for all bargaining unit positions listed in 3.2.1, below, for the purpose of collective negotiations for all terms and conditions of employment and the administration of grievances for the term of this collective bargaining agreement.

## **3.2 Bargaining Unit**

**3.2.1 Inclusion:** Included in the bargaining unit are all regular full-time and regular part-time Highway Department employees who regularly perform work operating, repairing, or maintaining Highway Department vehicles or equipment, including the working supervisor and working foreman; and regular full-time employees who perform the work of recycling coordinator.

**3.2.2 Exclusion:** Excluded from the bargaining unit is the Superintendent of Highways, Deputy Highway Superintendent, Secretary to the Superintendent of Highways, and temporary and seasonal workers as defined below.

**3.2.3 Regular Full-time:** For the purpose of this Collective Bargaining Agreement, a "regular 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 Regular Part-time:** For the purpose of this Collective Bargaining Agreement, a “regular part-time employee” will mean and refer to an employee who is regularly scheduled to work an average of twenty or more hours per week throughout the year.

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

**3.2.6 Seasonal:** For the purpose of this Collective Bargaining Agreement, a “seasonal” 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 and will not be eligible for benefits provided through this collective bargaining agreement.

**3.2.7 Unit Clarification:** Any positions not covered in 3.2.1, above, which are established subsequent to the date of execution of this collective bargaining agreement, shall be reviewed by the Union and the Town for the purpose of determining if incorporating such position into the bargaining unit is appropriate. If a dispute arises regarding inclusion of a title in the bargaining unit, the dispute will be submitted to the New York State Public Employment Relations Board for resolution.

### **3.3 Union Membership/Agency Shop**

**3.3.1 Union Membership:** An employee who chooses to become a member of the Union shall sign a card authorizing dues deduction and submit it to the Union. Thereafter, the Union will forward the authorization to the Town and the Town shall deduct from the wages of such employees in the unit and remit to United Public Service Employees Union (UPSEU) regular membership dues and other authorized UPSEU deductions, in accordance with 3.3.3, below, for those employees who have signed the appropriate payroll deduction authorizations permitting such deductions. No other employee organization (union) shall be accorded such payroll deduction privilege.

**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, 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). The Town shall deduct from the wages of employees in the bargaining unit who are not members of UPSEU an amount of money equivalent to other dues levied by UPSEU and shall transmit the sum deducted to UPSEU in accordance with the Laws of the State of New York. Such agency fee deductions shall be made in the same procedure and manner as the regular dues deductions.

**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. 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 Grievances and Hearings**

**3.4.1 Investigation and Presentation of Grievances:** One Shop Steward designated by the Union 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).

**3.4.2 Requests for Release Time:** Requests for the use of release time shall be made to the appropriate department head or Town Supervisor as far in advance as possible. The department head and the Town Supervisor shall have the sole discretion in granting release time; however, such requests will not be unreasonably denied. An employee requesting such release time shall not leave the employee's worksite until the department head or Town Supervisor has approved it.

**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 the Town Supervisor have requested the meeting.

### **3.5 Leave for Negotiations**

**3.5.1 Eligible Employees:** Two employees designated by the Union will be allowed release time, without loss of pay or leave credits, to attend collective-bargaining negotiations scheduled by the Town and the Union.

**3.5.2 Requests for Release Time:** Requests for the use of release time shall be made to the appropriate department head as far in advance as possible. Requests will not be denied. An employee requesting such release time shall not leave the employee's worksite until the department head has approved it.

### **3.6 Leave for Union Conferences**

**3.6.1 Eligible Employees:** The Shop Steward will be allowed release time, without pay, to attend conferences and conventions of the Union. Such leave shall not exceed sixteen hours, in the aggregate, in any one year.

**3.6.2 Requests for Release Time:** Requests for the use of release time shall be made to the appropriate department head as far in advance as possible. The department head shall have the sole discretion in granting release time; however, such requests will not be unreasonably denied. An employee requesting such release time shall not leave the employee's worksite until the department head has approved it.

### **3.7 Access to Employees**

**3.7.1 Union Representatives:** The Union shall have the sole and exclusive right to designate its own representatives, direct and manage its own affairs, and have exclusive access to employees during the last half-hour of the workday, provided this access does not interrupt the performance of normal duties and responsibilities of employees.

### **3.8 Bulletin Boards**

**3.8.1. Location:** The Union shall have an exclusive bulletin board at the Town garage and one at the Town recycling plant.



## **4 EMPLOYEE RIGHTS**

### **4.1 Probation**

**4.1.1 Length of Probationary Period (Competitive Class):** The probationary period for an employee appointed to a position in the competitive class will be in accordance with the rules and regulations of the Ulster County Civil Service Department.

**4.1.2 Length of Probationary Period (Non-Competitive & Labor Classes):** Except as otherwise provided in the rules of the Ulster County Civil Service Department, an employee's original appointment to a position in the non-competitive, or labor class shall be for a probationary period of fifty-two weeks.

**4.1.3 Failure to Successfully Complete Probationary Period:** In the event the employee's performance or conduct is not satisfactory, the Town may dismiss the employee from employment or return the employee to the employee's previous position, as the case may be, 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.

**4.1.4 Temporary or Seasonal:** In the event a Temporary or Seasonal is hired as a regular full-time or regular part-time employee, such individual shall serve the applicable probationary period. However, if the Temporary or Seasonal is full-time (40 hours per week) and is promoted to a regular full-time employee, and there is no break in service, then the employee's original date of hire as a Temporary or Seasonal shall be the date the probationary period begins.

**4.1.5 Promotions and Transfers:** Refer to Article 5.

### **4.2 Seniority**

**4.2.1 Service Seniority:** Seniority will be determined by the employee's length of continuous service with the Town of Gardiner.

**4.2.2 Computation of Seniority:** For the purpose of calculating the length of service of a regular full-time employee, one year will be credited for each year of service beginning on the employee's initial date of hire as a regular full-time employee. For the purpose of calculating length of service of a regular part-time employee, one year of service will be credited for every 2080 hours of paid work and paid leave. In the event a regular part-time employee is appointed to a position as a regular full-time employee, the seniority accrued as a part-time employee will be added to the seniority as a full-time employee.

**4.2.3 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.

**4.2.4 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"; however, the employee's anniversary date will be extended for a period equivalent to the time of such leave.

**4.2.5 Workers' Compensation:** An employee who is on Workers' Compensation and is not on the payroll will continue to accrue seniority as if the employee was in regular pay status. Such leave will not be considered as a break in "continuous service" and the employee's anniversary date will not be adjusted.

### **4.3 Layoff Procedure**

**4.3.1 First to be Laid Off:** Upon the elimination of positions, demotions or layoffs will be undertaken based upon seniority and title. In the event of a reduction in the number of positions in a job title within the bargaining unit, the employee within the affected job title with the least service seniority will be the first to be laid off.

**4.3.2 Bumping Rights:** An employee who is laid off may displace (bump) an employee in an equal or lower job title within the bargaining unit, provided the employee has more service seniority than the employee being bumped and the employee meets the minimum qualifications of the job title. Following the same procedure, the employee who is bumped may displace an employee in an equal or lower job title within the bargaining unit. This process will be followed until the last employee who is eligible to bump has had the opportunity to do so.

### **4.4 Recall Procedure**

**4.4.1 Recall to Same Job Title:** In the event there is a vacancy in the job title where a layoff occurred, the laid-off employee who was within the affected job title with the most service seniority will be offered the position. This process will be followed until each laid-off employee who was within that job title has been recalled to that job title.

**4.4.2 Notice of Recall to Same Job Title:** The Town will notify the laid-off employee of the vacancy in 4.4.1 by means of certified mail sent to the employee's last known address. In the event the laid-off employee does not respond within fourteen calendar days, either in person or in writing, or the employee rejects the offer, the employee will forfeit all recall rights.

**4.4.3 Recall to Different Job Title:** In the event there is a vacancy following a layoff in a new or existing job title within the bargaining unit, the Town will post the position in accordance with 5.1.1, below, and the laid-off employee will be eligible to apply for the position in accordance with 5.1.2, below.

**4.4.4 Change of Address:** A laid-off employee must notify the Town, in writing, of any change of address or telephone number.

### **4.5 Performance Appraisal**

**4.5.1 Purpose and Criteria:** The purpose of performance appraisal is to evaluate an employee's 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.

**4.5.2 Frequency:** An employee will be formally evaluated at least once each year on a date determined by the appropriate department head. 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.

**4.5.3 Post-evaluation Conference:** After an evaluation, the department head will meet with the employee to review the employee's performance appraisal report.

**4.5.4 Deficiencies:** Should deficiencies be recorded in the performance of the employee, the employee will receive specific, reasonable, written recommendations for improvement.

**4.5.5 Employee Reply:** An employee's written reply, if any, will be attached to the performance appraisal report.

**4.5.6 Appeals:** An employee's performance appraisal may not be submitted to the Grievance Procedure. If the employee does not agree with the evaluation, the employee may appeal the matter to the Town Supervisor. The appeal must be submitted, in writing, no later than thirty calendar days from receiving the evaluation.

Within fourteen calendar days after receiving the appeal, the Town Supervisor will meet with the employee to discuss the employee's objections. Within seven calendar days after the meeting, the Town Supervisor will issue a written response, which will be given to the employee and attached to the original evaluation report.

## **4.6 Personnel File**

**4.6.1 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. Someone authorized by the Town Supervisor must be present when the employee inspects the file. An employee may not remove or place any material in the employee's personnel file without the approval of the Town Supervisor.

**4.6.2 Union Access:** With the written consent of the employee, a representative of the Union will be allowed to review and have copies made of the contents of the employee's personnel file, with the exception of letters of reference.

**4.6.3 Change in Status:** An employee must immediately notify the Town Clerk of a change of name, address, telephone number, marital status, number and age of dependents, beneficiary designations, and who to notify in case of emergency.

## **5 VACANCIES & PROMOTIONS**

### **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 seven calendar days on the Union bulletin boards. In the event that operational needs require the immediate filling of the vacancy, the Town may make a temporary appointment.

**5.1.2 Application:** Once a position has been posted, it shall be the employee's responsibility to apply on the vacancy by making a written application.

### **5.2 Appointment to Vacancies**

**5.2.1 Selection:** The Superintendent of Highways will be the sole judge with respect to the degree to which applicants for positions in the highway department meet job qualifications. The Town Board will be the sole judge with respect to the degree to which applicants for position of recycling coordinator meet job qualifications. The selection of internal and/or external applicants to fill positions will be at the sole discretion of the Superintendent of Highways or Town Board, as the case may be. Such action shall not be subject to the Grievance Procedure.

**5.2.2 Probationary Period (Promotion/Transfer):** An employee who is promoted or transferred into a new position shall be placed on probation for a period of twenty-six weeks. At any time during this period, the Town may rescind the promotion or transfer and the employee will be reinstated to the employee's previous position. Such action shall not be subject to the Grievance Procedure or Disciplinary Procedure. Similarly, at any time during this period, the employee may elect to be returned to the employee's previous position.

## **6 HOURS OF WORK**

### **6.1 Work Schedule**

**6.1.1 Workday:** The regular workday of all regular full-time employees in the Highway Department shall be eight and one-half consecutive hours from 6:30 a.m. to 3:00 p.m., inclusive of an unpaid lunch break. Up to two full-time employees hired after January 1, 2002 may be assigned to a 3:00 to 11:30 p.m. shift for the months of November through March if scheduled at least two weeks in advance. As of December 31, 2003 additional new full-time employees may be scheduled on the 3:00 to 11:30 p.m. shift for the months of November through March, so long as the ratio of at least two day shift employees per one evening shift employees is maintained.

Notwithstanding the above, the Town Supervisor will establish the recycling coordinator's hours of work 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 fourteen calendar days.

**6.1.2 Workweek:** The regular workweek of all regular full-time bargaining unit employees shall be forty work hours, Monday through Friday.

Notwithstanding the above, the Town Supervisor will establish the recycling coordinator's scheduled days of work to meet the particular needs and requirements of the department. Once established, the employee's scheduled days of work shall not be changed without an advance written notice of at least fourteen calendar days.

**6.1.3 Additional Hours of Work:** No employee shall work additional hours unless the employee was granted approval to perform such work by the appropriate department head.

#### **6.1.4 Procedure for Assigning Additional Hours:**

**Snow Removal** - In the event there is an opportunity to work additional hours for snow removal or due to emergency road conditions, the opportunity will first be offered to those regular full-time and regular part-time employees who are normally assigned to that route.

**All Other Work** - In the event there is an opportunity in a given job title to work additional hours for reasons other than snow removal or emergency road conditions, the opportunity will first be offered on a seniority basis (most senior first) to those regular full-time employees in the affected job title. In the event no employee volunteers (including regular part-time, temporary, and seasonal personnel), the work will be assigned on a seniority basis (least senior first) to those same regular full-time employees.

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

**6.1.6 Time Records:** An employee must record all hours worked in each workday in a manner to be determined by the Town. No time record will be altered by management without written notice to the employee.

## **6.2 Notification of Absence**

**6.2.1 Notification of Tardiness:** An employee must be ready and able to work at the time the employee is scheduled to begin work. In the event such employee is unable to report to work at the scheduled time, the employee must notify the appropriate supervisor at least thirty minutes before the employee's scheduled starting time.

**6.2.2 Notification of Sick Leave:** In the event an employee must take sick leave, the employee must notify the appropriate supervisor at least thirty minutes before the employee's scheduled reporting time. The notification must be made personally to the appropriate Department Head, unless the Department Head authorizes the use of an answering device for this purpose. Unless an extended sick leave absence has been authorized, the employee must notify the appropriate Department Head each day of the absence. Failure to give this notice will render the employee ineligible to use sick leave credits for the absence.

**6.2.3 Early Departure:** In the event an employee must leave work during the workday, the employee must notify the appropriate supervisor prior to leaving.

## **6.3 Meal and Break Periods**

**6.3.1 Meal Period:** Employees shall be entitled to a half-hour unpaid, duty-free lunch break as part of their eight and one-half hour shift. However, when work demands necessitate an employee to work through the half-hour lunch, that time will be paid.

Meal periods must be approved by the appropriate department head in accordance with the needs and requirements of the department. Meal periods will normally be between 12:00 noon and 12:30 p.m. Unless otherwise directed by the department head, an employee may leave the work-site during the meal period.

The Town will provide a meal allowance of ten dollars, which shall be paid to employees who are working upon "call-out". The employee is eligible for this allowance immediately upon "call-out". Meal allowance shall be applicable for each eight hours of overtime work.

**6.3.2 Rest Periods:** Paid, duty-free rest breaks not to exceed fifteen minutes in length will generally be scheduled with one during the first half of the workday and the other during 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 break 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.

Rest breaks will be taken on the job site and shall not be taken in the event of an emergency.

An employee who chooses not to take a rest break will not be entitled to leave before the normal quitting time and will not receive extra pay for the time worked.

## 7 COMPENSATION

### 7.1 Wage Rates

The schedule set forth below will be the applicable schedule for the period January 1, 2014 through December 31, 2016, which reflects an increase of 2.5% on January 1, 2014, an increase of 2.75% on January 1, 2015, and an increase of 3% on January 1, 2016.

	12-31-12	1-1-14	1-1-15	1-1-16
Motor Equipment Operator	\$20.47	\$20.98	\$21.56	\$22.21
Working Foreman ( <i>vacant</i> )	\$21.73	\$22.27	\$22.89	\$23.57
Working Supervisor	\$22.43	\$22.99	\$23.62	\$24.33

In the first payroll period of January 2014, each employee will receive a separate check of four hundred dollars.

In the first payroll period of January 2015, each employee will receive a separate check of four hundred dollars.

**7.1.2 Longevity Bonus:** A regular full-time will be eligible for a longevity bonus of three hundred dollars to be paid on the anniversary date of the employee's fifth year of continuous employment and again on the anniversary of the employee's sixth, seventh, eighth, and ninth year of continuous employment. A regular full-time will be eligible for a longevity bonus of six hundred dollars to be paid on the anniversary date of the employee's tenth year of continuous employment and again each year thereafter on the anniversary of the employee's succeeding years of continuous employment.

### 7.2 Premium Pay for Overtime

**7.2.1 Authorization:** No employee shall work additional hours unless the employee was granted approval to perform such work by the appropriate department head.

**7.2.2 Overtime Rate:** Except as otherwise provided in this Article, overtime for all employees is defined as all hours worked in excess of forty hours per week. Overtime shall be compensated at the rate of one and one-half times the employee's hourly pay and shall be granted in pay or time off at the discretion of the employee with the choice made within the week the hours were worked. Notwithstanding the above, the recycling coordinator may not take compensatory time in lieu of premium pay.

**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. All military leave will not be included as time worked in the computation of overtime.

**7.2.4 Compensatory Time:** In the event the employee chooses to receive compensatory time, the employee will be credited with the equivalent of one and one-half hours of compensatory leave credits for all authorized time worked over forty hours in a given workweek. Use of compensatory time shall be approved at the discretion of the Superintendent of Highways, who shall not unreasonably withhold approval.

**7.2.5 Maximum Conversion of Compensatory Time:** An employee may not convert more than sixty hours into compensatory leave time in any given calendar year (equaling ninety hours of compensatory time). An employee must use all compensatory leave credits within the calendar year in which it is earned or receive payment at the end of the calendar year at the employee's then current rate of pay.

**7.2.6 Termination from Employment:** An employee who resigns, retires, is laid off, or leaves employment due to disciplinary action, will receive payment for unused compensatory credits to which the employee is properly entitled at the employee's then current rate of pay.

### **7.3 Out-of-Title Pay**

**7.3.1 Authorization:** The appropriate department head may require an employee to work out-of-title. Any such hours must first be approved by the department head.

**7.3.2 Compensation:** In the event an employee is assigned to assume the major duties and responsibilities of a higher paying job title, the employee will receive the established job rate for the higher title for the period of the assignment. Assignment of work in a lower classification shall not result in a diminution of the employee's hourly rate of pay.

### **7.4 Call-In Pay**

**7.4.1 Compensation:** Should an employee be called in to return to work after finishing for the day, said employee shall be paid for a minimum of four hours, regardless of the duration of the job.

**7.4.2 Weekend or Holidays Emergencies:** Any employee called in to work on the basis of an emergency on any Sunday or holiday shall be compensated at the time and one-half rate.

**7.4.3 Start Time:** The "call-in pay" for an employee who is called in for additional duty will begin when the first call is made, however, in no event will more than 45 minutes be paid.

### **7.5 Call-Out Incentive**

**7.5.1 Compensation:** In recognition that certain employees are engaged in snow and ice removal activities and must be responsive to unscheduled call-outs, and to ensure an acceptable level of service by such employees, the following incentive response plan will be in operation beginning with the 2010-2011 snow and ice removal season (effective 11-15-2010):

In instances where an employee is called out ten or more times during the season and

Responds to:	Will Receive:
75% of calls	\$300
85% of calls	\$350
95% of calls	\$400

**7.5.2 Payment Date:** The incentive response payment will be in the form of a separate lump-sum check to be paid at the end of the season, but no later than June 15<sup>th</sup>.

### **7.6 Pay Period**

**7.6.1 Pay Records:** The Town may determine the methods and procedures for recording time worked.

**7.6.2 Pay Day:** The wages of employees shall be paid on the same day in each bi-weekly pay period. Payment shall be by direct deposit. In the event such day falls on a holiday, the preceding day shall be the payday.

## 8 PAID LEAVE

### 8.1 Holidays

**8.1.1 Designated Holidays:** The following holidays will be observed on the day designated by the Town.

- New Year's Day
- Martin Luther King Day
- Presidents' Day
- Memorial Day
- Independence Day
- Labor Day
- Columbus Day
- Veterans' Day
- Thanksgiving Day
- Day after Thanksgiving
- Christmas Eve
- Christmas

In the event non-bargaining unit employees receive an increase in the number of holidays, then the bargaining unit employees will receive the same increase.

**8.1.2 Holiday Occurs on Days Off (recycling center only):** In the event a designated holiday occurs on a day for which a full-time employee at the recycling center was not scheduled to work, the holiday for such employee will be observed either on the preceding regularly scheduled day of work or on the succeeding regularly day of work, as determined between the employee and the Department Head. For example, if the holiday occurs on a Friday and that day and the preceding Thursday are the employee's regularly scheduled days off, the employee would observe the holiday on the preceding Wednesday or following Saturday.

**8.1.3 Holiday Pay:** A regular full-time or regular part-time employee who does not work on a day designated as a holiday will be paid for the day at the employee's regular daily rate of pay the part-time employee will not be paid for the day if the day the holiday is observed by the Town is not a normally scheduled workday.

**8.1.4 Assigned to Work on a Holiday:** 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" or, with the approval of the appropriate department head, the employee will be paid for all hours worked at the employee's regular rate of pay and such employee will receive an equal amount of time off with pay at a mutually agreed upon date within three months following the holiday.

In the event an employee is assigned to work on the date of January 1<sup>st</sup>, July 4<sup>th</sup>, Thanksgiving Day, or December 25<sup>th</sup>, the employee will be paid for all hours worked at two times the employee's regular hourly rate rather than one and one-half times.

**8.1.5 Holiday During Scheduled Leave:** In the event a designated holiday occurs on an employee's normal workday and the employee is on paid vacation leave, paid sick leave, or paid bereavement leave, the employee will receive holiday pay for the day and the employee's other leave credits will not be charged for that day.



## 8.2 Vacation Leave

**8.2.1 Allowance:** A regular full-time employee shall earn vacation credits on a monthly basis starting from the date of hire in accordance with the following schedule, starting from the date of hire.

	CREDITS PER MONTH
Upon hire through 1 <sup>st</sup> year of continuous service	3.33 hours
After completion of 1 year of continuous service (beginning of 2 <sup>nd</sup> )	6.67 hours
After completion of 4 years of continuous service (beginning of 5 <sup>th</sup> ) - hired before 1-1-2014	10.00 hours
After completion of 6 years of continuous service (beginning of 7 <sup>th</sup> ) - hired on or after 1-1-2014	10.00 hours
After completion of 14 years of continuous service (beginning of 15 <sup>th</sup> )	13.33 hours

**Special Vacation Period for 2014:** In addition the Superintendent of Highways will designate one calendar week during 2014 in which all employees will receive a paid leave of absence.

**8.2.2 Part-Time Employees:** A regular part-time employee is not eligible for paid vacation leave but may be allowed to take time-off without pay provided the individual has prior approval from the appropriate department head.

**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, including an unpaid leave of absence due to a Workers' Compensation claim.

**8.2.4 Accumulation:** Unused vacation may be carried over to the next calendar year, but total available vacation may not exceed two hundred and forty hours (thirty eight-hour days) at the close of the last business day of the calendar year. Any vacation credits in excess of two hundred and forty hours at the close of the last business day of the calendar year 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 one hundred and twenty calendar days.

**8.2.5 Scheduling:** An employee must receive prior approval from the appropriate department head to take vacation leave. No vacation request shall be unreasonably denied. An employee shall not be permitted to take a vacation of more than two consecutive weeks. Vacation may be taken in increments of not less than four hours (one-half days). An employee may take vacation leave only after it has been credited.

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.

**8.2.6 Termination of Employment:** An employee who resigns, retires, or is laid off will receive payment for unused vacation leave at the employee's then current rate of pay. In the event an employee is terminated for "just cause", the employee will not receive payment for unused vacation leave.

## 8.3 Sick Leave

**8.3.1 Allowance:** A regular full-time employee will be credited with eight hours of paid sick leave each month. A regular part-time employee regularly scheduled to work thirty to thirty-four hours per week will be credited with six hours of paid sick leave each month. A part-time employee regularly scheduled to work twenty to thirty hours per week will be credited with four hours of paid sick leave each month. The employee will be credited on the first day of the month after it has been earned.

**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 a regular full-time employee will be credited with forty-eight hours of paid sick leave and a regular part-time employee regularly scheduled to work thirty to thirty-four hours per year will be credited with thirty-six hours of paid sick leave, and a part-time employee regularly scheduled to work twenty to thirty hours per year will be credited with twenty-four 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, including 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 loss during an illness or injury and not a leave benefit to which the employee is automatically entitled. 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 may not be used to extend a vacation. Sick time must be taken in one-half hour increments. An employee may take paid sick leave only after it has been credited.

**8.3.6 Family Sick Leave:** An employee may use accumulated 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 notify the appropriate supervisor at least thirty minutes before the employee's scheduled reporting time. The notification must be made personally to the appropriate Department Head, unless the Department Head authorizes the use of an answering device for this purpose. Unless an extended sick leave absence has been authorized, the employee must notify the appropriate Department Head each day of the absence. Failure to give this notice 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. It is agreed between the parties that "pattern absenteeism" shall be prohibited. 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. If the employee is paid for a portion of the total accumulated sick leave credits or applies credits toward retiree medical insurance, only the remaining unpaid portion will be used to increase the employee's service credit at retirement.

**8.3.10 Termination of Employment:** An employee who resigns, retires, is laid off, or is terminated for "just cause" will not receive payment for unused sick leave credits. However, upon an employee's retirement in the New York State retirement system, the employee will be able to convert up to seven hundred and twenty-five hours of accumulated sick leave credits, at the employee's then current rate of pay, to pay for future premium payments for the medical insurance plan offered through the Town. The Town will administer such payments, with the retiree's monthly premium payments being drawn each month from the retiree's accumulated sick leave credits.

## **8.4 Personal Leave**

**8.4.1 Allowance:** A regular full-time employee hired **before** January 1, 2014 shall receive **forty-eight** hours of paid personal leave each year. A regular full-time employee hired on or **after** January 1, 2014 shall receive **thirty-two** hours of paid personal leave each year. A regular part-time employee regularly scheduled to work at least twenty hours per week shall receive sixteen hours of paid personal leave each year.

**8.4.2 Date Credited:** An eligible employee will be credited ("front-loaded") with personal leave on the first day of January of each year for use during that calendar year.

**8.4.3 New Employees:** A regular full-time employee who is hired **after** the first day of January in any given year will be credited with paid personal leave prorated by the number of months to be worked in the first calendar year of employment. For example, a full-time employee who is hired on April 1<sup>st</sup> will be credited with twenty-four hours of paid personal leave; an employee who is hired on October 1<sup>st</sup> will be credited with eight hours of paid personal leave. Thereafter, the employee will be credited on the first day of January for use during that year.

**8.4.4 Accumulation:** Personal days do not carry over or accumulate. Any personal leave credits remaining unused at close of business on the last day of the calendar year will be **converted to sick leave credits**.

**8.4.5 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. Personal leave may not be used to extend a vacation. Personal time must be taken in hourly increments. An employee may take personal leave only after it has been credited.

**8.4.6 Scheduling:** An employee must receive prior approval from the appropriate department head to take personal leave. The request must be submitted, in writing, to the department head at least two workdays in advance. In the event there is an unforeseen emergency, the requirement for advance notice will be waived. The department head will have total discretion in the approval of personal leave.

**8.4.7 Termination of Employment:** An employee who resigns, retires, is laid off, or is terminated for "just cause" will not receive payment for unused personal leave credits.

## 8.5 Bereavement Leave

**8.5.1 Immediate Family:** In the event of a death of a full-time 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. The employee must have completed the probationary period to be eligible for this benefit.

For purposes of bereavement leave, "immediate family member" is defined as an employee's spouse or domestic partner, child (including step or foster), parent or legal guardian, grandparent, grandchild, and spouse's parents. Other in-laws shall not be considered immediate family.

**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 family member". The request must be submitted, in writing, to the appropriate department head. The department head shall have total discretion in the approval of such additional unpaid bereavement leave.

**8.5.3 Extended Family:** A regular full-time employee may be granted two unpaid days leave for loss of a relative not considered immediate family. 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 unpaid bereavement leave.

**8.5.4 Part-Time Employees:** A regular part-time employee is not eligible for paid bereavement leave but may be allowed to take time-off without pay provided the individual has prior approval from the Superintendent of Highways.

## 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. Such leave will not be subtracted from any of the employee's leave credits. A part-time employee shall receive paid jury duty leave if the employee is scheduled to work for the Town on the day the jury duty is served. An employee is obligated to notify the Commissioner of Jurors that the Town is paying the employee's full pay during jury duty. An employee can collect and keep any mileage expense reimbursement that may be issued by the court system for performing jury duty.

**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 appropriate department head.

**8.6.3 Return to Duty:** In the event the employee is released from jury duty on a given day and there are two or more hours remaining in the employee's scheduled workday, the employee must report to work. The employee will be allotted time to return home and prepare for work.

## 8.7 Fire Calls

**8.7.1 Leave of Absence:** Regular full-time and regular part-time employees who are volunteer members of the Gardiner or Shawangunk Fire Departments will be permitted to attend fire calls during working hours without loss of pay or leave credits. In such event, the employee shall be required to submit to the appropriate department head verification of the employee's attendance at such call.

**8.7.2 Court-Issued Subpoena:** An employee who is required by order of a Court-issued subpoena to appear as a witness to an incident related to the employee's role as a volunteer firefighter, and in which the employee is not personally involved as a plaintiff or defendant, shall be granted leave without loss of pay or leave credits.

**8.7.3 Notification of Subpoena:** When an employee receives said subpoena, the employee must immediately submit a copy to the appropriate department head.

**8.7.4 Return to Duty:** When the employee is dismissed from court and there are two or more hours remaining in the employee's scheduled workday, the employee must report to work. The employee will be allotted time to return home and prepare for work.

## **8.8 Military Leave**

**8.8.1 Leave of Absence:** Regular full-time employees who are members of the National Guard or any reserve unit of the United States Armed Forces shall receive the difference between their military pay and their base rate of pay up to a maximum of twenty-two work days or thirty calendar days, whichever is more, if they are required to be absent from work. A copy of their orders must be given to the appropriate department head before leaving and a copy of their pay sheet must be submitted to the Town Supervisor upon returning to work.

# **9 UNPAID LEAVE**

## **9.1 Unpaid Leaves of Absence**

**9.1.1 General Terms:** Absences taken beyond an employee's leave accruals shall be considered unauthorized unless prior written approval has been given from the Town Supervisor. 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, personal illness, 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 Supervisor at least thirty calendar days prior to planned 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, in its discretion, 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 returning to work from an unpaid leave must submit request to return to work, in writing, to the Town Supervisor, at least fourteen calendar days in advance. If the employee's previous job cannot be vacated upon return, the employee will be given the first open position within the bargaining unit in an equal or lower position, provided the employee is qualified to perform the job duties.

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:** The Town will make available a medical insurance plan and a prescription drug plan to each full-time employee and the employee's eligible family. 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 bill or other expense not covered or reimbursed by the plan.

**10.1.2 Date Coverage Begins:** Coverage will begin on the first day of the month following the employee's first day of employment, provided the employee meets all eligibility requirements of the insurance plan and has completed the insurance application prior to the first day of employment. Enrollment in a medical insurance plan is not automatic. An employee must complete and submit the necessary enrollment forms to the Town Supervisor on time.

**10.1.3 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 is substantially equivalent to the then current plan, and provided that the Union is given written notice at least thirty calendar days before the effective date of the proposed change and/or alternative. The Union reserves the right to bargain over the impact of any proposed change and/or alternative as provided for herein.

**10.1.4 Premium Payment:** For an eligible regular full-time employee hired **before** January 1, 2004, the Town will pay the **full** premium of the medical insurance plan (individual and dependent, if applicable).

For an eligible regular full-time employee hired on or **after** January 1, 2004 but before January 1, 2014, the Town will pay **eighty-five** percent of the full premium of the medical insurance plan (individual and dependent, if applicable) and the employee will pay the remaining fifteen percent.

For an eligible regular full-time employee hired on or **after** January 1, 2014, the Town will pay **eighty** percent of the full premium of the medical insurance plan (individual and dependent, if applicable) and the employee will pay the remaining twenty percent.

The employee's contribution to the medical insurance premium will be deducted from the employee's regular paycheck. The employee may elect to have such deduction made on a pre-tax basis in accordance with Section 125 of the Internal Revenue Code.

### **10.2 Flexible Spending Account**

**10.2.1 Eligibility:** The Town will make available a Pre-Tax Contribution Program in accordance with Section 125 of the Internal Revenue Service Code to each regular full-time employee, provided the employee meets all eligibility requirements for medical insurance.

### **10.3 Medical Insurance Buy-Out**

**10.3.1 Eligibility:** A regular full-time employee who is covered by health insurance from another source, and is eligible for medical insurance coverage made available through the Town, may elect not to receive health insurance from the Town and receive a cash buy-out in lieu of receiving medical insurance benefits. To be eligible for the medical insurance buy-out, the employee must provide documentation of comparable medical insurance coverage in a manner and form to be determined by the Town and sign an appropriate waiver of medical insurance coverage and waiver of liability to the Town. In the event an employee is married to another employee of the Town who is eligible for medical insurance, they must enroll in either two individual plans or the same plan (two-person or family) and will not be eligible for this buy-out.

**10.3.2 Amount of Buy-Out:** If the employee is eligible for individual coverage, the employee will receive an amount equivalent to forty percent of the Town's annual premium contribution for individual coverage. If the employee is eligible for dependent coverage, the employee will receive an amount equivalent to forty percent of the Town's annual premium contribution for dependent coverage.

**10.3.3 Method of Payment:** Partial payment of the buy-out (1/26<sup>th</sup> of the annual premium) will be made in the employee's regular biweekly paycheck for each pay-period the employee is eligible for the buy-out.

**10.3.4 Reinstatement:** In the event the employee becomes ineligible for health insurance from the other source, at which time the employee may re-enroll in the Town health insurance plans for the remainder of the year so long as consistent with Plan documents. Coverage will begin on the first of the month immediately following the employee giving notice, provided the employee gives sufficient advance notice prior to the first of the month and meets all eligibility requirements of the insurance plan. An employee may also elect to resume coverage under the medical insurance plan during the annual open enrollment period.

## **10.4 Workers' Compensation Insurance**

**10.4.1 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.

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

**10.4.3 Reporting of Injury:** An employee should report an injury to the appropriate department head within twenty-four hours of the occurrence in order to ensure prompt coverage of the claim. In the event the employee is unable to complete the forms due to the injury or illness, the department head will complete and submit the required forms on behalf of the employee.

**10.4.4 Use of Leave Credits:** An employee may draw from the employee's sick leave credits, then compensatory leave credits, then personal leave credits, and 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.

**10.4.5 Continuation of Medical Insurance:** The Town will continue medical insurance coverage for the employee in accordance with the provisions of the Town's Family and Medical Leave Policy. Thereafter, an employee who is receiving Workers' Compensation payments for lost time AND is drawing full pay by using accrued leave credits will continue to receive medical insurance benefits and the Town will continue to make its contributions provided the employee makes the required employee contribution. If the employee has exhausted all leave credits, the employee may continue to be eligible for medical insurance coverage in accordance with COBRA.

## 10.5 Short-Term Disability Insurance

**10.5.1 Coverage:** The Town will make available a short-term disability plan for non-job-related injuries or illnesses that meets the minimum requirements of New York State Disability Insurance. The insurance company makes the determination of whether an employee is eligible for short-term disability benefits.

**10.5.2 Plan:** The Town may, at its discretion, change carriers and/or offer an alternative short-term disability plan.

**10.5.3 Premium Payment:** The Town will pay the full premium for short-term disability insurance for each eligible employee.

**10.5.4 Reporting of Injury:** To ensure prompt coverage of the claim, the employee should submit a report of the illness or injury to the appropriate Department Head, on the proper form, within twenty-four hours of the occurrence.

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

**10.5.6 Continuation of Medical Insurance:** The Town will continue medical insurance coverage for the employee in accordance with the provisions of the Town's Family and Medical Leave Policy. Thereafter, an employee who is receiving short term disability payments under this plan AND is drawing full pay by using accrued leave credits will continue to receive medical insurance benefits and the Town will continue to make its contributions for up to a maximum of one year provided the employee makes the required employee contribution. If the employee has exhausted all leave credits, the employee may continue to be eligible for medical insurance coverage in accordance with COBRA.

## 11 GENERAL PROVISIONS

### 11.1 Work Accouterments

**11.1.1 Safety Equipment:** The Town will provide protective clothing and equipment as provided by PESH standards. An employee must wear all required protective gear while performing work.

**11.1.2 Uniforms:** The Town will provide uniforms. An employee must wear the issued uniform while performing work for the Town of Gardiner. An employee may not wear the issued uniform to perform work for oneself or another concern or for recreation.

**11.1.3 Work Shoes:** The Town shall reimburse a regular full-time employee up to one hundred fifty dollars per contract year towards the cost of OSHA-approved work shoes or boots. Submission of receipts will be required prior to reimbursement.

The Town reserves the right to prohibit employees from wearing "sneakers" or other non-OSHA approved footwear to work. An employee who reports to work wearing such footwear may be ordered to leave and return wearing proper shoes or boots. The employee shall not be paid for the amount of time required to return to work wearing proper footwear.



**11.1.4 Work Jackets:** The Town shall reimburse a regular full-time employee up to one hundred and fifty dollars per contract year towards the cost of a work jacket (e.g. Carhart). Submission of receipts will be required prior to reimbursement.

**11.1.5 Tools & Equipment:** The Town will provide all necessary tools and equipment required to employees to perform job duties. Employees are responsible for proper care and use of all tools and equipment.

## **11.2 Travel Expenses**

**11.2.1 Employee's Vehicle:** The Town will pay the IRS mileage rate for employees required to use their own vehicles in the pursuit of Town business, excluding normal commute. The Town will not normally require any employee to use the employee's own vehicle to perform Town work. A Town employee will not normally be denied use of a Town vehicle for approved Town business.

## **11.3 Job Descriptions**

**11.3.1 Copies:** All employees will be supplied a copy of their Town of Gardiner job description.

## **11.4 Driver's License**

**11.4.1 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.

**11.4.2 Requirement to Possess a Commercial Driver's License:** An employee hired as a Motor Equipment Operator must possess a Commercial Drivers License at the time of appointment. An employee who operates a vehicle that requires a Commercial Driver's License (CDL) must maintain such license throughout employment. Effective January 1, 2009, the Town will reimburse an employee for the difference in the cost between a regular driver's license and a CDL.

**11.4.3 Loss or Suspension of Commercial Driver's License:** 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.

## **11.5 Limited Duty Program**

**11.5.1 Preamble:** The purpose of this Limited 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 or Town Supervisor may, on a case-by-case basis, require such employee to return to work in a limited duty assignment. The exercise of this Limited Duty Program shall not establish any precedent or commitment to provide limited duty assignments to any other employee at any time in the future.

**11.5.2 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.

**11.5.3 Limited 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.

**11.5.4 Wages and Benefits:** While performing a limited duty assignment, the employee shall receive the employee's regular hourly rate of pay and receive those benefits provided to regular full-time employees set forth in this collective bargaining agreement.

**11.5.5 Duration of Assignment:** A limited 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.

**11.5.6 Refusal of Assignment:** In the event the employee refuses a limited duty assignment, the employee will be referred to the Town's current insurance carrier for a benefit determination and may be subject to appropriate disciplinary action.

## **12 DUE PROCESS PROCEDURES**

### **12.1 Grievance Procedure**

**12.1.1 Purpose:** It is the policy of the parties that all grievances be resolved at the earliest possible state of the grievance procedure. Both parties recognize that the procedure must be available without any fear of discrimination because of its use. Formal or informal settlements at any stage of the grievance procedure shall bind the parties to the settlement but shall not be precedents in a later grievance proceeding.

**12.1.2 Definition:** For the purposes of this collective bargaining agreement, a grievance is a claimed violation or misinterpretation of any of the expressed provisions of this collective bargaining agreement, and shall be subject to all steps of this grievance and arbitration procedure if timely filed at each step.

**12.1.3 Informal Grievance:** The employee may present the employee's grievance within fourteen calendar days after the date on which the action or omission giving rise to the grievance occurred. Before the submission of a formal written grievance, the aggrieved party or the Shop Steward should attempt to resolve the grievance verbally with the appropriate department head.

**12.1.4 Step One - Formal Grievance:** If the grievance is not resolved informally within seven calendar days of its presentation to the department head, the Union may file a formal complaint on behalf of an aggrieved employee(s).

The grievance shall be reduced to writing and submitted to the appropriate department head. The grievance shall identify the section of the collective bargaining agreement that has been violated and shall include a statement of facts, times, and dates and the remedy sought.

The department head shall meet with the aggrieved employee(s), the Shop Steward, and the Union representative within fourteen calendar days of the submission of the grievance. The department head shall render a decision in writing no later than twenty-one calendar days after the meeting, which shall be given to the Shop Steward.

**12.1.5 Step Two - Appeal:** If the Union is not satisfied with the response at Step One, or if no response is received within twenty-one calendar days, or if such decision by the department head is not implemented, the Union may submit the grievance to the Town Board. The appeal must be submitted, in writing, within fourteen calendar days from receiving the Step One response, or the end of the twenty-one calendar day period if no response is given, whichever is sooner.

The Town Board shall have forty-five calendar days after receiving the appeal to issue a written response to the grievance.

**12.1.6 Step Three - Binding Arbitration:** If the Union is not satisfied with the response from the Town Board, or if the Step Two grievance is not resolved by the Town Board within the forty-five calendar days, the Union may submit the grievance to arbitration by filing a demand for arbitration with the New York State Public Employment Relations Board in accordance with its rules and regulations.

The demand for arbitration must be filed within thirty calendar days from receiving the Step Two response or when the Step Two response should have been received.

The conduct of the arbitration shall be under the exclusive jurisdiction and control of the arbitrator, which shall conform to applicable law. The arbitrator's decision shall be in writing and shall be final and binding upon all parties. The arbitrator shall have no power to alter, add to, or detract from this collective bargaining agreement. The fees of the arbitrator shall be paid equally by the Town and the Union.

**12.1.7 Time Limits:** The failure of the Union or aggrieved employee to timely file at any stage of the process shall be deemed a waiver of the claim. Failure of the Town to respond shall allow the Union to immediately proceed to the next step of the process. 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.

## **12.2 Disciplinary Procedure**

**12.2.1 Proper Cause:** All new employees shall be subject to a one-year probationary period, (refer to section 4.1, above), during which the employee may be terminated without reason. Where an employee has served beyond such probationary period, all matters of discipline after the one-year period may be subject to the procedure set forth in this section in the event that the Union claims that such disciplinary action was not based upon proper cause.

**12.2.2 Notice of Discipline:** If an employee who has completed the probationary period is presented with a Notice of Discipline, the Town will make available to that employee a written Notice of Discipline, which will contain all charges and specifications and the proposed penalty.

**12.2.3 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 will meet with the disciplined employee and the designated representative of the Union. Within seven calendar days after said meeting, the Town Supervisor will issue a written response, which shall be given to the designated representative of the Union.

**12.2.4 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 New York State Public Employment Relations Board 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 conduct of the arbitration shall be under the exclusive jurisdiction and control of the arbitrator, which shall conform to applicable law. The arbitrator's decision shall be in writing and shall be final and binding upon all parties. The arbitrator shall have no power to alter, add to, or detract from this collective bargaining agreement. The fees of the arbitrator shall be paid equally by the Town and the Union.

**12.2.5 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.

## **13 APPLICATION OF AGREEMENT**

### **13.1 Duration of Agreement**

**13.1.1** This collective bargaining agreement will be effective from January 1, 2014 through December 31, 2016, unless otherwise agreed to by the parties.

### **13.2 Savings Clause**

**13.2.1** In the event that any provisions or applications of this collective bargaining agreement shall at any time be declared invalid by a court or any other tribunal of competent jurisdiction or through government regulations or decrees, such decision shall not affect any of the other provisions of this collective bargaining agreement, it being the express intention of the parties hereto that all other provisions not declared invalid shall remain in full force and effect. Upon the issuance of such decision, the Town and the Union shall negotiate an adjustment in the affected provisions or applications with the intention of effecting the purpose of the provisions or applications.

**13.2.2** Any article or provision in this collective bargaining agreement construed to be in violation of the New York State Civil Service law shall be deemed to be excised from this collective bargaining agreement.

### **13.3 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.

### 13.4 Execution of Agreement

The parties have caused this Collective Bargaining Agreement to be signed by their respective representatives.

**TOWN OF GARDINER**

**UNITED PUBLIC SERVICE EMPLOYEES UNION**

\_\_\_\_\_  
**Carl Zatz**  
**Town Supervisor**

\_\_\_\_\_  
**Kevin E. Boyle, Jr.**  
**President**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Michael A. Richardson**  
**Labor Relations Consultant**

\_\_\_\_\_  
**Michael Kutski**  
**Labor Relations Specialist**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Matthew Aube**  
**Negotiating Team**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Brian Stiscia**  
**Negotiating Team**

\_\_\_\_\_  
**Date**