



THE CITY OF NEW YORK
OFFICE OF LABOR RELATIONS
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JAMES F. HANLEY
Commissioner

TO: HEADS OF CONCERNED CITY DEPARTMENTS AND AGENCIES

FROM: JAMES F. HANLEY, COMMISSIONER

SUBJECT: EXECUTED CONTRACT: School Crossing Guards

TERM: MARCH 3, 2008 – MARCH 2, 2010

Attached for your information and guidance is a copy of the executed contract entered into by the Commissioner of Labor Relations on behalf of the City of New York and District Council 37 on behalf of the incumbents of positions listed in Article I of said contract.

The contract incorporates terms of an agreement reached through collective bargaining negotiations and related procedures.

DATED: April 6, 2012

OFFICE OF LABOR RELATIONS REGISTRATION	
OFFICIAL	CONTRACT
NO: 12004	DATE: April 6, 2012

School Crossing Guards

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Appendix A

AGREEMENT entered into this ^{6th} day of April, 2012
by and between the City of New York and related public employers pursuant to and limited to their respective elections or statutory requirement to be covered by the New York City Collective Bargaining Law and their respective authorizations to the City to bargain on their behalf (hereinafter referred to jointly as the "**Employer**"), and Local 372, and District Council 37, A.F.S.C.M.E., AFL-CIO (hereinafter referred to as the "**Union**"), for the twenty-four (24) month period from March 3, 2008 to March 2, 2010.

WITNESSETH:

WHEREAS, the parties hereto have entered into collective bargaining and desire to reduce the results thereof to writing,

NOW, THEREFORE, it is mutually agreed as follows:

ARTICLE I - UNION RECOGNITION AND UNIT DESIGNATION

Section 1.

The **Employer** recognizes the **Union** as the sole and exclusive collective bargaining representative for the bargaining unit set forth below, consisting of employees of the **Employer**, wherever employed, whether full-time, part-time, per annum, hourly or per diem, in the below listed title, and in any successor title(s) that may be certified by the **Board of Certification of the Office of Collective Bargaining** to be part of the unit herein for which the Union is the exclusive collective bargaining representative and in any positions in Restored Rule X titles of the Classified Service the duties of which are or shall be equated by the City Personnel Director and the Director of the Budget for salary purposes to the below listed title:

70205 School Crossing Guard

Section 2.

The terms "employee" and "employees" as used in this **Agreement** shall mean only those persons in the unit described in Section 1 of this Article.

ARTICLE II - DUES CHECKOFF

Section 1.

- a. The **Union** shall have the exclusive right to the checkoff and transmittal of dues on behalf of each **employee** in accordance with the Mayor's Executive Order No. 98, dated May 15, 1969, entitled "**Regulations Relating to the Checkoff of Union Dues**" and in accordance with the Mayor's Executive Order No. 107, dated December 29, 1986, entitled "**Procedures for Orderly Payroll Check-Off of Union Dues and Agency Shop Fees.**"

- b. Any **employee** may consent in writing to the authorization of the deduction of dues from the **employee's** wages and to the designation of the Union as the recipient thereof. Such consent, if given, shall be in a proper form acceptable to the City, which bears the signature of the **employee**.

Section 2.

The parties agree to an agency shop to the extent permitted by applicable law, as described in a supplemental agreement hereby incorporated by reference into this **Agreement**.

ARTICLE III - SALARIES

Section 1.

The maximum salary for a title shall not constitute a bar to the payment of any salary adjustment or pay differentials provided for in this **Agreement** but the said increase above the maximum shall not be deemed a promotion.

Section 2.

Employees in the title School Crossing Guard shall be subject to the following specified hourly salary rates:

a. Effective 3/3/08

	Hiring rate *	Incumbent Rate Hired after 6/30/86 w/ 1 year of service	hired Between 7/1/85 6/30/86	hired between 7/1/84 6/30/85	hired before 7/1/84
Appt. Rate	\$9.50	\$10.92	\$11.21	\$11.41	\$11.63
After 1 yr.	\$9.874	\$11.35	\$11.62	\$11.81	\$11.98
After 2 yrs.		\$11.59	\$11.82	\$12.01	\$12.19
After 3 yrs.		\$12.40	\$12.64	\$12.76	\$12.91

b. Effective 3/3/09

	Hiring rate *	Incumbent Rate Hired after 6/30/86 w/ 1 year of service	hired Between 7/1/85 6/30/86	hired between 7/1/84 6/30/85	hired before 7/1/84
Appt. Rate	\$9.88	\$11.36	\$11.66	\$11.87	\$12.10
After 1 yr.	\$10.26	\$11.80	\$12.08	\$12.28	\$12.46
After 2 yrs.		\$12.05	\$12.29	\$12.49	\$12.68
After 3 yrs.		\$12.90	\$13.15	\$13.27	\$13.43

NOTE: * See Article III, Section 4 (New Hires).

Section 3.

A. General Wage Increase

- a.** The general increases, effective as indicated, shall be:
- i.** Effective March 3, 2008, Employees shall receive a general increase of 4%.
 - ii.** Effective March 3, 2009, Employees shall receive an additional general increase of 4%.
 - iii.** Part-time per annum, per session, hourly paid and per diem Employees (including seasonal appointees) and Employees whose normal work year is less than a full calendar year shall receive the increases provided in subsections 3B(a)(i) and 3B(a)(ii) on the basis of computations heretofore utilized by the parties for all such Employees.
- b.** The increases provided for in Section 3(a) above shall be calculated as follows:
- i.** The general increase in Section 3(a)(i) shall be based upon the base rates (including salary or incremental salary schedules) of the applicable titles in effect on March 2, 2008;
 - ii.** The general increase in Section 3(a)(ii) shall be based upon the base rates (including salary or incremental salary schedules) of the applicable titles in effect on March 2, 2009.
- c.**
- i.** The general increases provided for in this Section 3 shall be applied to the base rates, incremental salary levels and the minimum "hiring rates," minimum "incumbent rates" and maximum rates (including levels), if any, fixed for the applicable titles.
 - ii.** A general increase of 5.47%, effective on the last day of the Agreement, and consistent with the terms of the Stipulation of Settlement (A-13472-10; BCB 2864-10) shall be applied to the following "additions to gross": uniform allowances, equipment allowances, transportation allowances, uniform maintenance allowances, assignment differentials, service increments, longevity differentials, longevity increments, advancement increases, assignment (level) increases, and experience, certification, educational, license, evening, or night shift differentials.

Section 4. New Hires

- a.** The appointment rate for an employee newly hired on or after March 3, 2008 and appointed at a reduced hiring rate shall be the applicable minimum "hiring rate" set forth in subsections 2(a)(i)(1) and 2(b)(i)(1). On the two year anniversary of the employee's original date of appointment, such employee shall be paid the indicated minimum "incumbent rate" for the applicable title that is in effect on such two year anniversary as set forth in subsection 2(a)(i)(2) and 2(b)(i)(2) of this Article III.

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b. i. For a title subject to an incremental pay plan, the employee shall be paid the appropriate increment based upon the employee's length of service. Section 2 of this Article III reflects the correct amounts and has been adjusted in accordance with the provisions of Section 3(c)(i) of this Article III.

ii. Employees who change titles or levels before attaining two years of service will be treated in the new title or level as if they had been originally appointed to said title or level on their original hiring date.

c. For the purposes of Sections 4(a) and 4(b), employees 1) who were in active pay status before March 2, 2008, and 2) who are affected by the following personnel actions after said date shall not be treated as "newly hired" employees and shall be entitled to receive the indicated minimum "incumbent rate" set forth in subsections 2(a)(i)(2) and 2(b)(i)(2) of this Article III:

i. Employees who return to active status from an approved leave of absence.

ii. Employees in active status (whether full or part-time) appointed to permanent status from a civil service list, or to a new title (regardless of jurisdictional class or civil service status) without a break in service of more than 31 days.

iii. Employees who were laid off or terminated for economic reasons who are appointed from a recall/preferred list or who were subject to involuntary redeployment.

iv. Provisional employees who were terminated due to a civil service list who are appointed from a civil service list within one year of such termination.

v. Permanent employees who resign and are reinstated or who are appointed from a civil service list within one year of such resignation.

vi. Employees (regardless of jurisdictional class or civil service status) who resign and return within 31 days of such resignation.

vii. A provisional employee who is appointed directly from one provisional appointment to another.

viii. For employees whose circumstances were not anticipated by the parties, the First Deputy Commissioner of Labor Relations is empowered to issue, on a case-by-case basis, interpretations concerning application of this Section 4. Such case-by-case interpretations shall not be subject to the dispute resolution procedures set forth in Article VI of this Agreement.

d. The First Deputy Commissioner of Labor Relations may, after notification to the affected union(s), exempt certain hard to recruit titles from the provisions of subsection 4.

Section 5.

In the case of an employee on leave of absence without pay, the salary rate of such employee shall be changed to reflect the salary adjustments specified in Article III.

Section 6. - Longevity Increment Agreement

- a. School Crossing Guards with 15 or more years of "City" service in pay status shall receive a longevity increment of 43 cents (\$0.43) per hour.
- b. The rules for eligibility for the longevity increment described above in subsection 6a. shall be set forth in Appendix A to this **Agreement** and are incorporated by reference herein.

Section 7. - Additional Days of Pay

- a. All regularly employed School Crossing Guards shall receive one additional day of pay (Martin Luther King, Jr.'s Birthday) at their regular daily rate of pay in the month of January. Said additional day of pay shall be paid in the last paycheck in January or the first paycheck in February.
- b. All regularly employed School Crossing Guards shall receive one additional day of pay (Memorial Day) at their regular daily rate of pay in the month of May. Said additional day of pay shall be paid in the first paycheck in June.
- c. Effective July 1, 2002, all regularly employed School Crossing Guards shall continue to receive four (4) additional days of pay at their regular daily rate of pay as follows: Columbus Day; Veterans Day; Thanksgiving Day, and day after Thanksgiving Day.
- d. Effective July 1, 2004, all regularly employed School Crossing Guards shall continue to receive three (3) additional days of pay at their regular daily rate of pay as follows: during "Presidents' Week/mid-Winter Recess" or equivalent period in other than Department of Education.

ARTICLE IV - HOURS

Section 1.

No School Crossing Guard may work more than five (5) hours in a work day.

ARTICLE V - HEALTH INSURANCE

School Crossing Guards who regularly work twenty (20) or more hours per week shall be covered by the City's Basic Health Insurance Plan. Health Insurance coverage shall not be provided by the City during the summer recess except as described in Article VIII.

ARTICLE VI - WELFARE FUND

Section 1.

- a. The City shall make contributions to the District Council 37, A.F.S.C.M.E., AFL-CIO Health and Security Fund on behalf of all employees who regularly work 15 hours or more per week on a continuous basis and have been so employed continuously for 90 days prior to the commencement of the obligation of the City to make its contributions provided, however, that the summer recess, authorized leaves of absence or time on a recall list shall not be considered a break in service.
- b. In accordance with the election by the **Union** pursuant to the provisions of Article XIII of the 1995-2001 *Citywide Agreement* between the City of New York and related public employers and District Council 37, A.F.S.C.M.E., AFL-CIO, or any successor(s) thereto, the Welfare Fund provisions of that *Citywide Agreement* or any successor(s) thereto shall apply to employees covered by this **Agreement**, as described in Section 1(b) of the *Citywide Agreement*.
- c. When an election is made by the **Union** pursuant to the provisions of Article XIII, Section 1(b), of the 1995-2001 *Citywide Agreement* between the City of New York and related public employers and District Council 37, A.F.S.C.M.E., AFL-CIO, or any successor(s) thereto, the provisions of Article XIII, Section 1(b) of the *Citywide Agreement* or any successor(s) thereto, shall apply to employees covered by this **Agreement**, and when such election is made, the **Union** hereby waives its right to training, education and/or legal services contributions provided in this **Agreement**. In no case shall the single contribution provided in Article XIII, Section 1(b) of the *Citywide Agreement* or any successor(s) thereto, exceed the total amount that the **Union** would have been entitled to receive if the separate contributions had continued.
- d. Effective July 1, 2002, 11cents (\$0.11) per hour shall continue to be contributed for the provision of Welfare Fund Benefits during the summer months (from the last day of school in June to the first day of school in September) for School Crossing Guards who received Welfare Fund Benefits during the school year. The 11 cents per hour contribution will be made for each hour for which a School Crossing Guard is in pay status. Payments for this "summer" Welfare Fund contribution will be subject to a separate agreement to be entered into by the parties and no payments shall be made until said separate agreement is executed. Benefits to be provided are limited by the contribution itself. It is understood that if the benefits paid under the relevant schedule exceed the funds on hand for this purpose the benefits will be reduced or terminated. It is understood and agreed that the provisions of this Section (d). are entirely separate and apart from Welfare Fund payments that are contained in Article VI, Sections a, b, and c. It is further understood and agreed that any future increases in Welfare Fund payments as detailed in Sections a, b, and c above shall have no impact on this Section d. and that any increase contemplated for this Section d. shall be subject to negotiations between the parties applicable solely to this separate unit agreement or its successor(s).

- e. Effective July 1, 2002, 5 cents (\$0.05) per hour shall continue to be contributed to establish Welfare Fund benefits for School Crossing Guards who 1) permanently resign their positions as School Crossing Guards, 2) are at least 60 years of age, and 3) have at least 10 calendar years of continuous service as School Crossing Guards prior to leaving their position.

Continuous service shall be defined as time in pay status. However, Christmas, Easter, summer vacations and other school recesses shall not constitute a break in service.

For the purposes of this Article, School Crossing Guards who were terminated in 1975 as a result of the dissolution of the School Crossing Guard Program and who were reappointed by June 30, 1979, shall be deemed not to have had a break in service during the time the employee was terminated. However, the period of time between the employee's termination in 1975 and subsequent reappointment shall not be counted for purposes of calculating the 10 years of service required to receive this benefit.

The 5-cent contribution shall be made for each hour for which any School Crossing Guard is in pay status.

Payments for this Welfare Fund contribution will be subject to a separate agreement to be entered into by the parties, and no payments shall be made until said separate agreement is executed. Benefits to be provided are limited by the contribution itself. It is understood that if the benefits paid under the relevant schedule exceed the funds on hand for this purpose the benefits will be reduced or terminated. It is understood and agreed that the provisions of this Section (e) are entirely separate and apart from Welfare Fund payments that are contained in Article VI, Sections a, b, c, and d. It is further understood and agreed that any future increases in Welfare Fund payments as detailed in Sections a, b, c and d above shall have no impact on this Section (e), and that any increase contemplated for this Section (e) shall be subject to negotiations between the parties applicable solely to this separate unit agreement or its successor(s).

No benefits shall be provided to a School Crossing Guard who leaves her/his position prior to January 1, 1984.

Section 2.

The Union agrees to provide welfare fund benefits to domestic partners of covered employees in the same manner as those benefits are provided to spouses of married covered employees.

Section 3.

In accordance with the Health Benefits Agreement dated January 11, 2001, each welfare fund shall provide welfare fund benefits equal to the benefits provided on behalf of an active employee to widow(er)s, domestic partners and/or children of any employee who dies in the line of duty as that term is referenced in Section 12-126(b)(2) of the New York City

Administrative Code. The cost of providing this benefit shall be funded by the Stabilization Fund.

ARTICLE VII - ADDITIONAL HEALTH INSURANCE BENEFIT

Effective July 1, 2002, the sum of 5 cents (\$0.05) per hour shall continue to be contributed to D.C. 37 for remittance to the D.C. 37 Health and Security Fund for each hour worked by a School Crossing Guard. The sums shall be used to provide health insurance coverage for School Crossing Guards who are at least 60 years of age and resign on or after January 1, 1987 with at least 10 regular school years of continuous service in pay status as School Crossing Guards prior to their resignation.

For the purposes of this Article only, continuous service in pay status as a School Crossing Guard shall be counted towards the 10 year service requirement for those employees who were terminated in 1975 as a result of the disbanding of the School Crossing Guard Program and were reappointed by June 30, 1979.

The payments hereunder shall be subject to a separate agreement to be entered into by the parties and approved as to form by the Corporation Counsel. The cost of the benefits provided shall not exceed the contributions made pursuant to this Article VII. If the benefits exceed the available funds, the benefits shall be reduced or terminated.

ARTICLE VIII - SUMMER HEALTH INSURANCE

Section 1.

- a.** Effective July 1, 2002 the **City** shall continue to pay 9 cents (\$0.09) for each hour a School Crossing Guard is in pay status to be contributed toward a trust and agency account, maintained by the New York City Employee Benefit Program.
- b.** Effective July 1, 2002, the **City** shall contribute the sum of \$386,815.27 annually to the Summer Health Insurance Trust and Agency Account.

Section 2.

- a.** The funds contributed to the trust and agency account shall be used to provide or subsidize continued health insurance during the summer months for School Crossing Guards who are eligible for health insurance benefits during the school year and who otherwise meet eligibility criteria as described in Section c below.
- b.** The **City** and the **Union** shall meet each spring to determine service eligibility requirements for receipt of this benefit and to determine what portion of the health insurance cost shall be borne by the fund and what portion shall be borne by the School Crossing Guard.
- c.** In the event that a shortfall in monies in the trust and agency account is projected by the **City** for any summer vacation period, the **City** and the **Union** shall bargain over the extent, if any, to which the **City** will pay from the trust and agency account towards each affected Guard's coverage.

ARTICLE IX - POST & PICK

At the beginning of each school year, employees shall have the opportunity to pick their posts within their precinct. Such "picks" will be based on the employee's seniority within his/her precinct at the time post and pick occurs. Should a vacancy occur during the school year, a post and pick system will be instituted on a precinct-wide basis. Such assignments shall be made on the basis of seniority. For the purposes of this Article only, seniority shall be calculated as time served in the precinct as a School Crossing Guard.

ARTICLE X - PRODUCTIVITY AND PERFORMANCE

Introduction

Delivery of municipal services in the most efficient, effective and courteous manner is of paramount importance to the **Employer** and the **Union**. Such achievement is recognized to be a mutual obligation of both parties within their respective roles and responsibilities. To achieve and maintain a high level of effectiveness, the parties hereby agree to the following terms:

Performance Levels

a. The **Union** recognizes the **Employer's** right under the **New York City Collective Bargaining Law** to establish and/or revise performance standards or norms notwithstanding the existence of prior performance levels, norms or standards. Such standards, developed by usual work measurement procedures, may be used to determine acceptable performance levels, to prepare work schedules and to measure the performance of each employee or group of employees. Notwithstanding the above, questions concerning the practical impact that decisions on the above matters have on employees are within the scope of collective bargaining. The **Employer** will give the **Union** prior notice of the establishment and/or revision of performance standards or norms hereunder.

b. Employees who work at less than acceptable levels of performance may be subject to disciplinary measures in accordance with applicable law.

c. **Performance Compensation**

The **Union** acknowledges the **Employer's** right to pay additional compensation for outstanding performance.

The **Employer** agrees to notify the **Union** of its intent to pay such additional compensation.

ARTICLE XI - DEATH BENEFIT

If an employee dies during the term of this **Agreement** because of an injury arising out of and in the course of the employee's employment through no fault of the employee, and in the proper

performance of the employee's duties, a payment of twenty-five thousand dollars (\$25,000) will be made from funds other than those of the Retirement System in addition to any other payment which may be made as a result of such death. Such payment shall be made to the beneficiary so designated, or if no beneficiary is so designated, payment shall be made to the employee's estate.

ARTICLE XII - LEAVES

Section 1. - Death in Family

Absences for Death in the Family shall be excusable in the discretion of the agency head without charge to sick leave or annual leave balances, upon submittal of evidence satisfactory to the agency head.

- a. Employees shall be permitted absences not to exceed four (4) work days in the case of death in the immediate family. Immediate family shall be defined for this purpose as spouse; natural, foster or step parent, child, brother or sister; father-in-law; mother-in-law; or any relative residing in the household.
- b. Bereavement leave shall be granted for the death of a "domestic partner" pursuant to the terms set forth in Executive Order No. 38, dated January 7, 1993 or its successor(s).
- c. When a death in an employee's family occurs while the employee is on annual leave, such time as is excusable for death in the family shall not be charged to annual leave or sick leave.

Section 2. - Child Care Leave

- a. A child care leave of absence without pay shall be granted to an employee (male or female) who becomes the parent of a child up to four years of age (or whose domestic partner registered pursuant to Executive Order No. 48, dated January 7, 1993, becomes the parent of a child up to four years of age, either by birth or by adoption, for a period of up to forty-eight (48) months. The use of this maximum allowance will be limited to one instance only. All other confinement and child care leaves of an employee shall be limited to a thirty-six (36) month maximum.
- b. Prior to the commencement of child care leave, an employee shall be continued in pay status for a period of time equal to all of the employee's unused accrued annual leave.
- c. Employees, who initially elect to take less than the forty-eight (48) month maximum period of leave or the thirty-six (36) months may elect to extend such leave by up to two extensions, each extension to be a minimum of six (6) months. However in no case may the initial leave period plus the one or two extensions total more than forty-eight (48) months or thirty-six (36) months.

- d. This provision shall not diminish the right of the Agency Head or the Personnel Director, as set forth in Rule 5.1 of the Leave Regulations, to grant a further leave of absence without pay for child care purposes.

Section 3. - Sick Leave

- a. All employees shall continue to accrue one (1) hour of sick leave for each twenty (20) hours actually worked, to a maximum accrual of 500 hours. Effective July 1, 2004, all employees newly hired on or after July 1, 2004 shall accrue sick leave at the rate of one (1) hour of sick leave for each 24 hours actually worked for the first five (5) years of service.
- b. Effective July 1, 2004, employees may use three (3) days per year from their sick leave balances for the care of ill family members. Approval of such leave is discretionary with the agency and proof of disability must be provided by the employee satisfactory to the agency within five (5) days of the employee's return to work.

Section 4. - Annual Leave

- a. All employees employed prior to July 1, 1985 shall continue to accrue one (1) hour of annual leave for each eleven (11) hours actually worked, to a maximum accrual of 210 hours.
- b. Employees newly hired on or after July 1, 1985 shall accrue annual leave as follows:
 - At the beginning of the employees first year: 1 hour for every 22 hours actually worked.
 - At the beginning of the employees second year: 1 hour for every 17 hours actually worked.
 - At the beginning of the employee's third year: 1 hour for every 17 hours actually worked.
 - At the beginning of the employee's fourth year: 1 hour for every 15 hours actually worked.
 - At the beginning of the employee's fifth year: 1 hour for every 11 hours actually worked.
- c. Effective July 1, 1991 employees hired on or after July 1, 1985 shall accrue annual leave as follows:
 - At the beginning of the employee's first year: 1 hour for every 15 hours worked.
 - At the beginning of the employee's fifth year: 1 hour for every 11 hours worked.

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d. Effective July 1, 2004 employees hired on or after July 1, 2004 shall accrue annual leave as follows:

At the beginning of the employee's first year: 1 hour for every 15 hours worked.

At the beginning of the employee's fifth year: 1 hour for every 14 hours worked.

At the beginning of the employee's sixth year: 1 hour for every 13 hours worked.

At the beginning of the employee's seventh year: 1 hour for every 12 hours worked.

At the beginning of the employee's ninth year: 1 hour for every 11 hours worked.

ARTICLE XIII - IDENTIFICATION CARDS

The **Employer** shall provide to each employee who has served continuously for six (6) months a photo I.D. card. Lost cards shall be reported immediately and replaced at the employee's expense. Upon separation from service, an employee shall not receive her/his final paycheck until the employee has returned the I.D. card issued or has submitted an appropriate affidavit of loss.

ARTICLE XIV - UNIFORM ALLOWANCE

A uniform allowance in the per annum amounts set forth below shall be provided to those employees who are required to wear a uniform which is not supplied by the Employer:

<u>Effective Date</u>	<u>Annual Amount</u>
3/3/08	\$196
3/2/10	\$207

ARTICLE XV - NON-COMPETITIVE LAYOFF PROCEDURE

If budgetary restrictions, consolidations or abolition of functions or other curtailment of activities result in the abolition of non-competitive positions, the suspension among the incumbents in the same class of positions shall be made in inverse order of their original appointment to the agency in the subject class of positions.

The date of original appointment shall be the first date of appointment followed by continuous service up to the time of the abolition or reduction of positions.

An employee who had been terminated from the subject class of positions and who was reappointed in the affected class of positions within one year thereafter shall for the purposes of this Article be deemed to have continuous service except that employees terminated in 1975 as a result of

the dissolution of the School Crossing Guard Program and who were reappointed by June 30, 1979, shall for the purposes of this Article be deemed to have continuous service.

A period of an authorized leave of absence without pay or any period during which an employee is suspended from the employee's position pursuant to this Article shall not constitute an interruption of continuous service for the purposes of this Article.

Layoff shall be made from among employees in the same class of positions in the agency except that the Employer may determine the layoff unit (department, bureau, division or other subdivision). In such case layoff shall be made from among incumbents in the same class of positions in each such unit.

Where layoffs are scheduled, the following procedure shall be used:

- (1) Notice shall be provided to the union not less than 30 days before the effective date(s) of such projected layoffs.
- (2) Within such 30-day period designated representatives of the Employer will meet and confer with the designated representatives of the Union with the objective of considering feasible alternatives to all or part of such scheduled layoffs.

Employees in affected titles in the layoff unit shall be laid off in the following order:

- (1) All employees in probationary status in the same title. Among them, layoff shall be in inverse order to date of original appointment.
- (2) All employees who have satisfactorily completed their probationary periods in the same title. Among them, layoff shall be in inverse order to date of original appointment.

In the event of layoff the Employer shall place the names of such employees on a preferred list together with others who have been suspended from the same class of positions. The Employer shall certify such list for filling vacancies in the same class of positions in the layoff unit from which the suspensions were made.

Persons on the list shall be called for reinstatement in the order of their original date of appointment and upon the occurrence of a vacancy in an appropriate position in the layoff unit shall be certified on the basis of the original date of appointment.

The eligibility for reinstatement of a person on such a preferred list shall not continue for a period longer than four (4) years from the date of separation.

No person suspended or demoted prior to completing his/her probationary term shall be certified for reinstatement until the exhaustion of all other eligibles on the preferred list and shall be required to complete his/her probationary term upon reinstatement.

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Failure or refusal to accept reinstatement from preferred lists to vacancies in the same class of positions shall be deemed relinquishment of eligibility and the employee's name shall be removed from the list.

A person reinstated from a preferred list to his/her former class of positions shall receive at least the same salary he/she was receiving at the time of suspension.

Notwithstanding any other provisions of this Article, the Employer may disqualify for reinstatement and remove from a preferred list the name of any eligible who is physically or mentally disabled for the performance of the duties of the position for which such list is established, or who has been guilty of such misconduct as would result in dismissal.

ARTICLE XVI - GRIEVANCE PROCEDURE

Section 1. - Definition:

The term "**Grievance**" shall mean:

- a.** A dispute concerning the application or interpretation of the terms of this Agreement;
- b.** A claimed violation, misinterpretation or misapplication of the rules or regulations, *written* policy or orders of the Employer applicable to the agency which employs the grievant affecting terms and conditions of employment; provided, provided, disputes involving the Personnel Rules and Regulations of the City of New York or the Rules and Regulations of the Health and Hospitals Corporation with respect to those matters set forth in the first paragraph of Section 7390.1 of the Unconsolidated Laws shall not be subject to the grievance procedure or arbitration;
- c.** A claimed assignment of Employees to duties substantially different from those stated in their job specifications;
- d.** A claimed improper holding of an open-competitive rather than a promotional examination;
- e.** A claimed wrongful disciplinary action taken against a permanent Employee covered by Section 75(1) of the Civil Service Law or a permanent Employee covered by the Rules and Regulations of the Health and Hospitals Corporation upon whom the agency head has served written charges of incompetence or misconduct while the Employee is serving in the Employee's permanent title or which affects the Employee's permanent status.
- f.** Failure to serve written charges as required by Section 75 of the Civil Service Law or the Rules and Regulations of the Health and Hospitals Corporation upon a permanent Employee covered by Section 75(1) of the Civil Service Law or a permanent Employee covered by the Rules and Regulations of the Health and Hospitals Corporation where any of the penalties (including a fine) set forth in Section 75(3) of the Civil Service Law have been imposed.

- g.** A claimed wrongful disciplinary action taken against a Non-Competitive employee with more than three (3) months of service in title in the same agency except for employees during the period of a mutually agreed upon extension of probation.

Section 2.

The Grievance Procedure, except for grievances as defined in Sections l(d), l(e), and l(g) of this Article, shall be as follows:

Employees may at any time informally discuss with their supervisors a matter which may become a grievance. If the results of such a discussion are unsatisfactory, the Employees may present the grievance at **STEP I**.

All grievances must be presented in writing at all steps in the grievance procedure. For all grievances as defined in Section l(c), no monetary award shall in any event cover any period prior to the date of the filing of the **STEP I** grievance unless such grievance has been filed within thirty (30) days of the assignment to alleged out-of-title work. No monetary award for a grievance alleging a miscalculation of salary rate resulting in a payroll error of a continuing nature shall be issued unless such grievance has been filed within the time limitation set forth in **STEP I** below for such grievances; if the grievance is so filed, any monetary award shall in any event cover only the period up to six years prior to the date of the filing of the grievance.

STEP I The Employee and/or the Union shall present the grievance in the form of a memorandum to the person designated for such purpose by the agency head no later than 120 days after the date on which the grievance arose except that grievances alleging a miscalculation of salary rate resulting in a payroll error of a continuing nature shall be presented no later than 120 days after the first date on which the grievant discovered the payroll error. The Employee may also request an appointment to discuss the grievance and such request shall be granted. The person designated by the Employer to hear the grievance shall take any steps necessary to a proper disposition of the grievance and shall issue a determination in writing by the end of the third work day following the date of submission.

STEP II An appeal from an unsatisfactory determination at **STEP I** or **STEP I(a)**, where applicable, shall be presented in writing to the agency head or the agency head's designated representative who shall not be the same person designated in **STEP I**. An appeal must be made within five (5) work days of the receipt of the **STEP I** or **STEP I(a)** determination. The agency head or designated representative, if any, shall meet with the Employee and/or the Union for review of the grievance and shall issue a determination in writing by the end of the tenth work day following the date on which the appeal was filed.

STEP III An appeal from an unsatisfactory determination at **STEP II** shall be presented by the Employee and/or the Union to the Commissioner of Labor Relations in writing within ten (10) work days of the receipt of the **STEP II** determination. The grievant or the Union should submit copies of the **STEP I** and **STEP II** grievance filings and any agency responses thereto. Copies of such appeal shall be sent to the agency head. The Commissioner of Labor Relations or the Commissioner's designee shall review all appeals from **STEP II** determinations and shall issue a determination on such appeals within fifteen (15) work days following the date on which the appeal was filed.

STEP IV An appeal from an unsatisfactory determination at **STEP III** may be brought solely by the Union to the Office of Collective Bargaining for impartial arbitration within fifteen (15) work days of receipt of the **STEP III** determination. In addition, the Employer shall have the right to bring directly to arbitration

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any dispute between the parties concerning any matter defined herein as a "grievance". The Employer shall commence such arbitration by submitting a written request therefor to the Office of Collective Bargaining. A copy of the notice requesting impartial arbitration shall be forwarded to the opposing party. The arbitration shall be conducted in accordance with the Title 61 of the Rules of the City Of New York. The costs and fees of such arbitration shall be borne equally by the Union and the Employer.

The arbitrator's decision, order or award (if any) shall be limited to the application and interpretation of the Agreement, and the arbitrator shall not add to, subtract from or modify the Agreement. The arbitrator's award shall be final and binding and enforceable in any appropriate tribunal in accordance with Article 75 of the Civil Practice Law and Rules. The arbitrator may provide for and direct such relief as the arbitrator deems necessary and proper, subject to the limitations set forth above and any applicable limitations of law.

Section 3.

As a condition to the right of the Union to invoke impartial arbitration set forth in this Article, including the arbitration of a grievance involving a claimed improper holding of an open-competitive rather than a promotional examination, the Employee or Employees and the Union shall be required to file with the Director of the Office of Collective Bargaining a written waiver of the right, if any, of such Employee(s) and the Union to submit the underlying dispute to any other administrative or judicial tribunal except for the purpose of enforcing the arbitrator's award.

Section 4.

A grievance concerning a large number of Employees and which concerns a claimed misinterpretation, inequitable application, violation or failure to comply with the provisions of this Agreement may be filed directly at **STEP III** of the grievance procedure. Such "group" grievance must be filed no later than 120 days after the date on which the grievance arose, and all other procedural limits, including time limits, set forth in this Article shall apply. All other individual grievance in process concerning the same issues shall be consolidated with the "group" grievance.

Section 5.

If a determination satisfactory to the Union at any level of the Grievance Procedure is not implemented within a reasonable time, the Union may re-institute the original grievance at **STEP III** of the Grievance Procedure; or if a satisfactory **STEP III** determination has not been so implemented, the Union may institute a grievance concerning such failure to implement at **STEP IV** of the Grievance Procedure.

Section 6.

If the Employer exceeds any time limit prescribed at any step in the Grievance Procedure, the grievant and/or the Union may invoke the next step of the procedure, except that only the Union may invoke impartial arbitration under **STEP IV**.

Section 7.

The Employer shall notify the Union in writing of all grievances filed by Employees, all grievance hearings, and all determinations. The Union shall have the right to have a representative present at any grievance hearing and shall be given forty-eight (48) hours' notice of all grievance hearings.

Section 8.

Each of the steps in the Grievance Procedure, as well as time limits prescribed at each step of this Grievance Procedure, may be waived by mutual agreement of the parties.

Section 9.

Grievance relating to a claimed wrongful disciplinary action taken against a non-competitive employee covered by this Agreement shall be subject to and governed by the following special procedure:

The provisions contained in this section shall not apply to any of the following categories of employees:

- (a) Probationary employees
- (b) Non-competitive employees with less than three (3) months of service in title.

Step I(n) - Following the service of written charges upon an employee a conference shall be held with respect to such charges by a person who is designated by the agency head to review such charges. The employee may be represented at such conference by a representative of the **Union**. The person designated by the agency head to review the charges shall take any steps necessary to a proper disposition of the charges and shall issue a decision in writing by the end of the fifth day following the date of the conference.

Step II(n) - If the employee is dissatisfied with the decision in **Step I(n)** above, he or she may appeal such decision. The appeal must be within five (5) work days of the receipt of such decision. Such appeal shall be treated as a grievance appeal beginning with **Step II** of the Grievance Procedure set forth herein.

Section 10.

The grievance and the arbitration procedure contained in this Agreement shall be the exclusive remedy for the resolution of disputes defined as "grievances" herein. This shall not be interpreted to preclude either party from enforcing the arbitrator's award in court. This Section shall not be construed in any manner to limit the statutory rights and obligations of the Employer under Article XIV of the Civil Service Law.

Section 11. Expedited Arbitration Procedure.

- a.** The parties agree that there is a need for an expedited arbitration process which would allow for the prompt adjudication of grievances as set forth below.
- b.** The parties voluntarily agree to submit matters to final and binding arbitration pursuant to the New York City Collective Bargaining Law and under the jurisdiction of the Office of Collective Bargaining. An arbitrator or panel of arbitrators, as agreed to by the parties, will act as the arbitrator of any issue submitted under the expedited procedure herein.
- c.** The selection of those matters which will be submitted shall include, but not limited to, out-of-title cases concerning all titles, disciplinary cases wherein the proposed penalty is a monetary fine of one week or less or written reprimand, and other cases pursuant to mutual agreement by the parties. The following procedures shall apply:

i. SELECTION AND SCHEDULING OF CASES:

- (1)** The Deputy Chairperson for Disputes of the Office of Collective Bargaining shall propose which cases shall be subject to the procedures set forth in this Section 14 and notify the parties of proposed hearing dates for such cases.
- (2)** The parties shall have ten business days from the receipt of the Deputy Chairperson's proposed list of cases and hearing schedule(s) raise any objections thereto.
- (3)** If a case is not proposed by the Deputy Chairperson for expedited handling, either party may, at any time prior to the scheduling of an arbitration hearing date for such case, request in writing to the other party and to the Deputy Chairperson of Disputes of the Office of Collective Bargaining that said case be submitted to the expedited procedure. The party receiving such request shall have ten business days from the receipt of the request to raise any objections thereto.
- (4)** No case shall be submitted to the expedited arbitration process without the mutual agreement of the parties.

ii. CONDUCT OF HEARINGS:

- (1)** The presentation of the case, to the extent possible, shall be made in the narrative form. To the degree that witnesses are necessary, examination will be limited to questions of material fact and cross-examination will be similarly limited. Submission of relevant documents, etc., will not be unreasonably limited and may be submitted as a "packet" exhibit.
- (2)** In the event either party is unable to proceed with hearing a particular case, the case shall be rescheduled. However, only one adjournment shall be permitted. In the event that either party is unable to proceed on a second occasion, a default judgment may be entered against the adjourning party at the Arbitrator's discretion absent good cause shown.

- (3) The Arbitrator shall not be precluded from attempting to assist the parties in settling a particular case.
- (4) A decision will be issued by the Arbitrator within two weeks. It will not be necessary in the Award to recount any of the facts presented. However, a brief explanation of the Arbitrator's rationale may be included. Bench decisions may also be issued by the Arbitrator.
- (5) Decisions in this expedited procedure shall not be considered as precedent for any other case nor entered into evidence in any other forum or dispute except to enforce the Arbitrator's award.
- (6) The parties shall, whenever possible, exchange any documents intended to be offered in evidence at least one week in advance of the first hearing date and shall endeavor to stipulate to the issue in advance of the hearing date.

ARTICLE XVII - BULLETIN BOARDS: EMPLOYER FACILITIES

The **Union** may post notices on bulletin boards in places and locations where notices usually are posted by the **Employer** for the employees to read. All notices shall be on **Union** stationery, and shall be used only to notify employees of matters pertaining to **Union** affairs. Upon request to the responsible official in charge of a work location, the **Union** may use **Employer** premises for meetings during employees' lunch hours, subject to availability of appropriate space and provided such meetings do not interfere with **Employer** business.

ARTICLE XVIII - NO STRIKES

In accordance with the New York City Collective Bargaining Law, as amended, neither the Union nor any employee shall induce or engage in any strikes, slowdowns, work stoppages, mass absenteeism, or induce any mass resignations during the term of this **Agreement**.

ARTICLE XIX - UNION ACTIVITY

Time spent by employee representatives in the conduct of labor relations with the City and on union activities shall be governed by the terms of **Executive Order No. 75**, as amended, dated March 22, 1973, entitled "**Time Spent on the Conduct of Labor Relations between the City and its Employees and on Union Activity**" or any other applicable Executive Order.

ARTICLE XX - LABOR-MANAGEMENT COMMITTEE

Section 1.

The **Employer** and the **Union**, having recognized that cooperation between management and employees is indispensable to the accomplishment of sound and harmonious labor relations, shall jointly maintain and support a labor-management committee.

Section 2.

The labor-management committee shall consider and recommend to the agency head changes in the working conditions of the employees within the agency who are covered by this **Agreement**. The issue of walkie-talkies as a safety matter and the subject hours of staffing needed for school

crossing posts shall be appropriate subjects for labor-management discussion. Matters subject to the Grievance Procedure shall not be appropriate items for consideration by the labor-management committee.

Section 3.

The labor-management committee shall consist of six (6) members who shall serve for the term of this **Agreement**. The **Union** shall designate three members and the agency head shall designate three members. Vacancies shall be filled by the appointing party for the balance of the term to be served. Each member may designate one alternate. The committee shall select a chairperson from among its members at each meeting. The chairpersonship of the committee shall alternate between the members designated by the agency head and the members designated by the **Union**. A quorum shall consist of a majority of the total membership of a committee. The committee shall make its recommendations to the agency head in writing.

Section 4.

The labor-management committee shall meet at the call of either the **Union** members or the **Employer** members at times mutually agreeable to both parties. At least one week in advance of a meeting the party calling the meeting shall provide, to the other party, a written agenda of matters to be discussed. Minutes shall be kept and copies supplied to all members of the committee.

ARTICLE XXI - FINANCIAL EMERGENCY ACT

The provisions of this **Agreement** are subject to applicable provisions of law, including the New York State Financial Emergency Act for the City of New York as amended.

ARTICLE XXII - APPENDICES

The Appendix or Appendices, if any attached hereto and initialed by the undersigned shall be deemed a part of this **Agreement** as if fully set forth herein.

ARTICLE XXIII - SAVINGS CLAUSE

In the event that any provision of this **Agreement** is found to be invalid, such invalidity shall not impair the validity and enforceability of the remaining provisions of this **Agreement**.

ARTICLE XXIV - CONTRACTING OUT CLAUSE

The problem of "Contracting-Out" or "Farming-Out" of work normally performed by personnel covered by this **Agreement** shall be referred to the Labor-Management Committee as provided for in Article XX of this **Agreement**.

WHEREFORE, we have hereunto set our hands and seals this ^{6th} day of April, 2012.

**CITY OF NEW YORK AND
RELATED PUBLIC EMPLOYERS
AS DEFINED HEREIN**

**DISTRICT COUNCIL 37,
A.F.S.C.M.E., AFL-CIO**

BY: *James F. Hanley*
JAMES F. HANLEY
Commissioner of Labor Relations

BY: *Lillian Roberts*
LILLIAN ROBERTS
Executive Director

APPROVED AS TO FORM:

LOCAL 372, DC 37, AFSCME, AFL-CIO

BY: *Paul T. Reppen*
PAUL T. REPPEN
Acting Corporation Counsel

BY: *Santos Crespo*
SANTOS CRESPO
President

APPROVED:
FINANCIAL CONTROL BOARD

BY:

UNIT: School Crossing Guards

TERM: March 3, 2008 to March 2, 2010

OFFICE OF LABOR RELATIONS REGISTRATION	
OFFICIAL	CONTRACT
NO: <u>12004</u>	DATE: <u>April 6, 2012</u>

Appendix A

Longevity Increment Eligibility Rules

The following rules shall govern the eligibility of Employees for the longevity increments provided for in Article III, Section 6 of the 2008 - 2010 School Crossing Guard Unit Contract:

1. Only service in pay status shall be used to calculate the 15 years of service, except that for other than full time per annum Employees only a continuous year of service in pay status shall be used to calculate the 15 years of service. A continuous year of service shall be a full year of service without a break of more than 31 days. Where the regular and customary work year for a title is less than a twelve month year, such as a school year, such regular and customary year shall be credited as a continuous year of service counting towards the 15 years of service. If the normal work year for an Employee is less than the regular and customary work year for the Employee's title, it shall be counted as a continuous year of service if the Employee has customarily worked that length work year and the applicable agency verifies that information.
2. Service in pay status prior to any breaks in service of more than one year shall not be used to calculate the 15 years of service. Where an Employee has less than seven years of continuous service in pay status, breaks in service of less than one year shall be aggregated. Where breaks in service aggregate to more than one year they shall be treated as a break in service of more than one year and the service prior to such breaks and the aggregated breaks shall not be used to calculate the 15 years of service. No break used to disqualify service shall be used more than once.
3. The following time in which an Employee is not in pay status shall not constitute a break in service as specified in paragraph 2 above:
 - (a) Time on a leave approved by the proper authority which is consistent with the **Rules and Regulations of the New York City Personnel Director** or the appropriate personnel authority of a covered organization.
 - (b) Time prior to a reinstatement.
 - (c) Time on a preferred list pursuant to **Civil Service Law Sections 80 and 81** or any similar contractual provision.
 - (d) Time not in pay status of 31 days or less.

Notwithstanding the above, such time as specified in subsections a, b and c above shall not be used to calculate the 15 years of service.

4. Once an Employee has completed the 15 years of "City" service in pay status and is eligible to receive the \$0.43 longevity increment, the \$0.43 shall become part of the Employee's base rate for all purposes except as provided in paragraph 5 below.
5. The \$0.43 longevity increment shall not become pensionable until fifteen months after the Employee begins to receive such \$0.43 increment. Fifteen months after the Employee begins to receive the \$0.43 longevity increment, such \$0.43 longevity increment shall become pensionable and as part of the Employee's base rate, the \$0.43 longevity increment shall be subject to the general increases provided in Article III, Section 3(a) of this **Agreement**.

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