



QUEENS PUBLIC LIBRARY

September 6, 2019

Rose Lovaglio-Miller  
Director, Research & Negotiations  
District Council 37  
AFSCME, AFL-CIO  
125 Barclay Street  
New York, New York 10077

John Hyslop, President  
Queens Library Guild  
Local 1321, District Council 37,  
AFSCME, AFL-CIO  
125 Barclay Street  
New York, New York 10007

**Re: *Agreement Regarding OLR's Overtime Cap and Comp-Time Accrual & Use for Represented, FLSA Exempt Employees***

Dear Ms. Lovaglio-Miller and Mr. Hyslop:

I refer you to the Collective Bargaining Agreement for the period of January 1, 2015 to December 31, 2020 (hereinafter, "the Collective Bargaining Agreement," or "CBA") between the Queens Borough Public Library ("the Library") and District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO and its affiliated Local 1321 (collectively "the Union").

**WHEREAS**, the Union and the Library previously entered into a Side Letter Agreement (dated 4/2/18, and executed by the parties at or around 4/5/18, and 4/11/18, respectively, hereinafter referred to as the "4/2/18 Side Letter Agreement"); and

**WHEREAS**, the 4/2/18 Side Letter Agreement temporarily modified certain terms and conditions of the Collective Bargaining Agreement, including, but not limited to *Article IV, Section 7(b) and (c)* of the CBA. Additionally, *Section 10* of the 4/2/18 Side Letter Agreement provided for an extension of a "grace period," wherein represented employees who are classified as exempt under the federal Fair Labor Standards Act ("FLSA") could continue to earn compensatory time

("comp-time") at straight-time for any hours worked in excess of their regularly-scheduled work hours during the pendency of that extension; and

**WHEREAS**, the Library and the Union wish to amicably and collaboratively address certain other matters arising out of the termination of this "grace period."

**THEREFORE**, the Union and the Library further agree as follows:

1. All *represented, FLSA exempt employees* who have earned and accrued comp-time during the aforementioned "grace period" (and during any extension thereof) shall cash out any unused comp-time that he/she has accrued (but not used) as of 8/31/19 (as reflected on each employee's August 2019 timesheet). This mandatory cash out shall be at a 1:1 ratio. The Library shall retain the sole right and discretion to create whatever forms and/or procedures it reasonably deems necessary in order to implement this cash out provision in a reasonable and timely manner upon the execution of this Agreement.<sup>1</sup>
2. The parties further agree that, effective as of 9/1/19, all *represented, FLSA exempt employees* shall receive comp-time at straight time for any hours worked between thirty-five (35) and forty (40) hours in a given work week. Thereafter, if any such employee works in excess of forty (40) hours in a given work week, he/she shall be compensated for any such authorized overtime in accordance with the City of New York, Office of Labor Relations' (hereinafter, "OLR") *Interpretive Memorandum No. 2108-1, dated 10/12/18* (also referred to as the "OLR Overtime Cap Memo").<sup>2</sup> The parties further acknowledge and agree that, in the event the OLR issues any subsequent OLR Overtime Cap Memo(s) from time-to-time (which typically serve to raise the OLR's mandated overtime cap), any such successor memo(s) shall automatically become incorporated into this Agreement (and into the CBA), and shall control.

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<sup>1</sup> In a good-faith effort to assist in the timely implementation of this cash out provision, the Union and the Library have identified and confirmed the unused comp-time balances as of August 31, 2019 *for all represented, FLSA exempt employees* impacted by this Agreement, and the parties agree that the Library shall reasonably rely upon that data in implementing this cash out provision.

<sup>2</sup> The parties recognize that some of the Library's represented, FLSA exempt employees *begin each calendar year already exceeding* the applicable overtime cap. This occurs when an employee's *annual gross salary rate* (including any longevity payments, service increments, etc.) already exceeds the applicable overtime cap as of the start of that calendar year. Similarly, the parties recognize that for those represented, FLSA exempt employees *who do not* start a given calendar year *exceeding the overtime cap* (because his/her gross annual salary rate --including any longevity payments, service increments, etc. -- does not yet exceed the applicable overtime cap), each such employee shall be eligible *for overtime pay at time-and-one-half* for any authorized overtime hours worked in excess of forty (40) hours per week unless or until his/her earnings-to-date (as per the Overtime Cap Memo) exceed the applicable overtime cap during such calendar year.

3. Effective as of 9/1/19 and moving forward, any comp-time earned by *represented, FLSA exempt employees pursuant to* the OLR Overtime Cap Memo shall not be subject to the four (4) month usage provision contained within Article IV, Section 18 of the CBA. Rather, any such comp-time earned pursuant to the OLR Overtime Cap Memo may, at the employee's discretion, remain in an employee's comp-time bank *for up to six (6) months following the end of the fiscal year in which it was earned.*<sup>3</sup> Starting on 12/31/20, and on December 31<sup>st</sup> of each subsequent calendar year, any accrued but unused<sup>4</sup> comp-time earned (pursuant to Section 2 of this Agreement, above) during the preceding fiscal year shall be transferred into the employee's paid Sick Leave balance.<sup>5</sup>
4. By way of example, if an employee earns 20 hours of comp-time pursuant to the OLR Overtime Cap Memo in September of 2019, he/she can choose to retain this comp-time in his/her comp-time bank through 12/31/2020, at which time any unused amount *shall be* transferred into his/her paid Sick Leave balance. Similarly, if an employee earns 20 hours of comp-time pursuant to the OLR Overtime Cap Memo in July of 2020, he/she can choose to retain this comp-time in his/her comp-time bank through 12/31/2021, at which time any unused amount *shall be* transferred into his/her paid Sick Leave balance.
5. Effective 9/1/19, *represented, FLSA exempt employees* may voluntarily elect to cash out comp-time earned pursuant to the OLR Overtime Cap Memo (and pursuant to this Agreement) on a one-time basis each calendar year in the following manner:
  - a. Any such one-time, voluntary cash out election must take place between August 1<sup>st</sup> and November 30<sup>th</sup> of any given calendar year;
  - b. Up to seventy (70) hours of eligible comp-time may be cashed out at a 1:1 ratio (1 hour of comp-time:1 hour of cash-out time); and
  - c. Up to an additional seventy (70) hours of eligible comp-time may be cashed out on a 2:1 ratio (2 hours of comp-time: 1 hour of cash-out time).

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<sup>3</sup> The Library's fiscal year ends on June 30<sup>th</sup> of each calendar year. Accordingly, six months following the end of a fiscal year is December 31<sup>st</sup> of that same calendar year.

<sup>4</sup> Unused comp-time is comp-time *that has not* either been used as paid time off, or otherwise cashed-out pursuant to Section 5 of this Agreement.

<sup>5</sup> The parties recognize and agree that this Agreement shall only pertain to comp-time that is earned pursuant to the OLR Overtime Cap Memo. Accordingly, any other comp-time earned *by any* represented employees, including, but not limited to, any comp-time earned pursuant to Article V of the CBA ("Operation of the Library in the event of Extreme Temperatures") shall remain subject to the 4-month usage requirement contained within Article IV, Section 18 of the CBA.


6. Effective as of the date this Agreement is fully executed between the Library and the Union, moving forward, the Library agrees that it will not unreasonably or arbitrarily deny an employee's request to schedule and use comp-time accrued under such Agreement, *subject to* the following terms and conditions:
- a. In the event that an employee covered under this Agreement is seeking to schedule and use five (5) consecutive business days of comp-time or less, he/she is encouraged to provide her/his supervisor with at least ten (10) business days' notice of any such usage.
  - b. In the event an employee is seeking to schedule and use more than five (5) consecutive business days of comp-time, he/she must provide his/her supervisor with at least thirty (30) calendar days' notice of any such request.
  - c. In the event that an employee reasonably determines that he/she would like to schedule and use comp-time, but he/she is unable to adhere to the notice provisions detailed above (including, by way of example, but not limited to, circumstances where the employee experiences a personal emergency), the Library shall treat any such request as the equivalent to a request to use unscheduled Annual Leave, in which case the Library's approval of any such request will not unreasonably be withheld, but shall nevertheless be subject to the Library's staffing, service and operational needs within the requesting employee's department.
  - d. Provided that an employee complies with the applicable notice provisions detailed above, the Library agrees that it will make reasonable and good faith efforts to approve the request, and to cover the employee's requested absence. The Library further agrees that a denial of such a request (provided that the employee has complied with the applicable notice provisions detailed above) pursuant to this subsection must be in writing (email is an acceptable format), and articulate a clear and specific basis as to why the employee's request is being denied.
  - e. In the event that two or more employees who work within the same department, and within the same in-house job title, ***are both requesting*** to schedule and use comp-time earned under this Agreement ***for either the same period of time, or during overlapping periods of time***, the Library shall have the discretion ***to address any such competing/conflicting requests on the basis of seniority based on date of hire***. In the event the Library bases a denial of such a request on these circumstances, the Library shall provide its decision in writing, and any such decision ***will not*** be subject to the CBA's Grievance/Arbitration process.

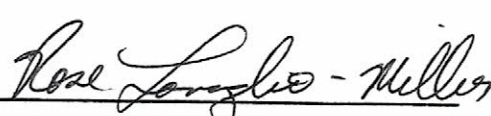
- f. Nothing contained within this Agreement shall serve to prevent the Library, at its sole discretion, **from offering an employee a reasonable alternative** (including, but not limited to, offering the employee an ability to voluntarily schedule and use her/his requested amount of comp-time on an agreed-upon alternative date(s), or **offering the employee additional comp-time** if the employee works during the time she/he had requested to take/use comp-time) in the event that an employee requests to schedule and use comp-time, but whose request has been denied by the Library. In the event that an employee is offered – and voluntarily accepts (at her/his sole discretion) -- **an alternative arrangement under this Subsection**, such an event shall not constitute a denial of an employee’s request under this Agreement, and thus any such decision shall not be subject to the CBA’s Grievance/Arbitration process.
- g. In the event that an employee declines any such offer/alternative arrangement made by the Library under Subsection (h), above, a denial of the employee’s request can then be subject to the Grievance/Arbitration process under the CBA.
- h. Moreover, an employee shall not be subjected to any disciplinary action and/or retaliation if he/she declines to voluntarily accept such an offer/alternative arrangement.

All of the aforementioned terms and conditions are effective immediately upon the execution of this Side Letter Agreement by all parties, and shall be specifically incorporated into the existing Collective Bargaining Agreement, and any renewal, extension or renegotiation thereof.

If the foregoing comports with your understanding, please signify your full agreement and concurrence by signing all of the enclosed originals of this letter, and returning the same to us.

Sincerely,

By:  Date: 9/6/19  
 Dennis M. Walcott  
 President & Chief Executive Officer  
 Queens Borough Public Library

By:  Date: 9/10/2019  
 Rose Lovaglio-Miller, Director  
 Research and Negotiations  
 District Council 37  
 AFSCME, AFL-CIO

By:  \_\_\_\_\_

**John Hyslop, President  
Queens Library Guild  
Local 1321, District Council 37  
AFSCME, AFL-CIO**

Date: 9/10/19

**cc: Moira Dolan, Senior Assistant Director, Research & Negotiations, District Council 37  
Leo Morris, Council Representative for Local 1321, District Council 37**