

AGREEMENT

This Agreement, by and between the United Federation of Teachers, Local 2, AFT, AFL-CIO (the “UFT”), by UFT President Michael Mulgrew, on behalf of all UFT-represented employees in the title Education Officer employed by the Board of Education of the City School District of the City of New York (the “DOE”), on the one hand, and the City of New York, New York City Department of Citywide Administrative Services (“DCAS”) (together, the “City”), and the DOE on the other hand (together with the UFT, the “Parties”), is made and entered into on this 6th day of November, 2017. The Agreement is made with respect to the following facts and circumstances:

RECITALS

WHEREAS, certain UFT-represented DOE employees are provisionally appointed incumbent employees of the DOE in the civil service title Education Officer;

WHEREAS, on May 29-30, 2015, DCAS held Examination No. 5022 (the “Exam”) for the position of Education Officer, which was taken by certain UFT-represented Education Officers;

WHEREAS, the UFT and UFT-represented Education Officers challenge the validity of the Exam and its results;

WHEREAS, the City and DOE maintain that the Exam and appointments made from the list established from the Exam are valid and legal in all respects;

WHEREAS, the Parties have discussed issues concerning the Exam, possible changes to the Exam and the status of the incumbent provisional Education Officers;

WHEREAS, the Parties have agreed on certain deadlines for creating and administering a new examination; and

WHEREAS, the Parties wish to preserve all of their legal rights with respect to the validity of the Exam, and the UFT and UFT-represented Education Officers expressly reserve the right to commence proceedings challenging the Exam and its results against the City and DOE in the future;

NOW THEREFORE, in consideration of this Agreement and for other good and valuable consideration, receipt of which is hereby acknowledged, the Parties hereby agree as follows:

1. Recitals. The foregoing Recitals are made a part of this Agreement.
2. Standstill. During the time that this Agreement is in effect, the Parties will not commence any legal action against each other relating to the validity of the Exam or its results, except as provided in Section 4.
3. Deadlines for a New Examination. DCAS agrees to create a new examination for the title Education Officer, for which a Notice of Examination will be issued for an application period to commence on or before May 5, 2018 (the “Notice Deadline”). The test for such new examination shall be administered no later than November 5, 2018 (the “Test Deadline”), and a resultant civil service list shall be established and publicized no later than November 5, 2019 (“List Establishment Deadline”).
4. Breach of Deadlines and Waiver of Defenses Based on Timeliness. The UFT may bring a special proceeding against the City and DOE, pursuant to Article 78 of the CPLR,

challenging the 2015 Exam, the list established based on the Exam, or any employment actions taken pursuant to the list established based on the Exam only if DCAS fails to comply with the Notice Deadline, Test Deadline, or List Establishment Deadline. In any such special proceeding, the City and DOE shall not assert and hereby waive any defense based on timeliness, including those arising out of laches, any statutes of limitations, or statutes of repose. Any special proceeding brought pursuant to this section challenging the validity of the 2015 Exam, its established list, or employment actions based on the established list shall be deemed timely if commenced within thirty days after the date of the deadline with which DCAS fails to comply. Nothing contained herein waives the rights of the UFT or UFT-represented Education Officers to challenge the validity of the new examination.

5. Extensions. The Parties may agree in writing to extend the terms of this Agreement.
6. Tolling of Limitations Periods. Except as provided in Section 4 of this Agreement, the time period during which this Agreement is in effect, which shall be from its execution on November 6, 2017, through November 26, 2019, shall not be included, asserted, or relied upon in any way in computing the running of the time under any applicable statute of limitations, or by way of laches, in defense of any administrative and/or civil action brought by the UFT and UFT-represented Education Officers against the City or DOE, including, but not limited to, actions arising under Article 78 of the CPLR, to challenge the validity of the Exam, the list established based on the Exam, and employment actions taken based on the list. Provided, however, that in the event that DCAS complies with the Notice Deadline, Test Deadline, and List Establishment Deadline, and the UFT or the UFT-represented Education Officers have not previously commenced a special

proceeding pursuant to Article 78 of the CPLR to challenge the validity of the 2015 Exam, the time to commence such a proceeding under the applicable statute of limitations shall be deemed to have expired on the date that DCAS meets the List Establishment Deadline for the new examination.

7. Non-Admission. Nothing contained herein shall be deemed to be an admission by the City or DOE that they have in any manner or way violated the rights of the UFT, the UFT-represented Education Officers, or any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York, or any other rules, regulations or bylaws of any department or subdivision of the City of New York. Similarly, nothing contained herein shall be deemed to be an admission by the UFT or UFT-represented Education Officers that the 2015 Exam or the new examination comply with applicable law and do not violate the rights of the UFT or Education Officers. This Agreement may not be used, or offered into or entered into evidence, in any litigation, mediation, alternative dispute resolution, or any other forum, for any purpose whatsoever except to enforce the terms of this Agreement.
8. Not a Policy. Nothing contained herein shall be deemed to constitute a policy or practice of the City or DOE.
9. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all of which, taken together, shall constitute one Agreement binding on the Parties.

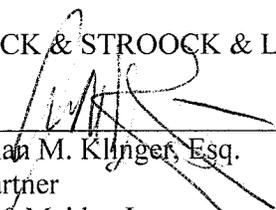
10. Governing Law. This Agreement shall be governed by the internal laws of the State of New York.
11. Complete Agreement. This Agreement contains all of the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Agreement regarding its subject matter shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.
12. Amendments. This Agreement may not be amended except in writing, signed by the Parties or their counsel.
13. Authority. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by each Party and this Agreement has been duly executed and delivered on behalf of each Party, acting through their respective counsel, and constitutes the valid and legally binding obligation of each Party, enforceable against them in accordance with its terms.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and intend to be legally bound hereby, as of November 6, 2017.

Dated: November 6, 2017

STROOCK & STROOCK & LAVAN LLP



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*Co-Counsel for the UFT and UFT-
Represented Education Officers*

Dated: November 6, 2017

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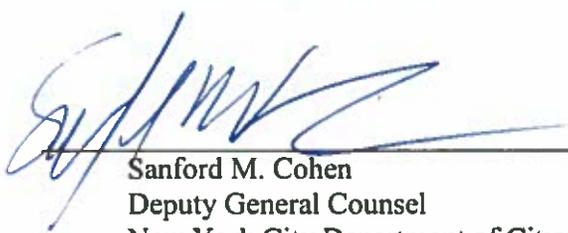
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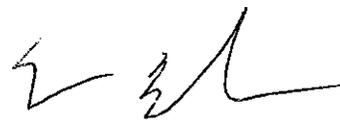
*Co-Counsel for the UFT and UFT-
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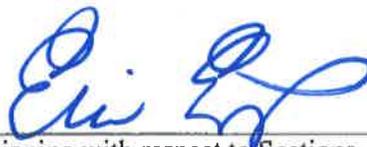
Dated: November 6, 2017

Signing with respect to Sections 4 and 6
Eric Eichenholtz
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100 Church Street
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Dated: November 6, 2017

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New York, New York 10007

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