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TOWN OF WEST SENECA

TOWN SUPERVISOR
SHEILA M. MEEGAN
TOWN COUNCIL
EUGENE P. HART
WILLIAM P. HANLEY, JR.

MEMO

To: The Honorable Town Board

From: Tina M. Hawthorne, Town Attorney

Date: September 19, 2019

Subject: Municipal Cooperation Agreement School Crossing Guards

Please see the attached Municipal Cooperation Agreement School Crossing Guards for this 2019-2020 school year. It is my advice that the Town Board adopt the attached resolution authorizing the Supervisor to enter into the attached Agreement.



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RESOLUTION

WHEREAS, Article 5-G of the General Municipal Law permits municipal corporations to enter into agreements for the performance among themselves or one for the other of their respective functions, powers, and duties, on a cooperative or contract basis; and

WHEREAS, the Town of West Seneca School District wishes to have school crossing guards in place for the protection of school children going to and from school; and

WHEREAS, Section 208-a of the General Municipal Law specifically authorizes town authorities to designate, authorize, appoint, and set salaries for school crossing guards; and

WHEREAS, Section 208-a of the General Municipal Law specifically authorizes the District to enter into an agreement with the Town by which it pays for certain portions of the salaries of the school crossing guards serving students of the District; and

NOW THEREFORE, be it resolved that the Town Board of the Town of West Seneca authorizes the Supervisor to execute the Municipal Cooperation Agreement School Crossing Guards Between the Town of West Seneca and West Seneca School District.

MUNICIPAL COOPERATION AGREEMENT
SCHOOL CROSSING GUARDS

THIS AGREEMENT made _____, 2019 by and between the TOWN OF WEST SENECA, a municipal corporation organized and existing under the laws of the State of New York, having its principal office at 1250 Union Road, West Seneca, NY 14224, hereinafter referred to as the "Town," and WEST SENECA CENTRAL SCHOOL DISTRICT, an educational corporation organized and existing under the laws of the State of New York having its principal offices at 675 Potters Road, West Seneca, NY 14224, hereinafter referred to as "District."

WITNESSETH:

WHEREAS, Article 5-G of the General Municipal Law permits municipal corporations to enter into agreements for the performance among themselves or one for the other of their respective functions, powers, and duties, on a cooperative or contract basis; and

WHEREAS, the District wishes to have school crossing guards in place for the protection of school children going to and from school; and

WHEREAS, Section 208-a of the General Municipal Law specifically authorizes town authorities to designate, authorize, appoint, and set salaries for school crossing guards; and

WHEREAS Section 208-a of the General Municipal Law specifically authorizes the District to enter into an agreement with the Town by which it pays for certain portions of the salaries (as set forth herein) of the school crossing guards serving students of the District; and

WHEREAS, this Agreement has been duly approved by a majority vote of the governing boards of the Town and District

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the Town and District hereby agree as follows:

1. The Town hereby agrees to provide the services of eight (8) school crossing guards to the District on all scheduled school days from September 5, 2019 through June 24, 2020 and at the locations described in the attached "Schedule A".
2. The District agrees to reimburse the Town for 100% of the salaries for crossing guard services from September 5, 2019, through December 31, 2019. It is understood by the parties that the budgeted salary expense for such period is \$30,000.00.
3. The District agrees to reimburse the Town for 50% of the cost for crossing guard services from January 1, 2020 through June 24, 2020. It is understood by the parties that the budgeted salary expense for such period is \$30,000.00, with the District responsible for \$15,000.00 (50%) of such expense and the Town responsible for the remaining \$15,000.00(50%)
4. Reimbursement as described in Paragraphs 3 and 4 above will occur monthly (in equal installments) over the course of the applicable term of this Agreement (September 5, 2019 through June 24, 2020). The Town shall retain responsibility for administering the pay, benefits, and other terms and conditions of employment of each school crossing guard, including, but not limited to, the determination of compensation and benefits; payroll administration; any pension service reporting;

tax withholding; and the accrual and exercise of any rights, benefits, and/or obligations inuring to public employees under any applicable Federal, State, or local law.

5. In accordance with Section 208-a of the General Municipal Law, each school crossing guard will have the duty to aid in protecting school children going to and from school and, for such purpose, shall have the power to control vehicular traffic.
6. Each school crossing guard will at all times while performing duties pursuant to this Agreement remain employees of, and subject to the control and chain of command, of the Town. Under no circumstances will any school crossing guard be considered an employee of the District.
7. To the extent that any school crossing guard is subject to discipline as a result of the performance of, or failure to perform, his or her duties, such discipline may only be administered by the Town and in accordance with all of the applicable laws, rules, regulations and contractual obligations observed by the Town.
8. The Town is responsible for ensuring the school crossing guard has the necessary equipment/materials to perform his or her duties.
9. Each school crossing guard's schedule will be determined by the Town but will be arranged to provide coverage at each post throughout arrival and dismissal times for the school building associated with each post as described in the attached "Schedule A".
10. The District may request that any individual school crossing guard, on the basis of performance, be replaced in his or her duties as a school crossing guard by an alternate school crossing guard; and the Town agrees that it will receive and consider any such requests from the District. Any reassignment and replacement that may take place as a result of such a request will be at the sole discretion of the Town.
11. This Agreement may be terminated as set forth in Paragraph 14 below by either party by delivering written notice of such termination to the other party. It shall otherwise be renewed annually, prior to September 1, and amended as necessary to meet the needs of the signatory agencies. In the event of termination during the school year, the Town's obligation to provide the crossing guard to the District will continue until the close of the school year, provided that such termination is not due to the other party's failure to perform under the terms of this Agreement.
12. The District acknowledges that it is an independent contractor to the Town and not an officer, agent, partner, joint venture, or employee of the Town. The District shall not, at any time, or in any manner, represent that it or any of its agents or employees is in any manner an agent or employee of the Town.
13. The Town acknowledges that it is an independent contractor to the District and not an officer, agent, partner, joint venture, or employee of the District. The Town shall not, at any time, or in any manner, represent that it or any of its agents or employees is in any manner an agent or employee of the District.
14. Each party reserves the right, after consultation with the other party and upon thirty (30) day's written notice, to terminate this Agreement. Should the reason for termination be that the other party failed to perform the services described in a manner satisfactory to the terminating party, the parties agree to discuss and attempt to resolve the underlying basis for the termination of this Agreement.

15. The District agrees that it will, at its own expense, indemnify and hold harmless the Town and/or all employees of the Town its officers and agents from all liability of claims, fines, fees, penalties, attorney fees, liability, judgment, costs, causes of action, damages, expenses and costs for or arising out of the performance or failure to perform the work, labor and services by the district, its agents, servants or employees whether caused by negligence of the part of the District or by anyone acting by, through or for the District.
16. The Town agrees that it will, at its own expense, indemnify and hold harmless the District and/or all employees of the District, its officers and agents from all liability of claims, fines, fees, penalties, attorney fees, liability, judgment, costs, causes of action, damages, expenses and costs for or arising out of the performance or failure to perform the work, labor and services by the Town, its agents, servants or employees whether caused by negligence of the part of the Town or by anyone acting by, through or for the Town.
17. As a part of its obligation to indemnify and hold harmless the District, its officers, agents and employees, as set forth above, the Town agrees to obtain and maintain in full force and effect, for the term of this Agreement, insurance coverage as described below:
 - a. Workers' Compensation Insurance: A policy covering the operations of the Town in accordance with the Workers' Compensation Law, covering all operations under this Agreement, and a certificate of insurance or other proof that Workers' Compensation coverage is in effect shall be provided to the District before the start date of this Agreement.
 - b. Liability and Property Damage Insurance: A policy covering the Town and covering the liability for damages imposed by law upon the Town with respect to all work performed by the Town under this Agreement naming the District additional insured, and a certificate of insurance or other proof that said liability and property damage coverage is in effect shall be provided to the District before the start date of this Agreement.
18. This Agreement constitutes the entire Agreement between the parties and supersedes any and all prior proposals, negotiations and agreements, whether written or oral. Any amendment to this Agreement shall be void unless it is in writing and subscribed by the party against whom the amendment is sought to be enforced.
19. In the event the terms and conditions of this Agreement are not strictly enforced by Town or the District, such non-enforcement shall not act as a waiver or amendment of this Agreement nor shall such non-enforcement prevent either the Town or the District from enforcing every term of this Agreement thereafter.
20. The District and the Town and their respective agents or employees shall strictly comply with all Federal, State, and local laws, rules, and regulations applicable to the performance of this Agreement. Furthermore, every provision of law required to be inserted in this Agreement shall be deemed so inserted, and this Agreement shall be read and enforced as if such provisions were so inserted.
21. This Agreement shall be governed by and under the laws of the State of New York. In the event that a dispute arises between the parties, the venue for the resolution of such a dispute shall be the County of Erie, State of New York.

22. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of said counterparts shall together constitute but one and the same instrument, which may be sufficiently evidenced by one counterpart.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written

DATE: _____ BY: _____
SUPERVISOR
TOWN OF WEST SENECA

DATE: _____ BY: _____
DISTRICT SUPERINTENDENT
WEST SENECA CENTRAL SCHOOL DISTRICT

State of New York)
Town of West Seneca)

On the ____ day of _____ in the year 2019 before me, the undersigned, a Notary Public in and for said State, personally appeared Sheila Meegan, Supervisor for the Town of West Seneca N.Y., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument; that she/he executed the foregoing instrument in accordance with Resolution No. ____ of _____ adopted by the _____ Town Board on _____, 2019.

Notary Public

State of New York)
Town of West Seneca):

On the ____ day of _____ in the year 2019 before me, the undersigned, a Notary Public in and for said State, personally appeared Matthew J. Bystrak, District Superintendent, West Seneca Central School District, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument; that she/he executed the foregoing instrument in accordance with Resolution No. ____ of _____ adopted by the _____ West Seneca Central School District Board of Education on _____, 2019.

Notary Public

“SCHEDULE A”

POST LOCATION	AM TIMES	PM TIMES
POST 1 ALLENDALE & WEST ELEMENTARY	8:20-8:50	3:00-3:30
POST 2 ALLENDALE & WEST ELEMENTARY	8:20-8:50	3:00-3:30
POST 3 WINCHESTER HARLEM @ BRADFORD	8:00-8:40	2:45-3:15
POST 4 WINCHESTER HARLEM RD ENTRANCE	8:00-8:40	2:45-3:15
POST 5 EAST MIDDLE (WEST ENTRANCE)	7:35-8:05	2:27-2:57
POST 6 NORTHWOOD NORTHWOOD @ TERRACE	8:00-8:45	2:55-3:15
POST 7 Q OF H MILL @ SENECA	7:45-8:15	2:15-2:45
POST 8 WEST MIDDLE CENTER RD ENTRANCE	7:30-8:00	2:27- 2:57