

## AGREEMENT

This Agreement is entered into this 31st day of January 2019, by and between the U.S. Department of Housing and Urban Development (“HUD”), the New York City Housing Authority (“NYCHA”), and New York City (“the City”).

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## I. Recitals

1. WHEREAS, under the United States Housing Act of 1937, as amended, 42 U.S.C. § 1437 *et seq.*, HUD is responsible for administering low income housing programs;
2. WHEREAS, NYCHA is a Public Housing Agency that receives federal financial assistance from HUD to administer its public housing program;
3. WHEREAS, NYCHA, in accordance with the Annual Contributions Contract and related regulations related to the grant effected pursuant to the Annual Contributions Contract, is required to, among other things, provide decent, safe, and sanitary housing for the public housing residents of New York City and comply with federal law protecting children from the hazards of lead poisoning;
4. WHEREAS, on June 11, 2018, the United States filed a complaint in the United States District Court for the Southern District of New York (the “Complaint”). The Complaint set forth the findings of the United States’ investigation, alleging, among other things, that NYCHA had routinely failed to comply with lead-based paint safety regulations; had failed to provide decent, safe, and sanitary housing, including with respect to the provision of heat and elevators and the control and treatment of mold and pests; and had repeatedly misled HUD through false statements and deceptive practices;
5. WHEREAS, in a Consent Decree executed June 11, 2018, NYCHA made admissions regarding, among other things, deficiencies in physical conditions with respect to lead, mold, heating, elevators and pests, untrue statements to HUD regarding the conditions of NYCHA properties, and practices with regard to Public Housing Assessment System inspections;
6. WHEREAS, based on NYCHA’s misconduct as detailed in the Complaint, on January 31, 2019, the Secretary of HUD (the “Secretary”) declared that NYCHA is in substantial default within the meaning of Section 6(j)(3)(A) of the U.S. Housing Act. *See* 42 U.S.C. § 1437d(j)(3)(A);
7. WHEREAS, HUD is not taking possession of NYCHA or appointing a receiver at this time. Rather, HUD has determined that the terms of this Agreement constitute an “arrangement[] acceptable to the Secretary and in the best interests of the public housing residents . . . for managing all, or part, of the public housing administered by the agency or of the programs of the agency” within the meaning of 42 U.S.C. § 1437d(j)(3)(A)(v);
8. WHEREAS, the purpose of this voluntary Agreement is to remedy the deficient physical conditions in NYCHA properties, ensure that NYCHA complies with its obligations under federal law, reform the management structure of NYCHA, and

facilitate cooperation and coordination between HUD, NYCHA, and the City during the term of this Agreement; and

9. WHEREAS, the City agrees to provide the funding as set forth in Section VI.
10. WHEREAS, except as provided in this Agreement, NYCHA shall maintain control of its operations and shall be responsible for implementing the action plans described in this Agreement and meeting the physical conditions standards set forth in Exhibit A and Exhibit B;
11. WHEREAS, the United States Attorney's Office for the Southern District of New York ("SDNY") will, within 14 days of the appointment of the Monitor, file appropriate papers with the U.S. District Court to obtain dismissal, without prejudice, of the Complaint;
12. NOW, THEREFORE, HUD, NYCHA, and the City, in consideration for their mutual promises, agree to be legally bound, as follows:

## **II. Definitions**

13. Whenever the terms set forth below are used in this Agreement, the following definitions shall apply:
  - a. "Action Plan" shall have the meaning provided in paragraph 35.
  - b. "Agreement" means this Agreement.
  - c. "Board" means the board of NYCHA, including all of its members.
  - d. "Chair" or "NYCHA Chair" means the chairperson of NYCHA.
  - e. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.
  - f. "Effective Date" has the meaning provided in Section XII.
  - g. "EPA" means the U.S. Environmental Protection Agency.
  - h. "Housing Act" or "Act" means the U.S. Housing Act of 1937, set forth at 42 U.S.C. § 1437d.
  - i. "HUD" means the U.S. Department of Housing and Urban Development.
  - j. "Monitor" means the individual serving as Monitor pursuant to Section III of this Agreement, as well as his or her consultants,

staff, or designees, except where expressly provided otherwise in this Agreement.

- k. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral, including subparts thereto.
- l. "Party" means HUD and NYCHA and, with respect to its commitments under this Agreement, the City.
- m. "Quarter" means each three-month period ending March 31, June 30, September 30, and December 31 of each calendar year.
- n. "Quarterly Report" means the reports described in paragraphs 25 to 26 of this Agreement.
- o. "Secretary" shall mean the Secretary of the U.S. Department of Housing and Urban Development or his or her designee, who shall be the Deputy Secretary, the Assistant Secretary of the Office of Public and Indian Housing, or a Deputy Assistant Secretary in the Office of Public and Indian Housing.
- p. "Section" shall mean a portion of this Agreement identified by a roman numeral.
- q. "Work Plan" shall mean the set of compliance requirements, standards, and deadlines contained in the document set forth herein as Exhibit A and Exhibit B.

### **III. Applicability**

- 14. The obligations of this agreement apply to apartment units, common areas, residential buildings, and building sites consisting of public housing owned or operated by NYCHA and receiving funding through Section 9 of the Housing Act.
- 15. If, due to a conversion program an apartment unit, common area, residential building, or building site is no longer operated by NYCHA and receiving funds through Section 9 of the Housing Act, then the obligations of this agreement shall no longer apply as to those conversions as of the closing of the applicable transaction, except that, with regard to transactions closed more than six months after the Effective Date, NYCHA shall ensure that, during the construction period, the project developer abates lead-based paint in compliance with the lead abatement standards of 24 C.F.R. § 35.930(d), regardless of the dollar value of rehabilitation. Following abatement, NYCHA shall provide to the Monitor a clearance report pursuant to 24 C.F.R. § 35.1340(c).

#### **IV. Monitorship**

##### **A. Selection and Costs**

16. After consultation with NYCHA and the City, HUD and SDNY shall require the City to appoint an individual selected by HUD and SDNY and chosen on the basis of merit to serve as the Monitor.
17. In the event that the individual serving as Monitor resigns or otherwise ceases to serve as Monitor, HUD and SDNY shall jointly designate a replacement Monitor. The replacement Monitor shall be an individual chosen on the basis of merit. HUD and SDNY will provide the City an opportunity to provide its views to with respect to possible replacement Monitors.
18. The Monitor may engage such staff, expert consultants, or other third-party contractors as he or she deems appropriate to use his or her powers fully and perform his or her responsibilities fully.
19. The Monitor shall submit an annual budget for the monitorship, including work, staff, expert consultants or other third-party contractors engaged by the Monitor, to HUD, SDNY, NYCHA and the City for approval.
  - a. Any dispute over the Monitor's budget shall be submitted to the Secretary for final decision.
  - b. The Monitor's approved annual budget shall be made publicly available.
  - c. Amendments to the budget shall proceed through the same process described in this paragraph.
  - d. The Monitor shall notify HUD, SDNY, NYCHA and the City when the Monitor has spent 75% of an approved annual budget.
  - e. If the Monitor exceeds the approved annual budget, the Monitor shall inform the City promptly after becoming aware of the overrun and shall submit to HUD, SDNY, NYCHA and the City a detailed explanation for the overrun, as well as a proposed amended budget reflecting the cost overrun and any other necessary adjustments pursuant to the process for amended budgets.
20. The City shall pay the approved costs of the monitorship. Such costs shall be in addition to the City Funding described in Section VII.

**B. General Powers**

21. The Monitor, HUD, EPA and SDNY shall have, solely for the purposes of this agreement, full access to all information in NYCHA's possession, including but not limited to data systems, documents, and materials, and they shall have full access to all programs, services, facilities, and premises under the control of NYCHA. Nothing herein limits the ability of HUD, EPA, and SDNY to use such information, once accessed, for any enforcement purpose. The Monitor, HUD, EPA and SDNY shall comply with any applicable federal law regarding personally identifiable information to which the Monitor, HUD, EPA and SDNY obtain access. This provision does not permit access to information protected by the attorney-client privilege or the attorney work product protection without NYCHA's consent. Nothing in this Agreement will otherwise restrict or limit any existing rights to access of HUD, EPA or SDNY.
22. The Monitor may communicate with NYCHA officers, employees, contractors, managers, board members, or residents without notice to NYCHA and without NYCHA's permission or presence, provided that such individuals shall not provide any information subject to the attorney-client privilege or attorney work product protection without NYCHA's consent. NYCHA shall make any such individuals within its control available to the Monitor upon request.
23. The Monitor may communicate at his or her discretion with any Party, the public, NYCHA residents, and representatives of any federal, state, or local United States entity.
24. The Monitor shall not be responsible for NYCHA's day-to-day operations. Nothing in this paragraph is intended to limit the powers of the Monitor otherwise granted under this Agreement.

**C. Reporting**

25. The Monitor shall submit a Quarterly Report, beginning after the first full quarter after the date of appointment, to HUD, EPA, and SDNY, setting out:
  - a. The work performed by the Monitor during the relevant period;
  - b. The extent to which NYCHA is complying with the Agreement, including Exhibit A and Exhibit B;
  - c. Objective data showing NYCHA's progress toward achievement of the requirements in Exhibit A and Exhibit B; and
  - d. Any other information the Monitor may deem appropriate regarding matters covered by the Agreement.
26. The Quarterly Reports or a summary thereof shall be made publicly available on NYCHA's website.

27. NYCHA shall meet with the Monitor, HUD, EPA and SDNY (at their discretion) to review the Monitor's Quarterly Reports and discuss strategies for improving NYCHA's performance. In addition, upon request by HUD, EPA, or SDNY, the Monitor shall meet with them (individually or collectively) to review NYCHA's performance under this Agreement, including to review the Monitor's Quarterly Reports.
28. The Quarterly Report issued five years from the Effective Date, and each Quarterly Report thereafter, shall include an assessment of whether NYCHA meets the Criteria for Termination, as described in paragraph 86.

**D. Community Engagement**

29. The Monitor shall engage with NYCHA stakeholders, including residents and resident groups, regarding matters related to the Agreement.
30. The Monitor shall periodically (but at least quarterly) convene a Community Advisory Committee, consisting of NYCHA stakeholders such as NYCHA's Resident Advisory Board; resident, community, and employee representatives; senior NYCHA managers; and other relevant stakeholders to solicit input regarding the achievement of the Agreement's purpose.
31. The Monitor shall establish procedures for the Monitor to communicate with and solicit comment from residents, resident groups, and other NYCHA stakeholders outside of the Community Advisory Committee.

**E. Coordination**

32. The Monitor shall coordinate with any court-appointed officers addressing matters covered by this Agreement, including the Special Master appointed in *Baez v. NYCHA*, No. 13 Civ. 8916 (S.D.N.Y.).

**V. Compliance Requirements and Action Plans**

33. NYCHA will implement and achieve substantial compliance with the requirements of Exhibit A and Exhibit B by the deadlines set forth therein.
34. NYCHA shall cooperate in all respects with actions taken by the Monitor under this Agreement.
35. NYCHA will prepare Action Plans setting forth policies and practices to be adopted and specific actions to be taken by NYCHA to achieve the obligations set forth in Exhibit A and Exhibit B and comply with the terms of this Agreement.
36. NYCHA shall submit each such Action Plan to the Monitor, with a copy to HUD and SDNY, for approval on a schedule set by the Monitor. Upon receipt of a proposed Action Plan submitted by NYCHA, the Monitor shall approve or reject the Action Plan as submitted within a reasonable time. The Monitor shall consider

public health and safety, cost, and other factors deemed relevant by the Monitor in reviewing a proposed Action Plan.

- a. If the Action Plan is rejected, the Monitor shall inform NYCHA (in writing if so requested by NYCHA) of the reasons the Action Plan is rejected. NYCHA shall promptly submit a revised proposed Action Plan addressing the deficiencies in the original Action Plan identified by the Monitor.
  - b. If NYCHA is unable to submit a revised proposed Action Plan acceptable to the Monitor within 30 days of the rejection, the Monitor may submit a proposed revised Action Plan to NYCHA, HUD and SDNY. Within 21 days of submission of the Monitor's proposal, NYCHA may submit comments on the proposal to HUD and SDNY. HUD and SDNY shall consider the Monitor's proposal and NYCHA's comments.
  - c. After considering the submissions and consultation with the Monitor, HUD (and, with respect to a revised proposed Action Plan implementing Exhibit A, SDNY) may approve the Monitor's proposal, approve NYCHA's proposal, approve either proposal with modifications, or reject the proposals. NYCHA and the Monitor shall be provided with notice of and a reasonable opportunity to comment on any non-de minimis modifications to the proposals submitted before a modified proposal goes into effect.
  - d. Nothing in the foregoing shall prevent NYCHA from taking actions it determines are necessary in the interest of residents while approval of an Action Plan is pending.
37. An Action Plan shall set forth policies and practices to be adopted and specific actions to be taken by NYCHA to achieve sustained compliance with particular aspects of this Agreement. Each Action Plan shall include interim milestones to be achieved by specified completion dates for all obligations due more than 60 days from the date of the Action Plan. An Action Plan may include, among other things, changes to policies, procedures, systems, personnel and management structures.
38. An Action Plan may set forth a methodology for calculating metrics contained in Exhibit A and Exhibit B, provided that such methodology is consistent with the terms of those Exhibits.
39. Any proposed revised Action Plan of the Monitor may direct NYCHA to select an independent contractor to perform work called for by an Action Plan. The Monitor shall give such direction through a revision to an Action Plan when the Monitor believes it is important to achieve or sustain NYCHA's compliance with



the Agreement, taking into consideration public health and safety, cost, and other factors deemed relevant by the Monitor. The selection of an independent contractor pursuant to this paragraph shall be through an open and public bidding process, consistent with applicable law, which shall detail the scope of work. NYCHA, in consultation with the Monitor, shall make the selection of an independent contractor based upon the contractor's experience, skill, expertise, and the estimated time and cost of repairs.

40. NYCHA shall promptly adopt each approved Action Plan as its official policy, procedure and course of action and shall use best efforts to implement such Action Plan. The obligation to use "best efforts" with respect to Action Plans does not diminish NYCHA's obligation to achieve substantial compliance with the requirements of Exhibit A and Exhibit B. An Action Plan shall not waive or affect any requirements of this Agreement, including Exhibit A and Exhibit B, which requirements shall be binding on NYCHA independently of any Action Plan.
41. NYCHA shall post each approved Action Plan on its public website.
42. The Monitor may direct NYCHA to submit, by a date certain, a replacement for or modification to any previously approved Action Plan. Such replacement or modified Action Plan will be subject to the process described in paragraphs 36 to 41.
43. At NYCHA's request, the Monitor will consider whether a modification to one or more requirements of Exhibit A, Exhibit B, or an approved Action Plan will further the purposes of this Agreement. If the Monitor determines that modifying such requirement will further the purposes of the Agreement, the Monitor may propose such modification to HUD and SDNY (and EPA as to a modification to Exhibit A). If HUD and SDNY (in consultation with EPA as to Exhibit A) concur in a proposed modification, such modification will go into effect and be a binding part of this agreement.

## **VI. Institutional Changes**

### **A. Change in Leadership**

44. The City shall follow the following process to select a permanent Chair and CEO for NYCHA:
  - a. By 30 days after the Effective Date, a list of candidates for the position of Chair and CEO shall be jointly developed by the City, HUD, and SDNY. Every candidate on the list shall be jointly agreed to by the City, HUD, and SDNY. The City, HUD, and SDNY shall have the opportunity to interview any candidates.
  - b. By the end of the 30 day period after the list of candidates is finalized, the City shall select a permanent Chair and CEO for

NYCHA from the jointly-developed list of candidates. If the selected candidate accepts the position, the selected candidate will begin serving as NYCHA Chair and CEO within 30 days of the candidate's selection, unless the candidate's personal circumstances require the candidate to start at a later date. If a selected candidate does not accept the position, the City may choose another individual from the list of candidates for the position, and that individual will begin serving as NYCHA Chair and CEO within 30 days of the candidate's selection, unless the candidate's personal circumstances require the candidate to start at a later date. In the alternative, the City may choose to restart the selection process set forth in this paragraph 44, in which case a new joint list shall be developed within 30 days of the date the selected candidate declined the position.

- c. The time periods in subparagraphs 44(a)-(b) shall, upon agreement by HUD, SDNY, NYCHA, and the City, be reasonably extended if extraordinary circumstances necessitate such an extension.
- d. During the term of this Agreement, NYCHA's Chair and CEO shall not be removed or replaced without the concurrence of HUD and SDNY.
- e. During the term of this Agreement or ten years, whichever is shorter, any vacancy in this position shall be filled pursuant to the process set out in this paragraph.

**B. Organizational Plan**

45. No later than 60 days after the appointment of the Monitor, the City shall engage a third-party management consultant selected jointly by the City and the Monitor. The consultant shall examine NYCHA's systems, policies, procedures, and management and personnel structures, and make recommendations to the City, NYCHA, and the Monitor to improve the areas examined.
- a. The consultant shall have full access to all information in NYCHA's possession not covered by the attorney-client privilege or attorney work product protection, including but not limited to data systems, documents, and materials, and they shall have full access to all programs, services, facilities, and premises under the control of NYCHA.
  - b. The City shall pay any costs and fees of the consultant.
  - c. The consultant's scope of work shall be jointly developed by the Monitor, NYCHA, and the City.

- d. The consultant shall deliver a final report and recommendations to the City, NYCHA, and the Monitor, with copies to HUD, EPA and SDNY, no later than a deadline to be set by the Monitor.
46. The Monitor and NYCHA collaboratively shall prepare an “Organizational Plan” setting forth changes to NYCHA’s management, organizational, and workforce structure (including work rules), and overarching policies necessary or appropriate to achieve sustained compliance with NYCHA’s obligations under this Agreement. The Organizational Plan may include, among other things, changes to the roles, responsibilities, authorities, and reporting lines of NYCHA’s Chair, General Manager, and Board. The Organizational Plan shall address the recommendations of the third-party management consultant and explain any deviations from those recommendations.
47. The proposed Organizational Plan shall be submitted to HUD, SDNY, and the City no later than six months from the receipt of the consultant’s report. After consultation with and concurrence by HUD and SDNY, the Organizational Plan shall be considered final.
48. If NYCHA and the Monitor are unable to agree on an Organizational Plan, then the Monitor shall develop his or her own Organizational Plan and shall provide copies of the plan to NYCHA, the City, HUD, and SDNY. The Monitor shall consider public health and safety, cost, and other factors deemed relevant by the Monitor in developing the Organizational Plan.
  - a. Within 21 days of submission of the Monitor’s proposal, NYCHA may make a submission regarding the proposal to HUD and SDNY. HUD and SDNY shall consider the Monitor’s proposal and NYCHA’s comments.
  - b. After considering the submissions and consultation with the Monitor, HUD and SDNY may approve the Monitor’s proposal, approve NYCHA’s proposal, approve either proposal with modifications, or reject the proposals. NYCHA and the Monitor shall be provided with notice of and a reasonable opportunity to comment on any non-de minimis modifications to the proposals submitted before a modified proposal goes into effect.
49. Once an Organizational Plan has been approved, NYCHA shall promptly adopt it as its official policy, procedure and course of action and shall use best efforts to implement it.
50. Nothing in the foregoing shall prevent NYCHA from taking actions it determines are necessary in the interest of residents while approval of an Organizational Plan is pending.

51. The Monitor and NYCHA may develop and issue a replacement for or modification to any previously approved Organizational Plan. Paragraphs 47 through 49 shall apply to such replacement or modification.
52. NYCHA shall report in writing to the Monitor, HUD, and SDNY on its compliance with the Organizational Plan sixty days after it is issued, and every sixty days thereafter until the Organizational Plan is fully implemented.

**C. Compliance Department**

53. No later than 45 days after the appointment of the Monitor, NYCHA, in consultation with the Monitor, shall establish and maintain a Compliance Department that will serve the following functions:
  - a. Overseeing NYCHA's regulatory compliance with regard to federal, state, and local obligations.
  - b. Ensuring the accuracy of external reporting and statements by NYCHA.
  - c. Ensuring that NYCHA management and staff receive appropriate compliance training.
  - d. Maintaining a forum for employee, contractor, and resident complaints (including anonymous complaints) regarding compliance issues, and taking action on such complaints as appropriate.
  - e. Ensuring the integrity of PHAS and other inspections at NYCHA.
  - f. Advising the Environmental Health and Safety Officer (described below) of any information obtained by the Compliance Department that relates to environmental health and safety issues.
  - g. Coordinating with the Environmental Health and Safety Officer regarding issues that impact both compliance and environmental health and safety.
  - h. Reporting to the Monitor regarding any compliance issues identified during the term of the Agreement.
54. The Compliance Department shall be headed by a Chief Compliance Officer appointed by NYCHA with the concurrence of the Monitor, after providing HUD and SDNY an opportunity to comment. Except insofar as otherwise provided in the Organizational Plan, the Chief Compliance Officer shall report directly to NYCHA's Chair.

**D. Environmental Health and Safety Department**

55. No later than 45 days after appointment of the Monitor, in consultation with the Monitor, NYCHA shall create an Environmental Health and Safety Department that will serve the following functions:

- a. Analyzing, overseeing, and improving environmental health and safety at NYCHA, which shall include but not be limited to issues relating to lead-based paint, mold, heating, pests, elevators, air quality, and other aspects of NYCHA's physical environment that affect residents' health or safety.
- b. Reporting to NYCHA's senior management and Board on environmental health and safety issues.
- c. Making recommendations to NYCHA's senior management and Board for improvement and correction of any environmental health and safety issues at NYCHA.
- d. Communicating with the public and stakeholders regarding environmental health and safety issues, including by maintaining a forum for employee and resident complaints (including anonymous complaints) regarding environmental health and safety issues.
- e. Advising the Chief Compliance Officer of any information obtained by the Environmental Health and Safety Department that relates to regulatory compliance.
- f. Coordinating with the Chief Compliance Officer regarding issues that impact both compliance and environmental health and safety.
- g. Ensuring the proper application of lead paint interim controls and proper abatement of lead paint.

56. The Environmental Health and Safety Department shall be headed by an Environmental Health and Safety Officer appointed by NYCHA with the concurrence of the Monitor, after providing HUD and SDNY an opportunity to comment. Except insofar as otherwise provided in the Organizational Plan, the Environmental Health and Safety Officer shall report directly to NYCHA's Chair.

**E. Quality Assurance Unit**

57. No later than 45 days after appointment of the Monitor, in consultation with the Monitor, NYCHA shall create a Quality Assurance Unit that will serve the following functions:

- a. Identifying maintenance performance problems that are related to particular buildings, units, managers, or staff.

- b. Using available information and research tools, including work-order data, resident interviews, employee interviews, and site visits.
- c. Considering both performance on individual work orders and also performance of maintenance repairs from the first identification of need to the ultimate correction of the problem (“end-to-end”).
- d. Reviewing work performed by NYCHA in advance of PHAS inspections to determine whether that work was industry-standard quality.
- e. Verifying and contributing to compliance with the Agreement insofar as the Agreement bears on maintenance work at NYCHA.
- f. Communicating with the public and stakeholders regarding quality assurance issues, including maintaining a forum for employee and resident complaints (including anonymous complaints), regarding quality assurance issues.
- g. Providing relevant Quality Assurance Unit findings to NYCHA managers, including the General Manager, and (during the term of the Agreement) to the Monitor, SDNY, and HUD.

58. The Quality Assurance Unit shall be headed by a Quality Assurance Officer appointed by NYCHA with the concurrence of the Monitor, and after providing HUD and SDNY an opportunity to comment. Except insofar as otherwise provided in the Organizational Plan, the Quality Assurance Officer shall report directly to NYCHA’s General Manager.

59. No later than 60 days after the appointment of the Monitor, NYCHA shall provide the HUD, SDNY, and the Monitor with a certification of compliance with paragraphs 53 to 59.

**F. PHAS Inspections**

60. NYCHA will not use deceptive practices with respect to PHAS inspections, will make all improvements in accordance with PIH Notice No. 2016-03, Uniform Physical Condition Standard (UPCS) Deficiencies and Industry Standard Repairs, July 11, 2016 or any subsequent or superseding guidance; will ensure that all maintenance repairs are performed to established industry standards and workmanship; and will ensure that properties meet HUD’s decent, safe, sanitary, and in good repair standards at all times.

61. NYCHA shall design internal controls to prevent deceptive practices including:

- a. Covering up/hiding conditions.

- b. Performing substandard repairs.
- c. Performing work in common areas after an inspection begins, other than for emergency health and safety issues.
- d. Performing work in selected or alternate units after such units have been identified, other than for emergency health and safety issues.

62. NYCHA's Chief Compliance Officer will be responsible for preventing deceptive practices with respect to PHAS investigations and ensuring compliance with HUD regulations and guidelines with respect to PHAS inspections. These responsibilities will include, but not be limited to:

- a. Ensuring that training is provided to NYCHA employees on the regulations and guidelines with respect to PHAS inspections, including in particular the importance of not committing deceptive practices in PHAS inspections.
- b. Routinely advising employees to report deceptive or otherwise improper PHAS practices to the Chief Compliance Officer.
- c. Investigating such complaints as well as forwarding such complaints to the HUD and SDNY, and otherwise as required by applicable law.
- d. Working with the Quality Assurance Unit to identify instances of improper work in connection with a PHAS inspection; provided, however, that the QA Unit's role is to identify maintenance needs and ensure the quality of work done throughout NYCHA throughout the year, and not to perform pre-PHAS maintenance itself.
- e. Reviewing available data to identify any instances of improper work in connection with a PHAS inspection, including, but not limited to, those identified by the QA unit.
- f. Recommending discipline for any managers or staff who conduct deceptive practices in PHAS inspections.
- g. Nothing in this section limits NYCHA residents', NYCHA contractors', or NYCHA employees' ability to raise issues with any other federal, state, or local government entity.
- h. By ninety (90) days after the appointment of the Monitor, NYCHA will submit an Action Plan to the Monitor for meeting the requirements discussed in this Section ("PHAS Inspections"). This Action Plan will be subject to the procedures of paragraphs 36-42.

## VII. City Funding

63. To assist NYCHA in its compliance with this Agreement, including Exhibit A and Exhibit B, and implementation of Action Plans adopted hereunder, the City agrees to provide financial support to NYCHA as follows:

- a. to provide the capital funding to NYCHA through Fiscal Year (“FY”) 2027 reflected in Exhibit C under the heading “Capital Items,” including allocations that flow to NYCHA developments through the Department of Housing Preservation and Development. NYCHA and the Monitor shall have maximum flexibility as provided by law with respect to the projects for which these funds are utilized. Nothing in this paragraph shall be construed as authorizing the shifting of funds from a particular initiative or project to another initiative or project;
- b. to provide the annual operating funds to NYCHA through FY 2027 reflected in Exhibit C under the heading “Expense Items.” NYCHA and the Monitor shall have maximum flexibility as provided by law with respect to the projects for which these funds are utilized. Nothing in this paragraph shall be construed as authorizing the shifting of funds from a particular initiative or project to another initiative or project;
- c. to not impose new or increased payment requirements or fees on NYCHA except for payments such as water fees imposed uniformly on New York City landlords;
- d. in addition to the funding in subparagraphs (a) and (b) above, to provide a total of \$1.0 billion in funding for capital expenses as provided in an Action Plan over the four fiscal years following the Effective Date of this Agreement; and
- e. to provide, for the duration of the Agreement or for at least each of the six fiscal years after the first four fiscal years following the Effective Date of this Agreement, whichever is later, an additional \$200 million per year in funding for capital expenses as provided in an Action Plan to NYCHA in addition to the funding in subparagraphs (a) and (b) above.

64. If this Agreement is terminated pursuant to section XIV of this Agreement, or in the event the Secretary exercises his authority under Section 6(j) of the Housing Act as described below, the City’s funding obligations shall be affected as follows:

- a. If the Agreement is terminated pursuant to the provisions of section XIV, the City’s funding obligations under subparagraphs 63(a)-(e) of this Agreement shall not be affected.



- b. If the Secretary exercises his authority under 42 U.S.C. § 1437d(j)(3)(A)(iv) to take possession of a portion of NYCHA's public housing program following a recommendation of the Monitor, and the subsequent concurrence of NYCHA's CEO, for the limited purpose of (1) abrogating any contract to which the United States or an agency of the United States is not a party that, in the written determination of the Secretary (which shall include the basis for such determination), substantially impedes correction of the substantial default, and after the Secretary determines that reasonable efforts to renegotiate such contract have failed, pursuant to 42 U.S.C. § 1437d(j)(3)(D)(i)(I); and/or (2) directing NYCHA not to comply with any State or local law relating to civil service requirements, employee rights (except civil rights), procurement, or financial or administrative controls that, in the Secretary's written determination (which shall include the basis for such determination), substantially impedes correction of the substantial default, pursuant to 42 U.S.C. § 1437d(j)(3)(D)(i)(V), then the City's funding obligations under subparagraphs 63(a)-(e) of this Agreement shall not be affected.
- c. The Monitor's recommendation under subparagraph 64.b must state in writing the basis for the Monitor's belief that such contract substantially impedes correction of the substantial default and that reasonable efforts to renegotiate such contract have failed and/or that a State or local law substantially impedes compliance with this Agreement. Prior to making the recommendation, the Monitor must have described the contract, state or local law in a quarterly report and explained the manner in which the Monitor believes such contract, state or local law impedes correction of the substantial default. The Monitor's recommendation shall specifically explain any potential impact on the overall operations of NYCHA and any potential disruption to NYCHA residents, and shall consider public health and safety, cost, and such other factors deemed relevant by the Monitor.
- d. The CEO may non-concur with the Monitor's recommendation if the CEO determines that the action recommended by the Monitor is not in the best interest of NYCHA residents. In such circumstance, the CEO shall provide to the Monitor and the Secretary a written determination of non-concurrence and the reasons for the non-concurrence.
- e. If the Secretary, without a recommendation of the Monitor and concurrence of the CEO, exercises his authority under 42 U.S.C. § 1437d(j)(3)(A)(iv) to take possession of a portion of NYCHA's public housing program for the limited purpose of (1) abrogating any contract to which the United States or an agency of the United

States is not a party that, in the written determination of the Secretary (which shall include the basis for such determination), substantially impedes correction of the substantial default, and after the Secretary determines that reasonable efforts to renegotiate such contract have failed, pursuant to 42 U.S.C.

§ 1437d(j)(3)(D)(i)(I); and/or (2) directing NYCHA not to comply with any State or local law relating to civil service requirements, employee rights (except civil rights), procurement, or financial or administrative controls that, in the Secretary's written determination (which shall include the basis for such determination), substantially impedes correction of the substantial default, pursuant to 42 U.S.C. § 1437d(j)(3)(D)(i)(V), then the City's funding obligations under subparagraphs 63(a)-(e) of this Agreement shall terminate.

- f. If the Secretary exercises his or her authority to (1) solicit competitive proposals from other public housing agencies or private housing management agents to manage all or substantially all of NYCHA or take any action under 42 U.S.C. § 1437d(j)(3)(A)(i); (2) petition the United States District Court for the appointment of a receiver or take any action under 42 U.S.C. § 1437d(j)(3)(A)(ii); (3) solicit competitive proposals from other public housing agencies or any private entities to oversee NYCHA's Capital Fund or take any action under 42 U.S.C. § 1437d(j)(3)(A)(iii); (4) take possession of all or part of NYCHA under 42 U.S.C. § 1437d(j)(3)(A)(iv), other than as provided above in subparagraphs 64.b to 64.d; or (5) require NYCHA to make arrangements under 42 U.S.C. § 1437d(j)(3)(A)(v) other than this Agreement or modifications to this Agreement made pursuant to section XIII, then the City's funding obligations under subparagraphs 63.a through 63.e of this Agreement shall terminate.

65. The City's funding obligations under this Agreement shall not be reduced by any funding provided by any other sources (including Borough President or City Council funds). The City shall not set off its obligation to pay funds under this Agreement against any funds that may now or in the future be due from NYCHA to the City, nor shall it exercise any right of recoupment related thereto.
66. Subject to the following paragraph 67, the funding pursuant to subparagraphs (d) and (e) of paragraph 63 shall be provided by the City to NYCHA as follows: the Monitor (or NYCHA at the Monitor's direction) will submit a project description and scope of work to the City's Office of Management and Budget ("OMB"). OMB shall approve this submission if the funds requested are within the dollar amounts described in subparagraphs (d) and (e) of paragraph 63. Subsequent to approval, NYCHA will submit the corresponding contracts to the City Comptroller for registration to the extent required by law.

67. In the event that the total amount of funds provided by the City pursuant to subparagraphs (a), (b), (d), and (e) of paragraph 63 have not been paid by the City to NYCHA during the time periods described in those subparagraphs, the unpaid amounts will be carried over and added to the funds available to NYCHA in the immediately following fiscal year and, to the extent unspent in the next fiscal year, shall continue to be carried over and added to each subsequent fiscal year until spent.
68. Neither the Monitor nor NYCHA shall use City capital funds for other than capital projects.
69. NYCHA and the Monitor may request, in light of capital funds provided by the City under paragraph 63, that HUD repurpose HUD capital funds for use for noncapital purposes.
70. All funds described in subsections (d) and (e) of paragraph 63 shall be spent only pursuant to an Action Plan approved by the Monitor and designed to meet NYCHA's obligations under the Agreement, and work paid for by such funds shall be performed under the direction of the Chair and General Manager subject to the terms of this Agreement.
71. Nothing in this Agreement precludes the City, at its exclusive option or as otherwise provided by law, from authorizing additional capital funding for NYCHA.
72. In the event that an undue financial hardship results in the City's financial inability to pay the full amount pursuant to paragraph 63, the City shall submit to the Monitor, HUD, SDNY, and NYCHA, within 45 days of the Monitor's request, a certification signed by the Mayor of the City and the City Comptroller setting forth that the City is unable to pay the entire amount requested, providing in detail the amount the City has the financial ability to pay ("Available Amount"), a description of the causes and extent of the undue financial hardship, and an explanation as to how the Available Amount was determined. The certification shall include a date when the City will be able to make available more or all of the funds due. If the City is unable to provide such a date in the certification, the City shall provide a certification every 90 days until it is able to provide a date ("Future Availability Date") by which it will make available more or all of the remaining funds (collectively, the "Unpaid Amount"). The City will pay the Available Amount as provided in paragraph 63. If the City and HUD (after consultation with SDNY) agree that there exists undue financial hardship on the part of the City, then NYCHA or the Monitor may seek a modification of applicable Action Plans or other obligations pursuant to paragraph 85.
73. In any dispute regarding the existence and amount of undue financial hardship within the meaning of paragraph 72, the City shall bear the burden of proof.

## **VIII. Regulatory Relief**

74. The Monitor shall assist NYCHA in seeking such regulatory relief from HUD, the City of New York, and the State of New York, as he or she deems is necessary for NYCHA to comply expeditiously and in a cost-effective manner with its obligations under this Agreement.
75. HUD shall consider any requests under paragraph 74 in accordance with all applicable legal requirements and principles of administrative procedure. Nothing in this Agreement limits HUD's discretion in considering such requests. HUD and NYCHA shall create a working group on regulatory relief in order to further the purposes of this Agreement. This working group shall facilitate the prompt response to NYCHA's waiver requests. HUD shall endeavor to respond to NYCHA's pending waiver requests within a reasonable timeframe from the Effective Date of this Agreement.

## **IX. HUD Actions**

76. HUD agrees to continue providing public housing operating and capital funds to NYCHA in accordance with its rules and regulations, including the funding formulas for operating and capital funds. In accordance with these rules, regulations and formulas, HUD will not offset or reduce the formula grants by the amount of the funds the City is providing to NYCHA pursuant to this Agreement.
77. HUD, in its discretion, may provide available technical assistance to NYCHA to facilitate compliance with the Work Plan.
78. HUD agrees to support NYCHA's Section 8 conversion programs known as PACT, as permitted by law.

## **X. Force Majeure**

79. "Force Majeure," for purposes of this Agreement, is defined as any event arising from causes beyond the control of NYCHA that delays or prevents the performance of any obligation under this Agreement despite NYCHA's best efforts to fulfill the obligation. The requirement that NYCHA exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any potential Force Majeure event (a) as it is occurring and (b) following the potential Force Majeure, such that the delay and any adverse effects of the delay are minimized. "Force Majeure" does not include NYCHA's financial inability to perform any obligation under this agreement.
80. If any event occurs or has occurred that may delay the performance of any obligation under this Agreement that NYCHA or the City intends to assert was caused by a force majeure event, NYCHA or the City shall provide notice to the Monitor, HUD, EPA and SDNY (if the event affects the performance of requirements contained in Exhibit A or Action Plans implementing Exhibit A)

within 30 days of when NYCHA or the City first knew that the event might cause a delay and provide NYCHA or the City's rationale for attributing such delay to a force majeure event. The Monitor, HUD, EPA or SDNY may request further information about the assertion of force majeure.

81. If HUD and, if the event affects the performance of requirements contained in Exhibit A or Action Plans implementing Exhibit A, SDNY agree that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Agreement that are affected by the force majeure event will be extended for such time as is necessary to complete those obligations in light of the force majeure event. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. HUD and SDNY (if the event affects the performance of requirements contained in Exhibit A or Action Plans implementing Exhibit A) will notify NYCHA and the City in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

## **XI. Notices**

82. Unless otherwise specified in this Agreement, whenever notifications, submissions, or communications are required by this Agreement, they shall be made in writing and addressed as follows:

As to HUD by mail:                   Dane Narode  
U.S. Department of HUD  
Office of General Counsel  
1250 Maryland, Ave, SW, Suite 200  
Washington, DC 20024

As to HUD by email:                   dane.m.narode@hud.gov

As to SDNY by mail:                   Robert William Yalen, AUSA  
U.S. Attorney's Office  
86 Chambers St., 3rd Floor  
New York, NY 10007

As to SDNY by email:                   robert.yalen@usdoj.gov  
monica.folch@usdoj.gov  
jacob.lillywhite@usdoj.gov  
taliam.kraemer@usdoj.gov  
sharanya.mohan@usdoj.gov

As to NYCHA by mail: Vito Mustaciuolo  
General Manager  
New York City Housing Authority  
250 Broadway  
New York, NY 10007

Debo P. Adegbile  
Wilmer Cutler Pickering  
Hale & Dorr LLP  
7 World Trade Center  
New York, NY 10007

As to NYCHA by email: vito.mustaciuolo@nycha.nyc.gov  
debo.adegbile@wilmerhale.com

As to the City by mail: Zachary W. Carter  
Corporation Counsel  
New York City Law Department  
100 Church Street  
New York, NY 10007

As to the City by email: [zcarter@law.nyc.gov](mailto:zcarter@law.nyc.gov)

As to EPA by mail: Chief, Pesticide and Toxic  
Substances Branch  
U.S. EPA  
2890 Woodbridge Avenue  
Edison, NJ 08837

As to EPA by email: [gorman.john@epa.gov](mailto:gorman.john@epa.gov)

83. HUD, EPA, SDNY, NYCHA and the City may, by written notice to the others, change its designated notice recipient or notice address provided above.

## **XII. Effective Date**

84. This Agreement shall become effective upon execution.

## **XIII. Modification**

85. The terms of this Agreement may be modified only by a subsequent written agreement signed by HUD (with the concurrence of SDNY), NYCHA, and the City.

#### **XIV. Termination**

86. The Criteria for Termination are that:

- a. NYCHA has been in substantial compliance with its obligations under this Agreement for at least the prior twelve months; and
- b. NYCHA is willing and able, following termination, to comply with applicable laws.

87. If, at any time more than five years after the Effective Date, NYCHA believes that it has satisfied the Criteria for Termination set forth in paragraph 86, then it may file a written request with HUD to terminate all or parts of this Agreement. If HUD after consultation with SDNY (and EPA, as to Exhibit A) agrees that NYCHA has satisfied the Criteria for Termination, with respect to the entire Agreement or with respect to the particular provisions sought to be terminated, then, within 10 days of making that determination, HUD will agree to terminate all or parts of the Agreement; provided, however, that to the extent the request for termination relates in whole or part to the requirements of Exhibit A, HUD and SDNY shall jointly decide whether the Criteria for Termination are met. If HUD (or HUD and SDNY in the case of Exhibit A) determines that one or more of the Criteria for Termination are unsatisfied, then HUD (or HUD and SDNY jointly in the case of Exhibit A) shall reject NYCHA's request. In this event, HUD (or HUD and SDNY jointly in the case of Exhibit A) shall notify NYCHA in writing of the criteria which are unsatisfied.

88. HUD may determine at any time and in its discretion to lift its determination of substantial default. Such event shall not terminate this Agreement.

#### **XV. Dispute Resolution**

89. If, at any time prior to the termination of this Agreement, the Monitor, HUD, or SDNY believes that NYCHA or the City is not in compliance with any obligation under this Agreement, HUD in consultation with SDNY shall consider whether such noncompliance may be addressed through informal dispute resolution, prior to pursuing Enforcement under Section XVI. If so, HUD, SDNY, the Monitor, NYCHA, and the City, as appropriate, shall make good faith efforts to meet and confer regarding a resolution of the dispute.

#### **XVI. Enforcement**

90. If the Monitor finds that NYCHA has failed to substantially comply with any of the requirements of this Agreement, including the procedural and substantive requirements in Exhibits A and B, or has failed to adopt or use best efforts to implement an Action Plan or Organizational Plan as required under the terms of this Agreement, then the Monitor may remedy such noncompliance as follows:

- a. The Monitor shall inform NYCHA in writing of the noncompliance and provide NYCHA 30 days in which to correct the noncompliance or to propose a plan for achieving substantial compliance that is acceptable to the Monitor.
  - b. If NYCHA fails to correct the noncompliance within 30 days, fails to propose a plan for achieving substantial compliance that is acceptable to the Monitor within 30 days, or fails to comply with a plan for achieving substantial compliance approved by the Monitor, the Monitor may propose a remedial directive requiring NYCHA to take specific action correct the noncompliance, which actions may include, but are not limited to, requiring NYCHA to (1) allocate or reallocate personnel; (2) allocate or reallocate resources; (3) take or refrain from specific actions; (4) hire independent contractors; (5) hire independent experts; or (6) increase NYCHA staff for specific functions. The Monitor shall consider public health and safety, cost, and other factors deemed relevant by the Monitor in developing a remedial directive.
  - c. The Monitor shall submit the proposed remedial directive for review to NYCHA, HUD, and SDNY 30 days in advance of the proposed date for the Monitor to issue the remedial directive. NYCHA may submit comments to HUD and SDNY within 21 days thereafter. HUD and SDNY shall consider the Monitor's proposal and NYCHA's comments.
  - d. After considering the submissions and consultation with the Monitor, HUD may approve the Monitor's proposal, approve NYCHA's proposal, approve either proposal with modifications, or reject the proposals. NYCHA and the Monitor shall be provided with notice of and a reasonable opportunity to comment on any non-de minimis modifications to the proposals submitted before a modified proposal goes into effect.
  - e. Upon approval of a remedial directive by HUD, the Monitor may issue a remedial directive.
91. If, after the issuance of a remedial directive, the Monitor finds that NYCHA has failed to comply with the remedial directive; continues to fail in using best efforts to implement the Plan addressed by the remedial directive; or continues to fail to meet the requirements in Exhibit A or Exhibit B addressed by the remedial directive, then NYCHA agrees that the Monitor may take such actions on NYCHA's behalf as the Monitor deems necessary to implement the remedial directive directly. The Monitor shall submit the proposed actions to be taken on NYCHA's behalf to NYCHA and to HUD with a copy to SDNY (or in the case of Exhibit A or Action Plans related thereto, to HUD and SDNY jointly) 30 days in advance of the proposed date for the Monitor to take such action. NYCHA may



submit comments to HUD and SDNY within 14 days thereafter. Upon concurrence in the remedial directive by HUD (after consultation with SDNY, or in the case of Exhibit A or Action Plans related thereto, by HUD and SDNY jointly), the Monitor may issue a remedial directive.

92. Paragraphs 90 and 91 shall not be used to address failures by NYCHA that are de minimis.

93. Nothing in this Agreement should be construed to limit HUD's or EPA's statutory or regulatory authority. HUD and EPA reserve all of their rights under applicable law, including, but not limited to, the right to appoint, or to seek judicial appointment of, a receiver for substantial default, as well as all other administrative remedies and authority.

94. In addition to all otherwise available remedies, if NYCHA or the City fails to comply with any part of this Agreement, HUD, EPA, or the United States on behalf of HUD and/or EPA, may pursue any remedy available to them, including to enforce this agreement by seeking injunctive relief or an order of specific performance in the U.S. District Court of the Southern District of New York. With respect to any such action to enforce this agreement:

- a. The City and NYCHA agree that a non-de minimis failure to comply with this Agreement causes an irreparable harm to the United States and warrants the issuance of injunctive relief for specific performance.
- b. The City and NYCHA agree that they waive any defenses, legal or equitable, that might exist with respect to such action, except the defenses that there was no non-de minimis failure of compliance with the Agreement and that the relief proposed is not necessary to remedy the noncompliance.
- c. The City and NYCHA agree that expedited resolution is required. The City and NYCHA consent to expedited resolution and to an expedited schedule for resolution of the dispute on the merits.

95. Nothing in this Agreement should be construed to limit the authority of HUD, EPA or the United States on behalf of HUD and/or EPA, to seek judicial enforcement of this Agreement.

#### **XVII. Effect of Agreement; Waiver**

96. This Agreement shall not be construed to create rights in, or grant any cause of action to, anyone not a Party to this Agreement, other than EPA or SDNY.

97. This Agreement shall not be construed to create any greater rights of NYCHA or the City against the United States (including HUD) than would otherwise exist.

98. NYCHA and the City waive any claims that exist as of the Execution Date against the United States (including HUD) and any of its employees and agents related to the subject matter of this Agreement.
99. NYCHA and the City waive any claims against the United States (including HUD) regarding the validity of this Agreement or any modifications thereto.
100. NYCHA and the City agree not to contest HUD's determination that NYCHA is in substantial default within the meaning of Section 6(j)(3)(A) of the U.S. Housing Act.
101. NYCHA and the City agree not to contest HUD's determination that the terms of this Agreement constitute an "arrangement[] acceptable to the Secretary and in the best interests of the public housing residents . . . for managing all, or part, of the public housing administered by the agency or of the programs of the agency" within the meaning of 42 U.S.C. § 1437d(j)(3)(A)(v).
102. This Agreement shall not be construed to limit the rights of the United States (including but not limited to HUD, EPA and SDNY) to seek relief under the Housing Act or under other federal laws or regulations. The United States reserves all legal and equitable remedies to address any potential imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, NYCHA's conduct, whether related to matters described herein or otherwise.
103. In any subsequent administrative or judicial proceeding initiated by the United States (including but not limited to HUD, EPA and SDNY) for injunctive relief, civil penalties, or other appropriate relief against NYCHA, NYCHA shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the Complaint or addressed in the Agreement.
104. This Agreement is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. This Agreement does not remove any responsibility of NYCHA for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits, and NYCHA's compliance with this Agreement shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. HUD and SDNY do not, by entering into this Agreement, warrant or aver in any manner that NYCHA's compliance with any aspect of this Agreement will result in compliance with any provisions of federal, state, or local laws, regulations, or permits.
105. This Agreement does not limit or affect the rights of the United States (including but not limited to HUD, EPA and SDNY) against any third parties not

party to this Agreement (including any present or former employees, officers, or board members), nor does it limit the rights of third parties, not party to this Agreement, against NYCHA, except as otherwise provided by law.

#### **XVIII. Litigation Claims**

106. HUD and SDNY agrees that within 14 days of appointment of the Monitor SDNY will file appropriate papers with the U.S. District Court to obtain dismissal, without prejudice, of the Complaint.

107. NYCHA agrees not to object to a motion to reinstate any Count of the Complaint in the event of breach of this Agreement by NYCHA. In such a case, NYCHA will not assert any defense of laches or untimeliness with respect to such Count. NYCHA hereby agrees to toll the running of any limitations period with respect to any civil claims asserted by the United States based on the allegations of the Complaint.

#### **XIX. Signatories/Service**

108. Each undersigned representative of HUD, NYCHA, and the City certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement.

109. This Agreement may be signed in counterparts, and its validity shall not be challenged on that basis.

#### **XX. Integration**

110. This Agreement, including Exhibits A through C, shall express the entire agreement of the parties hereto, written or oral with respect to resolving the substantial default of NYCHA.

111. This Agreement shall not supplant nor supersede any obligations of NYCHA under the ACC or any other agreements between NYCHA and HUD.

112. If there is any conflict between this Agreement and a provision of any other existing agreement, HUD shall in its sole discretion determine which provisions shall prevail.

#### **XXI. Information Collection and Retention**

113. The United States and its representatives, including attorneys, contractors, and consultants, will have continued access to NYCHA data and personnel to the extent necessary (in the United States' unreviewable discretion) for oversight of implementation of the Agreement.

114. Until one year after the termination of this Agreement, NYCHA and the City shall retain, and shall instruct its contractors and agents to preserve, all non-

identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) that relate in any manner to NYCHA's and the City's performance of its obligations under this Agreement and that meet criteria specified by the Monitor, who shall consider cost and the purposes of this Agreement in setting forth such criteria.

115. At the conclusion of the information-retention period provided in the preceding paragraph, NYCHA and the City shall notify HUD, EPA, and SDNY at least 90 days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding paragraph and, upon request by HUD or SDNY, NYCHA and the City shall deliver any such documents, records, or other information to the United States.
116. This Agreement in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States (including HUD and EPA) pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of NYCHA and the City to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.
117. NYCHA and the City agree that the United States may retain and use documents and information produced to it by NYCHA pursuant to Civil Investigative Demand or otherwise in the course of the United States' investigation of this matter, and in particular waives any limitation on the retention or use of such documents and information contained in 31 U.S.C. § 3733.
118. Nothing in this Agreement limits any document retention obligations that NYCHA or the City may have under applicable law or regulation.

## **XXII. June 11, 2018 Consent Decree**

119. The June 11, 2018 Consent Decree is null and void, except with respect to the admissions contained in paragraph 7 of the Consent Decree, which NYCHA ratifies and reaffirms.

## **XXIII. Construction and Severability**

120. Each party has participated in the drafting and preparation of this Agreement and this Agreement shall be construed as a whole, according to its fair meaning and not for or against any party.
121. If any part of this Agreement is found to be contrary to law, that part may be severed from the Agreement and the remainder of the Agreement shall remain in full force and effect. The remaining Agreement shall be construed as far as is lawful and practicable to enforce the overall intent of the original Agreement.

FOR THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT:

Dated: January 31, 2019  
New York, New York



BENJAMIN S. CARSON, SR., M.D.  
Secretary  
*U.S. Department of Housing and Urban  
Development*

451 7<sup>th</sup> St., SW  
Washington, DC 20410

FOR THE UNITED STATES OF AMERICA:

Dated: January 31, 2019  
New York, New York



GEOFFREY S. BERMAN  
United States Attorney  
*Attorney for the United States*

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FOR NYCHA:

Dated as of: January 31, 2019  
New York, New York



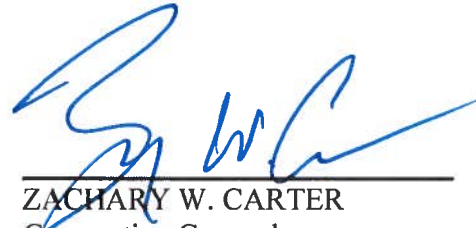
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Vito Mustaciuolo  
General Manager  
New York City Housing Authority

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New York, NY 10007  
Tel.: (212) 306-3416  
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FOR THE CITY OF NEW YORK:

Dated: January 31, 2019  
New York, New York



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Corporation Counsel  
*Attorney for the City of New York*

GEORGIA PESTANA  
First Assistant Corporation Counsel

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## EXHIBIT A – REQUIREMENTS FOR LEAD-BASED PAINT

### A. In General

1. Terms used with respect to lead-based paint compliance but not expressly defined herein shall have the meaning contained in 24 C.F.R. part 35, and 40 C.F.R. part 745.
2. NYCHA shall comply with 24 C.F.R. part 35, and 40 C.F.R. part 745.
3. Nothing herein limits NYCHA's obligations under any other federal, state, or local laws or regulations governing lead-based paint or lead-based paint hazards.

### B. Priority Action Units and Common Areas

4. No later than 30 days after execution of this Agreement, NYCHA shall provide the United States the following:
  - a. A report identifying all developments that meet the following requirements: (i) they were built prior to January 1, 1978, and (ii) they are not exempt pursuant to 24 C.F.R. § 35.115, as a result of an inspection, an abatement, or otherwise (the "Lead Paint Developments"). Such report will identify each unit (including each "child-occupied facility") within such Lead Paint Developments that is not exempt pursuant to 24 C.F.R. § 35.115 ("Lead Paint Unit").
  - b. A report (the "Immediate Action List") identifying the subset of Lead Paint Units that NYCHA has reason to believe are occupied or routinely visited by a child under the age of 6. Routine visiting shall be determined in conformance with the first sentence of the definition of child-occupied facility at 40 C.F.R. § 745.83.
5. Within 30 days of execution of this Agreement, NYCHA shall comply with the following requirements:
  - a. Perform at least one visual assessment in accordance with 24 C.F.R. § 35.1355 of each Lead Paint Unit on the Immediate Action List, except insofar as that Lead Paint Unit received a compliant visual assessment within the preceding 12 months; and
  - b. Eliminate any lead-based paint hazards in Lead Paint Units identified on the Immediate Action List through the performance of interim controls in accordance with 24 C.F.R. § 35.1330, or through abatement in accordance with 24 C.F.R. § 35.1325.
6. No later than 90 days after execution of this Agreement, NYCHA shall submit to the United States documents sufficient to show NYCHA's basis for claiming that particular pre-1978 developments are exempt pursuant to 24 C.F.R. § 35.115. To the extent that

HUD and SDNY thereafter notify NYCHA that they reject that determination, such developments, units and common areas will no longer be considered by NYCHA to be exempt pursuant to 24 C.F.R. § 35.115. If HUD and SDNY (a) object to the exemption for a particular development, unit, or common area, and (b) the lack of exemption would have led to the inclusion of additional units or common areas on the Immediate Action List, NYCHA shall within 30 days thereafter comply with paragraph 5 as to such additional apartments.

7. NYCHA may conduct a new lead-based paint inspection (in accordance with 24 C.F.R. § 35.1320(a)) of any Lead Paint Unit on the Immediate Action List. If that inspection determines that no lead-based paint is present in the unit, NYCHA may remove the unit from the Immediate Action List if NYCHA provides the inspection report to the United States and to the resident household within seven days of NYCHA's receipt of the inspection report, and the United States does not object to the removal of the unit from the Immediate Action List within 14 days of receiving such inspection results.

**C. Abatement of Lead-Based Paint**

8. Within five years of the execution of this Agreement, NYCHA shall abate all lead-based paint at the Harlem River Houses and the Williamsburg Houses (the "Early Abatement Developments") in accordance with 40 C.F.R. part 745 subpart L.
9. Within ten years of the execution of this Agreement, NYCHA shall abate, in accordance with 40 C.F.R. part 745 subpart L, all lead-based paint in 50% of apartment units that contain lead-based paint, and interior common areas that contain lead-based paint in the same building as those units. Units and interior common areas in the Early Abatement Developments shall be included in calculating compliance with the requirements in this paragraph.
10. Within fifteen years of the execution of this Agreement, NYCHA shall abate, in accordance with 40 C.F.R. part 745 subpart L, all lead-based paint in 75% of apartment units that contain lead-based paint, and interior common areas that contain lead-based paint in the same building as those units. Units and interior common areas abated pursuant to paragraphs 8 and 9 shall be included in calculating compliance with the requirements in this paragraph.
11. Within twenty years of the execution of this Agreement, NYCHA shall abate, in accordance with 40 C.F.R. part 745 subpart L, all lead-based paint in 100% of apartment units that contain lead-based paint, and interior common areas that contain lead-based paint in the same building as those units.
12. NYCHA shall abate exterior common areas that contain lead-based paint. NYCHA shall develop an Action Plan setting forth an appropriate timeline for such abatement, prioritizing common areas posing a higher risk of exposure to children.

13. For purposes of paragraphs 8, 9, 10, 11 and 12, “common areas” and “abatement” shall have the meaning in 40 C.F.R. part 745, subpart L. However, with respect to abatement, the Monitor shall determine whether NYCHA will not be able to comply with the ongoing maintenance, reevaluation, and other obligations associated with using enclosure, encapsulation, encasement, or other abatement measures that retain the lead-based paint in place (“alternative abatement methods”) (24 C.F.R. §§ 35.1120(c) and 35.1355, and see the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing ([https://www.hud.gov/program\\_offices/healthy\\_homes/lbp/hudguidelines](https://www.hud.gov/program_offices/healthy_homes/lbp/hudguidelines)), especially chapters 6 and 11 through 15), and if the Monitor determines that NYCHA will not be able to, then “abatement” in paragraphs 8, 9 and 11 shall mean the removal of lead-based paint in compliance with 40 C.F.R. part 745 subpart L, but shall not include alternative abatement methods, and NYCHA shall abate by removal any lead-based paint that had been abated by an alternative abatement method. After a finding by that Monitor that NYCHA will not be able to comply with its obligations associated with using alternative abatement methods, upon the Monitor subsequently finding that NYCHA will be able to comply, NYCHA may use such methods along with abatement methods that remove lead-based paint.
14. In performing any lead paint abatements, whether pursuant to paragraphs 8 and 9 or otherwise, NYCHA shall comply with the following, in addition to other legal requirements:
  - a. NYCHA shall ensure that a certified supervisor is onsite or otherwise available in accordance with 40 C.F.R. § 745.227(e).
  - b. NYCHA shall notify EPA of lead-based paint abatement activities electronically using EPA’s Central Data Exchange (CDX) in accordance with 40 C.F.R. § 745.227(e)(4)(vii).
  - c. NYCHA shall prepare and implement written occupant protection plans for all abatement projects in accordance with 40 C.F.R. § 745.227(e)(5).
  - d. NYCHA shall specify methods of collection and lab analysis in accordance with 40 C.F.R. § 745.227(f).
  - e. NYCHA shall ensure that a clearance examination is performed, and a clearance examination report provided by a lead-based paint inspector/risk assessor certified and licensed as applicable for the property location, in accordance with 40 C.F.R. § 745.227(e)(8)-(9). The lead-based paint inspector/risk assessor must be independent of the lead-based paint abatement firm, supervisor, and contractors performing the abatement work.
  - f. NYCHA shall ensure that the certified supervisor on each abatement project prepares an abatement report in accordance with 40 C.F.R. § 745.227(e)(10).

- g. NYCHA shall maintain records in accordance with 40 C.F.R. § 745.227(i) and 24 C.F.R. § 35.175.

**D. Lead-Safe Work Practices**

- 15. NYCHA shall comply with lead-safe work practice requirements set forth in the Lead Safe Housing Rule, 24 C.F.R. part 35, subparts B-R, and the Renovation, Repair, and Painting Rule, 40 C.F.R. part 745, subpart E, when directing or performing renovation (as that term is defined in 40 C.F.R. § 745.83) or maintenance work in Lead Paint Developments to which lead-safe work practices apply, including by:
  - a. Establishing and maintaining sufficient information in NYCHA's renovation and maintenance computer systems to readily identify renovation and maintenance projects involving work to which the lead-safe work practices regulations apply in accordance with 24 C.F.R. §§ 35.1330, 35.1350 and 40 C.F.R. §§ 745.85, 745.89;
  - b. Ensuring that only properly trained and certified firms and workers are assigned to perform work to which lead-safe work practices apply in accordance with 24 C.F.R. §§ 35.1330, 35.1350 and 40 C.F.R. §§ 745.85, 745.90;
  - c. Obtaining and maintaining certification as a certified renovation firm if any of the workers described in this paragraph are NYCHA employees, and the work they do is covered by 40 C.F.R. part 745, subpart E (or, if applicable in the future, the appropriate provisions of subpart Q), in accordance with 40 C.F.R. §§ 745.81, 745.89;
  - d. Ensuring supplies necessary to perform lead-safe work practices in accordance with 24 C.F.R. § 35.1350 and 40 C.F.R. § 745.85 are readily available to trained and certified workers;
  - e. Ensuring that firms and workers assigned to perform renovation or maintenance work to which lead-safe work practices apply use the RRP Renovation Checklist and establish and maintain records necessary to demonstrate compliance with the RRP Rule in accordance with 40 C.F.R. § 745.86;
  - f. Ensuring that residents of units and developments in which renovation or maintenance work to which lead-safe work practices apply will be performed are informed of the work to be performed and the risks involved in accordance with 24 C.F.R. § 35.1345 and 40 C.F.R. §§ 745.84 and 745.85;
  - g. Retaining records demonstrating compliance with the regulations set forth at 24 C.F.R. § 35.125 and 40 C.F.R. § 745.84.

- h. Containing or causing to be contained any work area to which lead-safe work practices will apply by isolating the work area and waste generated so that no dust or debris leaves the work area in accordance with 24 C.F.R. § 35.1345 and 40 C.F.R. § 745.85(a);
- i. Containing, collecting, and transporting waste from the renovation in accordance with 40 C.F.R. § 745.85(a)(4);
- j. Performing cleanup of any work area to which lead-safe work practices apply until no dust debris or residue remains in accordance with 24 C.F.R. §§ 35.1345, 35.1335 and 40 C.F.R. § 745.85(a) and (b), and conducting and passing a clearance examination in accordance with 24 C.F.R. § 35.1340 (including follow-up as required by that section's subsection (e) after clearance failure(s)), as provided by 40 C.F.R. § 745.85(c).

**E. Visual Assessments**

- 16. Each calendar year and at unit turnover, NYCHA shall perform visual assessments in Lead Paint Developments in accordance with 24 C.F.R. § 35.1355(a)(2).
- 17. Within one year of the execution of this Agreement, NYCHA shall control deteriorated lead-based paint identified by visual assessments in compliance with 24 C.F.R. § 35.1120(b)(1) and (2); except that for a visual assessment performed in an apartment unit that has not had a previous compliant visual assessment within the preceding twelve months, all corrections of lead-based paint hazards shall be made within thirty days of the visual assessment.

**F. Biennial Risk Assessment Reevaluations**

- 18. Within two years of the execution of this Agreement, NYCHA shall conduct risk assessment reevaluations of all NYCHA housing that contains lead-based paint in accordance with 24 C.F.R. § 35.1355.

**G. EIBLL/EBLL-Triggered Risk Assessments, Investigations and Abatement**

- 19. Within 30 days of appointment of the Monitor, NYCHA shall provide the Monitor a list (the "EIBLL/EBLL-Triggered Risk Assessment List") of all units, common areas servicing such units, and developments in which neither an environmental investigation nor a risk assessment was performed since the date of: (a) the reporting to NYCHA (if on or after July 13, 2017) of a case of a child under age 6 with an elevated blood lead level (EBLL) (as those terms are defined in 24 C.F.R. § 35.110, as amended by 82 Fed. Reg. 4151 (Jan. 13, 2017)) living in such unit and development, or (b) the reporting to NYCHA (if before July 13, 2017) of a case of a child with an elevated blood lead level (EIBLL) (as those terms were defined in 24 C.F.R. § 35.110, prior to amendment by 82 Fed. Reg. 4151 (Jan. 13, 2017)) living in such unit and development.
- 20. After providing the Monitor the EIBLL/EBLL-Triggered Risk Assessment List, within a timeframe acceptable to the Monitor, NYCHA shall confirm that the New York City

Department of Health and Mental Hygiene (“NYC DOHMH”) has performed an environmental investigation in accordance with 24 C.F.R. §§ 35.110, 1130, in any unit and common areas servicing that unit identified in the EIBLL/EBLL-Triggered Risk Assessment List. To the extent the NYC DOHMH has not performed an environmental investigation in accordance with 24 C.F.R. §§ 35.110, 1130, in any unit and common areas servicing that unit identified in the EIBLL/EBLL-Triggered Risk Assessment List, NYCHA shall perform such environmental investigation within a timeframe acceptable to the Monitor.

21. After issuing or receiving the report of the environmental investigation, within a timeframe acceptable to the Monitor, NYCHA shall complete the abatement of identified lead-based paint hazards in accordance with 24 C.F.R. §§ 35.1130(c) and 35.1325.
22. NYCHA shall perform risk assessments for all other units in the building in which a child under age 6 resides or is expected to reside on the date lead-based paint hazard reduction under Paragraph 21 is complete, and common areas servicing those units in the developments identified in the EIBLL/EBLL-Triggered Risk Assessment List, within a timeframe acceptable to the Monitor.

#### **H. EBLL Reporting**

23. NYCHA shall report to HUD each confirmed case of a child with an elevated blood lead level within 5 business days of being so notified in accordance with 24 C.F.R. § 35.1130.
24. No later than 60 days after the execution of this Agreement, NYCHA shall enter into a written agreement with the NYC DOHMH resolving any barriers to the sharing of information relating to resident children’s blood lead levels necessary for NYCHA to make disclosures to HUD in accordance with paragraph 23 and 24 C.F.R. § 35.1130, and shall provide a copy of such agreement to the United States.
25. NYCHA shall report to the Monitor and to the United States any NYC DOHMH Commissioner order to abate lead-based paint within five days of receiving such order.
26. On and after the Effective Date, to the extent NYC DOHMH has not performed an environmental investigation of any unit in which a child with an elevated blood lead level has been reported within 15 days of identifying such unit, NYCHA shall perform an environmental investigation of that unit and common areas servicing that unit and perform abatement of any lead-based paint hazards within thirty days in accordance with 24 C.F.R. §§ 35.1130(c) and 35.1325.

#### **i. Lead Disclosure**

27. From and after the Effective Date, NYCHA shall provide residents signing new leases (or, where required by regulation, renewal leases) with information about the presence of lead-based paint and lead-based paint hazards in their apartments and developments in accordance with the Lead Disclosure Rule, 24 C.F.R. part 35, subpart A; 40 C.F.R. part 745, subpart F.

28. NYCHA shall ensure that physical copies of all materials required to be disclosed by the Lead Disclosure Rule are present, available for inspection, and permanently maintained at the management office for each development.
29. NYCHA shall ensure that electronic copies of all materials required to be disclosed by the Lead Disclosure Rule are available to residents through an internet-based portal.

**ii. Certifications Regarding Lead Paint**

30. NYCHA shall provide the United States and the Monitor certifications describing its compliance as follows:
  - a. No later than 120 days after execution of this Agreement, NYCHA shall submit to the United States a statement describing its compliance with paragraphs 4-6. In its submission to the United States, NYCHA shall specify the method(s) used to correct any lead based paint hazards identified on the Immediate Action List and certify that such corrections were performed in compliance with the Lead Safe Housing Rule, Renovation, Repair and Painting Rule, and Abatement Rule, as applicable, and that residents were notified of the corrections in compliance with the Lead Safe Housing Rule.
  - b. Six months after the Effective Date, and every six months thereafter, NYCHA shall provide the United States and the Monitor a certification describing its compliance with paragraphs 8 to 15.
31. To the extent that compliance is not yet due under a particular provision at the time that the certifications described in paragraph 30 are to be provided, the certification shall describe NYCHA's progress achieving compliance when due, and detail NYCHA's plan for achieving compliance promptly.
32. Upon the request of the United States or the Monitor, NYCHA shall promptly submit documents underlying a certification.

**iii. Other Obligations**

33. In addition to meeting the requirements of paragraphs 1 to 32, and except where otherwise provided in an approved Action Plan, NYCHA shall perform the following tasks:

a.	NYCHA will display a sample kit of the supplies needed to complete an RRP work order in all 139 storerooms by January 31, 2019.
b.	NYCHA will issue a minimum of one kit of RRP supplies to RRP-certified staff daily by February 28, 2019.

c.	NYCHA will enhance its work order system to automatically create a “dust wipe” work order if a RRP work order is generated by February 28, 2019.
d.	NYCHA will select a vendor to supplement the EPA’s RRP training with practical training on dust control measures to simulate a range of working conditions by March 31, 2019 and train substantially all RRP-certified staff by December 31, 2019.
e.	NYCHA will provide all Resident Building Superintendents, Assistant Resident Building Superintendents, and Property Managers with training in RRP practices on an ongoing basis.
f.	NYCHA will train all maintenance workers to perform lead-based paint visual assessments by September 30, 2019.
g.	NYCHA will secure additional, dedicated painting contracts for the Healthy Homes Department to exclusively focus on remediation by December 31, 2019.



## **EXHIBIT B – REQUIREMENTS FOR HEAT, MOLD, ELEVATORS, PESTS, AND ANNUAL INSPECTIONS**

### **A. Heat**

#### **i. Provision of Heat**

1. As set forth in paragraphs 2 and 3 below, NYCHA will comply with N.Y.C. Admin. Code § 27-2029(a) (the “legal limits”), which as of the Effective Date require NYCHA to maintain the following temperatures in apartments between October 1 and May 31 (the “Heating Season”):

- a. between the hours of 6:00 a.m. and 10:00 p.m., a temperature of at least 68 degrees Fahrenheit whenever the outside temperature falls below 55 degrees; and
- b. between the hours of 10:00 p.m. and 6:00 a.m., a temperature of at least 62 degrees Fahrenheit.

2. By and after October 1, 2024, NYCHA will ensure that, during any given Heating Season:

- a. no more than 15% of occupied apartments, as measured according to procedures established in an Action Plan which may include a reliable sampling method, shall have an occasion in which the temperatures fall below the legal limits, and
- b. the temperature shall not fall below the legal limits on more than three separate occasions in a given unit.

#### **ii. Identification of Heating Failures**

3. Within 90 days of the Effective Date of this Agreement, for those developments which are already furnished with electronic temperature reading devices, NYCHA will institute and maintain a system that identifies all apartments in which such devices indicate a violation of the City Code heating requirements, and identifies the inside and outside temperatures associated with such violation.

4. This information will be available to all NYCHA personnel responsible for heating and to all development managers.

5. This information will be fully available to the Monitor, HUD, and SDNY.

6. An appropriate mechanism for disclosing this information to the public shall be provided in an Action Plan.

7. By December 31, 2020, NYCHA will have installed electronic temperature monitoring sufficient to provide NYCHA a comprehensive understanding of heating conditions in 44

developments, which shall include electronic temperature monitoring in no fewer than 30% of NYCHA apartments in such developments. A schedule shall be established in an Action Plan with deadlines by which NYCHA will install such monitoring systems in the remainder of NYCHA's developments.

**iii. Response to Heating Failure**

8. By October 1, 2019, NYCHA shall establish an Action Plan that identifies, for each development, how NYCHA will respond to heating outages, taking into account resident populations, historical data about prior outages, the availability of on-site and remote maintenance personnel, and response times. The plan shall include provisions for alternative heated community spaces for heating outages that are expected to last for a substantial duration. The plan shall also address NYCHA's policies for closing out work orders when the resident is not available at home or otherwise does not provide access to his or her apartment to resolve a heating outage. The plan shall be made available to the residents and posted online.

9. Starting with the Heating Season beginning October 1, 2019, NYCHA will:

- a. Consistent with its previously stated goal, restore heat to units affected by a heating shortage within an average of 12 hours.
- b. During the Heating Season, for 85% of heating shortfalls, NYCHA will restore heat to affected units within 24 hours, and in no event more than 48 hours. NYCHA may restore heat through the use of temporary replacement heating systems that comply with the N.Y.C. Admin. Code.
- c. In any event in which heat is unable to be restored to a particular unit within 12 hours, appropriate NYCHA personnel distinct from the NYCHA personnel responsible for the heat restoration, as identified in an Action Plan, shall undertake an investigation to determine the root cause(s) of such initial failure of the heating system and the failure to achieve the restoration of service within the timeframe, identify corrections to prevent or lessen the recurrence of such failures, and track the implementation of such corrective actions. Such information shall be retained in a central repository to which all applicable maintenance staff and management have access.

10. Starting with the Heating Season beginning October 1, 2024, NYCHA will:

- a. During the Heating Season, for 85% of heating shortfalls, NYCHA will restore heat to affected units within 12 hours, and in no event more than 24 hours. NYCHA may restore heat through the use of temporary replacement heating systems that comply with the N.Y.C. Admin. Code.
- b. In any event in which heat is unable to be restored to the affected units within 12 hours, the Quality Assurance Unit shall undertake an investigation to determine the root cause(s) of such initial failure of the heating system and the failure to achieve the restoration of service within

the timeframe, identify corrections to prevent or lessen the recurrence of such failures, and track the implementation of such corrective actions. Such information shall be retained in a central repository to which all applicable maintenance staff and management have access.

11. A failure to timely restore heat will not constitute violation of paragraphs 9 and 10 if NYCHA documents that the resident has failed to provide access to the unit; provided, however, that this paragraph only applies to the extent that NYCHA has provided the resident with the opportunity to authorize access in his or her absence.

12. A failure to timely restore heat will not constitute a violation of paragraphs 9 and 10 if the failure is caused by forces outside of NYCHA's control other than the weather, if NYCHA establishes to the satisfaction of the Monitor that they were the cause of the failure and that such cause was outside NYCHA's control. Nothing in this paragraph affects the provision in paragraph 11.

13. Beginning on and after the Effective Date:

- a. Within two hours of NYCHA learning of any unplanned heating outage, NYCHA shall notify all affected tenants by robocall. NYCHA shall also post notice of the outage within the common areas of the affected building and on NYCHA's website.
- b. For any planned heating shortfall, NYCHA will provide affected tenants with at least 48 hours' advanced notice. Such notice will be provided via robocall, and shall be posted in the common areas of the affected building and on NYCHA's website.
- c. NYCHA shall give the Monitor 48 hours' advanced notice of any planned heating shortfall, and shall notify the Monitor within 2 hours of receiving notice of any unplanned heating shortfall. The notice shall be provided in the manner prescribed by the Monitor.

**iv. Other Obligations**

14. In addition to meeting the requirements of paragraphs 1 to 13, and except where otherwise provided in an approved Action Plan, NYCHA shall perform the following tasks:

a.	By March 31, 2019, NYCHA will create a 24/7 Heat Desk which will monitor heating metrics and dispatch staff to correct deficiencies during the Heating Season.
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b.	NYCHA will modernize the Building Management Systems <sup>1</sup> at 44 developments by December 31, 2019. Modernization will include introducing indoor temperature sensors.
c.	<p>NYCHA will replace or address approximately 500 boilers by 2026, as follows:</p> <ul style="list-style-type: none"> <li>• 297 boilers will be replaced by December 31, 2026 based on the current capital plan (70 boiler within 3 years plus another 63 within five years). NYCHA will partner with the School Construction Authority (SCA) to reduce the overall timeframe for the planned capital work. The partnership with the SCA could accelerate NYCHA’s planned capital work by a year. NYCHA could further increase the number of heating plants replaced or accelerate the pace of replacement with additional funding, regulatory relief, and statutory changes. In parallel with boiler replacement, NYCHA will evaluate the condition of a development’s entire heating-related capital needs, such as replacement of underground distribution systems, and take appropriate action.</li> <li>• NYCHA will address approximately 200 additional boilers through PACT through December 31, 2026. The developer selected to partner with NYCHA will replace or repair the boiler and accessory heating systems as needed.</li> </ul>

**B. Mold<sup>2</sup>**

**i. Mold Incidence and Recurrence**

15. Within five years of the Effective Date, NYCHA shall comply with the following:

- a. For 85% of verified mold complaints, there shall not be a second verified mold complaint in the same unit or the same common area room or hallway within a 12-month period.
- b. No more than 15% of verified mold complaints shall be for mold covering 10 or more square feet in a unit or common area that is visible from within such unit or common area, unless NYCHA can document to the satisfaction of the Monitor that after having been advised by NYCHA to report incidences of mold, the resident did not report the incidence of mold until after the mold had reached this extent.
- c. Mold shall not appear more than three times in a year in any single unit.

<sup>1</sup> Building Management Systems are computerized controls that provide automation, remote monitoring, and remote control for building mechanical systems, such as boiler plants, ventilation, and common area lighting.

<sup>2</sup> “Mold” shall be defined as all species of microscopic fungi that grow in the form of filaments composed of many cells, and shall be limited to mold that has grown enough to be visible to the unaided eye.

16. For purposes of NYCHA's obligations under paragraph 15, small amounts of incidental mold growth that would be expected to occur in any household with average moisture conditions that may be remediated by the resident as part of standard housekeeping shall be excluded, such as limited mildew on shower curtains or around the caulking of a bathtub, so long as the character of this mold is properly documented and photographed by NYCHA.

**ii. Remediation of Mold and Moisture**

17. Within two years of the Effective Date:

- a. For 95% of instances in which a resident reports a mold complaint that is subsequently verified or NYCHA identifies mold in a unit, consistent with the NYCHA Standard Procedure SP 040:14:1, Mold/Mildew Control in NYCHA Residential Buildings, Revised December 19, 2018, within five business days of the resident reporting or NYCHA identifying mold in the unit, NYCHA shall prepare and provide a written plan for addressing the root cause to the resident. NYCHA may meet this standard by mailing a copy of the written plan to the resident via U.S. or electronic mail within the five day period.
- b. For 95% of instances in which a resident reports a mold complaint that is subsequently verified or NYCHA identifies mold in a unit, consistent with the NYCHA Standard Procedure SP 040:14:1, Mold/Mildew Control in NYCHA Residential Buildings, Revised December 19, 2018, within five business days of the resident reporting or NYCHA identifying mold in the unit, NYCHA shall remove mold that is visible from within the unit. In the alternative, NYCHA may comply with this standard by remediating the mold and its underlying root cause (i) within 7 days, for repairs that can be performed by a Maintenance Worker or Caretaker, or (ii) within 15 days, for repairs that must be performed by skilled trade workers or other specialized staff in one or more visits.
- c. For 95% of reports to NYCHA of floods, leaks from above, and other conditions that cause sustained or recurrent moisture to flow into a resident's unit or the walls of the unit, NYCHA shall abate the condition within 24 hours of a report of the condition to NYCHA, and NYCHA shall remove any standing water that resulted from such condition within 48 hours of the report.

18. A failure to meet the timeframes in subparagraphs (a) and (b) of paragraph 17 shall not constitute a violation of those standards if NYCHA documents that the resident has failed to provide access to the unit; provided, however, that this paragraph only applies to the extent that NYCHA has provided the resident with the opportunity to authorize access in his or her absence.

19. NYCHA will not close any mold, flood, or "leak from above" work orders as "Resident Not Home," including any such work orders that NYCHA has not yet verified.

iii. ***Baez v. NYCHA***

20. NYCHA shall comply with the terms of orders in *Baez v. NYCHA*, No. 13 Civ. 8915, as they may be entered or revised by the Court.

**C. Elevators**

21. Within 120 days of the Effective Date, NYCHA shall establish an Action Plan that identifies, for each building that contains an elevator designed for resident use, how NYCHA will respond when all elevators are out of service at that building (a “no-service” condition). Such plan shall take into account the resident population of each building, any individuals with self-reported mobility impairments, historical data about prior outages or service disruptions, the availability of personnel to assist residents, the terms of any elevator support contract, and historical response and repair times. Such plans shall be made available to the residents and posted online.

22. Within 120 days of the Effective Date, NYCHA shall provide HUD and the Monitor with sufficient data to identify elevator service interruptions in the prior three years. This data shall be updated at least quarterly.

23. Within three years of the Effective Date, NYCHA shall comply with the following:

- a. 70% of buildings containing more than one elevator will have no more than one instance per year where all elevators are out of service (whether planned or unplanned) at the same time, and no such building shall have more than three instances in a year.
- b. 70% of elevators in all buildings shall have an unplanned outage no more than eight times per year, and no elevator shall have unplanned outages more than 15 times a year.

24. Within five years of the Effective Date, NYCHA shall comply with the following:

- a. 85% of buildings containing more than one elevator will have no more than one instance per year where all elevators are out of service (whether planned or unplanned) at the same time, and no such building shall have more than three instances in a year.
- b. 85% of elevators in all buildings shall have an unplanned outage no more than eight times per year, and no elevator shall have unplanned outages more than 12 times a year.

25. Notwithstanding anything else herein, NYCHA will take an elevator out of service where required for health and safety reasons.

26. An outage that NYCHA demonstrates to the satisfaction of the Monitor to be the result of an act of vandalism by a third party shall not be counted as an outage for purposes of paragraphs 23 and 24, provided that (i) the Monitor concludes that NYCHA used and continues to use best

efforts to prevent such vandalism in the affected building, and (ii) such outage is resolved within the response times set forth herein.

27. As of one year of the Effective Date, NYCHA shall have no planned outages that result in a no-service condition between the hours of 6 a.m. and 10 a.m. or between 3 p.m. and 8 p.m., except for planned elevator rehabilitation or replacement or outages mandated by another governmental agency or regulatory entity.

**i. Response to Disruptions in Service**

28. For the first year after the Effective Date, NYCHA shall reduce the duration of service outages by 10%, and 75% of no-service conditions shall be resolved within 18 hours of the time NYCHA learns of them. The response rate shall improve each year thereafter as determined by the Monitor and HUD based on the data NYCHA provides to the Monitor and HUD and the steps NYCHA has taken in executing its action plans.

29. Within five years of the Effective Date, NYCHA shall resolve all outages within the following timeframes:

a. For outages that result in a no-service condition:

- (i) 85% shall be resolved within 4 hours of NYCHA learning of such condition, and
- (ii) no no-service condition shall last more than 12 hours, unless the no-service condition is in a one-elevator building and results from either (A) an outage due to an elevator rehabilitation or replacement or (B) an outage for which the industry-accepted repair time is longer than 12 hours or that requires NYCHA to order unavailable parts.

b. For outages that do not result in a no-service condition:

- (iii) 85% shall be resolved within 10 hours of NYCHA learning of such condition, and
- (iv) no outage shall last more than 18 hours, unless the outage results from either (A) an outage due to an elevator rehabilitation or replacement or (B) an outage for which the industry-accepted repair time is longer than 18 hours or that requires NYCHA to order unavailable parts.

**ii. Outage Identification and Notice**

30. Within six months of the Effective Date, NYCHA will institute and maintain a system that identifies every elevator outage and the start and end times of such outages identified by remote monitoring systems, work-order records, or any additional sources of outage information,

and make that system accessible and available to all NYCHA personnel responsible for elevators and to other relevant personnel, including all development managers and the General Manager.

31. Within five years of the Effective Date, NYCHA will establish continuous remote monitoring in 70% of its elevators.

32. Within six months of the Effective Date, NYCHA will establish a system to provide residents of buildings affected by a planned outage 24-hours advanced notice, and to provide residents of buildings affected by an unplanned outage notice within two hours of NYCHA learning of the outage. Such notice shall include instructions regarding what assistance NYCHA has available for individuals with mobility impairments during the outage. Notice shall occur by robocall and via postings within the affected building and on NYCHA's website.

33. NYCHA will provide the Monitor 24 hours advanced notice of any planned outage, and shall notify the Monitor of any unplanned outage within two hours of NYCHA learning of the outage. Notice shall occur in the method prescribed by the Monitor.

**iii. Other Obligations**

34. In addition to meeting the requirements of paragraphs 15 to 33, and except where otherwise provided in an approved Action Plan, NYCHA shall perform the following tasks:

a.	NYCHA will adopt a new seven-day, extended schedule for caretakers to enable more frequent cleaning of elevator door tracks at the start of each shift.
b.	NYCHA will replace or address at least 425 elevators by 2024: <ul style="list-style-type: none"><li>• 275 elevators will be replaced by December 31, 2024 through its capital plan. (108 within three years plus another 167 within five years)</li><li>• NYCHA will transfer 150 additional elevators to third-party management through the PACT program by December 31, 2024. The developer selected through PACT will replace elevators as needed in buildings under its purview.</li></ul>

**D. Pests<sup>3</sup>**

**i. Pest Population Reduction**

35. Within six months of the Effective Date, the Monitor in consultation with NYCHA shall establish reasonable protocols by which Integrated Pest Management ("IPM") professionals shall develop and provide reliable estimates, at least quarterly, of the pest populations in each

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<sup>3</sup> "Pest" means rats, mice, cockroaches, and bedbugs.



NYCHA development. NYCHA shall promptly publish these figures, by development and pest type, on its website.

36. Within three years of the Effective Date, NYCHA shall achieve a 50% reduction of its rat population across its portfolio, a 40% reduction in its mice population across its portfolio, and a 40% reduction in its roach population across its portfolio. By that time, NYCHA shall also achieve a percentage reduction in its bedbug population across its portfolio, to be determined by the Monitor.

37. Within five years of the Effective Date, NYCHA shall achieve a further 50% reduction in each of its pest populations across its portfolio.

**ii. Response to Resident Complaints**

38. Within two years of the Effective Date, NYCHA shall:

- a. respond to 75% of all rat complaints within two business days, and to all rat complaints within five days;
- b. respond to 75% of all other pest complaints within seven days, and to all other pest complaints within ten days;
- c. apply effective pest control methods (in compliance with applicable law including the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C § 136 *et seq.*), to address any verified complaints within 7 days; and
- d. provide expedited response and application of pest control methods in cases where NYCHA is aware that a resident of the unit has asthma or another condition generally recognized as being caused or exacerbated by exposure to pest infestations (for example, other respiratory illness, immune deficiency/suppression, and/or effects of certain medical treatments). In an Action Plan, NYCHA and the Monitor shall establish a procedure for informing residents of a process through which residents may notify NYCHA if anyone residing in a unit has such a health condition.

39. Within five years of the Effective Date, NYCHA shall:

- a. respond to 90% of all rat complaints within two business days, and to all rat complaints within five days;
- b. respond to 90% of all other pest complaints within seven days, and to all other pest complaints within ten days.

40. If NYCHA does not respond to a pest complaint by a resident as required by paragraphs 38 and 39 but (a) provides the resident with the opportunity to authorize access in the resident's absence and (b) documents to the satisfaction of the Monitor that the resident has failed to

provide access to the unit, NYCHA will be deemed to have responded to the complaint for purposes of paragraphs 38 and 39 at the time of the first documented attempt to access the unit.

**iii. Targeted Relief for Infestations**

41. Within six months of the Effective Date, NYCHA shall, for any unit that has more than one pest infestation complaint verified by NYCHA staff within twelve months (a) cause a professional using IPM techniques to evaluate the unit and its immediately adjacent units and common areas within 30 days to identify any circumstances specific to that unit that may have contributed to such recurrence (including, but not limited to, unaddressed leaks, proximately located trash, or holes in walls), and (b) address, consistent with IPM principles, any such circumstances within the following 30 days.

**iv. Integrated Pest Management**

42. For purposes of this Agreement, IPM means, as described by EPA on its IPM Principles website, as of the Effective Date, “an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM programs use current, comprehensive information on the life cycles of pests and their interaction with the environment. This information, in combination with available pest control methods, is used to manage pest damage by the most economical means, and with the least possible hazard to people, property, and the environment. ... IPM takes advantage of all appropriate pest management options including, but not limited to, the judicious use of pesticides.”

43. Within twelve months of the Effective Date, NYCHA shall incorporate industry standard IPM practices, including Northeastern IPM Center (NortheastIPM.org and StopPests.org), Integrated Pest Management – A Guide for Affordable Housing, using the current edition at the time of the pest complaint (the edition as of the Effective Date was February 2014), as developed under an interagency agreement between HUD and the U.S. Department of Agriculture) for their Delivery of IPM Training to PHAs project; and current editions of other professional IPM resources as the Monitor may approve, into building operations in all NYCHA properties.

44. Within twelve months of the Effective Date, NYCHA shall send staff appropriately trained on IPM to respond to any pest complaint.

**v. Daily Inspections and Trash Collection**

45. Within six months of the Effective Date, NYCHA shall, no less than once every 24 hours, inspect the grounds and common areas of each building for cleaning and maintenance needs, including pests and trash, and correct such conditions. In particular, NYCHA shall ensure that trash on the grounds or common areas of each NYCHA building is collected and either removed from the premises or stored in a manner that prevents access by pests at least once every 24 hours.

**vi. Other Obligations**

46. In addition to meeting the requirements of paragraphs 35 to 45, and except where otherwise provided in an approved Action Plan, NYCHA shall perform the following tasks:

a.	NYCHA will install 8,000 door sweeps on basement doors with gaps by March 31, 2020
b.	NYCHA will install 50 rat slabs by December 31, 2020.
c.	NYCHA will dedicate 20 full-time exterminator staff to conduct ongoing comprehensive preventative maintenance treatments in public spaces for developments within the RMZ.
d.	NYCHA will install exterior bulk crushers or retrofit exterior compactors with auger bulk crushers at 10 developments by December 31, 2022

**E. Annual Inspections**

47. NYCHA will conduct annual inspections of developments. To complete its annual inspections, NYCHA shall either: (a) inspect each occupied unit each year; or (b) inspect its units pursuant to such other program of annual inspection that is consistent with HUD Public Housing Management E-Newsletter, Vol. 3, Issue (January 2012).

48. By and after ninety (90) days after the Effective Date of this agreement, annual inspections shall include having the person conducting the inspection perform any minor repairs during the inspection.

49. By one hundred and twenty days (120) after the appointment of the Monitor, NYCHA will submit an Action Plan to the Monitor for complying with the requirement to conduct annual inspections and perform minor repairs during such inspections. The Action Plan shall include procedures for (i) on-site completion of minor repairs during inspections, and (ii) the scheduling of other inspection-identified maintenance deficiencies for subsequent repair.

# Exhibit C

**New York City Housing Authority  
FY18-FY27 Expense & Capital (Mayoral Only)**

*On the City Fiscal Year*

	FY18	FY19	FY20	FY21	FY22	FY23	FY24	FY25	FY26	FY27	TOTAL FY18-FY27
<b>Funding</b>											
City Tax Levy	\$ 127,424,609	\$ 123,768,582	\$ 124,365,233	\$ 114,720,995	\$ 114,761,919	\$ 73,307,856	\$ 73,307,856	\$ 73,307,856	\$ 73,307,856	\$ 73,307,856	\$ 971,580,618
Capital	\$ 483,236,000	\$ 423,575,000	\$ 179,122,000	\$ 86,000,000	\$ 136,000,000	\$ 136,000,000	\$ 136,000,000	\$ 136,000,000	\$ 136,465,000	\$ 137,944,000	\$ 1,990,342,000
<b>GRAND TOTAL</b>	\$ 610,660,609	\$ 547,343,582	\$ 303,487,233	\$ 200,720,995	\$ 250,761,919	\$ 209,307,856	\$ 209,307,856	\$ 209,307,856	\$ 209,772,856	\$ 211,251,856	\$ 2,961,922,618

\*This table breaks out NYCHA's budget as of 5/10/18. Capital will be reforecast every fiscal year to account for what NYCHA has actually committed. The remaining funding is rolled to the following fiscal year or subsequent fiscal years.