

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA, :
:
Plaintiff, :
: 18 Civ. 5213
v. :
:
NEW YORK CITY HOUSING AUTHORITY, :
:
Defendant. :
:
----- X

CONSENT DECREE

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I. RECITALS

1. WHEREAS, plaintiff the United States of America commenced this action against the defendant New York City Housing Authority (“NYCHA”) for appointment of a monitor and injunctive and other relief pursuant to the U.S. Housing Act of 1937 (“Housing Act”), 42 U.S.C. § 1437d(j)(3), the Anti-Fraud Injunction Act, 18 U.S.C. § 1345, the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(1), and the Toxic Substances Control Act, 15 U.S.C. § 2616(a)(1);

2. WHEREAS, the United States alleges that NYCHA violated and continues to violate lead paint safety regulations promulgated by the U.S. Department of Housing and Urban Development and the U.S. Environmental Protection Agency, *see* 24 C.F.R. part 35; 40 C.F.R. part 745, as well as other HUD regulations, including those requiring public housing agencies to provide housing that is “decent, safe, sanitary and in good repair,” 24 C.F.R. § 5.703;

3. WHEREAS, the City of New York (the “City”) agrees to the funding commitment in paragraphs 54 to 62 of this Consent Decree;

4. WHEREAS, the Parties agree that settlement of this case is in the public interest and that entry of this Consent Decree is an appropriate means of resolving the claims asserted by the United States in its Complaint; and

5. WHEREAS, the Court finds that this Consent Decree is fair, reasonable, and consistent with the public interest;

6. NOW, THEREFORE, with the consent of the Parties, it is hereby ORDERED, ADJUDGED and DECREED as follows:

II. ADMISSIONS

7. NYCHA admits, acknowledges, and accepts responsibility for the following conduct:

Statements to HUD

- a. At least once a year, beginning no later than 2010 and extending through 2016, NYCHA’s certifications to HUD contained untrue representations that NYCHA “will comply with” HUD’s federal lead paint safety regulations.
- b. At least once a year, beginning no later than 2010 and extending through 2016, NYCHA’s certifications to HUD contained untrue representations that NYCHA was “in compliance with all applicable Federal statutory and regulatory requirements.”
- c. Every year, since at least 2011 and through 2016, NYCHA submitted to HUD, via New York City’s Consolidated Plans, untrue statements that “NYCHA complies with Federal, State, and City regulations concerning lead and executes HUD directives regarding lead-based paint (LBP).”

Lead Paint

- d. In more than half of NYCHA's developments, NYCHA's inspections (including statistical sampling) have confirmed the presence of lead paint somewhere on the premises, and in at least 92 developments, the inspections (including statistical sampling) have confirmed the presence of lead paint inside apartment units.
- e. Since at least 2010, NYCHA has not performed most of the biennial lead paint risk assessment reevaluations required by regulation for developments containing lead paint. In a 2011 email, a NYCHA director advised a NYCHA executive that NYCHA was not conducting required risk assessment reevaluations.
- f. From at least 2012 to 2016, NYCHA failed to perform visual assessments of apartments for lead paint hazards as required by regulation. In 2016, NYCHA began performing visual assessments in units where children under six reside, but NYCHA has not yet performed visual assessments in the majority of apartments that may contain lead paint.
- g. Since at least 2010, NYCHA has not ensured that staff use lead-safe work practices when performing work on surfaces that may contain lead paint. NYCHA's policies and procedures do not ensure that maintenance workers are informed that the surfaces they work on contain lead paint. Less than one-third of the maintenance workers assigned to NYCHA developments with lead paint are trained in lead-safe work practices. In May 2016 email, a NYCHA executive advised that "there [were] only 33 paint[ers]/paint supervisors trained in lead safe practices" working in Brooklyn developments. NYCHA has determined that at least 12,000 apartments in Brooklyn developments may contain lead paint.
- h. From at least 2010 until 2015, NYCHA did not provide HUD with any information regarding children living at NYCHA who had been found to have an environmental intervention blood lead level ("EIBLL").

Mold Growth

- i. Between 2011 and present, NYCHA residents have made many thousands of complaints about mold growth every year.
- j. In many cases, NYCHA staff verified that the mold growth covered 10 or more square feet. In nearly 300 cases between 2014 and 2016, the verified mold growth covered more than 100 square feet.
- k. Currently, after NYCHA has removed mold from apartments, the mold returns at least 30% of the time.

Adequate Heating

- l. Residents called in roughly 825,000 complaints of insufficient heat between 2011 and 2016.

- m. In Winter 2017-2018 alone, more than 320,000 residents, 80% of the public housing population, lost heat.

Functional Elevators

- n. In 2016 alone, NYCHA experienced an average of more than 13 outages per elevator. The majority of NYCHA elevator buildings had at least one period with no functioning elevator service in 2016.
- o. Although NYCHA provides stair climbers to elderly or disabled residents in certain circumstances, NYCHA elevator outages can leave residents, including elderly and disabled residents, stranded in the lobby of their building.

Pest Infestations

- p. NYCHA's data reflects more than 260,000 work orders for roaches between 2013 and 2016. For the same period, there were more than 90,000 mouse work orders and nearly 36,000 rat work orders.
- q. The number of work orders created for roaches nearly doubled between 2013 and 2016, and the number of apartments reporting mice and rat complaints has been increasing since 2013.

Backlog

- r. From 2012 to 2013, NYCHA reported to HUD significant progress in reducing its backlog of work orders. During the same period, NYCHA suspended annual inspections, resulting in the creation of substantially fewer work orders. NYCHA reported its progress to HUD without mentioning its suspension of annual inspections.

HUD Inspections

- s. Every year, HUD assesses living conditions at NYCHA through Public Housing Assessment System ("PHAS") inspections.
- t. For a decade, NYCHA provided its staff with a list of "Quick Fix Tips" to improve inspection scores. These Quick Fix Tips included replacing damaged ceiling tiles with "painted cardboard," covering broken fences with 2x4s painted black, and placing "improperly stored flammables" "out of sight" on the day of an inspection.
- u. In one 2013 email, a NYCHA superintendent wrote to staff members, "We're hiding four big pails of oil behind your containers for our PHAS inspection today. We'll get them after it's over." The superintendent then forwarded his email to a NYCHA director, to request assistance in eventually disposing of the oil.

III. JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, 15 U.S.C. § 2616, 42 U.S.C. § 1437(d)(j)(3), and 42 U.S.C. § 4852d.

9. Venue is proper in this district under 28 U.S.C. § 1391(b)(1) and (2) because the defendant resides in this district and because a substantial part of the events giving rise to the claims occurred in this district. For purposes of this Consent Decree, or any action or proceeding to enforce this Consent Decree, NYCHA consents to venue in the Southern District of New York and to this Court's jurisdiction over this Consent Decree, over any such action or proceeding, and over NYCHA.

10. For purposes of this Consent Decree, NYCHA does not contest that the Complaint states claims against NYCHA upon which relief may be granted.

IV. APPLICABILITY

11. NYCHA shall provide a copy of this Consent Decree, or an appropriate summary, to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to any contractor or subcontractor retained to perform work required to comply with this Consent Decree, including Performance Requirements and Action Plans.

12. In any action to enforce this Consent Decree, NYCHA shall not raise as a defense the failure by any of its officers, directors, employees, agents, contractors, or subcontractors to take any actions necessary to comply with this Consent Decree, including Performance Requirements and Action Plans, except to the extent permitted by Section XIII (Force Majeure) below.

V. DEFINITIONS

13. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. "The Anti-Fraud Injunction Act" means the section of the United States Code set forth at 18 U.S.C. § 1345.
- b. "Action Plan" means one or more detailed plans for complying with a requirement stated in the Consent Decree, as further defined in paragraphs 27 through 36.
- c. "Board" means the board of NYCHA, including all of its members.
- d. "Chair" or "NYCHA Chair" means the chairperson of NYCHA.
- e. "Complaint" means the complaint filed by the United States in this action.
- f. "Consent Decree" means this consent decree.

- g. “EPA” means the U.S. Environmental Protection Agency.
- h. “Executive Order” means the Executive Order No. 180 issued on April 2, 2018, by the Governor of the State of New York, including any amendments thereto.
- i. “Housing Act” means the U.S. Housing Act of 1937, set forth at 42 U.S.C. § 1437d.
- j. “HUD” means the U.S. Department of Housing and Urban Development.
- k. “Lead Paint Free” means, for a residential property, that the property has been found not to have lead paint by a lead paint inspection conducted in accordance with 24 C.F.R. § 35.1320(a) (or that results of additional tests by a certified lead paint inspector refuted a prior finding that lead paint was present); or that all lead paint on the property has been identified and removed, and clearance has been achieved in accordance with 40 C.F.R. § 745.227(e) before September 15, 2000, or in accordance with 24 C.F.R. §§ 35.1320, 35.1325 and 35.1340 on or after September 15, 2000. This term does not apply to residential property where enclosure or encapsulation has been used as a method of abatement.
- l. “Lead Paint Laws” means federal, state or local lead paint safety statutes and regulations, including but not limited to the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851; the Toxic Substances Control Act, 15 U.S.C. § 2616(a)(1); the Lead-Safe Housing Rule, 24 C.F.R. part 35; the Renovation, Repair, and Painting Rule, 40 C.F.R. part 745, subpart E; the Abatement Rule, 40 C.F.R. part 745, subpart L; and the Lead Disclosure Rule, 24 C.F.R. part 35, subpart A & 40 C.F.R. part 745, subpart F.
- m. “Monitor” means the individual appointed pursuant to paragraphs 15 and 16 of this Consent Decree.
- n. “NYCHA housing” means the 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.
- o. “Parties” means the United States, NYCHA and, with respect to its funding commitment in paragraph 54 of this Consent Decree, the City.
- p. “Performance Requirements” means objective quantitative benchmarks developed pursuant to the process set forth in paragraphs 23 to 25 of this Consent Decree.
- q. “PHAS Inspections” means HUD’s Public Housing Assessment System inspections. *See generally* 24 C.F.R. Part 902.
- r. “Quarter” means each three-month period ending March 31, June 30, September 30, and December 31 of each calendar year.

- s. “Quarterly Report” means the reports defined in paragraphs 41 to 43 of this Consent Decree.
- t. “TSCA” means the Toxic Substances Control Act, set forth at 15 U.S.C. § 2601 *et seq.*

VI. MONITORSHIP

Purpose

14. The purpose of the Monitorship shall be to ensure that NYCHA (1) complies with all Lead Paint Laws, (2) provides housing that is decent, safe, sanitary, and in good repair, in accordance with 24 C.F.R. § 5.703, (3) does not make false or misleading statements to the United States, and (4) implements the terms of the Consent Decree.

Selection

15. The United States shall propose a Monitor for approval by the Court. The Monitor shall be an individual chosen on the basis of merit. The United States will provide NYCHA and the City an opportunity to provide their views to the United States with respect to possible monitors. The United States in its discretion will also provide an opportunity for other stakeholders, including New York State, the New York City Council, and tenant groups, including the Citywide Council of Presidents, to provide views on selection of a Monitor. NYCHA and the City have the right to submit objections within 15 days of the United States’ presentation of the monitor for approval by the Court.

16. In the event that the person who is approved as Monitor resigns or otherwise ceases to serve as Monitor, the United States shall propose a new Monitor pursuant to paragraph 15 for approval by the Court.

17. The Monitor shall 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.

General Powers and Responsibilities

18. The Monitor shall use his or her powers under this Consent Decree to ensure that the Monitorship’s purposes are achieved and that NYCHA complies with, and on an ongoing basis will continue to comply with, these requirements:

- a. NYCHA shall be in compliance with, and comply on an ongoing basis with, the requirements to (1) conduct visual assessments annually and at unit turn-over, 24 C.F.R. §§ 35.1120(c) and 35.1355(a)(2); (2) conduct biennial risk assessment reevaluations, 24 C.F.R. §§ 35.1120(c) and 35.1355(b)(4); (3) use lead-safe work practices, including training and certification, site preparation, containment, clean-up, and notification to residents, 24 C.F.R. §§ 35.1120(b) and (c), 35.1345, 35.1350, 35.1355(a)(4), and 40 C.F.R. part 745 subparts E and L; (4) follow elevated blood lead level response and notification requirements, 24 C.F.R. §§ 35.110, 35.1130; (5) make disclosures in accordance with the Lead Disclosure Rule, 24 C.F.R. part 35, subpart A and 40 C.F.R. part 745 subpart F; (6) review the adequacy of prior testing for lead paint and lead-free determinations by NYCHA; (7) comply in all respects with Lead Paint Laws; and (8) make NYCHA Housing fully Lead Paint Free within an accelerated timeframe (except as provided in paragraph 33 below).
- b. NYCHA public housing shall be “free of mold,” 24 C.F.R. § 5.703(f), and NYCHA shall remedy the conditions described in the Complaint related to mold and prevent recurrence of those conditions.
- c. NYCHA shall provide heating that is “functionally adequate, operable, and in good repair,” 24 C.F.R. § 5.703(c), including by complying with New York City Administrative Code § 27-2029a and 24 C.F.R. § 5.703(g), and shall remedy the conditions described in the Complaint related to heat and prevent recurrence of those conditions.
- d. NYCHA shall provide elevators that are “functionally adequate, operable, and in good repair,” 24 C.F.R. § 5.703(c), and shall remedy the conditions described in the Complaint related to elevators and prevent recurrence of those conditions.
- e. NYCHA public housing shall be “free of infestations by rats, mice, or other vermin,” 24 C.F.R. § 5.703(f); *see also* 24 C.F.R. § 5.703(a), and NYCHA shall remedy the conditions described in the Complaint related to pests and prevent recurrence of those conditions.
- f. NYCHA shall attempt to avoid and promptly address any other health and safety issue that arises.
- g. NYCHA shall ensure the integrity of PHAS and other inspections.

19. The Monitor shall have full access to all information in NYCHA’s possession, including but not limited to data systems, documents, and materials, and full access to all programs, services, facilities, and premises under the control of NYCHA.

20. The Monitor may communicate with NYCHA officers, employees, contractors, managers or board members, 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.

21. The Monitor will periodically (but at least twice annually) 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 Monitorship's purpose. Such stakeholders may advise the Monitor regarding the prioritization of projects.

22. The Monitor shall establish procedures for the Monitor to communicate with and solicit comment from residents and other NYCHA stakeholders outside of the Community Advisory Committee.

Development and Implementation of Performance Requirements

23. As soon as practicable after the Monitor's appointment, the Monitor shall develop Performance Requirements, in consultation with NYCHA and the City, to achieve compliance with the requirements of paragraphs 18(b) through (f). The Monitor shall prioritize development of Performance Requirements that (in his or her judgment) are necessary to address emergent health and safety issues. Proposed Performance Requirements shall be submitted to the United States for approval.

24. Performance Requirements approved by the United States shall be filed by the Monitor on the Court's public docket. A Performance Requirement shall be binding on NYCHA and enforceable by the Monitor or the United States beginning 30 days after its filing on the public docket, unless NYCHA has filed an objection with the Court. If NYCHA timely files such objection, the Performance Requirement shall not go into effect until the Court resolves the objection. On any such objection, the Performance Requirement shall be modified or set aside by the Court only if found to be arbitrary and capricious.

25. If the United States disapproves the Monitor's proposed Performance Requirements, and the United States and the Monitor are unable to agree on a revision to the proposed Performance Requirements, the Monitor may ask the Court to approve the proposed Performance Requirements notwithstanding the United States' disapproval. Within 30 days thereafter, the United States and NYCHA shall have an opportunity to submit any objections to, or arguments in support of, such Performance Requirements. The Monitor's Performance Requirements shall be modified or set aside by the Court only if found to be arbitrary and capricious. If not set aside, the Performance Requirement shall go into effect upon order of the Court resolving the objection.

26. The Monitor, in consultation with NYCHA, may develop modifications to previously approved Performance Requirements. Such proposed modified Performance Requirements are subject to the approval process and other terms described in paragraphs 23 to 25.

Action Plans, Organizational Plan, and Operational Plan

27. As soon as practicable after the Monitor's appointment, NYCHA and the Monitor collaboratively shall prepare one or more proposed Action Plans for the achievement of the requirements set forth in paragraph 18(a) and (g), and as soon as practical after each Performance Requirement goes into effect, NYCHA and the Monitor collaboratively shall prepare one or more proposed Action Plans for the achievement of each Performance Requirement and the requirements set forth in paragraph 18(b) through 18(f). NYCHA and the Monitor shall consider public health and safety, cost, and other factors deemed relevant by the Monitor in developing Action Plans. Each proposed Action Plan shall set forth specific actions necessary to bring NYCHA into sustained compliance with these requirements, shall require NYCHA to satisfy these requirements by a date certain, and shall include interim milestones with specific completion dates.

28. As soon as practicable after the Monitor's appointment, NYCHA in consultation with the Monitor shall develop an operational plan ("Operational Plan") clearly delineating the roles, responsibilities, authorities, and reporting lines of NYCHA's Chair, General Manager, and Board, to enable NYCHA to expeditiously fulfill the purposes of the Consent Decree and submit such Operational Plan to the Monitor for review. If NYCHA and the Monitor are unable to agree on an Operational Plan, then the Monitor shall develop his or her own Operational Plan pursuant to paragraph 31.

29. As soon as practicable after the Monitor's appointment, NYCHA in consultation with the Monitor shall prepare a proposed plan ("Organizational Plan") for the implementation of changes to NYCHA's management, organizational, and workforce structure, including work rules, necessary or appropriate to achieve sustained compliance with the Performance Requirements and the requirements set forth in paragraph 18(a) through 18(g) and submit such Organizational Plan to the Monitor for review. If NYCHA and the Monitor are unable to agree on an Organizational Plan, then the Monitor shall develop his or her own Organizational Plan pursuant to paragraph 31.

30. Proposed Action Plans, the proposed Operational Plan, and the proposed Organizational Plan (collectively, "Plans") developed pursuant to paragraphs 27, 28, and 29 shall be submitted to the City for comment and to the United States for approval. If approved by the United States, such Plans shall be filed on the Court's public docket, shall be binding on NYCHA as of the date of filing on the docket, and shall be enforceable by the Court upon application by the Monitor or the United States.

31. If the Monitor and NYCHA are unable to agree on a Plan, or the United States does not approve a Plan submitted to it, the Monitor may instead develop his or her own Plan and submit it directly to the Court for approval. Within 30 days thereafter, the United States and NYCHA shall have an opportunity to submit any objections to, or arguments in support of, such Plan. The Monitor's Plan shall be modified or set aside by the Court only if found to be arbitrary and capricious. If not set aside, the Plan will go into effect upon order of the Court resolving the objection.

32. The Monitor and NYCHA together may develop a proposed modification to a Plan. Such proposed modified Plan is subject to the approval process and other terms described in paragraphs 30 through 31, including the ability of the Monitor to submit his or her own modification to the Court in the absence of agreement.

33. In an Action Plan addressing the requirements in paragraph 18(a), the Monitor may propose to modify paragraph 18(a)(8) to permit abatement of specific NYCHA developments by methods that are authorized by federal regulations other than removal, upon a finding by the Monitor that NYCHA will be able to comply with the ongoing maintenance and other obligations associated with using such alternate methods and that permitting such alternate measures will further the purposes of this Consent Decree. Upon approval of such Action Plan pursuant to paragraphs 30 and 31, paragraph 18(a)(8) shall be deemed modified for purposes of this Consent Decree.

34. An Action Plan may include, among other things, policies, procedures, systems, personnel and management structures to be adopted by NYCHA in order to come into compliance with, and maintain compliance with, federal law and NYCHA's obligations contained in paragraph 18 and otherwise as set forth in this Consent Decree.

35. 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 Consent Decree.

36. In addition to any other powers of the Monitor under this Consent Decree, the Monitor may, pursuant to an Action Plan, direct NYCHA to select an independent contractor through an open and public bidding process, consistent with applicable law, which shall detail the scope of work and which shall make the selection based upon the contractor's experience, skill, expertise, and the estimated time and cost of repairs. The Monitor shall give such direction when the Monitor believes it is important to achieve or sustain NYCHA's compliance with the Consent Decree.

37. In addition to any other powers of the Monitor under this Consent Decree, if the purpose of the Consent Decree is being frustrated by the inability of NYCHA to comply with an Action Plan, the Monitor, with the consent of the United States, may apply to the Court seeking extraordinary relief, including the authority to enter into contracts on NYCHA's behalf. The Monitor must present compelling evidence in support of his or her application.

Executive Order and Court-Appointed Officers

38. Pursuant to the terms and conditions of the Executive Order, as it may be amended, \$550 million in state resources may be available. Both the Monitor and NYCHA may take advantage of procurement flexibility afforded by federal, state, and local law, including provisions of the Executive Order relating to rules of procurement and contracting and design/build authority consistent with applicable federal law. The Parties agree that receipt of the \$550 million in emergency state resources and the procurement flexibility afforded by provisions of the Executive Order relating to rules of procurement and contracting and design/build authority are important to the success of this Consent Decree.

39. The Monitor shall coordinate with any other court-appointed officers addressing matters covered by this Consent Decree, including the Special Master appointed in *Baez v. NYCHA*, No. 13 Civ. 8915, as well as any relevant federal, state or local agencies or inspectors. In the event that the action or failure to take action of another court-appointed officer interferes with achieving the purposes of this Consent Decree, the Monitor, with the consent of the United States, may seek relief from the Court.

Judicial Supervision

40. The Monitor, as an officer of the Court, shall be supervised by the Court.

Reporting

41. The Monitor shall submit a Quarterly Report, beginning after the first full quarter after the date of appointment, to the United States, NYCHA's Chair and Board, and the Court, on the Court's public docket, setting out:

- a. The work performed by the Monitor during the relevant period;
- b. Objective data showing NYCHA's progress toward achievement of established Performance Requirements and other requirements of Action Plans, including interim milestones;
- c. The extent to which NYCHA is complying with the Consent Decree and any approved Performance Requirements and Action Plans; and
- d. Any other information the Monitor may deem appropriate to include in light of the Monitorship's purpose.

42. The Monitor will provide draft Quarterly Reports to the Parties at least 15 business days in advance of issuance. The Parties shall provide any comments on the report within 10 business days of receiving the draft report. The Monitor shall consider the Parties' comments and may make changes before issuing the report.

43. The Quarterly Report issued five years from the Effective Date, and each Quarterly Report thereafter, shall include an assessment of whether NYCHA meets the requirements for termination of this Consent Decree, as described in paragraph 97.

44. After two years after the Effective Date, the Monitor may propose reducing the frequency of Quarterly Reports to semi-annual. The reports shall continue to set out the information required for Quarterly Reports under paragraphs 41 and 43. If any Party objects to the Monitor's proposal, the dispute may be submitted to the Court pursuant to paragraphs 84 to 86.

45. The Monitor may communicate at his or her discretion and *ex parte* with any Party, the Court, the public, and representatives of any federal, state, or local government entity.

Removal of Monitor

46. A Monitor may be removed by the Court for cause.

VII. COOPERATION BY NYCHA

47. NYCHA shall cooperate in all respects with actions taken by the Monitor under this Consent Decree.

VIII. HUD ASSISTANCE

48. The Monitor shall assist NYCHA in seeking such regulatory relief from HUD as he or she deems is necessary for NYCHA to comply expeditiously and in a cost-effective manner with its obligations under the Consent Decree. Such regulatory relief may include:

- a. The use of a procurement process for capital improvement projects where any such contract is awarded in a manner consistent with the best value two-step procurement process set forth in Part LLL of c. XXX of the New York Laws of 2018;
- b. An increase in the micro-threshold for all contracts to \$25,000;
- c. An increase in the small purchase procurement threshold to \$250,000; and
- d. Contracts for the same scope of services (where the aggregate of such contracts exceeds the small purchase procurement threshold) to be procured separately by the small purchase procurement method by borough and/or development(s) rather than NYCHA-wide, where justified by need and approved by the Monitor;

49. HUD shall consider any requests under paragraph 48 in accordance with all applicable legal requirements and principles of administrative procedure. Nothing in this Consent Decree limits HUD's discretion in considering such requests.

50. HUD hereby lifts the "zero threshold" for all of NYCHA's Capital Program drawdowns that was imposed on NYCHA on or about March 16, 2018, as an administrative sanction.

51. The Monitor and NYCHA shall meet with HUD to discuss strategies to improve NYCHA's ability to comply with its obligations under this Consent Decree.

52. 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 Consent Decree.

IX. FUNDING AND RELATED PROVISIONS

53. NYCHA shall pay all reasonable fees and costs of the Monitor and the Monitorship necessary or appropriate to successfully conduct the Monitor's responsibilities under this Consent Decree.

54. To assist NYCHA in its compliance with this Consent Decree, including NYCHA's obligations under Performance Requirements and Plans, the City agrees to provide financial support to NYCHA for the duration of the Consent Decree, as follows:

- a. to provide the capital funding to NYCHA through Fiscal Year ("FY") 2027 reflected in Exhibit A 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 A 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 maintain the current practice of not seeking payments from NYCHA for payments in lieu of taxes ("PILOTS") and police services, and to not impose new or increased payment requirements or fees on NYCHA in any other areas 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 billion in capital funding over the four fiscal years following the Effective Date of this Consent Decree; and
- e. to provide each fiscal year after the first four fiscal years following the Effective Date of this Consent Decree, an additional \$200 million in capital funding to NYCHA in addition to the funding in subparagraphs (a) and (b) above.

55. The City's funding obligations under paragraph 54 shall not be reduced by any funding provided by any other sources (including Borough President or City Council funds). The City shall not setoff its obligation to pay funds under paragraph 54 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.

56. Subject to the following paragraph 57, the capital funding pursuant to subparagraphs (d) and (e) of paragraph 54 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 54. Subsequent to approval, NYCHA will submit the corresponding contracts to the City Comptroller for registration to the extent required by law. After the Comptroller registers a contract, NYCHA can pay vendors using its own funds. NYCHA will be reimbursed by the City through the Department of Housing Preservation and Development within 30 days of receiving a proper payment requisition and substantiating evidence of payment.

57. In the event that the total amount of capital funds provided by the City pursuant to subparagraphs (a), (d), and (e) of paragraph 54 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.

58. Neither the Monitor nor NYCHA shall use City capital funds for non-capital projects.

59. All funds described in subsections (d) and (e) of paragraph 54 shall be spent only pursuant to an approved Action Plan to meet NYCHA's obligations under the Consent Decree, 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 Consent Decree.

60. Nothing in this Consent Decree precludes the City, at its exclusive option or as otherwise provided by law, from authorizing additional expense or capital funding for NYCHA.

61. In the event that an undue financial hardship results in the City's financial inability to pay the full amount requested pursuant to paragraph 54, the City shall submit to the Monitor, the United States, 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 more or all the funds due available. 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 more or all of the remaining funds available (collectively, the "Unpaid Amount"). The City will pay the Available Amount as provided in paragraph 54. If the Parties 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 pursuant to paragraph 32.

62. The Monitor, the United States, and NYCHA may object to the City's certification, in which case the Court will decide whether, because of undue financial hardship, the City is financially unable to provide the funding as required by this Consent Decree. If the Court finds that the undue financial hardship did not occur, or that the City has the financial ability to pay some or all of the funding owed under this Consent Decree, the Court shall enter an

appropriate order requiring payment. If no objection is filed to the certification, or if the Court rejects any objection that is filed, the City shall make the Unpaid Amount available for payment to NYCHA pursuant to paragraph 54 on before the Future Availability Date. If the Court finds undue financial hardship, the Monitor and/or NYCHA may apply to the Court for modification of applicable Action Plans pursuant to paragraph 32.

X. INSTITUTIONAL CHANGES

63. In consultation with the Monitor, NYCHA will create a Compliance Department headed by a Chief Compliance Officer. The Chief Compliance Officer shall be responsible for:

- 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 or other inspections at NYCHA.
- f. Advising the Environmental Health and Safety Officer (created pursuant to paragraph 64 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 Consent Decree.

64. In consultation with the Monitor, NYCHA will create an Environmental Health and Safety Department headed by an Environmental Health and Safety Officer. The Environmental Health and Safety Officer shall be responsible for:

- 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.

65. In consultation with the Monitor, NYCHA shall create a Quality Assurance Unit charged with verifying the completion, timeliness, and quality of maintenance work.

XI. RELIEF COMMENCING PRIOR TO EFFECTIVE DATE OR MONITOR

66. Without waiting for the occurrence of the Effective Date of this Consent Decree, the appointment of the Monitor, or the issuance of an Action Plan, NYCHA shall take the actions set forth in paragraphs 67 to 70 below.

67. *Lead-Safe Work Practices and Abatement Rule* – Without waiting for the Effective Date, NYCHA shall comply in all respects with the lead-safe work practices (including training and certification, site preparation, containment, and clean-up, and notification requirements) required by 24 C.F.R. §§ 35.1120, 35.1130, 35.1345, 35.1350, 35.1355(a)(4), and 40 C.F.R. part 745, subpart E, and with the Abatement Rule, 40 C.F.R. part 745, subpart L.

68. *Resident Notification* – No later than 150 days after its execution of the Consent Decree, without waiting for the Effective Date, NYCHA shall notify residents in any apartment that NYCHA has identified as containing lead paint, or in any apartment in a building with common areas that NYCHA has identified as containing lead paint, of this fact, together with (a) the location of the lead paint, (b) that NYCHA has the obligation to perform interim controls, (c) a description of how to voluntarily disclose to NYCHA that a child under six resides or is expected to reside in the apartment, and (d) a request to residents to report deteriorated lead paint or failure of encapsulation or enclosure, as provided in 24 C.F.R. §§ 35.1120(c) and 35.1355(a)(7), to NYCHA and the Monitor, except that NYCHA shall provide such notification to residents in any apartment in which a child under the age of 6 resides that NYCHA has identified as containing lead paint within 90 days of execution of the Consent Decree, without waiting for the Effective Date.

69. *Lead Disclosure Rule* – No later than 120 days after its execution of the Consent Decree, without waiting for the Effective Date, NYCHA shall ensure that physical copies of all materials required to be disclosed by the Lead Disclosure Rule be present, available for inspection, and permanently maintained at the management office for each development. No later than 180 days after its execution of the Consent Decree, without waiting for the Effective Date, NYCHA shall ensure that that paper or electronic copies shall be sent to each resident, that electronic copies shall be available to residents through an internet-based portal, and that electronic copies shall be available to the United States.

70. *Prioritization* – In responding to reports of deteriorated paint, NYCHA shall prioritize the elimination of lead paint hazards in apartments in which children under six or pregnant women reside and common areas frequented by children under six.

XII. MATTERS RESOLVED

71. This Consent Decree resolves the civil claims of the United States asserted against NYCHA in the Complaint. As to claims by the United States other than those asserted on behalf of EPA, subject to the terms of this Consent Decree, the United States releases the civil claims asserted against NYCHA in the Complaint. As to claims asserted by the United States on behalf of EPA, subject to the terms of this Consent Decree, the United States on behalf of EPA covenants not to file a civil action against NYCHA asserting the claims asserted by the United States on behalf of EPA in the Complaint.

72. The United States Attorney’s Office for the Southern District of New York (“SDNY”) agrees not to seek criminal charges against NYCHA based on the facts and omissions described in the Complaint through the Effective Date. This Consent Decree does not limit in any way SDNY’s prerogative to criminally investigate and/or criminally charge and prosecute any individual.

73. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree.

74. The United States reserves the right to seek further injunctive or equitable relief under its Complaint to supplement this Consent Decree if the Monitorship fails to achieve its purposes.

75. Except as to the claims described in paragraphs 71 and 72, this Consent Decree shall not be construed to limit the rights of the United States to seek relief under the Housing Act, Anti-Fraud Injunction Act, TSCA, or under other federal laws or regulations. The United States further 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 the claims described in paragraphs 71 and 72 or otherwise.

76. In any subsequent administrative or judicial proceeding initiated by the United States 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 this case, except with respect to claims that have been specifically resolved pursuant to paragraphs 71 and 72.

77. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. NYCHA is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits, and NYCHA's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that NYCHA's compliance with any aspect of this Consent Decree will result in compliance with any provisions of federal, state, or local laws, regulations, or permits.

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

79. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, anyone not a Party to this Consent Decree.

80. Subject to paragraphs 71 and 72, HUD and EPA reserve all of their rights under applicable law.

81. HUD specifically reserves the right to appoint, or to seek judicial appointment of, a receiver for substantial default, as well as all other administrative remedies.

XIII. FORCE MAJEURE

82. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of NYCHA that delays or prevents the performance of any obligation under this Consent Decree 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 Consent Decree.

83. If the United States agrees, or the Court determines, that a delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Consent Decree 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.

XIV. DISPUTE RESOLUTION AND COMPELLING PERFORMANCE

84. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Consent Decree, entering orders modifying this Consent Decree, or effectuating or enforcing compliance with the terms of this Decree.

85. Should any dispute about the implementation of this Consent Decree arise, the Parties and the Monitor will endeavor in good faith to resolve it. If they cannot do so, they shall raise the dispute with this Court, which shall resolve it.

86. Except as otherwise provided in this Consent Decree, in any dispute before the Court NYCHA shall bear the burden of demonstrating that its position is consistent with the obligations and objectives of the Consent Decree and that accepting its position would better further the objectives of the Consent Decree than accepting any opposing position.

XV. INFORMATION COLLECTION AND RETENTION

87. 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 Consent Decree.

88. Until one year after the termination of this Consent Decree, NYCHA 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 performance of its obligations under this Consent Decree.

89. At the conclusion of the information-retention period provided in the preceding paragraph, NYCHA shall notify the United States 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 the United States, NYCHA shall deliver any such documents, records, or other information to the United States.

90. This Consent Decree 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 to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

91. NYCHA agrees 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 28 U.S.C. § 3733.

XVI. COSTS

92. The Parties shall bear their own costs of this action, including attorneys' fees.

XVII. NOTICES

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

As to the United States by email: robert.yalen@usdoj.gov
 monica.folch@usdoj.gov
 jacob.lillywhite@usdoj.gov
 talia.kraemer@usdoj.gov
 sharanya.mohan@usdoj.gov
 dane.m.narode@hud.gov
 ellis.demian@epa.gov (lead paint issues only)

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

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

 Lead Paint Team Leader
 US EPA Region 2
 2890 Woodbridge Ave. (MS 225)
 Edison, NJ 08837-3679
 (lead paint issues only)

As to NYCHA by mail: Stanley Brezenoff
Interim Chair and Chief Executive Officer
New York City Housing Authority
250 Broadway
New York, NY 10007

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

As to NYCHA by email: stanley.brezenoff@nycha.nyc.gov
debo.adebile@wilmerhale.com

As to the City: 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

94. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

XVIII. EFFECTIVE DATE

95. The Effective Date of this Consent Decree shall be the date upon which the Court enters the Consent Decree or a motion approving the Consent Decree, whichever occurs first, as recorded on the Court's docket; provided, however that NYCHA agrees that it is bound to perform the actions described in paragraphs 67 to 70 after the execution of this Consent Decree without waiting for the occurrence of the Effective Date.

XIX. MODIFICATION

96. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by the Parties. To the extent that the Parties propose to modify paragraphs 54 through 62, the City must also sign such document.

XX. TERMINATION

97. After a minimum of five years from the Effective Date, any Party may petition the Court to terminate the Consent Decree, and the Consent Decree shall be terminated upon the Court's determination that (1) NYCHA has been in substantial compliance with all of its obligations (including but not limited to the requirements in paragraph 18, Performance Requirements, and Action Plans) under the Consent Decree for at least the prior twelve months;

and (2) NYCHA is willing and able following termination to continue to comply with the Performance Requirements and applicable law.

98. The obligations under this Consent Decree with respect to lead, mold, heat, elevators or pests may be terminated by Court order, after a minimum of five years from the Effective Date, if (1) NYCHA and the United States consent or (2) the Court determines that (a) there has been substantial compliance with that portion of the Consent Decree (including but not limited to applicable requirements in Paragraph 18, Performance Requirements, and Action Plans) for a period of 12 months, and (b) NYCHA is willing and able to continue to comply with the Performance Requirements and applicable law related to such portion of the Consent Decree (“Partial Termination”).

99. No earlier than six months after a Partial Termination, the Monitor or any Party may petition the Court during the term of the Consent Decree for reinstatement of any obligations terminated pursuant to paragraph 98. The Court may reinstate terminated obligations only if the petitioning Party or the Monitor establishes that there has been material degradation in NYCHA’s compliance with the terminated obligations since the Partial Termination.

XXI. SIGNATORIES/SERVICE

100. Each undersigned representative of NYCHA, the United States, and the City certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree.

101. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. NYCHA agrees to accept service of process by e-mail or mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXII. INTEGRATION

102. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. The Parties and the City acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XXIII. FINAL JUDGMENT

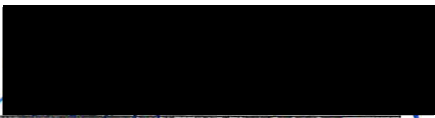
103. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED this __ day of _____, 2018:

UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES OF AMERICA:

Dated: June 11, 2018
New York, New York

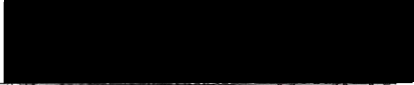


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FOR NYCHA:

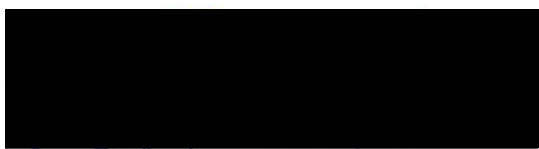
Dated: June 11, 2018
New York, New York


STANLEY BREZENOFF
Interim Chair and Chief Executive Officer
New York City Housing Authority

250 Broadway
New York, NY 10007
Tel.: (212) 306-3434
Email: stanley.brezenoff@nycha.nyc.gov

FOR THE CITY OF NEW YORK:

Dated: June 8, 2018
New York, New York



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Exhibit A to Consent Decree

New York City Housing Authority

FY18-FY27 Expense & Capital (Mayoral Only)

On the City Fiscal Year

	Funding	FY18	FY19	FY20	FY21	FY22	FY23	FY24	FY25	FY26	FY27	TOTAL FY18-FY27
<i>Forgone Payments</i>	Forgone Revenue	\$ 105,450,000	\$ 105,450,000	\$ 105,450,000	\$ 105,450,000	\$ 105,450,000	\$ 105,450,000	\$ 105,450,000	\$ 105,450,000	\$ 105,450,000	\$ 105,450,000	\$ 1,054,500,000
<i>Expense Items</i>	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
<i>Capital</i>	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
GRAND TOTAL		\$ 716,110,609	\$ 652,793,582	\$ 408,937,233	\$ 306,170,995	\$ 356,211,919	\$ 314,757,856	\$ 314,757,856	\$ 314,757,856	\$ 315,222,856	\$ 316,701,856	\$ 4,016,422,618

*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.