

**AGREEMENT
BY AND BETWEEN
NEW YORK CITY HOUSING AUTHORITY
AND**

[REDACTED] RESIDENT COUNCIL]

**FOR
TENANT PARTICIPATION ACTIVITIES AND FUNDS**

THIS AGREEMENT (the “**Agreement**”), dated as of _____, 2019 (the “**Effective Date**”), is entered into by and between the NEW YORK CITY HOUSING AUTHORITY (“**NYCHA**”), a public benefit corporation organized and existing under the laws of the State of New York, having its principal offices at 250 Broadway, New York, New York 10007, and [REDACTED] **RESIDENT COUNCIL**] (the “**RC**”), [CHOOSE ONE: an unincorporated resident council OR a not-for-profit corporation], with its principal office at [REDACTED] (each, a “**Party**” and collectively, the “**Parties**”).

RECITALS

WHEREAS, NYCHA is the largest public housing authority in North America with more than 300 developments; and

WHEREAS, the RC was organized pursuant to 24 C.F.R. Part 964 as the duly-elected resident council for [REDACTED] development] (the “**Development**”) to serve as the representative of the authorized residents of the Development (the “**Residents**”); and

WHEREAS, NYCHA officially recognizes the RC as the duly-elected resident council for the Development; and

WHEREAS, the Parties wish to work in partnership to improve the quality of life and general satisfaction of the Residents; and

WHEREAS, in accordance with 24 C.F.R. Part 964, the purpose of this Agreement is to set forth the responsibilities, procedures, general activities, and overall format for the funding of approved expenses for eligible tenant participation activities (“**TPA(s)**”) incurred by the RC during the term of the Agreement (the “**Funding**”);

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the Parties do hereby agree as follows:

ARTICLE 1 ENTIRE AGREEMENT AND INCORPORATION

1.1 This Agreement and all documents incorporated by reference into this Agreement constitute the entire agreement between the Parties.

1.2 In accordance with 24 C.F.R. 964.18(a)(10), the Parties shall update the Agreement as needed at least once every three (3) years. Any amendment to this Agreement must be in writing and signed by an authorized representative of each Party.

1.3 This Agreement is subject to all applicable federal, state, and local laws and regulations and incorporates by reference as if fully set forth herein the following documents, and any subsequent amendment(s) to the following documents:

- 1.3.1 NYCHA’s Tenant Participation Guidebook for Resident Councils (the “**TPA Guidebook**”);
- 1.3.2 The RC’s annual spending plans (the “**Annual Spending Plan(s)**”); and
- 1.3.3 The RC’s approved TPA proposals (the “**Proposal(s)**”).

ARTICLE 2 TERM OF AGREEMENT

2.1 This Agreement will commence as of the Effective Date and will expire on December 31, 2020 (the “**Initial Term**”), unless this Agreement is extended or earlier terminated pursuant to its provisions. This Agreement shall be extended automatically for up to three (3) consecutive three (3) year renewal terms (each a “**Renewal Term**” and together with the Initial Term, the “**Term**”).

ARTICLE 3 RESPONSIBILITIES

3.1 **Responsibilities of the RC.**

- 3.1.1 **Recognition as RC.** The RC shall maintain its recognition as the official duly-elected RC for the Development by complying with all federal requirements for recognition, including maintaining written procedures such as bylaws, having a democratically-elected governing board consisting of a minimum of five (5) officers, and holding fair and frequent elections, occurring at least once every three (3) years for each office.
- 3.1.2 **Tenant Participation Activities.** In accordance with 24 C.F.R. Part 964, the role of the RC shall be to engage in TPAs that improve the quality of life and resident satisfaction and to participate in self-help initiatives that enable residents to create a positive living environment for families living in public housing. The RC shall ensure that such TPAs promote serviceability, efficiency, economy and stability in the operation of the Development.
- 3.1.3 **Procurement.** In accordance with the procedures and requirements set forth in the TPA Guidebook, the RC shall procure all goods and services required to carry out its functions in the most efficient and economical manner and maintain appropriate records, including supporting documentation establishing the basis on which such contracts were awarded and signed certifications, in the forms attached to the TPA Guidebook.
- 3.1.4 **Personal Property.** The RC acknowledges and agrees that all personal property (including, office equipment, computers, furniture, and supplies) purchased with Funding provided pursuant to this Agreement or purchased by NYCHA for use by the RC will be used in accordance with the Agreement, the RC shall have the exclusive right to use the property for the sole purpose of carrying out its duties. The RC shall maintain a written inventory of all personal property purchased with Funding provided pursuant to the Agreement. The inventory shall be made available to NYCHA upon request. The RC shall be solely liable for any loss or damage to all such property under its control, other than normal wear and tear. The RC shall comply

with all applicable NYCHA policies regarding the safeguarding, tracking, control, use, and disposition of NYCHA property.

3.2 **Responsibilities of NYCHA.**

- 3.2.1 *Recognition.* NYCHA officially recognizes the RC as the resident council representing the Development that may advise NYCHA on policies and issues impacting the Residents.
- 3.2.2 *Funding.* NYCHA shall administer the Funding in accordance with this Agreement. The RC's annual Funding allocation shall be based upon the amount of funding actually provided by HUD to NYCHA for TPAs. In the event HUD provides less than the full amount of TPA funding, then NYCHA may, in its discretion, reduce the RC's annual Funding allocation proportionally.

ARTICLE 4 FUNDING

4.1 **Generally.**

- 4.1.1 NYCHA will provide Funding for eligible TPAs, as set forth in the TPA Guidebook (the "**Eligible TPAs**").
- 4.1.2 The RC shall ensure that all expenditures of Funding will not contravene provisions of law and will promote serviceability, efficiency, economy, and stability in the operation of the Development. The RC shall only use the Funding for approved Eligible TPAs, as approved by NYCHA in the approved Annual Spending Plan and approved Proposals. In the event the RC makes expenditures in violation of this Agreement, the RC shall be subject to appropriate remedies, which may include reimbursement of the improperly spent funds and/or reduction(s) of the RC's future Funding allocation(s).

4.2 **Annual Allocation and Spending Plan.**

- 4.2.1 On or about January 1, of each year of the Term, NYCHA will notify the RC of its estimated available funding (the "**Annual Allocation**") for the next fiscal year, which begins January 1 and ends December 31 (the "**Fiscal Year**").
- 4.2.2 Based upon the Annual Allocation, the RC shall draft a proposed Annual Spending Plan for the next Fiscal Year, which it shall submit to its membership for review, feedback, and approval. Upon receiving approval of the proposed Annual Spending Plan from its membership, the RC shall submit the proposed Annual Spending Plan, and all other documentation required by NYCHA, to NYCHA no later than February 15 for NYCHA's review and approval. The RC may not make any changes to the approved Annual Spending Plan without obtaining prior, written approval from NYCHA.
- 4.2.3 On or about April 1, of each year of the Term, NYCHA will notify the RC of its total funds available following NYCHA's reconciliation and roll over of expenditure from the previous fiscal year.

4.3 **Proposals.**

- 4.3.1 For each activity listed in the RC's approved Annual Spending Plan, the RC shall submit Proposals to NYCHA for NYCHA's review and approval. The Proposals must describe the TPA, itemize all expenses associated with the TPA, and document the procurement process for each expense, in accordance with the requirements of this Agreement, including but not limited to the TPA Guidebook.
- 4.3.2 The RC shall submit its Proposals on a quarterly basis, at least 30 calendar days before the beginning of each quarter for all TPAs proposed for the upcoming quarter.
- 4.3.3 The RC must receive NYCHA's approval of its Proposal prior to incurring any expenses for a TPA included in its approved Annual Spending Plan. If the RC fails to obtain NYCHA's prior approval, NYCHA will not issue any payments to vendors. The RC shall be responsible for paying unapproved expenses with funds other than those granted by HUD or NYCHA.

4.4 **Payment.**

- 4.4.1 NYCHA shall disburse the Funding following the procedures set forth in the TPA Guidebook.
- 4.4.2 For expenses greater than \$5,000, NYCHA will pay vendors directly, pursuant to a separate agreement, provided the RC complies with the requirements set forth in this Agreement, including but not limited to the TPA Guidebook.
- 4.4.3 For expenses \$5,000 and less, the RC must pay for such expenses directly using a commercial credit card (the "**Commercial Card**"), issued by NYCHA, following the procedures set forth in the TPA Guidebook. The RC must include the relevant proposal tracking number (otherwise known as the TP number) on all Commercial Card transaction receipts.
- 4.4.4 In the event the RC fails to make a payment or submit an invoice to NYCHA on time, and a vendor charges a late payment fee, the RC shall be responsible for paying all such late fees from funds other than those granted by HUD or NYCHA.

4.5 **Financial Management.**

- 4.5.1 The RC shall create and keep all accounts, ledgers and reports according to a Fiscal Year that begins on the first day of January.
- 4.5.2 The RC shall establish and maintain its own commercial bank account (the "**Account**") for the purpose of receiving and disbursing funds.

4.6 **Unspent Funds.** If, at the end of a Fiscal Year, the RC has not (1) spent all the Funding available in its Annual Allocation for that Fiscal Year, or (2) received approval from NYCHA to rollover unspent funds, in accordance with the procedure set forth in the TPA Guidebook, then the unspent funds shall revert to a general TPA fund kept by NYCHA, which NYCHA may use for Eligible TPA expenses

at any NYCHA development. If, upon the expiration or earlier termination of this Agreement, the RC holds any unspent Funding in its Account, the RC shall return such unspent funds to NYCHA.

ARTICLE 5 REPRESENTATIONS, WARRANTIES, AND CERTIFICATIONS

5.1 The RC shall not seek Funding through this Agreement for expenses that have been paid for by another funding source.

5.2 The RC will not and has not used Federally-appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. The RC shall include this certification in all contracts it enters into with Funding provided pursuant to this Agreement.

5.3 The RC has not and will not engage in any scheme or practice that seeks to solicit, pay or receive as payment, or to deliver to anyone, any sum or thing of value (including, without limitation, the performance of any service) that may constitute or be construed as a bribe, kick-back, or other inducement that in any manner may prejudice NYCHA's interests. The RC acknowledges that NYCHA relies upon this representation and covenant as a material inducement to enter into the Agreement with the RC.

ARTICLE 6 ACCESS LICENSE

6.1 If requested by the RC, NYCHA shall provide the RC with non-exclusive access to office space and meeting facilities, so long as such space is available. Any such access shall be subject to a separate license agreement, which must be executed by both Parties before access is granted.

ARTICLE 7 MAINTENANCE BOOKS AND RECORDS, RIGHT TO AUDIT, AND COOPERATION WITH INVESTIGATIONS

7.1 During the Term of this Agreement, the RC shall keep and maintain separate, true, accurate, and complete books and records related to the RC's finances and activities, including but not limited to (1) all accounts, procurement files, contracts, receipts and other books and records showing in detail all expenses and charges incurred by the RC, and (2) all documentation demonstrating the RC's compliance with applicable federal, state, and local laws and regulations and this Agreement (the "**Books and Records**"). The RC shall keep and retain its Books and Records for a period of at least six (6) years from the termination of this Agreement or such additional time as may be required by NYCHA, HUD, or applicable law. The RC shall maintain its Books and Records at its offices located at the address first set forth above, or at such other location as is approved by NYCHA in writing.

7.2 Any duly authorized representative of HUD, NYCHA or the Comptroller General of the United States shall have access to and the right to audit, inspect, copy, and examine all such Books and Records and other related documents.

7.3 The RC shall cooperate in any investigation or any inquiry by any governmental authority or agency, including the New York City Department of Investigation and NYCHA's Office of the Inspector General, in connection or relating to this Agreement and/or the Funding

7.4 The provisions of this Article 7 shall survive any expiration or termination of this Agreement.

ARTICLE 8 COMPLIANCE WITH LAWS AND RULES

8.1 The RC shall comply with all applicable laws and rules, including the NYCHA Policies, throughout the duration of this Agreement.

ARTICLE 9 TERMINATION

9.1 If, due to reduced HUD funding or other financial or administrative issues, or NYCHA program-wide changes to TPA administration, either Party deems it necessary to modify this Agreement, the Parties shall negotiate in good faith to modify the Agreement to address such constraints. In the event the Parties are unable to agree upon a solution, then either Party may terminate the Agreement upon 30 days prior written notice to the other Party of its intention to terminate the Agreement. After receipt of such notice, the Parties must cease all activities under the Agreement, unless otherwise directed in the notice.

9.2 In the event NYCHA withdraws recognition of the RC, this Agreement shall terminate immediately upon the date of withdrawal or recognition. Such termination shall occur automatically and without notice.

9.3 The RC will be entitled to Funding for the Eligible TPAs performed up to the time of termination, provided that such activities were approved by NYCHA, following the procedures set forth in this Agreement.

9.4 If the RC protests NYCHA’s determination to terminate the Agreement, the RC may dispute it in accordance with Article 10.1 of this Agreement.

ARTICLE 10 DISPUTES

10.1 ***Administrative Determinations.*** Within thirty (30) calendar days after its receipt of a determination made by NYCHA, the RC may dispute the determination by submitting to NYCHA a written statement describing the dispute. NYCHA shall endeavor to issue a written response within thirty (30) calendar days of receipt of the RC’s dispute. The Parties shall negotiate in good faith to reach a settlement of any such dispute. In the event the Parties are unable to resolve the dispute within thirty (30) calendar days, such dispute shall be submitted to HUD in according with applicable HUD regulations.

ARTICLE 11 INSURANCE

11.1 The RC shall cause any third party it engages to perform services using TPA funds to obtain insurance that meets the requirements set forth in the TPA Guidebook, and to name the RC and NYCHA as additional insureds.

ARTICLE 12 LIMITATION OF LIABILITY

12.1 In no event will either Party be liable for any consequential damages, including, without limitation, lost profits or lost business opportunity.

ARTICLE 13 RC AS AN INDEPENDENT CONTRACTOR

13.1 In carrying out its functions pursuant to this Agreement, the RC will have the status of an independent contractor without the power to act as agent for, or otherwise bind, NYCHA. Neither the RC nor its officers, members, or employees will represent themselves to be, or be deemed to be, employees or agents of NYCHA. Nothing contained in this Agreement will create any contractual relationship between any RC contractor and NYCHA.

13.2 The RC shall be responsible for all taxes and liabilities it incurs. The RC shall not use NYCHA’s tax identification and exemption number or other corporate or tax identifying names, numbers, or characteristics.

ARTICLE 14 MISCELLANEOUS

14.1 **No Waiver.** The failure of either Party to exercise in any respect any right provided for herein shall not be deemed a waiver of any right hereunder.

14.2 **New York Law.** The Agreement and performance of it are governed by and are to be construed in accordance with the laws of the State of New York

14.3 **Notices.** Any notice to be given under this Agreement must be in writing and sent by hand or overnight mail service, or registered or certified United States mail, return receipt requested, to the attention of the Parties at the respective addresses set forth below:

to the RC:

[Redacted]
[Redacted]
Attn: [Redacted]
[Redacted]
]

to NYCHA:

New York City Housing Authority
Community Engagement and Partnerships
250 Broadway, 12th Floor
New York, New York 10007
Attn: Executive Vice President for Community Engagement
and Partnerships

with a copy to:

New York City Housing Authority
Law Department
250 Broadway, 9th Floor
New York, New York 10007
Attn: Assistant General Counsel for Corporate Affairs

14.4 **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same Agreement.

14.5 **Authority of Signatory.** Each of the Parties hereto represents and warrants to the other that the person executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such Party’s behalf.

(SIGNATURES ON FOLLOWING PAGES)

IN WITNESS WHEREOF, the Parties, with intent to be legally bound as of the Effective Date, have caused this Agreement to be executed by their respective duly authorized officers as set forth below.

NEW YORK CITY HOUSING AUTHORITY

By: _____
Name: _____
Title: _____
Date Signed (MM/DD/YEAR): / / _____

IN WITNESS WHEREOF, the Parties, with intent to be legally bound as of the Effective Date, have caused this Agreement to be executed by their respective duly authorized officers as set forth below.

RC Name

By: _____

Name: _____

Title: _____

Date Signed (MM/DD/YEAR): ____ / ____ / ____