

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and among the Natural Resources Defense Council (“NRDC”); the Newark Education Workers Caucus (“NEW Caucus”); the City of Newark, New Jersey, Ras Baraka, the Newark Department of Water and Sewer Utilities, and Kareem Adeem (collectively “Newark”); and the New Jersey Department of Environmental Protection and Catherine McCabe (collectively “NJDEP”) (collectively, “Parties,” and individually, “Party”).

WHEREAS, NRDC and NEW Caucus filed a lawsuit against Newark and NJDEP on June 26, 2018, in the U.S. District Court for the District of New Jersey (“Court”), No. 18-cv-11025 (“Litigation”), seeking injunctive relief for alleged violations of the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*, and the Lead and Copper Rule, 40 C.F.R. § 141.1 *et seq.*;

WHEREAS, Newark and NJDEP deny the allegations in the Litigation and deny that the Safe Drinking Water Act and Lead and Copper Rule have been violated, or that relief is due;

WHEREAS, the Parties desire to settle and resolve the Litigation, including all claims that were brought or could have been brought by or among the Parties for violations of the Safe Drinking Water Act related to lead in Newark drinking water, involving conduct prior to the date defined in the Release clause below, in order to avoid further costs of litigation;

NOW, THEREFORE, in consideration of the foregoing, and for the additional consideration set forth below, which the Parties agree is sufficient, the Parties agree as follows:

JURISDICTION AND VENUE

1. Solely for the purposes of this Agreement, the Parties agree that this Court has jurisdiction over the Parties and the subject matter of this Agreement pursuant to the Safe Drinking Water Act, 42 U.S.C. § 300j-8(a), and the federal-question jurisdiction statute, 28 U.S.C. § 1331.
2. Solely for the purposes of this Agreement, the Parties agree that venue is proper in this district under 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in this judicial district.
3. Solely for purposes of this Agreement, the Parties waive all objections and defenses that they may have to jurisdiction of the Court, to venue in this District, and to Plaintiffs’ standing, and shall not challenge this Court’s jurisdiction to enter and enforce this Agreement.

AGREEMENT PERIOD

4. This Agreement shall take effect and become binding on the Parties on the day after the Court grants the Joint Motion, described below (the “Effective Date”). This Agreement has no force or effect on any Party before the Effective Date.
5. The effective period of this Agreement shall begin on the Effective Date and shall continue either through June 30, 2021, or through December 31, 2021, depending on the

circumstances defined in the two Paragraphs below. This effective period shall be called the “Effective Period” elsewhere in this Agreement.

6. Except as explicitly stated below with respect to substantial completion of lead service line (“LSL”) replacements, and with respect to certain reporting requirements that may extend to or beyond December 31, 2021, the commitments and obligations of Newark and NJDEP under this Agreement may be extended beyond June 30, 2021 only upon one condition, and then only once. If Newark concludes, or NJDEP determines in writing, on or before September 1, 2021, that Newark’s 90th percentile lead level, calculated based on tap water samples collected in accordance with 40 C.F.R. § 141.86 between January 1, 2021, and June 30, 2021, exceeds the federal Lead Action Level as defined in 40 C.F.R. § 141.80 *et seq.*, then all of the commitments and obligations of Newark and NJDEP under this Agreement shall revive and extend through December 31, 2021, and expire at the end of that date. The NJDEP will use best efforts to make the 90th percentile lead-level determination by September 1, 2021. However, this date is only a goal and is not binding on NJDEP. Examples that may delay the NJDEP’s determination could be the need to obtain additional information from Newark, the need to consult with the EPA, or other factors. The Parties may not challenge whether the NJDEP used its best efforts under the Dispute Resolution and Remedies section of this Agreement or otherwise. For the avoidance of doubt, if Newark concludes that the 90th percentile lead level for the period between January 1, 2021 and June 30, 2021 is below the federal Lead Action Level, and NJDEP has not made a determination to the contrary prior to September 1, 2021, then this Agreement will not be extended beyond June 30, 2021, except for requirements explicitly set forth below that extend beyond this date. Specifically, NJDEP agrees to reporting requirements that extend to December 31, 2021 under paragraph 19, and that may extend beyond December 31, 2021 under paragraphs 19.F and 19.G. NJDEP and Newark also agree to provide information under paragraph 20, which may not be available until after the Effective Period. Newark agrees to maintain its website through December 31, 2021 (as more fully described in paragraph 18), and to use its best efforts to continue its current LSL replacement program until the LSL replacement program is substantially complete, even if beyond the Effective Period (as more fully described in paragraph 21). The commitments and obligations of Newark and NJDEP under this Agreement shall not otherwise extend beyond December 31, 2021.

DISMISSAL

7. In exchange for the commitments from Newark and NJDEP described in this Agreement, NRDC and NEW Caucus agree to dismiss the Litigation with prejudice.
8. By their signatures below, Newark and NJDEP authorize Plaintiffs to sign on behalf of all Parties and their respective counsel, and to file with the Court, the Joint Motion for Dismissal With Prejudice (“Joint Motion”) attached hereto as Exhibit A. The Joint Motion seeks entry of a Proposed Order, attached thereto (“Proposed Order”), voluntarily dismissing with prejudice NRDC’s Second Amended Complaint (and all prior complaints) in the Litigation. The Joint Motion shall be filed by Plaintiffs no later than two (2) business days following the date that the last Party signs the Agreement.

9. The Parties recognize that the outcome and timing of the Court's disposition of the Joint Motion cannot be controlled, guaranteed, or known in advance. The Parties also recognize that this Agreement has been negotiated under the assumption that the Court will grant the Joint Motion in the form and substance of the Proposed Order, and therefore that this Agreement is conditioned in full on the Court's granting the Joint Motion in the form and substance of the Proposed Order. In the event that the Court denies the Joint Motion, this Agreement shall not take effect and shall be void. In the event that the Court grants the Joint Motion but enters an order differing in any respect from the Proposed Order, then this Agreement shall take effect, but shall be voidable in full by any Party within seven (7) business days of such order. The Parties agree that in the event that this Agreement becomes voidable pursuant to this paragraph, no provision of this Agreement shall be severable, such that the entire Agreement shall be void if any Party elects to void it within the allotted time.
10. The Parties agree to jointly request an expeditious ruling on the Joint Motion. The Parties further agree that any time that elapses while the Parties await the Court's disposition of the Joint Motion shall not alter, or give cause to alter, any term of this Agreement, including any date herein. For example, the Effective Period of this Agreement and its expiration date shall not be extended because time elapses while the Parties await the Court's disposition of the Joint Motion. The Parties further agree that the pending stay of litigation should continue while the Parties await the Court's disposition of the Joint Motion, and the Parties hereby agree that Newark may continue to ask the Court to extend the stay of litigation as needed, representing the consent and joinder of all Parties to such requests, so long as the Joint Motion is pending before the Court. The Parties agree that the Court's termination of the stay of litigation, during the pendency of the Joint Motion, shall make this Agreement voidable by any Party. The Parties agree that in the event that this Agreement becomes voidable pursuant to this paragraph, no provision of this Agreement shall be severable, such that the entire Agreement shall be void if any Party elects to void it.

RELEASE

11. On the Effective Date, NRDC and NEW Caucus, and their officers and directors in their official capacities, predecessors and successors ("Releasing Parties") hereby forever release and discharge the City of Newark, New Jersey, Ras Baraka, the Newark Department of Water and Sewer Utilities, Kareem Adeem, New Jersey Department of Environmental Protection, and Catherine McCabe, including their agents, servants, employees, officers, elected officials, appointed officials, attorneys, predecessors, successors, assigns, and insurers ("Released Parties"), from any and all past, present, or future claims, demands, obligations, and actions of any nature relating to lead in Newark's drinking water and involving conduct prior to the earlier of (1) the date upon which NJDEP designates optimal water quality parameters for Newark's orthophosphate-based corrosion control system in the Pequannock, or (2) the date six months after Newark's deadline under the Supplemental Compliance Order and Agreement ("SCAO") for completing follow-up sampling, *see* ECF No. 286-1, at 8-9; SCAO ¶ 35A, ECF No. 286-10, including, but not limited to, any claims, whether known or unknown, asserted or not asserted, that were brought or could have been brought as part of the Litigation ("Released Claims"). For the avoidance of doubt, the Releasing Parties do not include the membership of NRDC or NEW Caucus. The Released Claims include, but are not limited to, claims of any nature for injunctive relief, costs, losses,

compensation, expenses, and damages of any nature whatsoever, whether based in tort, contract, statute, or regulation, by citizen suit or otherwise, or based in any other theory of recovery. The Released Claims include any claim regarding lead in Newark drinking water and involving conduct prior to the expiration date of the release as defined above in this paragraph.

12. The Releasing Parties further agree not to fund the representation of any party in any legal claim or action against the Released Parties related to lead in drinking water and involving conduct prior to the expiration date of the release as defined in the preceding paragraph, including without limitation any tort claim related to lead in Newark drinking water, and including any claim that would be a “Released Claim” if brought by the Releasing Parties themselves. For the purpose of this Agreement, to “fund” representation means (1) employing attorneys while they represent any party in any claim that would be a Released Claim against the Released Parties if brought by the Releasing Parties themselves; (2) compensating attorneys for such representation; or (3) providing material aid or assistance to a person or entity (a) who has specifically advised the Releasing Party from whom material aid or assistance is sought that such aid or assistance is sought for the specific purpose of bringing or prosecuting a lawsuit against the Released Parties regarding lead in Newark’s drinking water and involving conduct by the Released Parties prior to the expiration date of the release as defined in the preceding paragraph; and (b) for the purpose of materially aiding or assisting such litigation. Notwithstanding anything to the contrary in subparagraph (3) herein, and for the avoidance of doubt, nothing in this Paragraph prevents the Releasing Parties from making the following types of communications, provided such communications respect the Parties’ March 23, 2020 Stipulated Protective Order and the confidentiality of settlement communications: (i) making statements or providing information to the general public; (ii) engaging in public advocacy (including, by way of example only, statements regarding actual or proposed rules, regulations, policies and practices related to drinking water at the federal, state, or local level); (iii) speaking on panels; (iv) speaking to the press; (v) discussing information already in the public domain; or (vi) communicating about their own personal experiences and observations (including, by way of illustration only, the personal experiences and observations of residents of Newark). Notwithstanding the above, the Parties may provide information in response to a subpoena or court order.
13. The Released Claims are released notwithstanding that they may include claims that are unknown to the Releasing Parties, whether through ignorance, oversight, error, negligence or otherwise and which, if known, would materially affect the Releasing Parties’ decision to enter into this Agreement. The Releasing Parties further agree that they have accepted the commitments in this Agreement as a complete compromise with the Released Parties of all matters involving disputed issues of law and fact. The Releasing Parties assume the risk that facts, law or scientific knowledge – or interpretations thereof – may not conform to their beliefs or understanding, or may change. The Releasing Parties agree that this Agreement shall be, and will remain, effective in all aspects, notwithstanding any changes in fact, law, knowledge, or any interpretation thereof. The Releasing Parties understand and agree that the Released Parties expressly deny liability in this Litigation. The Releasing Parties understand and agree that this Agreement is a compromise of a disputed claim, and that the

commitments set forth in this Agreement are not to be construed as admissions of liability by the Released Parties.

14. Newark and NJDEP hereby fully and finally release and discharge any and all direct, first-party claims that they may have against Plaintiffs, including their agents, servants, employees, attorneys, predecessors, successors, assigns, and insurers, from any and all past, present, or future claims, demands, obligations, and actions of any nature, whether known or unknown, relating to lead in drinking water and involving conduct prior to the expiration of the release as defined in paragraph 11. Notwithstanding the preceding sentence, Newark and NJDEP do not release any third-party claims against Plaintiffs that Newark and/or NJDEP may have as defendants in any other action, and Newark and/or NJDEP may seek to implead Plaintiffs in such actions to the extent allowable by law and facts. Plaintiffs deny that there are any potential claims against them that would be allowable by law or facts, or that Newark or NJDEP would have any right to relief against them of any kind. This Agreement shall be binding on all Parties, and their respective officers, directors, and executives in their official capacities, and the Parties' predecessors, successors, assigns, and attorneys.

LIABILITY NOT ADMITTED

15. Nothing in this Agreement constitutes any admission of liability by Newark or NJDEP, and Newark and NJDEP deny any and all liability or right to relief of any kind under the Safe Drinking Water Act or Lead and Copper Rule relating to the claims and allegations that were made, or that could have been made, in the Litigation. This Agreement is made to avoid further litigation, and to compromise fully and finally, and to settle, the disputes or claims as defined in this Agreement.
16. The Parties acknowledge that this settlement and release shall be without precedential value, and is not intended to be an admission of liability. This Agreement shall not be used as evidence, in this or any other matter, in any court or other dispute resolution proceeding, to create, approve, or establish any allegations relating to the subject matter of the Litigation, except that this Agreement may be relied on and used as evidence in any action to enforce the terms of the Agreement.

RESPONSIBLE PARTY

17. Each commitment set forth below in this Agreement is chargeable only to the Party making it. No Party shall be responsible for fulfilling, or undertaking the work to fulfill, the commitment of any other Party, and no Party shall be responsible for the consequences of another Party's failure to fulfill any commitment. The failure of a Party to fulfill a commitment in this Agreement shall give rise to remedies against that Party as described below, but shall not constitute a breach of this Agreement by any other Party, and shall not be grounds for any Party to void, invalidate, or enforce all or any part of this Agreement except as described in the section below regarding remedies, and then only with respect to the particular Party implicated. The Parties agree that the commitments set forth below do not conflict with the July 25, 2018, Compliance Agreement and Order ("CAO") and/or the March 29, 2019, SCAO between Newark and NJDEP.

REPORTING COMMITMENTS

18. Newark commits to maintaining and supplementing the section of its multilingual (English, Spanish, and Portuguese) website that provides public information related to lead in the City's drinking water, www.newarkleadsviceline.com ("Website"), through December 31, 2021, in the following ways. Newark will maintain on its Website all information already posted there as of October 1, 2020, except to the extent necessary to update, correct, clarify, or supplement that information. Any update, correction, clarification, or supplementation of the Website must also be multilingual. At least once every month, Newark will provide and update on the Website information identifying the aggregate number of LSL replacements in Newark and the aggregate number of water filters and water filter replacement cartridges provided in Newark. At least once every month, Newark will also provide and update on the Website information identifying LSL replacement eligibility and status associated with each valid customer address; at a minimum, this information will be provided through updates to the "Check Your Address" interactive web tool, which Newark will make available in English, Spanish, and Portuguese. At least once every month, Newark will also update on the Website information about water filter and water filter replacement cartridge eligibility and distribution status associated with each valid customer address. The distribution status update will include whether a water filter and/or water filter replacement cartridges has/have been provided for each address; if water filter replacement cartridges have been provided for an address, the update will also include the date when they were last provided for that address. In addition, Newark will state on its Website when the Website was last updated, including but not limited to information displayed through the "Check Your Address" interactive web tool.
19. Within 30 days of the Effective Date of this Agreement, NJDEP will provide a dedicated web page to post the following items and information for the Newark water system. The items and information required to be posted on the web page shall continue until December 31, 2021, except for the items under paragraphs 19.F and 19.G, which NJDEP agrees to post even if they are issued or approved after December 31, 2021:
 - A. The results of all first-draw tap monitoring, including customer-requested sampling, conducted in accordance with 40 C.F.R. § 141.86, that were used to determine the 90th percentile lead level for the second half 2020 and the first half 2021 monitoring periods. Such results will be posted on the web page after NJDEP reviews the results and makes a final determination of the 90th percentile level. NJDEP is not required to post test results for samples that it determines do not meet the requirements of 40 C.F.R. § 141.86. The second half of 2020 monitoring results will be posted within thirty (30) days of the Effective Date of this Agreement or within five (5) business days of the date that NJDEP determines the 90th percentile in accordance with 40 C.F.R. § 141.80(c)(3), whichever is later. The first half of 2021 monitoring results will be posted within five (5) business days of the date that NJDEP determines the 90th percentile in accordance with 40 C.F.R. § 141.80(c)(3).
 - B. The results of all submitted water quality parameter ("WQP") sampling collected pursuant to the approved WQP sampling plan that have been accepted by NJDEP

after the results have been reviewed in accordance with quality assurance/quality control protocols. Such results will be posted on the web page within five (5) business days of the date NJDEP completes its Quality Assurance/Quality Control (“QA/QC”) process after each 6-month monitoring period. NJDEP will post such results beginning with the first full 6-month monitoring that is in progress on the Effective Date of this Agreement. It is understood that these results may be posted prior to the NJDEP’s review of the results.

- C. All final Notices of Non-Compliance, Notices of Lead Action Level Exceedance, and Notices of Violation that are issued to Newark concerning lead in the drinking water after the Effective Date of this Agreement. Such notices will be posted within five (5) business days of their issuance, except that Notices of Violation will be posted within five (5) business days of their effective date.
- D. Any modifications to existing administrative orders with Newark, or new administrative orders against Newark, relating to lead in the drinking water. NJDEP will post such modifications or new orders within five (5) business days of their execution or issuance.
- E. Quarterly reports required by the Temporary Treatment Approval that are submitted by Newark after the Effective Date of this Agreement and any letter correspondence in response from NJDEP. Such reports will be posted within five (5) business days from their receipt by the NJDEP. Such letters will be posted within five (5) business days from their issuance. NJDEP may redact personally identifiable information, including addresses, and information concerning water system infrastructure that raises homeland security concerns. It is understood that these reports may be posted prior to the NJDEP’s review of the reports.
- F. Newark’s final report required by the Temporary Treatment Approval and the NJDEP letter approving the report. The NJDEP will also post any letters rejecting the report. The report will be posted within five (5) business days of the NJDEP’s approval of the report, and the letters will be posted within five (5) business days of their issuance. NJDEP agrees to post the approved report and the approval letter, even if it is approved after December 31, 2021. The NJDEP will post the entire report, subject to redactions of personally identifiable information, including addresses, and information concerning water system infrastructure that raises homeland security concerns. The report will include final studies and information used to support the report. Such studies should include the results from lead profile (a.k.a. sequential sampling) monitoring, all final results from pipe scale analysis, and all final results from the pipe loop study. The NJDEP shall have the sole discretion to determine what elements are required to be included in the report and to approve the report. This Settlement Agreement does not give the Plaintiffs any rights to require Newark or the NJDEP to conduct any particular studies or to include any particular studies or information in the report.

- G. The NJDEP letter designating optimal WQPs. The letter will be posted within five (5) business days of its issuance. NJDEP agrees to post the letter, even if it is issued after December 31, 2021. This letter may or may not be the same letter approving Newark's final report under paragraph 19.F.
- H. Newark's updated sampling plan for lead tap sampling. It is understood that NJDEP need not post the current plan since it is not updated. NJDEP shall post the sampling plan within five (5) business days of when NJDEP approves the updated plan. Nothing herein affects the NJDEP's discretion on whether and when to require Newark to update their plan.
- I. Newark's 2020 WQP sampling plan. NJDEP shall post the WQP plan within ten (10) business days of the Effective Date of this Agreement.
- J. NJDEP approvals related to Newark's corrosion control treatment for lead pursuant to 40 C.F.R. § 141.82 and N.J.A.C. 7:10-11 and which are issued after the Effective Date of this Agreement. Such approvals will be posted within five (5) business days of their issuance.
- K. A phone number and email address within the Division of Water Supply and Geoscience for Newark residents to contact NJDEP with any issues and questions about Newark's drinking water pertaining to lead (e.g., difficulty getting testing or filters, problems with LSL replacement, etc.). NJDEP will assign staff to respond to Newark residents' questions or concerns. NJDEP will publicize availability of the phone number and email address on the dedicated web page, and in a press release, within five (5) business days of the Effective Date of this Agreement, stating that the DEP contact is available, but that residents are encouraged to attempt to resolve their questions or concerns directly with Newark first.
- L. Information to encourage childhood blood testing and a link to the N.J. Department of Health web page and the Essex County Health Department web page. This information will be published within ten (10) business days of the Effective Date of this Agreement.

20.

A.

- 1. Newark shall provide to NJDEP the results of all tap water lead sampling conducted by, or at the direction of, Newark, regardless of whether any of those results may ultimately be included in a 90th percentile calculation. Newark will provide to NJDEP all results from sampling pool samples on one spreadsheet, including the same scope of information Newark provided to Plaintiffs in the document "2020.07.01 Lead Results Jan-June 2020." In addition, Newark will provide to NJDEP all results from customer-requested samples on another spreadsheet, including the same

scope of information as in the “CR 2020 Garden State Jan-June.” Newark will provide these spreadsheets to NJDEP starting with the July-December 2020 monitoring period. Newark will also provide these spreadsheets to NJDEP for the first half of 2021 if there is no lead action level exceedance for the first half of 2021, or for the first half of 2021 and the second half of 2021 if there is a lead action level exceedance for the first half of 2021. Newark will provide the spreadsheets to NJDEP within ten (10) days of the close of the relevant monitoring period, or within ten (10) days of the Effective Date of this Agreement, whichever is later.

2. NJDEP will provide the spreadsheets identified in paragraph 20.A.1 to the Plaintiffs as soon as practicable but no later than within five (5) business days of receiving the spreadsheets. Plaintiffs may not challenge NJDEP’s efforts to provide the spreadsheets prior to the five-business-day deadline under this Agreement. It is understood that NJDEP may provide these spreadsheets prior to its review of the spreadsheets.
- B. As soon as practicable, but no later than thirty (30) days after the close of a monitoring period, and through the Effective Period of this Agreement, NJDEP will provide to Plaintiffs’ counsel all BWSE-14, BWSE-15, BWSE-16, BWSE-18, and BWSE-56 forms received from Newark, and the post-LSL replacement/120Water Audit samples received from Newark. NJDEP will provide these forms starting with the July-December 2020 monitoring period. NJDEP will also provide these forms for the first half of 2021 if there is no lead action level exceedance for the first half of 2021, or for the first half of 2021 and the second half of 2021 if there is a lead action level exceedance for the first half of 2021. Plaintiffs may not challenge NJDEP’s efforts to provide the spreadsheets prior to the 30-day deadline under this Agreement. It is understood that NJDEP may provide these forms prior to its review of these forms.
- C. If the NJDEP redacts any addresses from the quarterly reports posted under paragraph 19.E or the final report posted under paragraph 19.F, NJDEP will provide such reports to the Plaintiffs with the addresses as soon as practicable but no later than the deadlines set forth above in paragraphs 19.E or 19.F, as applicable. Plaintiffs may not challenge NJDEP’s efforts to provide the reports prior to the deadlines set forth in paragraphs 19.E or 19.F. It is understood that the quarterly reports may be provided to the Plaintiffs prior to the NJDEP’s review of the reports.

OTHER COMMITMENTS

21. Newark commits to using its best efforts to continue its current LSL replacement program in Newark until the LSL replacement program is substantially complete. Substantial completion of the LSL program is defined as the complete replacement of all LSLs in Newark that Newark can identify following a reasonable and diligent effort. Upon completion of each LSL replacement or within a reasonably short period of time thereafter, Newark will provide instructions for flushing the service line and recommendations for using

a water filter, and will offer to provide filters and a one year's supply of filter replacement cartridges, to residents at properties where LSLs have been replaced. Newark further commits to continuing the LSL replacement program with a level of speed and diligence reasonably comparable to its LSL replacement efforts over the past six months. The Parties agree that serious and unforeseen circumstances – for example, without limitation, a worsening of the COVID-19 pandemic materially affecting Newark's resources and/or personnel – may impact the speed of the LSL replacement program, and Newark is not in breach of its obligations under this paragraph if such serious and unforeseen circumstances result in a slowdown or pause in the LSL replacement program notwithstanding Newark's best efforts. Newark's commitment to using its best efforts to achieve the substantial completion of the LSL replacement program, as defined above, shall survive beyond the Effective Period of this Agreement if necessary to achieve substantial completion of the LSL replacement program. Newark will not perform any partial LSL replacement, with the exception that Newark will replace the lead service line from the main to the curb and cap the replaced line at the curb for properties that are confirmed to be abandoned. If the LSL replacement program is still in effect when a new owner buys the property, Newark will replace the remainder of the LSL; otherwise the new owner is responsible for replacement of the remainder of the LSL before water service will be restored. For purposes of this Agreement, complete replacement of the LSL includes replacement of the line from the water main to the water meter, if the meter is located inside the home, or to the building inlet, if the water meter is located outside the home, and includes any lead pigtail, gooseneck or other fitting that is connected to the LSL.

22. Newark commits to continuing its water filter distribution program, as defined in the SCAO, through the Effective Period of this Agreement. Specifically, paragraph 27.I of the SCAO gives Newark the right to petition NJDEP for termination of the water filter distribution program before the NJDEP designates optimal WQPs. Notwithstanding this right, Newark commits that it will not submit a petition to NJDEP for termination of the water filter distribution program that would have the effect of ending the water filter distribution program during the Effective Period of this Agreement.
23. Newark commits to holding public "town hall" meetings, whether in-person or virtually, on the following schedule: once within thirty (30) days of the Effective Date of this Agreement, once within two months following the initial town hall, and once every four months thereafter during the Effective Period of this Agreement. Such meetings will include reports to the public on the progress of Newark's LSL replacement program, the status of Newark's water filter and water filter replacement cartridge distribution program, and the status of Newark's corrosion control efforts, including general (not sample-specific) information about levels and trends in lead sampling in Newark drinking water. Such meetings will offer the public an opportunity to ask questions of responsible officials from the Newark Department of Water and Sewer Utilities.
24. Newark commits to continuing to provide free water lead testing for Newark residents, upon customer request, through the Effective Period of this Agreement.
25. Newark commits to maintaining a significant, multilingual citywide advertising campaign, including, as appropriate, advertisements on billboards, buses, trains, bus shelters, and/or in

other public areas, to remind Newark residents to test their tap water for lead, continue to use filters (for those who have them, and explicitly including those whose LSLs have been replaced), and follow instructions for flushing taps. This advertising campaign shall continue at least ninety (90) days, not necessarily consecutively, during the Effective Period of this Agreement.

26. Newark commits to conducting the following public outreach through the Effective Period of this Agreement: (i) within thirty (30) days of the Effective Date of this Agreement, and every three months thereafter, include a multilingual insert in Newark water customer bills to remind customers about the availability of free water lead testing; (ii) continue to provide information on its Website on the availability of free water lead testing; and (iii) within thirty (30) days of the Effective Date of this Agreement, and every three months thereafter, provide via social media, including Facebook and Twitter, a new reminder about the availability of free water lead testing.
27. Within thirty (30) days of the Effective Date of this Agreement, Newark commits to conducting a multilingual citywide robocall, reminding residents to replace expired water filter cartridges and informing residents how they can obtain free replacement cartridges, including where replacement cartridges are available for pickup. Newark will also post on social media, including Facebook and Twitter, monthly multilingual reminders to residents to check for and replace expired water filter cartridges, and information on how they can obtain free replacement cartridges, including where replacement cartridges are available for pickup.
28. Nothing in this Agreement alters the definition or parameters of the water filter distribution program set forth in the SCAO. For example, nothing in this Agreement alters the criteria by which Newark residents are eligible for a free water filter. For the avoidance of doubt, the Parties agree that the commitments in Paragraphs 18-27 do not alter the definition or parameters of the water filter distribution program set forth in the SCAO and thus are enforceable.
29. Nothing in this Agreement is intended to lessen any obligation Newark or NJDEP has or may have in the future under federal or state law, as in effect on the Effective Date of this Agreement or as modified in the future, including but not limited to obligations under the Safe Drinking Water Act and the Lead and Copper Rule. Nor does anything in this Agreement prevent Newark or NJDEP from contesting that they have any particular obligation under federal or state law.

DISPUTE RESOLUTION AND REMEDIES

30. Any action regarding any provision of this Agreement must be brought solely and exclusively in the U.S. District Court for the District of New Jersey. The Parties waive all rights to file suit or raise a dispute over this Agreement in any other forum, including without limitation arbitration, state court, and federal court other than the U.S. District Court for the District of New Jersey. Nothing herein shall affect NJDEP's authority available to it under the New Jersey Safe Drinking Water Act to enforce the CAO or SCAO against Newark. Nor shall anything in this Agreement affect NJDEP's authority available to it under the New

Jersey Safe Drinking Water Act or any other State law to take enforcement action against Newark for matters not set forth in the findings of this Agreement, the CAO, or the SCAO. Nothing in this Agreement gives the Plaintiffs any authority or rights to enforce, or intervene in the enforcement of, the CAO or the SCAO.

31. The Parties agree that the U.S. District Court for the District of New Jersey shall retain jurisdiction over this Agreement following dismissal of the Litigation. The Joint Motion and its Proposed Order shall explicitly provide that the Court's dismissal order incorporate the terms of this Agreement by reference; the Proposed Order shall also state that the Court retains jurisdiction over this Agreement. The Parties agree that, to the extent possible, Judge Esther Salas should resolve disputes arising under this Agreement, unless the case is transferred to another judge. The Parties agree and consent that Magistrate Judge Cathy L. Waldor can and should act in place of Judge Salas to resolve disputes under this Agreement, in the discretion of Judge Salas or, if applicable, her successor as the Article III judge assigned to this case.
32. The Parties agree that no dispute regarding this Agreement may be raised, or action brought, except upon an allegation of a material noncompliance with this Agreement. The Parties agree that they jointly wish to avoid further litigation of this case, and they agree that the "material noncompliance" standard of this paragraph is meant to discourage and deter unnecessary litigation as well as material noncompliance. For purposes of this Agreement, material noncompliance is defined as more than just a minor breach of this Agreement.
33. Before any action or dispute regarding this Agreement may be brought before the Court, a Party alleging material noncompliance with the Agreement must provide written notice ("Notice") of the alleged noncompliance to the Party allegedly failing to comply with this Agreement, and the Notice must provide sufficient detail to allow the recipient Party to understand and cure the alleged noncompliance. No action or dispute regarding this Agreement may be brought if the recipient Party has made reasonable and diligent efforts to cure the alleged noncompliance within thirty (30) days of the receipt of the Notice.
34. No Party shall be entitled to damages of any kind for breach of this Agreement. A Party may seek to enforce this Agreement upon an allegation of material noncompliance, but the only available remedy from the Court is forward-looking injunctive relief to enforce the specific provisions of this Agreement.
35. Parties shall bear their own attorneys' fees and costs in any dispute over compliance with this Agreement.

ATTORNEYS' FEES

36. The Parties waive any and all claims to attorneys' fees and costs incurred in connection with the Litigation, whether incurred before, during, or after the pendency of the Litigation. This waiver includes claims to attorneys' fees and costs under any source, including but not limited to the fee-shifting provision of the Safe Drinking Water Act.

CAO AND SCAO

37. Nothing in this Agreement is intended to alter, amend, or supersede the CAO or the SCAO. To the extent possible, this Agreement shall be interpreted in such a way as to eliminate tension between its terms and the terms of the CAO and/or SCAO. To the extent of any direct conflict between the terms of this Agreement and any term of the CAO and/or SCAO, the terms of the CAO and/or SCAO shall control. The Parties represent that they are unaware of any direct conflict between the terms of this Agreement and any term of the CAO and/or SCAO and, for the avoidance of doubt, agree that the commitments in this Agreement are enforceable against the Parties.
38. Nothing in this Agreement shall relieve Newark from complying with the CAO and SCAO and all applicable federal, state, and local permits as well as all applicable statutes, codes, rules, regulations, and orders, including but not limited to the statutes and regulations cited herein.

REPRESENTATIONS

39. In entering into this Agreement, the Releasing Parties represent that they have relied upon the advice of their attorneys, and that the terms of this Agreement are fully understood and voluntarily accepted by the Releasing Parties.
40. In entering into this Agreement, the Parties represent that they have executed this Agreement of their own free will, without any duress or outside influence of any character. The Parties represent that in deciding to enter into this Agreement, they have not done so in reliance on anything that has been said by any Party or its lawyers outside of this Agreement.
41. The Releasing Parties further represent and warrant that no other person or entity has, or has had, any financial interest in the claims, demands, obligations, or causes of action referred to in this Agreement; that they have the sole right and exclusive authority to execute this Agreement; and that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or such causes of action referred to in this Agreement.

AUTHORITY TO SIGN

42. Each person signing below represents that he or she is duly authorized to sign for and to bind the person or entity for which he or she is executing this Agreement.

FORUM SELECTION

43. This Agreement shall be construed and interpreted in accordance with the laws of the State of New Jersey. The Parties, however, expressly waive the right to seek to enforce this Agreement, whether by civil action or otherwise, in any forum except as described above in the Dispute Resolution and Remedies section of this Agreement.

EXECUTION BY COUNTERPARTS

44. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts, when taken together, shall constitute one agreement. Signatures by facsimile or in electronic format shall be deemed to be original signatures for all purposes.

AMENDMENT

45. This Agreement may be amended only in writing and by agreement of all Parties.

COOPERATION

46. All Parties agree to cooperate fully and execute supplementary documents and to take all additional actions that may be reasonably necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

NOTICES AND COMMUNICATION

47. During the Effective Period of this Agreement and thereafter until further notice, communication between the Parties shall be accomplished by email, as to NRDC, and by phone or email, as to Newark and DEP, to the following counsel:

For NRDC and NEW Caucus:

Jerome L. Epstein
Natural Resources Defense Council
1152 15th Street, NW, Suite 300
Washington, DC 20005
jepstein@nrdc.org

and

Sara E. Imperiale
Nancy S. Marks
Margaret T. Hsieh
Michelle A. Newman
Natural Resources Defense Council
40 W 20th Street, Floor 11
New York, NY 10011
simperiale@nrdc.org
nmarks@nrdc.org
mhsieh@nrdc.org
mnewman@nrdc.org

For Newark: Communications from NJDEP may be sent directly to Newark personnel as determined in the best judgment of NJDEP and consistent with the CAO and SCAO. All communications from NRDC and/or NEW Caucus to Newark shall be directed to:

Eric L. Klein
Beveridge & Diamond, P.C.
155 Federal St., Suite 1600
Boston, MA 02110
617.419.2316
eklein@bdlaw.com

and

Bina R. Reddy
Beveridge & Diamond, P.C.
400 W. 15th St., #1410
Austin, TX 78701
512.391.8045
breddy@bdlaw.com

For NJDEP:

Communications from Newark to NJDEP shall be sent directly to NJDEP as set forth in the CAO and SCAO. All communications from NRDC and/or NEW Caucus to NJDEP shall be directed to:

Andrew Reese, Deputy Attorney General
PO Box 093
Trenton, NJ 08625-0093
609-376-2789
andrew.reese@law.njoag.gov

Kristen Heinzerling, Assistant Section Chief
PO Box 093
Trenton, NJ 08625-0093
609-376-2803
kristen.heinzerling@law.njoag.gov

EFFECTUATION OF PROTECTIVE ORDER

48. The Effective Date of this Agreement shall constitute the date of “final termination” and “final conclusion” of the Litigation for the purposes of Section 10 of the Parties’ March 23, 2020, Stipulated Protective Order Governing the Production and Exchange of Discovery, ECF 331. The Parties shall comply with the provisions of Section 10 within the time periods specified therein, except that Plaintiffs may retain a copy of Newark’s water service accounts

spreadsheet through the duration of this Agreement and will destroy the document within 14 days of the end of the Effective Period of this Agreement.

MERGER

49. This Agreement constitutes the entire understanding of the Parties with respect to its subject matter and merges and supersedes all prior discussions, agreements, and understandings of every kind and nature between them, and no person or entity shall be bound by any condition other than as expressly provided for in this Agreement. The CAO and SCAO shall remain unaffected by this Agreement. This Agreement is independently enforceable against the Parties.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

For Plaintiff Newark Education Workers Caucus:

Date: 1/15/2021



Yvette Jordan
Chair
Newark Education Workers Caucus

For Plaintiff Natural Resources Defense Council:

Date: 1/15/2021



Erik D. Olson
Senior Strategic Director, Health & Food
Healthy People & Thriving Communities Program
Natural Resources Defense Council

Approved as to form:

Date: 1/15/2021



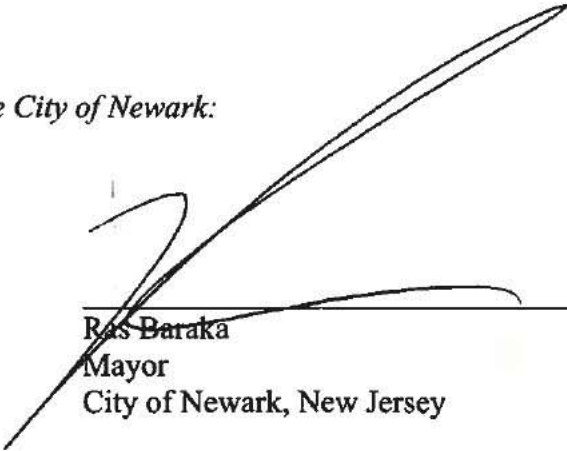
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mhsieh@nrdc.org
mnewman@nrdc.org

*Counsel for Plaintiffs Newark Education Workers Caucus
and Natural Resources Defense Council*

For Mayor Ras Baraka and the City of Newark:


Date: 1/20/21



Ras Baraka
Mayor
City of Newark, New Jersey

For Kareem Adeem and the Water and Sewer Department, Newark, New Jersey


Date: 1/21/2021



Kareem Adeem
Director, Water and Sewer Department
City of Newark, New Jersey

For Mayor Ras Baraka, the City of Newark, Kareem Adeem, and the Water and Sewer Department, Newark, New Jersey

Date: 1/20/21



Kenyatta Stewart
Corporation Counsel
City of Newark, New Jersey

For the Commissioner of the NJDEP:

Date: 1/15/2021



Donald Hirsch, Chief
Northern Bureau of Water
Compliance and Enforcement,
New Jersey Department of
Environmental Protection

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY



Date: January 15, 2021

Andrew Reese
Deputy Attorney General

Attorney for the Commissioner of the NJDEP