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Settlement Agreement, dated January 31, 2002, among the United States of America, the Yonkers Branch of the National Association for the Advancement of Colored People, Charlotte Ryer for herself and as representative of the certified class of minority (black and Hispanic) residents of Yonkers who are parents of minority children in the Yonkers public schools, the Yonkers Board of Education, the City of Yonkers, the State of New York, the Governor of the State of New York in his official capacity, the New York State Board of Regents, the members of the Board of Regents in their official capacities, the New York State Education Department, the New York State Education Commissioner in his official capacity, the Urban Development Corporation (also known as the Empire State Development Corporation), and the Chairman of the Urban Development Corporation in his official capacity, together comprising all of the parties to the education portion of the action, United States v. Yonkers Board of Education, 80 CIV 6761 (LBS), by their duly authorized representatives, to provide, upon the Agreement's effective date, for the full, complete, and final resolution and present termination of all education claims in this twenty-one-year-old school desegregation action concerning the Yonkers Public Schools:

I. Recitals

1. Definitions

A. All references to "Agreement" include Attachments A and B to this Agreement, which are hereby specifically incorporated by this reference as enforceable parts of the Agreement.

B. As used in this Agreement:

(1) "Action" means U.S. v. Yonkers Board of Education, 80 CIV 6761 (LBS), which, as indicated in paragraph II(5)(A), the parties have agreed to request the Court to treat as severed into two distinct and separate parts, a housing portion and an education portion.

(2) "Education action" means the education portion of the action which the parties request be treated as severed from the rest of the action, as set out in paragraph II(5)(A) of this Agreement. "Education action" includes (a) all pending pleadings in or relating to the education portion of the action, including (but not limited to) the Third-party Complaint/Cross Claim filed by defendant City against the State, the Governor, and the New York State Education Department; (b) all motions and other proceedings in or relating to the education portion; and (c) all orders therein.

(3) "Housing action" means the housing portion of the original action once it is treated as severed from the education portion, as set out in paragraph II(5)(A).

(4) "Plaintiffs" means the United States of America and the plaintiffs-intervenors.

(5) "Plaintiffs-intervenors" means the Yonkers Branch of the National Association for the Advancement of Colored People ("NAACP"), and Charlotte Ryer in her own capacity and as representative of the class of minority (black and Hispanic) residents of Yonkers who are parents of minority children in the Yonkers Public Schools and/or the class of such residents as recertified by the Court in the orders and/or judgments contemplated by this Agreement.

(6) "State defendants" means the State of New York ("State"), the Governor of the State of New York in his official capacity ("Governor"), the New York State Board of Regents, the members of the Board of Regents in their official capacities, the New York State Education Department ("SED"), the New York State Education Commissioner in his official capacity ("SED Commissioner"), and the Urban Development Corporation ("UDC," also known as the "Empire State Development Corporation") and its Chairman in his official capacity. The

Governor is a State defendant herein only as a third-party defendant/cross-defendant in the Third-party Complaint/Cross Claim filed by the City of Yonkers.

(7) "Yonkers public schools" or "YPS" refers to the public schools in the Yonkers City School District, located in the City of Yonkers, New York.

(8) "YBOE" means the Yonkers Board of Education, which operates the YPS.

(9) "Defendants" means (a) the YBOE, (b) the City of Yonkers ("City"), and (c) the State defendants.

(10) "Parties," "all parties," and "any party" refer to all plaintiffs and defendants as defined for this Agreement.

(11) "Court" and "District Court," unless otherwise required by the context, refer to the United States District Court for the Southern District of New York.

(12) "Effective date" and "effective date of this Agreement" shall have the meaning assigned by paragraph II(1)(A).

(13) "Claims" means (a) all claims which have been raised by any party against any other party in the education action, (b) all claims which could have been raised by any party against any other party in the education action or in any forum, based on the prior segregation of the YPS or on acts or omissions previously alleged or found in the education action, and (c) any claims by any party against any other party for relief asserted in the education action, including all claims for funding and for declaratory or injunctive relief, and all claims and potential claims for attorneys' fees arising out of the education action.

(14) "Program" unless otherwise indicated, means any one or more of the

programs described in Attachment A, or any modification thereto which has been approved as provided in paragraph II(4)(B)(3) and II(4)(D).

(15) "Funding obligation" means the respective and separate duties of the State or the City (as the case may be), as set forth in this Agreement, to provide funds for the ultimate use of the YBOE.

(16) "Kokkonen" refers to Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375 (1994), and "Kokkonen principles" refers to the principles of law enunciated in the decision in Kokkonen relating to the power of a federal court to retain jurisdiction, upon dismissal of an action, in order to enforce a settlement agreement.

(17) The "program/funding term" means the period of time which begins upon the effective date of this Agreement, as defined by paragraph II(1)(A), and which ends upon June 30, 2006.

(18) "Paragraph" refers to a paragraph or subparagraph of this Agreement.

2. History[1]

A. Litigation to 1986

(1) In 1980, the United States brought suit against the City, the YBOE, and the Yonkers Community Development agency ("initial defendants"), alleging housing and school segregation in violation of the Equal Protection Clause and federal civil rights statutes.

(2) The NAACP and Charlotte Ryer, for herself and as class representative initially of the black residents of Yonkers, moved to intervene as plaintiffs in May 1981, and in July 1981

[1] More complete history of the action and its education portion can be found in the many judicial decisions which have been rendered.

the case was certified as a class action. It has proceeded as a class action on behalf of all minority (black and Hispanic) residents of Yonkers currently residing in, or eligible to reside in, publicly assisted housing, or those who are parents of minority children attending the Yonkers public schools. This settlement concerns only the education claims of the class.

(3) In 1985, the initial defendants were found liable for housing and school segregation, and, in 1986, the District Court separately ordered specific relief addressed to the housing segregation in Yonkers and specific relief addressed to the segregation in the YPS. The school relief (known as "Educational Improvement Plan I" or "EIP I") – an order principally designed to desegregate student assignment (through magnet schools, student balloting, and transportation), teacher assignment, and special education placement – was implemented in the YPS remarkably swiftly and smoothly. EIP I has since been modified by several orders.

B. Litigation from 1986

(1) In September 1987, the YBOE sought to file a cross-claim against State defendants, alleging that they were also liable for the prior segregation in education and housing in Yonkers, that there were continuing vestiges in the YPS of the prior segregation which were not being addressed by EIP I, that additional relief was necessary to address the vestiges, and that State defendants should participate in providing such relief. The same month, plaintiffs-intervenors amended their complaint to add similar claims against State defendants.

(2) State defendants' motions to dismiss and for summary judgment were denied. In 1993, after a trial, the District Court found vestiges of the prior segregation of the YPS.

(3) In 1995, after a separate trial on the liability for housing and school segregation of defendants State, Governor, Regents, SED, the SED Commissioner, and UDC, the District Court

dismissed the claims against all State defendants as a matter of law under a precedent of the Court of Appeals for the Second Circuit. In 1996, the Court of Appeals, relying on the District Court's factual findings but distinguishing this action from that precedent, reversed the dismissal of all State defendants (other than the dismissal of the Governor, which was affirmed), and found the remaining State defendants liable for the segregation in the YPS.

(4) The City filed a Third-party Complaint/Cross Claim, dated October 2, 1996, against the State, the Governor in his official capacity, the New York State Education Department, the Education Commissioner in his official capacity, and the Comptroller in his official capacity, seeking contribution from the State for the on-going costs of the school desegregation remedy, and claiming that these defendants were necessary parties to such contribution. The District Court denied a motion to dismiss the Third-party Complaint/Cross Claim, and the named State defendants filed an answer. The City, as the sole Third-party Plaintiff and Cross-Claimant against the Comptroller, has stipulated with the Comptroller to withdraw and dismiss any action and claims against the Comptroller.

(5) In 1997, after another hearing regarding vestiges, the District Court found that the same vestiges which it had identified as of 1993 still existed in 1997, and ordered implementation of a remedial plan which had been proposed by the YBOE (known as "Educational Improvement Plan II" or "EIP II"). The State was ordered to provide the YBOE with $450,000 to prepare an EIP II budget, and was ordered to contribute thereafter to the costs of EIP I and EIP II under a front-loaded formula with an ultimate equal division of costs between the City and the State.

(6) In a June 1999 decision, the Court of Appeals initially reversed the 1993 and 1997 findings of vestiges, and, after its own review of the record, held that no vestiges existed. The

panel proposed a remand for proceedings to end the action.

(7) In the June 1999 decision, the Court of Appeals held that it was undisputed that none of the vestiges described in Green v. County School Board of New Kent Co., 391 U.S. 430 (1968) (the "Green factors") exists in the YPS.

(8) In August 1999, while a motion for reconsideration was pending, the Court of Appeals stayed further implementation of EIP II. The YBOE elected to continue some of the EIP II programs.

(9) In a November 1999 decision reconsidering its June decision, 197 F.3d 41 (2d Cir. 1999), the Court of Appeals panel withdrew the June decision, adhered to its reversal of the District Court's specific findings of vestiges, adhered to its holding that no Green factors are present in the YPS, and continued the stay. The Court of Appeals remanded the matter to the District Court for the limited purpose of determining on the record as of 1997 whether any other conditions existed which constituted vestiges and, if so, whether relief was warranted, and, if so, what relief the District Court would propose to order. The Court of Appeals panel provided for the immediate return to the panel of the matter after the completion by the District Court of the limited remand.

C. Litigation and Settlement Negotiations

(1) To carry out the limited Court of Appeals remand, the District Court scheduled the submission of proposed findings and conclusions based on the then existing record, but also encouraged the parties to seek voluntary resolution. Since the end of 1999, the parties have been both litigating and actively exploring consensual resolution.

(2) In August, 2000, the Governor demonstrated the State's commitment to efforts to reach consensual resolution by promising the City and YBOE a $10 million settlement advance,

which was paid in May 2001.

(3) On November 30, 2000, the District Court issued its opinion responding to the remand question whether, based on the 1993 and 1997 trial records, there were any vestiges other than those rejected by the Court of Appeals. The District Court found five conditions to be vestiges.

(4) The District Court referred the matter to the Education Monitor, Dr. Joseph M. Pastore, Jr., for further proceedings to update the record and, to the extent that the vestigial conditions remained, recommend such relief, if any, as would be appropriate.

(5) In the District Court's November 30, 2000 opinion, it again urged the parties to seek consensual resolution. Efforts toward that end continued, with the able and invaluable assistance of the Monitor.

(6) On April 18, 2001, the YBOE, in light of the two Court of Appeals opinions in 1999, adopted a resolution stating its formal position that there are no vestiges of prior segregation in the YPS and directing that prompt application for complete unitary status be made. The parties continued, however, to litigate whether vestiges exist in the YPS, and if so, how to remedy them.

(7) On May 16, 2001, a plenary hearing before the Monitor commenced. It was adjourned after several hours at the suggestion of the Monitor so that the parties could negotiate. The following days originally reserved for the hearing were devoted to further negotiations. Those negotiations to explore the possibility of reaching a settlement of all remaining aspects of this action continued on and off until the successful culmination represented in this Agreement.

3. Recitals as to the Settlement Itself

A. Now, noting the litigation history in this case recited above, and after extensive, difficult, and complex negotiations which have taken place over many months, and with due and careful consideration, the parties have decided to enter into this Agreement to avoid the likelihood of further lengthy and costly litigation with resultant prolonged administrative and funding uncertainty and educational disruption, to serve the interests of YPS's students in receiving equal educational opportunities, and to serve the public policy interests of the State and the City in restoring local control of public education.

B. The parties believe that this Agreement carefully balances dismissal, on the effective date, of the education claims and return to local control with maintenance of a robust and quality educational program, to provide a fair exchange of valuable consideration by and to all the parties. The parties also acknowledge to each other that the educational programs described in Attachment A and the funding described in Attachment B will further demonstrate defendants' good faith.

C. The parties believe that this Agreement is a fair, lawful, and appropriate final resolution of all outstanding education issues in this litigation and shall work together to seek prompt Court approval of the Agreement after Class members have had a full opportunity to be heard, and to implement the Agreement.

D. The parties have concluded that, without litigating to a final determination the present conditions in the YPS or the legal accuracy of characterizations of those conditions as vestiges, this Agreement provides an adequate and proper basis for dismissal of the education action with prejudice on the effective date, the return of the schools to local control, and the termination

of the education action with prejudice, provided the Court retains limited ancillary jurisdiction under Kokkonen to ensure that the respective parties abide by their obligations under this Agreement.

E. As this Agreement renders moot all issues raised on remand and addressed in the interlocutory November 30, 2000 Decision and Order, as well as all directions in that order for further remand proceedings, as a consequence of the settlement, the parties jointly request that the Court withdraw the November 30, 2000 Decision and Order.

II. Operative Provisions of Agreement

1. Effective Date of Agreement; Duration of Parties' Obligations under the Agreement

A. Effective Date

(1) The terms "effective date" and "effective date of the Agreement" shall mean the date upon which the last to occur of the following five listed events shall take place:

a. The Court enters an order or judgment approving the Agreement;

b. The Court enters an order or judgment (i) vacating all presently effective remedial or executory provisions of all previous decisions or orders in the education action and (ii) directing the Clerk of the Court to enter an entry in the docket for the action indicating that the November 30, 2000 Decision and Order has been withdrawn as moot in light of the Agreement;

c. The Court enters an order, declaring or reciting that thereafter the action shall be treated as if severed into the education portion and the housing portion, and that the Court shall not thereafter issue any judgment, order or direction in either portion which might combine or recombine the two portions; or otherwise cause, grant or direct any programmatic or other relief or remedy of an educational nature applicable to any of the parties to this action except as provided in

this Agreement;

d. The Court enters an order or judgment dismissing the education action with prejudice in light of this Agreement, subject only to the Court's retention of ancillary jurisdiction over the Agreement to enforce its terms under Kokkonen principles; and

e. The State Legislature approves an appropriation of the State funding obligations specified in Attachment B that are to be paid by the State to the City respecting the period July 1, 2001 to June 30, 2002, and such legislative appropriation recognizes and references the total amount of the State's funding obligations set forth in said Attachment B.

(2) If the Court declines to approve this Agreement as submitted to it by the parties or an appellate court of competent jurisdiction on direct appeal of an order of approval vacates such approval, this Agreement shall be a nullity except that, to the extent that the State shall have paid funds to the City and/or YBOE in anticipation of settlement (including the $10 million paid in May 2001 and any other funds which may have been paid thereafter against settlement or provided under the Agreement pursuant to the Attachment B schedule), the State shall be entitled to credit for such payments against the following, in the priority order in which they are set out:

a. Any funding order issued by the Court in the action requiring the State hereafter to pay the City and/or YBOE, applying such credit regardless whether the payment and obligation are for, or the payment is to be received in, the same year or in different years;

b. Any State education aid, whether general or categorical, required to be paid to the City and/or YBOE pursuant to State law, including any grants awarded; and

c. Any other matured State financial obligation to the City and/or YBOE under State law or resulting from an order of any court.

B. Duration of Parties' Obligations under the Agreement

Whenever the duration of a party's obligation is limited by the terms of this Agreement, the duration shall not be extended unless, in a proceeding for specific performance of that obligation, the Court both finds that such party has failed to fulfill such obligation and orders the party to specifically perform its obligation, in which case, as set forth in paragraph II(7)(B), the Court shall have the power to extend only that party's duty to perform such obligation beyond the program/funding term and shall retain such jurisdiction only to require such performance by such party until such time that such party fulfills the outstanding obligation.

2. Program

A. Once the Agreement becomes effective as above provided, the YBOE shall be required to maintain or implement the programs identified in Attachment A according to the provisions and schedules described in Attachment A, until the conclusion of the program/funding term. In addition, for the duration of the program/funding term, the YBOE shall maintain the YPS Pre-Kindergarten and Kindergarten programs in substantially the same manner as they exist in the 2001-02 school year.

B. This Agreement does not require the State to implement or supervise implementation of any program under this Agreement.

C. As specified in paragraphs II(1)(A)(1)(b) and II(6)(E)(6), the remedial and executory provisions of the School Desegregation Order (also generally referred to as "EIP" or "EIP I") dated May 13, 1986, and all additions, amendments, and modifications thereto, whether formally entered on the docket as court orders or informally made or permitted by or with the acquiescence of the Court, the Monitor and/or the parties, and any other orders affecting education program, shall

be vacated as of the effective date of the Agreement and thereafter have no further force and effect, any voluntary continuation by YPS of existing programs or procedures thereafter notwithstanding.

D. During the 2001-2002 school year, the YBOE shall maintain all Attachment A programs and all programs currently under court order through the 2001-2002 school year except where modifications are agreed to by all parties in writing. During the following four school years, the YBOE shall have complete discretion (within the funds available to it as a result of the City's budget processes) to retain, modify, or eliminate all programs offered in the 2001-2002 school year, except for those programs set forth in Attachment A and the Pre-Kindergarten and Kindergarten programs as described in paragraph II(2)(A). Attachment A programs may be modified or eliminated only in accordance with the terms of paragraphs II(4)(B)(3) and II(4)(D) of this Agreement.

E. The attainment of any outcomes or of the objectives of the programs described in Attachment A (including but not limited to such information as student test scores; rates of participation in courses, graduation and drop-out status, disciplinary proceedings, special education, and English Language Learner status; and measures of compliance with state education law and procedures, and of degree of achievement of Regents' standards and of SED goals and objectives) shall not be considered in determining the YBOE's compliance with its obligations set out in Attachment A.

F. Nothing in this Agreement relieves the YBOE of its obligations to comply with state and federal education law and procedures.

3. Funding and Maintenance of Effort Obligations

A. The State and City's Funding Obligations

(1) Commencing with the effective date, the State shall provide to the City for allocation to the YBOE the funding required under Attachment B pursuant to the terms specified therein.

(2) Assuming the State meets its funding obligations under Attachment B, the City shall allocate to the YBOE sufficient funding to ensure that the programs provided by the YBOE in the YPS pursuant to Attachment A are funded. This funding requirement may be within and shall not necessarily be in addition to the City's maintenance of effort obligations set forth in paragraph II(3)(B)(3).

(3) This Agreement shall not give rise to any joint obligations on the part of the City and the State, or to any obligations for contribution by either one of them for, or indemnity of either one of them by, the other.

(4) Any funds voluntarily paid by the State to the City for the use of the YBOE, or to the YBOE itself, after August 1, 2000, and before the effective date, in contemplation of possible settlement, including a certain $10 million payment announced by Governor George E. Pataki in or about August 2000 and paid in May 2001, as well as any other payments made pursuant to the Attachment B schedule, shall be regarded as being in partial discharge of the State's Attachment B obligations.

(5) Notwithstanding any other provisions of this Agreement, the full extent of the obligation of the Governor with respect to the State's funding obligations is that the Governor, within his lawful authority, including the State Constitution and applicable laws, shall timely seek

the annual budgetary appropriations by the State Legislature for the full and timely payments to the City by the State of the funds which Attachment B requires the State to pay to the City.

B. The State's and City's Maintenance of Effort Obligations

(1) Agreement Not To Supplant Funds

The funding obligations under this Agreement shall not supplant regular funding for the YPS.

(2) The State's Maintenance of Effort Obligations

(a) Annual State education funding shall be made available to the City and YBOE through the regular State aid financing and budget process without regard to the funds provided by the State pursuant to Attachment B. The funds provided by the State pursuant to Attachment B shall be in addition to State education funding to the City and YBOE through the regular State aid financing and budget process.

(b) This maintenance of effort provision shall not entitle the City or YBOE to any specific amount of State education funds based upon (i) the amount of State funding for prior years, or (ii) funds provided to other city school districts, provided however that the Court may consider the above factors and any other relevant evidence in determining whether the State has met its obligations set forth in paragraphs II(3)(B)(1) and II(3)(B)(2)(a) above. This maintenance of effort provision shall not entitle the City or the YBOE to completion of the regular State education budget processes as to the City and YBOE (or any advance or payment by the State pursuant to Attachment B) earlier than said processes are completed as to, or payments made to, other city school districts in the State.

(3) The City's Maintenance of Effort Obligations

The City shall promptly allocate to the YBOE each year during the program/funding term:

(a) All sums provided to the City by the State pursuant to the schedule set forth in Attachment B;

(b) All sums appropriated by the State to the City for education purposes through the regular State education aid financing and budgeting process;

(c) All sums provided to the City or the YBOE by federal government sources and by non-governmental sources for education purposes; and

(d) An annual City appropriation of not less than $135 million in general City tax revenue.

C. Limitations on the State's Funding and Maintenance of Effort Obligations

(1) The funding obligation required of the State as specified in Attachment B and the State's obligations set forth in paragraphs II(3)(B)(1) and II(3)(B)(2)(a) shall constitute the sole obligations relating to financing from the State to the City and the YBOE for Yonkers education under this Agreement.

(2) In no event shall the State be responsible under this Agreement for maintaining or implementing the programs set out in Attachment A or for insuring that the YBOE has sufficient financial resources to provide these programs if the State funding required under this Agreement is current.

4. Reporting, Communications, and Program Review and Modification

A. Reporting

(1) So as to confirm that program expenditure and program implementation requirements under this Agreement have been met, the YBOE shall provide to all other parties, by no later than December 15 of each year of the program/funding term, reports reflecting the following: (a) the amount of Attachment B settlement funds received from the State; (b) the total amount of funds expended on Attachment A programs, including subtotals of the amount spent on each Attachment A program; (c) only for the 2001-2002 school year, subtotals of the amount spent on each previously ordered EIP I program; and (d) written certification by the YBOE that it expended on educational programming and services all settlement funding received. Such annual reports shall address the specified items regarding the immediately preceding school year and shall include a cumulative summary of such items to date.

(2) In addition to the reporting obligations stated in paragraph II(4)(A)(1) above, the YBOE shall promptly respond in writing to reasonable requests for further information by any other party at any time during the program/funding term, provided such requests and each response shall be copied to all other parties.

(3) By no later than December 15 of each year of the program/funding term, the City shall provide to all other parties written certification of its compliance with its obligations set forth in paragraphs II(3)(B)(1) and II(3)(B)(3) under this Agreement.

B. The Parties' Duty to Confer

(1) The parties shall confer and consult as they deem appropriate to address any concerns regarding implementation of the Agreement, and the parties shall make a good faith effort to resolve such concerns amicably if at all possible.

(2) If a party believes another party has failed to comply with or has breached the Agreement, the complaining party shall notify the allegedly breaching party within ninety (90) days of the date when such complaining party knew or should have known of any such breach, and such parties shall have sixty (60) days from the date of notification to resolve the dispute consensually, provided that no interruption of funding takes place or is imminent. Only if this interruption of funding exception does not apply and the dispute has not been resolved consensually within this 60-day period may a complaining party, within thirty (30) days of the expiration of the 60-day period, make an application to the Court to enforce the terms of the Agreement under its retained limited ancillary jurisdiction as provided in paragraph II(7) of this Agreement. In the event the interruption of funding exception applies, the complaining party may, within thirty (30) days of the date of notification, make an application to the Court to enforce the terms of the Agreement under its retained limited ancillary jurisdiction. As respects an alleged breach of Attachment B payment obligations, the 90-day time limit referenced herein shall be triggered by the scheduled date of payment in Attachment B. As respects an alleged breach by the State regarding its obligations set forth in paragraphs II(3)(B)(1) and II(3)(B)(2)(a) under this Agreement, the 90-day time limit referenced herein shall be triggered by the date of enactment by the Legislature of a budget bill that contains regular State education aid for the upcoming school year.

(3) If a party seeks a modification of a program in Attachment A, the party shall notify all other parties of the proposed modification, and the parties shall have sixty (60) days from the date of notification to obtain consent from all parties in writing to the proposed modification. If a dispute regarding a proposed modification to a program in Attachment A has not been resolved within this 60-day period, a complaining party may, pursuant to paragraph II(4)(D)(4) below, ask the External Review Panel ("ERP"), (described in paragraph II(4)(D)(2) below), to issue a recommendation regarding the proposed modification. Requests for such recommendations shall be made in writing to the ERP no sooner than June 30, 2003 and no later than January 31, 2004.

C. Program Review

(1) To assist in the monitoring of compliance with this Agreement, an Office of Compliance shall be established within the YBOE. The office shall be under the direction of a full-time Chief Compliance Officer who shall be selected by the consent of all parties as expeditiously as possible but not later than May 1, 2002. The Chief Compliance Officer shall be an employee of the YBOE, shall report to the Superintendent of the YPS, and shall have an office located within the school district. The Chief Compliance Officer shall be responsible for monitoring and collecting data relevant to the implementation of the Attachment A programs.

(2) To facilitate the monitoring process, the Chief Compliance Officer shall recruit, select, and supervise a cadre of part-time, independent Site Visitors, who shall serve as external evaluators of the Attachment A programs. Any party may submit nominations for Site Visitors to the Chief Compliance Officer. Site Visitors shall be professionally credentialed educators who shall not be YPS or YBOE employees but who shall receive per diem compensation from the YBOE at

prevailing rates. The number of Site Visitors shall not be less than 6 or more than 12 at any given time during the course of the program/funding term and the total number of site visitor compensation days during the course of this Agreement shall not exceed 120 days.

(3) The Site Visitors shall collect data and shall visit schools to determine whether the Attachment A programs are being implemented consistent with the specific program objectives set forth in the relevant program description in Attachment A. Such data shall be reported to the Chief Compliance Officer, shall be made available to any party upon reasonable request, and shall serve to inform the annual meet and confer sessions described in paragraph II(4)(D)(1) below.

(4) During the third year of the program/funding term, but not later than December 15, 2003, the YBOE shall provide to all parties a formal self-study and evaluation report on the effectiveness of the Attachment A programs in achieving their objectives. The YBOE self-study and evaluation report shall be distributed to the parties and shall be made available promptly by the YBOE for public inspection.

D. Program Modification

(1) In each year of the program/funding term, but not later than May 15, the parties shall meet and confer to discuss the implementation of programs in Attachment A. At any such meeting, any party may present proposals to modify programs in Attachment A provided that party complies with the duty to confer requirement in paragraph II(4)(B)(3) above. None of the other parties shall be obliged to accept or approve any such proposal, and no such proposal shall be adopted unless (i) all parties consent to the proposal in writing or (ii) the proposal is recommended unanimously by the ERP pursuant to the procedures set forth in paragraph II(4)(D)(7) below.

(2) During the third year of the program/funding term, the programs in Attachment

A shall be subjected to an independent review by the ERP. The chair of the ERP shall be Dr. Joseph M. Pastore, Jr., with any successor to be selected upon consent of the parties. The ERP shall include two additional individuals, each of whom shall be an expert in public education strategies and/or public education administration, and neither of whom shall have been an employee of any party or was retained by any party during the action as an advisor or expert. Plaintiffs shall jointly nominate three experts by May 1, 2003, from whom defendants must select one by June 30, 2003. Likewise, defendants shall jointly nominate three experts by May 1, 2003, from whom plaintiffs must select one by June 30, 2003.

(3) The ERP shall set its own rules and procedures. The YBOE shall provide the funds for and pay all reasonable and related expenses of the ERP, including reasonable compensation of its members.

(4) Between June 30, 2003 and January 31, 2004, any party may submit requests in writing to the ERP asking that it issue a recommendation on proposed modifications to Attachment A programs, provided such party has complied with the duty to confer requirement set forth in paragraph II(4)(B)(3) above.

(5) By March 15, 2004, the ERP shall complete its site visit of the YPS and shall provide to all parties by April 15, 2004 a report ("ERP Report") on its observations regarding the operation and effectiveness of the programs in Attachment A to achieve the programs' objectives stated in Attachment A and any recommendations it may have for modifying, terminating, or replacing any such programs. Any recommendation in the ERP's report shall be limited to modifications of the programs in Attachment A.

(6) The ERP's recommendations shall be advisory only except as provided in

paragraph II(4)(D)(7) below, but the parties shall each promptly consider those recommendations.

(7) An ERP recommendation to modify programs in Attachment A is binding on the parties and enforceable as part of this Agreement under the specific performance procedures and the Court's retained limited ancillary jurisdiction if and only if all the following criteria are met:

(a) a party referred the modification to the ERP pursuant to paragraph II(4)(B)(3) above;

(b) all members of the ERP unanimously recommend the modification and no member of the ERP, upon a demonstration to the ERP by any party, within 30 days of the issuance of the ERP Report, is persuaded that a recommended modification is not in keeping with the specific objectives of the program set out in Attachment A and should not be implemented; and

(c) at least one party to the Agreement supports the unanimous ERP recommendation.

(8) Except as to binding unanimous ERP recommendations referenced in paragraph II(4)(D)(7) above, nothing in the ERP Report (or elsewhere in this Agreement) shall be deemed to authorize or permit any change, or to permit the Court to require any change, in the programs described in Attachment A. No ERP recommendation, whether or not binding, shall be deemed to authorize or permit the Court to require any increase in the amount of, or acceleration in the payment times for, or modification of, the funding obligations described in Attachment B. Any binding program recommendation in the ERP Report which may be implemented in the fourth and fifth school years under this Agreement shall not result in an aggregate increase in the Attachment A budget for that year in an amount greater than 10% thereof.

(9) In preparing its report, the ERP may:

(a) Rely upon all reported information provided by the YPS as well as all anecdotal and other information provided by the parties and their constituents;

(b) Take into account changes in general educational theory and approaches and State curriculum requirements and standards since the development of Attachment A; and

(c) Hold a public hearing or hearings in facilities provided by the YBOE.

(10) The ERP Report shall be a public document and shall be made available promptly by the YBOE for public inspection.

5. Status of the Action

A. Severance

As part of the parties' joint application and motion to the Court described in paragraph II(6) below, the parties shall request that the Court issue an order, as described in paragraphs II(1) and II(6)(E), declaring that the action shall be treated as severed into two distinct portions, the housing portion of the action and the education portion of the action, and making the recitations set out in paragraphs II(1) and II(6)(E)(5) that the education portion of the action, this Agreement, and education claims resolved herein will have no further role in the housing portion of the action, or in the implementation and interpretation of orders in the housing portion of the action; and nothing hereafter occurring in the housing action shall have any bearing on the interpretation of this Agreement or in the determination of compliance with it.

B. Unitary Status

Upon the effective date:

(1) The Yonkers Public Schools are, and henceforth shall be deemed to be, unitary with respect to the Green factors.

(2) The enforceable obligations of this Agreement fully address all conditions that plaintiffs-intervenors claim and defendants deny are vestiges of the prior *de jure* segregation of the YPS. Therefore the education action shall ~~have been~~ be dismissed with prejudice, subject only to the terms of this Agreement and the Court's ancillary jurisdiction to enforce them in accordance with Kokkonen principles.

(3) Thenceforth, no party may reassert or relitigate in this Court or in any other jurisdiction, any claim or contention that, based upon circumstances existing or claimed to have existed prior to the effective date:

a. The YPS are not or are no longer unitary, or

b. Any vestiges of the prior *de jure* segregation continue to exist or have recurred in the YPS.

C. Local Control

(1) From and after the effective date, the YPS shall be free from direction by or supervision on the part of the Court and/or Court appointees, except for the Court's exercise of its retained ancillary jurisdiction solely to enforce the terms of this Agreement in accordance with Kokkonen. The policies and programs of the YPS shall thenceforth be locally determined in accordance with applicable law, except to the extent provided for in paragraphs II(2)(A) and II(2)(D) and Attachment A of this Agreement.

(2) The concept of local control as used in this Agreement shall not preclude the consideration of any recommendations for changes to any educational program or policy with respect to the YPS if originating from, or the result of ongoing review and discussion among, local entities, such as the YBOE, the City, the NAACP, the local teachers union, the PTA, or other organization. The Attachment A programs and the provisions in this Agreement permitting discussion or modification thereof by the parties and the ERP shall be deemed consistent with the local control of the YPS.

6. Approval by the Court

Each of the parties by signing the Agreement assumes the following obligations or makes the following representations (knowing that all other parties hereto and the Court are relying on any such representations):

A. The formality with which such party has caused the Agreement to be executed is in accordance with such party's governing rules and procedures and comports with applicable law. The execution of the Agreement by such party is accordingly complete, lawful, and binding upon such party.

B. Promptly after all parties have executed the Agreement in accordance with the provisions of the prior paragraph, but in no event later than 15 business days following the point at which all of them have executed the Agreement, the parties by joint motion shall submit the Agreement to the Court for preliminary approval and request that the Court, in compliance with all requirements of Rule 23,

(1) Direct the giving of notice to the Class,

(2) Schedule and hold a fairness hearing,

(3) After the fairness hearing, approve the Agreement as a fair, reasonable, and adequate resolution of this case, and

(4) Enter final judgment dismissing the education portion of the action with prejudice and retaining ancillary jurisdiction over the Agreement under Kokkonen solely to enforce the terms of the Agreement.

C. All parties shall represent to the Court in their affidavits supporting such motion that the Agreement is fair, reasonable, and adequate, and is the result of arms-length negotiations, and shall recommend approval of the settlement as set forth in the Agreement as being in the best interest of their respective clients and the Class members under the circumstances.

D. At the fairness hearing, the parties shall cooperate in good faith to achieve the expeditious approval of the settlement, and shall ask the Court to approve the Agreement and to enter final judgment thereon ("Judgment").

E. In order to satisfy the requirements of the Agreement, the Judgment (and/or the decision or order upon which it rests) shall include, by specific statement or reference to the Agreement to the extent permitted by law and the rules of court, provisions that:

(1) Affirm certification of the proceeding as a class action pursuant to Rule 23, Fed. R. Civ. P., consistent with the Class previously defined and accepted by the Court;

(2) Find that the notice to Class Members of the fairness hearing satisfied the requirements of Rule 23, Fed. R. Civ. P., and due process, and that the Court has jurisdiction over the Class;

(3) Find that the Agreement is fair, reasonable, and adequate, and the result of arms-length negotiations in all respects;

(4) Find that the defendants have formed a fixed intent that the condition of *de jure* segregation which was formerly found by the Court shall

not return to the YPS;

(5) Declare that all housing claims and proceedings (including any claims for costs and attorneys' fees arising out of or relating to housing claims) shall be treated as severed from the education portion of the action, i.e., henceforth and permanently for all purposes treated without consideration of any education claims, noting that this Agreement and the Judgment concern, affect, and resolve only the education portion of the action;

(6) Direct the Clerk of the Court to enter an entry in the docket for the action indicating that the District Court's November 30, 2000 Decision and Order has been withdrawn as moot in light of the Agreement; and vacate, for all further purposes, EIP I (as amended) and all other orders respecting education issued in the action prior to the effective date, including but not limited to funding, funding formula, and programmatic orders;

(7) Dismiss as to all parties the education action with prejudice, including all claims whatsoever in the education action, and direct the entry of the Judgment; and

(8) Expressly state in the order of dismissal and/or Judgment that the Court is retaining ancillary jurisdiction over the Agreement under Kokkonen principles only for the purpose of enforcing the terms of the Agreement.

F. Neither the parties nor their counsel shall solicit, request, or encourage anyone to object to the Agreement.

G. All parties shall defend the Agreement and any order or judgment unqualifiedly approving the same in any action or proceeding, direct or collateral, attacking the legality or effectiveness of the Agreement. Any participation by the United States in any appeal contemplated by this paragraph II(6)(G) is subject to the independent authority of the Solicitor General.

H. Any party that becomes aware of any collateral action or proceeding attacking the legality or effectiveness of the Agreement shall promptly notify all other parties. Thereafter, all

parties shall take all necessary steps to effectuate the removal or transfer of said collateral action or proceeding to the District Court for the Southern District of New York for adjudication of the challenge to the Agreement or provisions thereof.

I. All parties waive any right to appeal the decision of the District Court approving the Agreement without qualification and dismissing this case with prejudice provided that the order of approval and dismissal is consistent with this Agreement.

7. Future Role of the Court

A. Following the effective date, the Court's jurisdiction over the education portion of the action and all parties in and as to the education portion of the action shall cease, except that the Court shall retain ancillary jurisdiction throughout the program/funding term solely to enforce the terms of the Agreement and to order specific performance thereof, as contemplated under the Kokkonen principles.

B. The Court's retention of such jurisdiction shall not extend beyond the program/funding term unless: (i) a party is alleged to have failed to fulfill one of more of its obligations under the Agreement, (ii) another party brings an application for specific performance of that obligation pursuant to the terms specified in paragraph II(4)(B)(2), and (iii) the Court needs time beyond June 30, 2006, to rule on such application and if warranted, to order specific performance. If the Court finds that such party has indeed failed to fulfill such obligation, the Court shall have the power to direct specific performance of such party's obligations until such time that such party fulfills the outstanding obligation.

C. After the effective date, no party to this Agreement shall make application to any tribunal for specific performance of this Agreement other than to the Court. All parties irrevocably

and unequivocally submit themselves to the jurisdiction of the Court for the adjudication of any application for specific performance. Any such application must be made within the time limits set forth in paragraph II(4)(B)(2).

D. The Court shall have the power to approve and enforce any amendment to the Agreement to which all parties have agreed in writing and submitted to the Court for approval pursuant to paragraph IV(5) below. The Court also shall have the power to enforce any amendment to Attachment A programs, provided such amendment complies with the procedures outlined in paragraphs II(4)(B)(3) and II(4)(D) above and paragraph IV(5) below.

E. Under no circumstances may the Court increase the amount of the State's or City's funding obligations specified in this Agreement. Provided the State funding required under this Agreement is current, the timing of such funding shall not be altered by the Court.

F. The Court, in its sole discretion, may award reasonable attorneys' fees and costs to a party who prevails in making or opposing an application for specific performance, with the award to be paid by the losing party or parties. An award may not be based on rates which exceed those which would have been awardable by the Court in the action on October 1, 2001.

G. Without limiting the scope of the preceding subparagraphs A-F, after the effective date, the Court shall be without jurisdiction to entertain an application in the education action for, or to issue a judgment, injunction, order or declaration in the education action ordering, creating, continuing, modifying, or ending any education program, policy or facility in the YPS, except as may result from the Court's granting or denying the application of any party to this Agreement for specific performance of this Agreement in accordance with Kokkonen principles.

H. Upon the effective date, the appointment of the Education Monitor shall

terminate, and the Monitor shall be without power to act as representative of the Court respecting the education action or the implementation of the Agreement.

8. Waivers and Releases

A. Upon the effective date of this Agreement:

1. Except for obligations undertaken in this Agreement, each party permanently waives and releases all other parties from all claims that were asserted in or arose from the education action, or that could have been raised by any party against any other party in the education action or in any forum based on the prior *de jure* school segregation in the YPS, the implementation of any order in the education action, or on acts or omissions previously alleged or found in the education action. Each party further waives any right to make an appeal, to pursue an appeal previously made, or to revive an appeal from any order in the education action.

2. Each party releases all other parties from any claim for expenses and attorneys' fees in or relating to the education action, except as set out in paragraphs II(7)(F) and II(10)(B).

B. No party shall initiate, join as a party or *amicus curiae* in, fund, advertise, or otherwise support any action or proceeding in any court or administrative forum which seeks as relief an order, declaration, judgment, award or determination to the effect that any alleged condition, act, omission, conduct, practice, or course of behavior prior to the effective date of the Agreement engaged in by any party, person, agency, institution, or group in or with respect to the YPS constitutes, contributes to, or comprises a vestige or evidence of the former *de jure* segregation previously found by the Court to have existed in the YPS.

9. Declaration Regarding Segregation

In addition to all other obligations, each and all defendants affirmatively declare their belief that the YPS are presently free of *de jure* segregation.

10. Monitor's and Attorneys' Fees

A. Monitor's Fees

Upon the Education Monitor's submission of a statement for any remaining unbilled or unpaid fees for his services in the education action, and for reimbursement for expenses incurred by him therein, within 120 days of the effective date of the Agreement, the YBOE shall pay the Education Monitor such unpaid fees and expenses.

B. Attorneys' Fees

(1) Within 120 days after the effective date of the Agreement, and based on the contemporaneous records to be provided by Michael H. Sussman, Esq., attorney for plaintiffs-intervenors, and subject to review and justification in said records, and following the procedures required,

> (a) with respect to the State, by State law (including N.Y. Public Officers Law Section 17) and practice, and subject to all approvals of the various State officials required thereby, and
>
> (b) with respect to the City, by State and local law and practice and subject to all approvals of City officials required thereby,

the City and State, respectively, shall pay pursuant to 42 U.S.C. § 1988 the amounts of no more than Fifty Thousand dollars ($50,000) and no more than Four Hundred and Fifty Thousand dollars ($450,000) in checks made payable to Michael H. Sussman, Esq., 25 Main Street, Goshen, NY 10924, together totaling the sum of no more than $500,000, to Michael H. Sussman, Esq., attorney

for plaintiffs-intervenors, for his attorney's fees and expenses incurred in the education aspects of the action which have not previously been paid by any defendants. Said respective amounts shall be subject to downward adjustment to the extent not supported by the contemporaneous records provided.

(2) The amount provided for in subparagraph II(10)(B)(1) above includes payment for all services rendered by Mr. Sussman, and all expenses incurred by him, in connection with the negotiation and execution of this Agreement, and for all services to be rendered by him through the effective date of the Agreement. The amount to be paid to Mr. Sussman by the State and City, respectively, for such services and expenses, is a negotiated compromise of reasonable fees and expenses based on Mr. Sussman's contemporaneous records of past time expended by himself, and his partners, associates, and paralegal staff, determined at the rates which would have been awardable to him by the Court in the action as of October 1, 2001, and his reasonably estimated services and expenses through the effective date.

(3) All claims of Mr. Sussman or his firm for such expenses or fees shall be deemed satisfied in full by these payments, and he waives and releases all parties from any other past or potential claims for expenses and attorneys' fees for such services or expenses incurred by himself or his firm in the education portion of the action or in the education action. Mr. Sussman hereby indemnifies the State and City defendants, respectively, and shall hold them and each of them harmless from and against any and all claims for which may hereafter be presented or made by any other attorney or firm for fees or expenses alleged to have been incurred in representing the plaintiffs-intervenors in the education portion of the action, or in the education action, through the effective date.

(4) Other than as provided in the preceding subparagraphs of this paragraph II(10)(B), each party represents to all other parties that it knows of no outstanding or unpaid claims for expenses and fees by any attorney for services or expenses allegedly incurred in the education portion of the action or in the education action; and each party hereby indemnifies each other party and shall hold them and each of them harmless from and against any and all claims which may hereafter be presented or made by any attorney for fees and expenses allegedly incurred in representing such indemnifying party in the education portion of the action or in the education action.

III. Execution of Agreement

Subject to the provisions of Rule 23, Fed. R. Civ. P., regarding representation of and settlement by a class, each person executing this Agreement as representing, or executing on behalf of, one or more parties, represents and warrants to all concerned (understanding that all other parties are relying on such representations) that, to the best of his or her knowledge and belief:

(A) He or she has been duly authorized to execute this Agreement on behalf of the party or parties indicated; and

(B) Said party or parties have been informed of the Agreement and all of its substantive provisions and have done all things required by statute and/or necessitated by the parties' governing rules, procedures, and practices to enter into the Agreement unequivocally and to authorize the person executing on its or their behalf to do so.

IV. Miscellaneous

1. Successors Bound

This Agreement shall be binding upon, and shall be enforceable against, the parties signatory hereto and their successors and assigns.

2. Notices and Addresses

A. Notices required by or relating to this Agreement shall be directed to the parties by first class mail at the addresses below provided by them for the purpose of receiving such notices:

(1) United States of America

JOHN R. MOORE
EMILY H. McCARTHY
U.S. Department of Justice
Civil Rights Division
Educational Opportunities Section, PHB
950 Pennsylvania Ave., N.W.
Washington, DC 20530

(2) Yonkers Branch of the NAACP

THE YONKERS BRANCH OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
c/o Michael H. Sussman, Esq.
The Law Offices of Michael H. Sussman
25 Main Street
Goshen, NY 10924

(3) City of Yonkers

MAYOR JOHN D. SPENCER
City Hall, 2nd Floor
40 South Broadway
Yonkers, NY 10701

with duplicate to:

Raymond P. Fitzpatrick, Jr., Esq.
1929 Third Ave. N., Suite 600
Birmingham, AL 35203

(4) Yonkers Board of Education

YONKERS BOARD OF EDUCATION
c/o Lawrence W. Thomas, Esq.
Donoghue, Thomas, Auslander and Drohan
28 Wells Avenue, Building #2
Yonkers, NY 10701

(5) State of New York

ELIOT SPITZER
Attorney General of the State of New York
120 Broadway - 24th Floor
New York, NY 10271
Attn: Stephen M. Jacoby
Assistant Attorney General

(6) New York State Education Department

KATHY A. AHEARN
Counsel and Deputy Commissioner for Legal Affairs
New York State Education Department
89 Washington Avenue
Albany, NY 12234.

B. Any changes of address for the purpose of notice under this Agreement shall be made by providing written notice of the change to the other parties and to counsel at the addresses provided by them for the purpose.

3. Completeness of Agreement

This Agreement constitutes the entire agreement among the parties. No representations, warranties, considerations, or inducements have been made to any party concerning the Agreement other than those specifically set forth in this Agreement.

4. Non-severability

If, after this Agreement becomes effective, as provided in paragraph II(1), any substantial and material provision of the Agreement should be finally declared invalid, illegal, or unconstitutional by a court of competent jurisdiction (and all appeals therefrom have been exhausted or the time to appeal therefrom has expired), and unless within 30 days of such declaration becoming final the parties notify the United States District Court for the Southern District of New York of their mutual intent to be bound by and to implement either (i) the remaining provisions of the Agreement or (ii) a modified Agreement agreed to by all parties and submitted at the time of notification to the Court for its approval, this Agreement shall be deemed to be null and void in all respects, except that: (A) the State shall be entitled to credit for any funds it has advanced pursuant to paragraphs I(2)(C)(2), II(1)(A)(2), and II(10)(B); and (B) the State and City shall be entitled to credit for any and all attorneys' fees and expenses paid by either of them pursuant to paragraph II(10)(B).

5. Amendment of the Agreement

This Agreement may not be amended except (1) upon written consent of all parties and with Court approval or (2) with respect to the educational programs in Attachment A only, pursuant to the procedures outlined in paragraphs II(4)(B)(3) and II(4)(D) above. The parties shall provide timely notice to the Court of any amendment to this Agreement. The parties intend that any

amendment shall thereafter be subject to specific performance under Kokkonen principles to the extent provided in this Agreement.

6. Execution in Multiple Copies

This Agreement may be executed in multiple copies, each of which shall be deemed an original.

[end of text of body of Agreement; Signature Pages and Attachments follow]

_____

Ralph F. Boyd, Jr.
Assistant Attorney General
Civil Rights Division

_____

Emily H. McCarthy
Educational Opportunities Litigation Section
United States Department of Justice
Civil Rights Division
Educational Opportunities Section, PHB
950 Pennsylvania Ave., N.W.
Washington, DC 20530

Attorneys for Plaintiff the United States of America

Plaintiff-Intervenor Yonkers Branch of the
National Association for the Advancement of Colored People
By:

_____
Leonard Buddington, Jr.
President

_____
Michael H. Sussman, Esq.
Attorney for Plaintiffs-Intervenors the Yonkers Branch of the National Association for the Advancement of Colored People, and Charlotte Ryer for herself and as representative of the Certified Plaintiff-Intervenor Class
The Law Offices of Michael H. Sussman
25 Main Street
Goshen, NY 10924

Defendant Yonkers Board of Education
By:

_____
Robert M. Ferrito
President

_____
Joe L. Farmer
Superintendent of Schools

_____
Lawrence W. Thomas, Esq.
Donoghue, Thomas, Auslander and Drohan
Attorneys for Yonkers Board of Education
28 Wells Avenue, Building #2
Yonkers, NY 10701

Defendant City of Yonkers, a New York Municipal Corporation
By:

_____
John D. Spencer, its Mayor

_____
Raymond P. Fitzpatrick, Jr., Esq.
Attorney for the City of Yonkers
1929 Third Ave. N., Suite 600
Birmingham, AL 35203

_____
George E. Pataki
Governor of the State of New York

Eliot Spitzer
Attorney General of the State of New York
Attorney for State Defendants
By:

_____
Stephen M. Jacoby
Assistant Attorney General
120 Broadway - 24th Floor
New York, NY 10271

ATTACHMENT A
[TO BE SUPPLIED]

Attachment B

New York State Payments to the City of Yonkers
For YBOE Pursuant to Settlement Agreement

Date Payment To be Made	Respecting Period	Amount to be Paid ($ Millions)
March 15, 2002	July 1, 2001 to June 30, 2002	$ 70
November 15, 2002	July 1, 2002 to June 30, 2003	$ 30
March 15, 2003	July 1, 2002 to June 30, 2003	$ 40
November 15, 2003	July 1, 2003 to June 30, 2004	$ 30
May 15, 2004	July 1, 2003 to June 30, 2004	$ 30
November 15, 2004	July 1, 2004 to June 30, 2005	$ 25
May 15, 2005	July 1, 2004 to June 30, 2005	$ 25
November 15, 2005	July 1, 2005 to June 30, 2006	$ 25*
May 15, 2006	July 1, 2005 to June 30, 2006	$ 25*
Total		$300

* Each of the payments to be made in the 2005-06 school year will be adjusted by $5 million to reflect the $10 million settlement payment made by the State to the City of Yonkers in May 2001, resulting in net payments of $20 million each after such adjustments are made.