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August 7, 2023

Mr. David Schaeffer
Audit Manager
Office of the State Comptroller
110 State Street
Albany, NY 12236

Re: Oversight of Sidewalk Sheds (2022-F-36)

Dear Mr. Schaeffer:

Thank you for the opportunity to respond to the recommendations in the above-captioned audit report. The Department is taking steps to improve our existing procedures to address the issues identified in your report. We view your recommendations as helpful in furthering our commitment to providing quality public service.

The Department of Buildings (DOB) regulates the safe and lawful use of more than 1.1 million buildings and over 40,000 active construction sites under its jurisdiction by enforcing laws, including the City's Construction Codes, Zoning Resolution and Energy Code, as well as the New York State Multiple Dwelling Law. The Department enforces compliance with these regulations and promotes public safety through its review and approval of building plans, permitting, licensing functions, and inspections.

DOB's primary objective is promoting the safety of buildings and construction sites, including those with sidewalk sheds. The Department promotes safety at these sites and buildings through a variety of means including site safety and complaint inspections. The Department makes every effort to balance its multiple, competing priorities and mandates to conduct these inspections and takes enforcement action where appropriate.

While we acknowledge your recommendations, the Department disagrees with the Comptroller's assertion that "limited progress" has been made. As stated in prior communications, we also have concerns that the original recommendations from your office did not account for any of the agency improvements made prior to the completion of the original audit (Oversight of Sidewalk Sheds (2019-N-9), which greatly increased oversight over both building facades and sidewalk sheds. Since the completion of the audit, the Department has introduced various initiatives, to address the recommendations in the audit report. For example, the Department has updated documents and training curriculums related to the Certificate of Correction process, provided inspectorial training, as well as refresher training for inspectors.

Furthermore, building owners and other responsible parties are required to fulfill their legal obligations to maintain their buildings, construction sites, and provide protection as required by the New York City Administrative Code, **§ 28-301.1**. DOB rigorously enforces these provisions and has consistently taken strong enforcement actions against those who fail to abide by them.

In addition, on July 24, 2023, New York City Mayor Eric Adams and the Department of Buildings announced a collection of proposals titled "**Get Sheds Down**," that will also address many of the findings and recommendations in the audit report. Our new "**Get Sheds Down**" plan goes much further than the limited scope of the original audit, with novel initiatives intended to greatly improve the design of pedestrian protection and reduce the total number of sidewalk sheds in the city by addressing the unbalanced incentive structure that leads to sheds being up for year after year. Notable, these proposals will increase penalties where an owner does not make progress towards completing façade repairs and removing a sidewalk shed and will make significant improvements over current sidewalk shed designs. Additionally, the Department will evaluate Local Law 11 to determine whether any changes to the inspection schedule are needed. Please refer to the following press release for additional information about these proposals:

<https://www.nyc.gov/office-of-the-mayor/news/537-23/mayor-adams-dob-commissioner-oddo-plan-remove-unsightly-sheds-scaffolding-nyc#/0>

Of the initial 15 audit recommendations, four recommendations have been implemented, and two recommendations are partially implemented, as per the audit report. Notably, the audit report did not mention that DOB disagreed with five recommendations, and thus no action was taken.

Below are the Department's responses to the recommendations:

Response to Recommendations

Recommendation 1: Require permit holders to immediately notify DOB when a shed is erected and monitor compliance with this requirement.

DOB's Original Response: *The Department disagrees with this recommendation. As previously noted, the property owner is responsible for erecting sidewalk sheds when required. While the Department appreciates your policy recommendation, given practical realities with regard to staffing levels and DOB'S multiple, competing priorities and mandates, including but not limited to following up on Class 1 OATH summonses, the Department has determined that adding a notification requirement and tracking those notifications is not a practicable, efficient use of Department resources.*

Comptroller's Status Update: *Not implemented*

DOB's Response to Follow-up Audit: The Department disagrees with this recommendation. Our position on this matter remains unchanged from our previous response above.

Recommendation 2: Improve policies and procedures to monitor that sheds are safely maintained.

DOB's Original Response: *DOB partially agrees with this recommendation. DOB has multiple units that promote safety at sites and buildings through a variety of means including site safety and complaint inspections. When non-compliance is identified, DOB notifies the responsible party and takes appropriate enforcement action. Ultimately, however, is the responsibility for ensuring that sidewalk sheds are appropriately maintained lies with the property owner or other responsible party.*

DOB's Response to Follow-up Audit: The Comptroller determined that this recommendation was implemented.

Recommendation 3: Ensure that the unsafe shed conditions identified are corrected.

DOB's Original Response: *DOB partially agrees with this recommendation. DOB investigated the shed conditions that the audit noted, and, where warranted, issued summonses ordering those conditions be corrected. Ensuring that those violating conditions are corrected, however, is the responsibility of the property owner or other responsible party.*

Comptroller's Status Update: *Partially implemented*

DOB's Response to Follow-up Audit: DOB partially agrees with this recommendation. DOB cannot compel compliance or correction. Ensuring that those violating conditions are corrected, is the responsibility of the property owner or other responsible party.

This recommendation will also be addressed by the "Get Sheds Down" initiative, which will increase DOB's oversight over sidewalk sheds. Additionally, in certain areas, DOB will impose penalties where an owner does not make progress towards completing façade repairs, which includes filing plans, pulling a permit and completing repairs.

Recommendation 4: Implement procedures for building owners and contractors to complete and submit uniform daily shed inspection reports to DOB and monitor to ensure inspections are accurate and timely.

DOB's Original Response: *DOB disagrees with this recommendation. The code requires that inspection reports be maintained; it does not require those reports to be submitted to DOB. It is the responsibility of the property owner or other responsible part to ensure that these inspections are performed correctly and at the appropriate intervals. If and when DOB identifies non-compliance with these code provisions, it will take enforcement action as appropriate, including issuing summonses.*

Comptroller's Status Update: *Not implemented*

DOB's Response to Follow-up Audit: DOB disagrees with the Comptroller's findings. Pursuant to Chapter 3301.13.13 of the New York City Construction Code, construction superintendent must maintain a log at each job site for which the construction superintendent is responsible. As such, the log must be made available to the commissioner upon request. The construction superintendent must complete such log prior to departing the job site, by the end of the day. Each day's log entry must be signed and dated by the construction superintendent. When DOB inspectors perform an inspection, examination of those logs is part of the inspection process. Considering this, DOB believes this recommendation should not be considered "Not Implemented".

Recommendation 5: Utilize registered design professional filings, or lack thereof, to identify non-compliance and take appropriate actions to ensure building reports are filed, adequate protection is installed, and unsafe conditions are corrected immediately.

DOB's Original Response: *DOB partially agrees with recommendation. The Department currently uses filing information to identify non-compliance and take enforcement actions where appropriate for buildings over six stories. Ensuring that*



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unsafe conditions are corrected, however, is the responsibility of the property owner or other responsible party.

Comptroller's Status Update: *Not implemented.*

DOB's Response to Follow-up Audit: DOB partially agrees with this recommendation. All permitted sheds are tracked by DOB. However, if there is no permit or complaint, there is no mechanism for tracking or monitoring an

illegally installed shed. The Department will continue to use all enforcement tools to enforce compliance.

Recommendation 6: Immediately inspect unsafe sites, including sites for which DOB received Notifications of Unsafe Conditions or Unsafe Façade Compliance Reports, to ensure protection is properly installed or the unsafe condition is corrected.

DOB's Original Response: *DOB partially agrees with this recommendation as the Façade Unit already confirms the presence of public protection after each and every unsafe notification or unsafe compliance report for buildings over six stories. The Façade Unit confirms whether public protection is installed, if necessary, per the unsafe report or unsafe notification and takes enforcement action where appropriate. Ensuring that protection is installed, and that unsafe condition are corrected, is the responsibility of the property owner or other responsible party.*

Comptroller's Status Update: *Not implemented.*

DOB's Response to Follow-up Audit: DOB partially agrees with this recommendation. The Façade Unit confirms whether public protection is installed, and if necessary (per the unsafe report or unsafe notification), will take enforcement action where appropriate.

Recommendation 7: Develop and implement control activities, including policies and procedures to ensure property owners publicly post shed permits as required.

DOB's Original Response: *DOB partially agrees with this recommendation. As noted previously, DOB will continue to conduct inspections, including site safety and complaint inspections, at sites with sidewalk sheds and take enforcement action where appropriate. However, the owner or responsible party is responsible for ensuring that shed permits are publicly posted when required.*

Comptroller's Status Update: *Not implemented*



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DOB's Response to Follow-up Audit: DOB partially agrees with this recommendation. By code requirement, permits must be clearly posted. When DOB identifies sidewalk sheds that have no or expired permits, it will continue to notify the property owner or responsible party that he or she is not in compliance and take appropriate enforcement action. The Department maintains; however, that the owner or responsible party is responsible for obtaining the required renewals or removing sheds when not required.

Additionally, a property owner may experience other mitigating factors that later result in non-compliance. For example, postings might be destroyed by rain, wind, erosion, vandals, etc. Where possible though, the Department will continue to take appropriate enforcement action.

This recommendation will also be addressed by the NYC Mayor's "Get Sheds Down" initiative, which proposes doing away with an existing penalty waiver for expired shed permit violations, further encouraging property owners to keep shed permits up to date with the more frequent renewal schedule being proposed.

Recommendation 8: Identify sheds with expired permits and take appropriate action to ensure property owners obtain the required renewals or remove the shed.

DOB's Original Response: *DOB partially agrees with this recommendation. When DOB identifies sidewalk sheds that have expired permits but remain in place, it will continue to notify the property owner or responsible party that he or she is not in compliance and take appropriate enforcement action. The Department maintains, however, that the owner or responsible party is responsible for obtaining the required renewals or removing sheds when required. DOB will continue to conduct inspections, including site safety and complaint inspections at sites with sidewalk sheds and take enforcement action when appropriate.*

Comptroller's Status Update: *Not implemented.*

DOB's Response to Follow-up Audit: DOB partially agrees with this recommendation. Our position on this matter remains unchanged from our previous response above. This recommendation will also be addressed by the NYC Mayor's "Get Sheds Down" initiative as indicated above.

Recommendation 9: Develop, implement, and adhere to procedures to monitor compliance with the Building Code requirement to notify DOB of the removal of a shed within two business days of complete removal and verify that the sheds have been removed.



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DOB's Original Response: *DOB disagrees with this recommendation. The building owner or other responsible party is responsible for ensuring that sidewalk sheds are removed when they are no longer required. The most important consideration related to sidewalk sheds is that they are installed when required to protect the public, monitoring notifications that the shed has been removed is of lower priority. Given practical realities with regard to staffing levels and DOB's multiple, competing priorities and mandates that take precedence, this initiative would not be an efficient use of limited agency resources.*

Comptroller's Status Update: *Not implemented.*

DOB's Response to Follow-up Audit: After considering the comments made by the Comptroller, DOB partially agrees with this recommendation. However, as mentioned above, resource limitations and the delays in shed removal notifications inhibit our ability to respond within the recommended timeframe.

DOB Inspectors continue to respond to complaints and issue violations for those conditions that require them. This recommendation will also be addressed by the NYC Mayor's "Get Sheds Down" initiative.

Recommendation 10: Adhere to DOB shed removal policies and procedures, including supervisor review of CSC Inspection results.

DOB's Original Response: *DOB agrees with recommendation. Supervisors already review all appointment approvals through CSC. Additionally, CSC has implemented a revised checklist review procedure and has updated its SOPs to reflect the revised process.*

DOB's Response to Follow-up Audit: The Comptroller determined that this recommendation was implemented.

Recommendation 11: Develop and implement policies and procedures to monitor façade conditions at buildings six stories or less.

DOB's Original Response: *The Department disagrees with this recommendation. The Department appreciates your policy recommendation. However, given the technical complexities and resource concerns that this raises, the Department cannot accept or implement it at this time.*

Comptroller's Status Update: *Not implemented*

DOB's Response to Follow-up Audit: The Department disagrees with this recommendation. We are mindful of façade conditions at smaller buildings and continue to respond to complaints. Additionally, section 28-301.1. 1 of the New York City Administrative Code, added by Local Law 126 of 2021, requires



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building owners to have an annual parapet observation performed in accordance with DOB's rules.

Recommendation 12: Immediately identify overdue compliance with OATH summonses and implement policies and procedures to monitor these sites and ensure hazardous conditions have been corrected.

DOB's Original Response: *DOB disagrees with this recommendation. "Overdue Compliance" is an OATH system status over which DOB has no control. DOB is not involved in applying or monitoring this system status.*

Comptroller's Status Update: *Not implemented*

DOB's Response to Follow-up Audit: DOB partially agrees with the above recommendation and believes that the new shed initiative may address some component of this recommendation, including prompting building owners not to delay in addressing potentially unsafe façade conditions.

Recommendation 13: Update the required documents to be submitted with Certificates of Correction (as proof that conditions have been corrected) to ensure that the records provided substantiate correction of the violation.

DOB's Original Response: *DOB partially agrees with this recommendation, As previously noted. "before" photographs are not practical or feasible to require in all situations. However, the Department is in the process of updating our SOP and training staff to provide further guidance with respect to reviewing submitted evidence. In addition, DOB will update its web page, forms, and systems to instruct customers that photographs require labels.*

DOB's Response to Follow-up Audit: The Comptroller determined that this recommendation was implemented.

Recommendation 14: Re-inspect sites that submit a Certificate of Correction to determine if all hazardous conditions have been corrected.

DOB's Original Response: *DOB partially agrees with this recommendation. DOB has an audit process which it inspects 15% of the certificates of correction submitted for Class 1 OATH summonses. Given practical realities regarding staffing levels and DOB's multiple, competing priorities and mandates, reinspecting all sites that submit a certificate of correction is not currently feasible. Additionally, to do so would be an inefficient allocation of limited resources given that only a very small number of certificate of correction audit inspections result in finding of a false filing.*

Comptroller's Status Update: *Partially implemented.*

DOB's Response to Follow-up Audit: DOB partially agrees with this recommendation. The Department makes a good faith effort to inspect and return to the Enforcement Unit all Certificate of Corrections in a timely manner. The Department continues its aggressive efforts to strengthen this program and similar ones. These have been ongoing and pre-date this audit. As part of this program, we focus on reinspecting certain conditions that resulted in Class 1 violations being issued and continue to perform audits of Certificates of Correction submitted to the Department.

Recommendation 15: Follow procedures to coordinate with HPD to assist with taking immediate measures to protect the public from unsafe conditions.

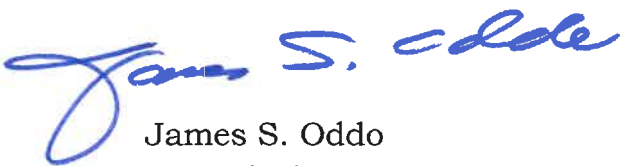
DOB's Original Response: *DOB agrees with this recommendation in that it is current practice.*

DOB's Response to Follow-up Audit: The Comptroller determined that this recommendation was implemented.

The 'Get Sheds Down' plan is a significant step towards improving our City's infrastructure and enhancing the quality of life for all New Yorkers and we look forward to keeping you updated on our progress to implement the reforms in the plan.

We strongly value the dialogue between our offices and look forward to identifying ways we can continue to strengthen our system for the benefit of all New Yorkers.

Sincerely,



James S. Oddo
Commissioner

cc: Mark Sanabria, NYC Department of Buildings
Maxim Pierre, NYC Department of Buildings
Kerry Castro, NYC Department of Buildings
Marjorie Landa, NYC Mayor's Office of Risk Management and Compliance
Doug Giuliano, NYC Mayor's Office of Risk Management and Compliance