

OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF NEW YORK

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In the Matter of the

**Investigation by Eric T. Schneiderman, Attorney
General of the State of New York, of**

West Harlem Local Development Corporation.
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ASSURANCE NO.

12-120

ASSURANCE OF DISCONTINUANCE

WHEREAS, the Office of the Attorney General of the State of New York ("OAG"), Eric T. Schneiderman, has conducted an investigation pursuant to the Not-for-Profit Corporation Law ("N-PCL") and Section 63(12) of the Executive Law into complaints that the West Harlem Local Development Corporation ("WHLDC"), a Type C New York not-for-profit local development corporation, had violated the N-PCL in connection with its administration of charitable funds intended to benefit the West Harlem community;

WHEREAS, subject to obtaining court approval, WHLDC intends to transfer its assets to West Harlem Development Corporation ("WHDC"), a Delaware not-for-profit corporation, and then dissolve;

WHEREAS, OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest, accepts this Assurance pursuant to Section 63(15) of the Executive Law in lieu of commencing a statutory proceeding, and hereby discontinues its investigation of WHLDC;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties that this Assurance contains OAG's findings in connection with its investigation of WHLDC, which

WHLDC neither admits nor denies, and the prospective relief and other provisions to which OAG, WHLDC and WHDC (each a "party") have agreed.

FINDINGS

1. WHLDC has the charitable mission of promoting the economic development of the West Harlem community. The WHLDC by-laws require between 15 and 28 directors and prescribe specific eligibility requirements for directors, including seats reserved for the designees of federal, state and local elected officials whose districts include West Harlem and constituency groups such as public housing residents, business owners and cultural institutions. WHLDC has not obtained tax-exempt status from the Internal Revenue Service ("IRS").

2. Following negotiations in connection with Columbia University's ("Columbia") ongoing campus expansion in West Harlem, WHLDC and Columbia entered into a West Harlem Community Benefits Agreement, dated May 18, 2009 ("CBA"). The CBA confers various rights and responsibilities on WHLDC, including coordinating access to CBA benefits for community members and the right to direct the expenditure of a "Benefits Fund" for the benefit of the West Harlem community. The Benefits Fund is payable in yearly installments over sixteen years, totaling \$76 million. CBA § II.B, Ex. G. Under the CBA, WHLDC is required to have a "Fiscal Sponsor" that "shall hold and disburse the Benefits Fund in accordance with the instructions of WHLDC." CBA § II.B.2. Installments are paid by Columbia as charitable contributions directly to the Fiscal Sponsor, which maintains the books and records for the Benefits Fund. The Fund for the City of New York ("FCNY") was selected as the initial Fiscal Sponsor.

3. Prior to November 2011, FCNY had made only one grant of CBA funds at the direction of WHLDC: \$302,400 to sponsor summer jobs for West Harlem youth as part of the New York City Department of Youth and Community Development's 2011 Summer Youth

Employment Project (SYEP). Since that time, only two additional grants have been made: \$756,000 to the SYEP in June 2012, and \$85,753.42 to the Manhattanville Houses of the New York City Housing Authority in August 2012.

4. In or about March 2011, the WHLDC board of directors determined to form a new not-for-profit corporation, WHDC, as successor to WHLDC. Subject to obtaining court approval, WHLDC intends to transfer its assets, including its rights and responsibilities under the CBA, to WHDC, and then petition for dissolution. In March 2011, WHLDC caused WHDC to be incorporated in Delaware. WHDC obtained tax-exempt status under Section 501(c)(3) of the Internal Revenue Code in July 2011. WHDC received authority to do business in New York as a foreign not-for-profit corporation in November 2011. The WHDC by-laws provide for a board of directors with between 11 and 19 members, comprised of three members designated by elected officials, two members designated by Community Board 9, and at-large members. Under the by-laws, a majority of the WHDC directors must have demonstrated a commitment to West Harlem through residency, business ownership, or employment in the area.

5. OAG's investigation found that WHLDC's ability to engage in CBA grant-making and otherwise fulfill its charitable mission has been impeded and delayed by, among other things, the lack of staff to run the day-to-day operations of the organization and the board's failure to develop clear policies and procedures for grant-making activities in conjunction with its Fiscal Sponsor. As a result, confusion and concerns have arisen in the West Harlem community about the status of the CBA funds and WHLDC's grant-making activities.

6. OAG's investigation has not found theft, fraud or other misappropriation of charitable assets by WHLDC or its directors and officers. As of October 2012, FCNY had received \$6.55 million in Benefits Fund installments and has made three grants totaling

approximately \$1.14 million at WHLDC's direction. WHLDC has incurred approximately \$0.73 million in operating expenses, including consulting, legal, personnel, office lease and equipment, and fiscal sponsorship fees. The remaining funds of approximately \$4.68 million are on deposit in bank accounts held by FCNY as WHLDC's Fiscal Sponsor.

7. WHLDC and its board have cooperated with OAG throughout the investigation. Since OAG commenced its investigation, WHLDC has retained its first Executive Director, opened an office in West Harlem, started a public website, <www.westharlemdc.org>, and taken additional steps towards commencing its grant-making activities in earnest.

8. In May 2012, FCNY notified WHLDC of its decision to terminate its Fiscal Sponsor relationship with WHLDC. WHLDC and FCNY agreed that the termination would be effective as of December 31, 2012. WHLDC initiated a search for a new Fiscal Sponsor.

9. On December 7, 2012, WHLDC and WHDC entered into a Memorandum of Understanding ("MOU") with Tides Center and Tides Foundation (together, "Tides"), under which Tides will act as Fiscal Sponsor for a three-year term.

10. In consultation with Tides and OAG, WHLDC has developed "Grant-Making Procedures," attached hereto as Exhibit 1, as well as a "Conflict of Interest Policy for Grant Making and Non-Grant Making Transactions," attached hereto as Exhibit 2. Together, these documents are referred to in this Assurance as the "Grant-Making Policies." In accordance with the Grant-Making Policies, the grant cycle will include the following principal steps:

- a. The staff of WHLDC will receive and pre-screen for eligibility grant applications from tax-exempt not-for-profit organizations.

- b. WHLDC staff will submit eligible applications to the WHLDC Board of Directors for consideration. Grant applications selected by the WHLDC board will be recommended to Tides.
- c. Tides will conduct due diligence regarding the proposed grants and, if appropriate, disburse the funds as recommended by WHLDC.
- d. Grant monitoring duties will be shared by WHLDC and Tides.

PROSPECTIVE RELIEF

11. **Grant-making procedures.** In all its activities and with respect to each and every proposed grant, WHLDC or WHDC (either, the "Organization") agrees:

- a. to follow and abide by, and contract with its Fiscal Sponsor to follow and abide by, the Grant-Making Policies;
- b. to not amend or revise the Grant-Making Policies, in any material way, without the prior written consent of OAG; and
- c. to not change its Fiscal Sponsor, or cease to have a Fiscal Sponsor, without the prior written consent of OAG, such consent not to be unreasonably withheld.

12. **Grant-making cycles to commence promptly.** Within six (6) months of execution of this Assurance, the Organization will complete at least one grant cycle, to include awarding grants of CBA funds to no fewer than six (6) qualified tax-exempt not-for-profit organizations. Thereafter, the Organization will complete at least two grant cycles per year.

13. **Compliance.** Each director, officer and employee of the Organization will review and agree in writing to follow and abide by the Grant-Making Policies and this Assurance within thirty (30) days of execution of this Assurance or initial affiliation with the Organization, whichever is later. The Organization will maintain records documenting

fulfillment of this requirement. With respect to any subsequent revision to the Grant-Making Policies made in accordance with the provisions of Paragraph 11, the Executive Director of the Organization will give notice of the revision to the board of directors at a regular meeting thereof and the revision will be noted in the minutes of the meeting.

14. **Expenditures.** On a fiscal-year basis, the Organization will make at least eight-five percent (85%) of its expenditures in the form of direct grants of CBA funds or other program expenses.

15. **Public disclosure of grants.** The Organization will disclose on its public website on a regular periodic basis, at least quarterly, the following information with respect to each CBA Benefits Fund grant awarded:

- a. the name and address of the grant recipient;
- b. the date and amount of the grant; and
- c. a statement concerning the purpose of the grant.

16. **OAG jurisdiction and registration.** WHDC agrees to submit to OAG jurisdiction and comply in all respects with the N-PCL and the New York Estates, Powers & Trusts Law ("EPTL"), including without limitation the requirements of the N-PCL with respect to dissolution, merger, and transfer of all or substantially all of an organization's assets. In any action brought by OAG, including without limitation for violations of the N-PCL or EPTL with respect to the administration of charitable assets, WHDC agrees not to raise or interpose in any way its state of incorporation (Delaware) as a defense to any cause of action, claim, or argument asserted by OAG. In addition, WHDC will register with the OAG Charities Bureau and comply with all registration requirements, including annual filing of Form CHAR500. Notwithstanding

the foregoing, OAG will not require WHDC to take any action that is prohibited by Delaware law.

17. **Additional disclosures.** For any year in which the Organization does not file an IRS Form 990, the Organization will disclose on its public website and submit to OAG as an attachment to its Form CHAR500 the following information:

- a. financial statements, including a balance sheet and statement of activities, including without limitation with respect to CBA Benefits Fund amounts held and disbursed by the Fiscal Sponsor;
- b. related party transactions, compensation and other key employee information, and any fundraising activities of the Organization, in a manner substantially similar to the disclosure required by IRS Form 990; and
- c. such other information as the Attorney General may from time to time request in writing.

ADDITIONAL PROVISIONS

18. The term of this Assurance is three (3) years from its execution with respect to the prospective relief set forth in paragraphs 11, 12, 13 and 14. With respect to paragraphs 15, 16 and 17, the term of this Assurance is continuing, unless modified by mutual agreement of the parties.

19. OAG has agreed to the terms of this Assurance based on, among other things, the representations made to OAG by the Organization and its counsel and OAG's own factual investigation. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by OAG in its sole discretion.

20. This Assurance constitutes the entire agreement between OAG and the Organization, and supersedes all prior agreements and understandings, written or oral, among the parties with respect to the subject matter of this Assurance. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by any party in agreeing to this Assurance. The headings and captions in this Assurance are for convenience only and do not affect or control the meaning or construction of this Assurance.

21. Each party represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. No party shall take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis.

22. This Assurance may not be amended, except by an instrument in writing signed on behalf of all of the parties to this Assurance. This Assurance may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by each of the parties.

23. This Assurance shall be binding on and inure to the benefit of all the parties hereto and their respective successors and assigns, provided that no party, other than OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of OAG.

24. In the event that any one or more of the provisions in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion

of OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

25. The Organization shall, upon request by OAG, provide all documentation and information necessary for OAG to verify compliance with this Assurance, without the necessity for a subpoena.

26. Acceptance of this Assurance by OAG shall not be deemed approval by OAG of any of the practices or procedures referenced in OAG's findings herein, and the Organization shall make no representation to the contrary.

27. Pursuant to Section 63(15) of the Executive Law, evidence of a violation of this Assurance shall constitute *prima facie* proof of violation of the N-PCL and/or the Executive Law in any action or proceeding thereafter commenced by the OAG. If any court of competent jurisdiction determines that the Organization has breached this Assurance, the Organization shall pay to OAG the reasonable cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses and court costs.

28. All notices, reports, requests and other communications pursuant to this Assurance shall be in writing and shall be directed as follows:

If to the Organization, to:

Kofi A. Boateng
Executive Director
West Harlem Development Corporation
423 West 127th Street, Suite A
New York, NY 10027
Fax: (646) 476-5588
E-mail: kboateng@westharlemdc.org

with copies to:

Donald Notice
Board Chairman
c/o West Harlem Group Assistance

1652 Amsterdam Avenue
New York, NY 10031
Fax: (212) 862-3281
E-mail: dnotice@whgainc.org

Daniel R. Alcott, Esq.
Dorf & Nelson LLP
The International Corporate Center
555 Theodore Fremd Avenue
Rye, New York 10580
Fax: (914) 381-7608
E-mail: dalcott@dorflaw.com

If to OAG, to:

David E. Nachman
Enforcement Section Chief and Senior Counsel
Charities Bureau
Office of the New York State Attorney General
120 Broadway, 3rd Floor
New York, NY 10271-0332
Fax: (212) 416-8393
E-mail: david.nachman@ag.ny.gov


29. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

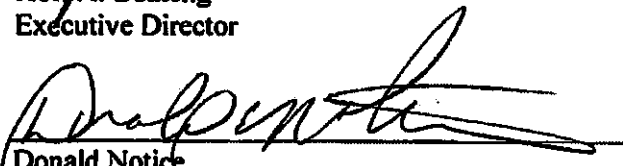
30. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

IN WITNESS THEREOF, this Assurance is executed by the parties hereto on the dates set forth below.

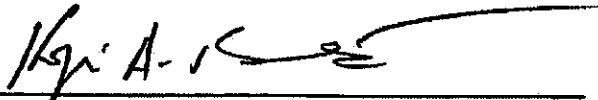
Dated: New York, New York
December 17, 2012

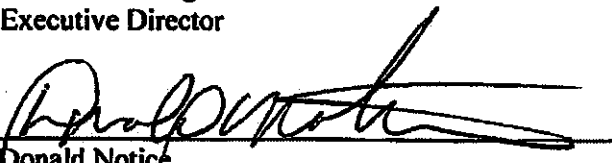
WEST HARLEM LOCAL
DEVELOPMENT CORPORATION

By: 
Kofi A. Boateng
Executive Director

By: 
Donald Notice
Board Chairman

WEST HARLEM
DEVELOPMENT CORPORATION

By: 
Kofi A. Boateng
Executive Director

By: 
Donald Notice
Board Chairman

Dated: New York, New York
December 18, 2012

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York


By: 
David E. Nachman
Enforcement Section Chief and Senior Counsel
Charities Bureau

Exhibit 1 to Assurance of Discontinuance No. 12-120

WEST HARLEM LOCAL DEVELOPMENT CORPORATION

GRANT-MAKING PROCEDURES

Introduction

West Harlem Local Development Corporation (WHLDC) is the recipient of funds contributed, and to be contributed, by Columbia University under a Community Benefits Agreement (CBA). Consistent with a provision of the CBA, WHLDC has engaged the Tides Foundation (Tides) to be its fiscal sponsor and to provide additional expertise, transparency, and diligence in grant-making. The WHLDC staff presents WHLDC's Board with grant application summaries. The WHLDC Board reviews, approves and recommends applications to the Tides Board for funding.

WHLDC'S GRANT-MAKING PROGRAM

WHLDC's priority is to support West Harlem-based community projects by deploying funds contributed by Columbia University pursuant to the CBA through its Grant-Making Program and other activities. WHLDC's strategy is to address the needs of West Harlem through collaborations and capacity enhancements of Community Based Organizations and institutions.

Selected projects of organizations must be located in or provide services to the West Harlem community as defined by New York City, Manhattan Community District 9 (CD9): south to north: from 110th Street to 155th Street; east to west: from St. Nicholas, Bradhurst, Edgecombe, Morningside and Manhattan Avenues to the Hudson River. The application must address one or more of the following need categories (Community-Need Categories) that are identified in the CBA. WHLDC reserves the right to alter the list of needs and categories for CD9 and to set funding priorities.

Community-Need Categories (in alphabetical order only)

- Arts and Culture
- Community Facilities
- Education
- Employment and Economic Development
- Environment
- Historic Preservation
- Housing
- Transportation

Eligibility

To qualify for consideration under the WHLDC Grant-Making Program, the applicant must be a not-for-profit entity in good standing as an Internal Revenue Service 501(c)(3) tax-exempt organization. An IRS determination letter is required and a copy must be included with the pre-grant application. To qualify for funding consideration, the organization must meet the following criteria:

- The project must be directed toward fulfilling one of the WHLDC Community-Need Categories.
- The organization must be charitable, educational, or scientific as defined by the Internal Revenue Service in Section 501(c)(3).
- The organization must identify measurable goals and agree to the monitoring of results.

Projects not funded

Projects not funded at this time include the following:

- Pilot or start-up projects that are not based on, or modeled after other existing projects with a history of results.
- Construction of buildings.

- Projects that are sponsored by religious organizations and schools with bias to a particular religion and are not open to the entire community.
- Non-project specific proposals.
- Endowment funding requests.
- Private for-profit schools.
- Proposals to fund individuals, private foundations, and donor advised funds.

GRANT APPLICATION PROCESS

Grant Cycles

The WHLDC Board reviews grant applications and makes grant recommendations to TIDES on a quarterly basis. Grant decisions are made four times per year according to the following 2013 schedule:

2013 Grant Cycle	Pre-Grant Application Deadline*	Grant Applications deadline	Grant Decision
1 st Quarter	Jan 14	Feb. 8	March
2 nd Quarter	March 1	April 5	June
3 rd Quarter	June 3	July 5	September
4 th Quarter	Sept. 2	Oct. 4	December

*Pre-grant Applications will be reviewed and notifications to apply or not to apply for grants will be sent to the applicant within 10 business days after the deadline.

How to Apply for a WHLDC Grant

STEP 1: Submit a Pre-Grant Application

Prior to consideration of a grant application for funding, WHLDC requires the applicant to submit a pre-grant application which is available on West Harlem Development Corporation's website (www.westharlemdc.org). Pre-grant applications can be saved and submitted via the website (preferred) or downloaded and submitted via email.

Downloaded and completed pre-grant applications should be returned to the Director-Programs via:

1. E-mail w/ attachment to: grants@westharlemdc.org

Upon receipt, WHLDC conducts an initial due diligence. If the pre-grant application is of interest to WHLDC, applicants are notified within 10 business days of receipt and invited to submit a full grant application.

STEP 2: Submit a Grant Application

Applicants are notified by electronic mail that they have been invited to submit a grant application and a project budget. After the invitation, WHLDC sends grant application and budget templates to the applicant via email.

STEP 3: Grant Review by WHLDC

Grant applications are initially evaluated by WHLDC in part on the following basis:

- Does the proposal align with stated WHLDC Community-Need Categories?
- If implemented, will the project have measurable impact on addressing the needs of the West Harlem community?

WHLDC will only review grant applications from organizations that have been invited to apply.

Please note that an invitation to submit a grant application does not imply that an invited charitable organization will receive a grant. It means only that the organization and its project meet the minimum criteria of WHLDC's grant making requirements, and the inquiry will be given further consideration. After WHLDC staff reviews grant applications, it will submit applications meeting the stated criteria to the WHLDC Board for review, and the WHLDC Board then will make its recommendations to the Tides Board for funding.

STEP 4: Grant Review by Tides. Grant applications approved by the WHLDC Board are submitted to Tides as recommendations for funding. Each recommendation for funding will be subjected to an independent review and due-diligence by Tides to determine the grant applicant's organizational health and capacity. Additional information may be requested during this review process. All applicants will be notified of final decisions in a timely fashion. Funding decisions by the Tides Board, at the recommendation of the WHLDC Board, for the grant cycle are final and there is no appeal process.

Amount of Grant Awards

The size of grants considered by WHLDC for approval by Tides shall be no more than \$350,000 per year (maximum) per grantee. WHLDC reserves the right to change the maximum grant amount at any time. WHLDC makes only one-year grants and not multi-year grants. Organizations can apply for additional years. WHLDC's Board reserves the right to put a limit on the maximum number of years that one organization can be funded.

All grants are paid in two installments: the first with the grant award letter from Tides; and the second after satisfactory attainment of milestones as agreed and noted in the interim report. WHLDC strongly encourages organizations to seek funding from additional sources to supplement requested support from WHLDC.

Avoidance of Conflicts of Interest

It is critical that all funding decisions be made objectively, based on the grant applications submitted and not for the benefit of any WHLDC Board Member, Tides's staff, WHLDC's staff, or member of Tides Board of Directors. Funding is made exclusively to maximize benefits for the West Harlem community under the CBA. WHLDC follows a conflict of interest policy for its staff, directors and those principals who may appoint directors.

Grant Selection Process:

Phase 1: Review of Pre-Grant Application.

WHLDC staff is responsible for evaluating pre-grant applications. The projects of the Applicants are evaluated based upon the following principal criteria:

- A. Goals and Objectives: Is the proposed project consistent with the CBA and WHLDC's Community-Need Categories?
- B. Is the project based in West Harlem? Will the project significantly benefit the CD9 area of West Harlem?
- C. Is the applicant an IRS recognized 501(c) (3) public charitable, education, or scientific organization and in good standing?
- D. Is the budget sufficient for undertaking the project and achieving the anticipated outcomes?
- E. Does the organization demonstrate the capacity to continue the project for a period beyond WHLDC's support?

Phase 2: Review of Grant Application and Grant Awards.

WHLDC's staff is responsible for the initial review of all grant applications. The staff prepares recommendations for grant action for the consideration of the WHLDC Board, based upon the following criteria:

- A. Rationale/Justification:
 - 1. Does the grant application sufficiently describe why this project is important?
 - 2. Is there a clear statement of the need in CD9 that the project will address?
 - 3. Is a target population identified?
- B. Goals and Objectives:
 - 1. Are the goals of the project consistent with the CBA and WHLDC's Community-Need Categories?
- C. Sustainability:
 - 1. What is the duration of the project?
 - 2. How will the results achieved be sustained beyond the end of WHLDC's support?
- D. Budget:
 - 1. Is the budget realistic and sufficient to achieve the desired goals and objectives?
 - 2. Will there be other funds to support this project?

WHLDC's Board reviews proposals presented by WHLDC's staff and determines the grants to recommend for final approval by the Tides Board of Directors. Grant recommendations require a majority of the entire WHLDC Board to vote in the affirmative. The Grant Application provides that by signing the application, the prospective grantee agrees to a series of conditions including monitoring and filing reports.

Phase 3: Fiscal Sponsor Review and Approval

For grant applications recommended for funding by the WHLDC Board, Tides conducts its own, independent due diligence. Tides reviews the reports and analysis submitted by WHLDC. WHLDC works closely with Tides, enabling reasons for rejections to be promptly conveyed to applicants. Applicants can correct identified demerits and reapply in subsequent grant cycles. Because of the constant loop of communication between Tides and WHLDC grant staffs, potential obstacles to final approval are identified and communicated to the applicant before the application reaches the Tides Board for review. Disapproval by the Tides Board of funding recommendations made by the WHLDC Board therefore are anticipated to be exceptions and rare. The Tides Board nevertheless has final decision-making authority and there is no appeal from its determinations. However, barring severe deficiencies in the application or with the applying organization, organizations whose applications have been denied may reapply in subsequent cycles.

Phase 4: Grant Administration and Payments

Grant Applicants recommended by WHLDC Board receive letters via e-mail of the actions by WHLDC Board that will indicate what to expect next. Upon approval by the Tides Board, successful applicants receive letters notifying them of the grant awards upon WHLDC's Board's recommendation. The first installment of the grant award accompanies Tides' award letter. The conditions of the grant set forth in the grant application, to which the applicant agreed when submitting the application, are also summarized in the award letter for reference.

GRANT MONITORING

Progress Reporting

The grant conditions require grantees to submit two reports - an interim and a final report.

(a) Prior to receiving the first progress report, and approximately five months after the grant has been made, WHLDC and Tides personnel, accompanied at certain times by representatives of WHLDC's Board, make site visits to assess progress and, where appropriate, make recommendations to maximize the impact of projects. The purpose of the site visits is to monitor and assess programmatic progress and review financial accountability.

(b) After the site visit, the grantee submits a six-month interim report, which is a self-assessment by the grantee. The report should identify the project's achievements; problems encountered, and planned solutions to the problems. The interim report is due fifteen (15) days after the end of the first six months of receiving the award letter. Failure to meet this deadline will delay the receipt of the second installment. The final report is due thirty (30) days after the end of the grant period. Until a final report has been received, a grantee will not be invited to submit another grant application.

WHLDC's staff reviews the interim reports and presents written evaluations of each grant to Tides and to the WHLDC Board. If there are no problems with the project, funding continues unimpeded. If there is a problem, WHLDC's Board would recommend a termination of the grant to Tides. The ultimate decision to terminate a grant is made by the Tides Board of Directors.

Termination of Grants

If at any time the grantee is not in compliance with the terms and conditions of the grant award, WHLDC notifies the grantee and provides a reasonable period for the grantee to cure the deficiency. If acceptable corrective action is not taken by the grantee, WHLDC reserves the right to recommend a termination of the grant before the second installment is paid. Grantees will be notified in writing if their grants have been terminated. In some cases, WHLDC would require a return of the funds paid to the organization. Such cases would be caused by incidence of fraud, theft, and financial malfeasance that may subsequently come to the attention of WHLDC and/or Tides.

Publication

WHLDC will publicize grant-funded activities on its website, printed materials, and videos which may include the names and other identifying information of grantee organizations. Grantees are required to agree to such publications and waive privacy rights, or rights of publicity.

Financial Reporting

Consistent with its commitment to transparency and accountability, WHLDC compiles financial data and posts summaries on its website on a quarterly basis. The financial information includes a cumulative listing of the names of grantees, a brief description of the funded project, and the grant amount awarded for that project. Grantees are required to agree to such disclosures and waive privacy rights, or rights of publicity.

Exhibit 2 to Assurance of Discontinuance No. 12-120

CONFLICT OF INTEREST POLICY FOR GRANT MAKING AND NON-GRANT MAKING TRANSACTIONS

WEST HARLEM LOCAL DEVELOPMENT CORPORATION

West Harlem Local Development Corporation (“WLHDC” or the “Corporation”) is committed to operating in a fair and transparent manner and expects its directors, officers and employees to disclose conflicts of interest when they arise and abide by this Conflicts of Interest Policy for Grant Making and Non-Grant Making Transactions (“Policy”) in all respects. This Policy governs the actions required of a “Covered Person” when such Covered Person knows, or should reasonably know, that he/she has a Conflict of Interest or Potential Conflict of Interest in connection with (i) the making of a grant (“Grant Making Transactions”), or (ii) a compensation arrangement with a Covered Person and/or a transaction with a third party that does not involve grant making (collectively “Non-Grant Making Transactions”). This Policy also governs the actions of the Corporation when the Board of Directors or a committee makes a determination in good faith that there exists a Conflict of Interest. It is the duty of all Covered Persons to be aware of this Policy, and to identify and disclose Conflicts of Interest as directed in this Policy. This Policy provides guidelines for identifying Conflicts of Interest, disclosing Conflicts of Interest and procedures to be followed by WHLDC to manage Conflicts of Interest, in accordance with this Policy and applicable law.

Definitions

- *Apparent Conflict of Interest:* A circumstance in which a reasonable person would think that the decision-maker’s judgment is likely to be compromised or his or her ability to act in the best interest of the Corporation is impaired.
- *Business Relationship:* A direct or indirect ownership or investment interest, including, but not limited to, ownership of stocks, bonds, partnerships or other equity interests; rights to patent or lease payments; receipt of consulting fees, salary, loans, gifts or other forms of compensation or remuneration; or service on the board of directors.
- *Closely Associated With:* Having a current or prospective Personal Relationship or Business Relationship with.
- *Conflict of Interest:* A situation in which a Covered Person (and, in the case of a Designated Director, his/her Elected Official) is Closely Associated With a third party individual or entity, vendor, or grantee with whom WHLDC is considering engaging in a Grant Making or Non-Grant Making Transaction. A Conflict of Interest is also present when a Covered Person’s compensation arrangement with WHLDC is being determined. In addition, an Apparent Conflict of Interest is a Conflict of Interest.

- *Committee Member*: An individual who serves on a board delegated committee who is in a position, through his/her position on the Committee, to influence Grant Making or Non-Grant Making Transactions.
- *Covered Person*: A Director, Officer, Committee Member, and/or Employee of WHLDC.
- *Designated Director*: A Director who was designated by an Elected Official in accordance with WHLDC's Bylaws, to serve as its representative on the Board of Directors of WHLDC.
- *Director*: An individual who was elected by a majority vote of the Board of Directors of WHLDC to serve currently on the Board of Directors of WHLDC or is an Elected Official.
- *Disinterested*: Having no Conflict of Interest or Potential Conflict of Interest with respect to the Grant Making or Non-Grant Making Transaction under consideration.
- *Elected Official*: An individual who is provided, in the Bylaws of WHLDC, the right, by virtue of his/her elected government office, to designate a representative to the Board of Directors of WHLDC.
- *Employee*: A person who is employed by WHLDC.
- *Officer*: An individual who serves as an officer of WHLDC.
- *Personal Relationship*: Related through family (including by marriage, blood, adoption, or domestic partnership) to a Director, Officer, Employee or paid consultant.
- *Potential Conflict of Interest*: A situation that may develop into a Conflict of Interest or an Apparent Conflict of Interest.

1. When Does a Conflict of Interest Arise? A Conflict of Interest (defined above) arises when a Covered Person (and, in the case of a Designated Director, his/her designating Elected Official) has a direct or indirect personal or financial interest in connection with a particular Grant Making or Non-Grant Making Transaction. This can result in a situation where there is inappropriate personal or financial gain to a Covered Person. Similarly, a situation or transaction in which a Covered Person has divided loyalties can result in the appearance of a lack of integrity in the decision-making process of the Corporation. Both results are damaging to WHLDC and are to be addressed in accordance with this Policy. By way of illustration only, note that a Conflict of Interest can arise in the following circumstances, which are not meant to be exhaustive:

- *Example #1:* A Covered Person is Closely Associated With a particular charity applying for a grant.
- *Example #2:* A Board member of WHLDC is also a Board member of another nonprofit or for-profit entity with which WHLDC collaborates or conducts business.

2. Disclosure of Conflicts. With respect to Grant Making, prior to each Board meeting, WHLDC will distribute to all Covered Persons a list of proposed grantees for the upcoming grant cycle. Covered Persons must review all proposed grantee lists and must disclose in writing any Conflicts of Interest as they arise as well as any Potential Conflict of Interest. If the Conflict of Interest relates to a Non-Grant Making Transaction, the Covered Person must disclose in writing any Conflict of Interest. In the case of Designated Directors, in addition to their own disclosures, such Designated Directors have a duty to inquire with their Elected Official as to whether the Elected Official has any Conflict of Interest or Potential Conflict of Interest relating to WHLDC's activities or the proposed grant recipient. Advance disclosure must occur so that the Conflict of Interest can be managed in accordance with this Policy. Employees should disclose to their supervisor (who shall in turn disclose to the Chairperson of the Board), Officers and Directors should disclose directly to the Chairperson of the Board, and the Chairperson should disclose to any other member of the Board, as soon as the Covered Person with the Conflict of Interest or Potential Conflict of Interest is aware of its existence.

3. Undisclosed Conflicts. Even if there has been no disclosure by a Covered Person, the Board of Directors or a WHLDC committee shall have the authority to investigate and determine whether any Covered Person has a Conflict of Interest that should be disclosed and managed. The Chairperson of the Board or committee shall, if appropriate, appoint a disinterested person, or a committee composed of such persons, to investigate whether such conflicts exist.

4. Recusal from Deliberations and Voting. A Covered Person who has disclosed that he/she has a Conflict of Interest, or has been determined by the Board of Directors to have a Conflict of Interest, may make one presentation to the Board of Directors or the Committee at which the Grant Making or Non-Grant Making Transaction is being discussed but thereafter (i) must recuse him/herself from any discussions or deliberations relating to the transaction or proposed grant, and (ii) may not be involved in the decision of what action to take and may not participate in any vote concerning the matter in which the Conflict of Interest arises. Nor may the conflicted individual attempt directly or indirectly to influence the decision. In all cases, decisions will be made only by persons without a Conflict of Interest.

5. Consideration of Non-Grant Making Transactions. In a proposed Non-Grant Making Transaction in which a Covered Person has disclosed or been found by the Board of Directors to have a Conflict of Interest, the Covered Person with an interest in the transaction shall disclose to the Board of Directors all material facts concerning the proposed Transaction and the Covered Person's interest in the proposed Transaction. The Chair of the Board shall investigate or, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement. After exercising due diligence, the Board of Directors or committee shall determine whether the Corporation can obtain with reasonable efforts an equally or more advantageous

transaction or arrangement from a person or entity that would not give rise to a Conflict of Interest. If an equally or more advantageous transaction or arrangement in which there would be no Conflict of Interest is not reasonably possible under the circumstances, the Board of Directors shall determine by a majority vote of the disinterested Directors or members whether the transaction or arrangement is in the corporation's best interest, for its own benefit, and whether it is fair and reasonable, and shall contemporaneously document the bases for that determination in the minutes recording such vote. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

6. Addressing Violations of the Conflicts of Interest Policy.

(a) If the Board of Directors or committee has reasonable cause to believe a Covered Person has failed to disclose a Conflict of Interest or Potential Conflict of Interest, it shall inform the individual of the basis for such belief and afford him/her an opportunity to explain the alleged failure to disclose.

(b) If, after hearing the Covered Person's response and after making further investigation as warranted by the circumstances, the Board of Directors or committee determines the individual deliberately or negligently has failed to disclose a Conflict of Interest or Potential Conflict of Interest, it shall take appropriate disciplinary and/or corrective action, including rescission of an approved transaction and/or removal from positions in the Corporation, as determined by the Board of Directors.

7. Records of Proceedings. The minutes of the Board of Directors and all committees with powers delegated by the Board of Directors shall contain:

(a) The names of the persons who disclosed or otherwise were found to have a Conflict of Interest, the nature of the Conflict of Interest, a description of any action taken to determine whether a Conflict of Interest was present, and the Board of Directors' or committee's decision as to whether a Conflict of Interest in fact existed, and if so, the actions taken to resolve or address it.

(b) The names of the persons who were present for discussions or votes relating to the transaction or arrangement; the content of the discussion, including any alternatives to the proposed transaction or arrangement; and a record of any votes taken in connection with the proceedings, including the documentation required by paragraph 5 above if applicable.

8. Board Action. The Board or a committee may approve a Grant or a Non Grant-Making Transaction in which one or more of its members has disclosed a Conflict of Interest if such decision is made in good faith, in accordance with the Bylaws, and provided the requirements of this Policy have been followed.

9. Quorum. Covered Persons with a Conflict of Interest may be counted in determining the presence of a quorum at a meeting of the Board or of a committee which authorizes a grant, contract or other transaction in which one or more Covered Persons are recused.

10. Annual Statements. Each Covered Person shall annually sign and deliver to the secretary of the Corporation a statement (the "Disclosure Statement"), attached as an addendum to this Policy, which affirms that such person:

- (a) Has received a copy of this Conflict of Interest Policy,
- (b) Has read and understands the Policy,
- (c) Has agreed to comply with the Policy,
- (d) Has disclosed and/or will disclose all known Conflicts of Interest or Potential Conflicts of Interest in accordance with the Policy, and
- (e) Understands that WHLDC is a charitable non-profit corporation, and that in order to maintain its federal tax exemption it must engage primarily in activities that accomplish one or more of its charitable purposes.

Each individual who is a Covered Person as of the date of adoption of this Policy shall, within thirty days thereof, sign and deliver the Disclosure Statement to the secretary of the Corporation. Any individual who becomes a Covered Person following the date of adoption of this Policy, shall prior to assuming such position, sign and deliver the Disclosure Statement to the secretary of the Corporation

11. Periodic Reviews. To ensure that the Corporation operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its non-profit status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include whether the corporation's (i) Non-Grant Making Transactions are reasonable, based on competent survey information, and are the result of arm's length bargaining and (ii) decisions on Grant Making Transactions have been made in accordance with this Policy.

12. Use of Outside Experts. When conducting the periodic reviews provided for in this Article, the Corporation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of Directors of its responsibility for ensuring periodic reviews are conducted.

WEST HARLEM LOCAL DEVELOPMENT CORPORATION

Disclosure Statement

Conflict of Interest Policy

I am a Director, Officer or Employee of West Harlem Local Development Corporation (the "Corporation"), or an Elected Official, and this will serve to confirm that I:

- A. have received a copy of the Corporation's Conflicts of Interest Policy for Grant Making and Non-Grant Making Transactions ("Policy");
- B. have read and understand the Policy;
- C. have agreed to comply with the Policy;
- D. have disclosed below all known Conflicts of Interest or Potential Conflicts of Interest in accordance with the Policy; and
- E. understand that the Corporation is a charitable non-profit corporation, and that in order to maintain its federal tax exemption it must engage primarily in activities that accomplish one or more of its charitable purposes.

Attach additional pages as necessary.

Date:

Signature

Print name