

**THEATER SUBDISTRICT COUNCIL LOCAL DEVELOPMENT  
CORPORATION**

**MINUTES OF THE MEETING OF DIRECTORS**

This meeting of the Directors of the Theater Subdistrict Council Local Development Corporation ("Corporation") was held at 10:10 AM on September 13, 2010, at 31 Chambers Street, New York, New York, 10007.

The following Directors were present:

Kate Levin, Alternate for Mayor Michael Bloomberg  
Amanda Burden, Director, Department of City Planning  
Susannah Vickers, Alternate for Manhattan Borough President Scott Stringer  
Danielle Porcaro, Alternate for New York City Council Speaker Christine Quinn  
Jed Bernstein, Mayor's Appointee  
Ben Cameron, Mayor's Appointee  
Paige Price, Speaker's Designee

A quorum of the Directors was present.

Notice of this meeting was given to all Directors in accordance with the by-laws. Public notice of this meeting was posted in accordance with the Open Meetings Law, and was given to Manhattan Community Boards 4 and 5 in accordance with the by-laws.

The alternate for the Mayor, Commissioner Kate Levin, presided as Chairperson.

Before beginning discussion of the grant application, it was noted that Directors have disclosed the following conflicts of interest, in accordance with the Corporation's Conflicts of Interest Policy: (i) Jed Bernstein – Broadway League, Manhattan Theatre Club, Theatre Development Fund; (ii) Ben Cameron – American Theatre Wing, Broadway League, Signature Theatre Company; and (iii) George C. Wolfe – Lincoln Center Theater. These Directors accordingly recused themselves from consideration of the respective applications.

Commissioner Levin and Barbara Janowitz, the Corporation's consultant, led a discussion of the grant applications. It was noted that prior to the meeting, each Director individually ranked the 28 applications and a composite of these rankings was provided to the Directors. Ms. Janowitz suggested that the 5 applications receiving least support be set aside and that discussions focus on the stronger applications. The Directors proceeded to discuss the strengths and weaknesses of the remaining 23 applications.

Director George C. Wolfe arrived during the discussions at 10:35 AM.

The Directors were then asked to each select their top 18 applications (Directors who reported conflicts of interest were advised that they could reduce their votes by the number of conflicts that they reported).

The Directors then discussed a number of administrative items while the votes were being tallied.

It was noted that the minutes of the meetings of June 9, 2010, were given to all Directors prior to the meeting. There being no corrections to the minutes, upon motion made and seconded, the minutes were unanimously adopted.

A motion was made to briefly adjourn the Meeting of Directors in order to convene a Meeting of the Audit Committee. Upon motion made, and seconded, the Meeting of Directors was adjourned at 11:30 AM.

At 11:35 AM, the Meeting of Directors was reopened.

It was announced that the Audit Committee had recommended that Barry Popick be retained to prepare the Federal 990 and to conduct the required audit an audit of the Corporation's finances for FY 2009-2010. Upon motion made and seconded, a resolution was unanimously adopted to retain Barry Popick.

The financial statements for FY 2009-2010 were reviewed and the balances of the Theater Subdistrict Funds were discussed. Upon a motion made and seconded, the financial statements for FY 2009-2010, attached hereto as Exhibit A, were adopted; and it was resolved that the Treasurer should file these financial statements, as necessary to comply with local, state, and federal laws.

The Annual Report, prepared in accordance with the Public Authorities Accountability Act ("PAAA"), was distributed prior to the meeting, and was discussed by the Directors. Upon motion made and seconded, the Annual Report, attached hereto as Exhibit B, was approved for filing with the necessary local and state government entities.

It was noted that the PAAA now requires all public authorities to adopt a Mission Statement and Performance Measures, to submit answers to a series of related questions, and to certify that the Directors have read the Mission Statement and the responses to each of the questions. The Mission Statement, Performance Measures and responses to questions were discussed.

Upon a motion made and seconded, the Mission Statement and Performance Measures were adopted; and the documents attached hereto as Exhibit C, were approved for filing, as necessary to comply with the PAAA.

There was a discussion regarding the Model Grant Agreement and it was noted that no substantive changes had been made to the document since the first grant cycle. Upon a motion made and seconded, a resolution was unanimously that the Model Grant Agreement, attached hereto as Exhibit D, shall be executed as a condition to the final award of the respective grants, subject to any administrative or technical changes; and it was further resolved to permit the Chief Executive Officer discretion, pending the circulation of criteria to the Directors, with respect to individual grantees, to modify the disbursement schedule or to make disbursement of funds contingent on other prerequisites.

Attention returned to the grant applications and the Directors discussed the voting results.

Upon a motion made and seconded, a resolution was unanimously adopted to award 15 grants to the applicants and in the amounts shown on Exhibit E, for a total of \$2,147,000, subject to the execution of grant agreements and provision of all necessary documentation by the grantees.

At 12:05 PM, Director Amanda Burden departed.

There being no other business before the meeting, upon motion made and seconded, the meeting of Directors adjourned at 12:10 PM.

Susannah Vickers

Susannah Vickers,  
Alternate for Secretary

**EXHIBIT A**

**THEATER SUBDISTRICT COUNCIL LOCAL DEVELOPMENT CORPORATION**

<b>INCOME STATEMENT: June 1, 2009 - May 31, 2010</b>	
<b>REVENUE</b>	
Contributions*	\$0
Interest	
Earned on accounts	\$23,963
Total Revenue	\$23,963
<b>EXPENSES</b>	
Filing Fees**	\$275
Banking Fees	\$0
Accountant/Auditor	\$2,540
Consultant	\$38,750
Administrative	\$1,649
Grants and Programmatic***	\$120,000
Total Expenses	\$163,214
<b>NET INCOME through May 31, 2009</b>	<b>-\$139,251</b>
<b>Beginning Balance^</b>	<b>\$4,757,370</b>
<b>Ending Balance^^</b>	<b>\$4,618,118</b>

**NOTES**

\* \$120,000 in grant funds were returned from ART/NY and then reissued upon amendment to the Grant Agreement

\*\* Fees paid to the NYS Charities Bureau with the annual filing

\*\*\* Includes initial grant payments from Round One of \$40,000 and \$80,000

^ Adjusted from the ending balance presented for FY 08-09 to reflect a payment of 98,400 to Fund for Public Schools, prior to the beginning of FY 2009-10

^^ Ending balance in accounts in the May 2010 statements was \$4,636,803.77 (4,612,872.06 + 23,931.71), which did not reflect fees owed to the consultant in the amounts of \$10,900 and \$7,350, honoraria provided to the advisory panel (\$625), and interest accrued in the final days of May 2010 (\$189.56).

**THEATER SUBDISTRICT COUNCIL LOCAL DEVELOPMENT CORPORATION**

<b>BALANCE SHEET: May 31, 2010</b>		
<b>ASSETS</b>		
Cash (TSC checking and savings account)	\$	4,618,118
Accounts Receivable	\$	-
Inventories	\$	-
Other Assets	\$	-
<b>LIABILITIES</b>		
Accounts Payable	\$	-
Other Liabilities	\$	-
<b>EQUITIES</b>		
Total Fund Balances or Net Assets	\$	4,618,118

**EXHIBIT B**

**THEATER SUBDISTRICT COUNCIL  
LOCAL DEVELOPMENT CORPORATION**

**Annual Report  
Fiscal Year 6/1/2009 - 5/31/2010**

**THEATER SUBDISTRICT COUNCIL  
LOCAL DEVELOPMENT CORPORATION  
Annual Report  
Fiscal Year End Date: 5/31/2010**

**Operations and Accomplishments**

On September 16, 2009, the Theater Subdistrict Council, LDC (the "TSC") held meetings of members and directors, and a meeting of the audit committee.

At the meeting of members, directors and alternate directors were elected.

At the meeting of directors, the Investment Guidelines and the Procurement Policy were readopted, subject to minor revisions. The financial statements for fiscal year ending May 31, 2009, were also discussed and adopted.

The initial ten grantees' programs were then discussed. At that time, eight of the ten grantees had met their performance benchmarks. Of the remaining two grantees, one had sought a revised scope of services from the TSC and the other remained behind schedule due to changes in personnel. The interim and final reports from all grantees were expected during the 2010-2011 fiscal year.

The directors assessed the initial results of the TSC's grant program and revised the criteria for its second round of grant solicitations. The Chief Executive Officer was directed to prepare and disseminate grant solicitation documents based on these discussions. Before the end of the fiscal year, the TSC received 95 Intent to Apply Letters from applicants in response to the solicitation.

Finally, the Audit Committee held its meeting and recommended an auditor to conduct an audit of the finances for fiscal year 2008-2009.

**Project Summary**

The TSC has awarded and is overseeing ten grants totaling approximately \$1.26 million, which were designed to enhance the long-term viability of Broadway and to promote the welfare of the Theater Subdistrict. These grants are designed to facilitate the production of plays and small musicals within the Theater Subdistrict, and to develop new audiences for all types of theatrical productions.

Those organizations receiving grants included:

- Alliance of Resident Theatres/New York
- The Broadway League
- Classical Theatre of Harlem
- The Fund for Public Schools
- The New 42nd Street
- New Dramatists
- Roundabout Theatre Company
- Signature Theatre Company
- Theatre Development Fund
- Walker International Communications Group

**THEATER SUBDISTRICT COUNCIL  
LOCAL DEVELOPMENT CORPORATION  
Annual Report  
Fiscal Year End Date: 5/31/2010**

**Board Member Summary**

<b>Name</b>	<b>Position</b>
Michael Bloomberg	Chairperson, Mayor of the City of New York
Kate Levin	Mayor's Alternate
Christine Quinn	Vice Chair, Speaker of the New York City Council
Danielle Porcaro	Speaker's Alternate
Scott Stringer	Secretary, Manhattan Borough President
Anthony Borelli	Borough President's Alternate
Amanda Burden	Treasurer, Director of NYC Dept. of City Planning
Jed Bernstein	Mayor's Appointee
Ben Cameron	Mayor's Appointee
George C. Wolfe	Mayor's Appointee
Paige Price	Speaker's Designee

**Employee Summary**

The TSC has no employees.

**Compensation Schedule**

Members and directors receive no compensation for their service to the TSC.

**THEATER SUBDISTRICT COUNCIL  
LOCAL DEVELOPMENT CORPORATION  
Annual Report  
Fiscal Year End Date: 5/31/2010**

**Receipts and Disbursements**

During the fiscal year ended May 31, 2010, the TSC received revenues totaling \$23,963. During that same period, the TSC had expenditures totaling \$163,214.

<b>Income Statement (6/01/2009 - 5/31/2010)</b>	
<b>REVENUE</b>	
Contributions	\$0
Interest	
Earned on accounts	\$23,963
Total Revenue	\$23,963
<b>EXPENSES</b>	
Filing Fees	\$275
Banking Fees	\$0
Accountant/Auditor	\$2,540
Consultant	\$38,750
Administrative	\$1,649
Grants and Programmatic	\$120,000
Total Expenses	\$163,214
<b>NET INCOME through May 31, 2009</b>	<b>-\$139,251</b>
<b>Beginning Balance</b>	<b>\$4,757,370</b>
<b>Ending Balance</b>	<b>\$4,618,118</b>

**THEATER SUBDISTRICT COUNCIL**  
**LOCAL DEVELOPMENT CORPORATION**  
**Annual Report**  
**Fiscal Year End Date: 5/31/2010**

**Assets and Liabilities**

On May 31, 2010, the TSC's only assets were its checking and savings accounts, totaling \$4,618,118. The organization had no outstanding liabilities.

<b>Balance Sheet (5/31/10)</b>		
<b>ASSETS</b>		
Cash (TSC checking and savings account)	\$	4,618,118
Accounts Receivable	\$	-
Inventories	\$	-
Other Assets	\$	-
<b>LIABILITIES</b>		
Accounts Payable	\$	-
Other Liabilities	\$	-
<b>EQUITIES</b>		
Total Fund Balances or Net Assets	\$	4,618,118

THEATER SUBDISTRICT COUNCIL  
LOCAL DEVELOPMENT CORPORATION  
Annual Report  
Fiscal Year End Date: 5/31/2010

**Schedule of Debt**

The TSC has no outstanding debts.

**Real and Personal Property Transactions Summary**

The TSC has no real or personal property. No real or personal property was disposed during the fiscal year.

**Procurement Summary**

Number of Current Contracts	2
Total Value of Contracts	\$52,500

**Investment Report**

The TSC does not maintain any investments.

**THEATER SUBDISTRICT COUNCIL  
LOCAL DEVELOPMENT CORPORATION  
Annual Report  
Fiscal Year End Date: 5/31/2010**

**Code of Ethics (adopted 7/31/2007)**

This Code of Ethics shall apply to all members, directors, officers of the TSC and staff to such members, directors and officers ("Covered Persons") providing assistance to the Theater Subdistrict Council Local Development Corporation ("TSC"). These policies shall serve as a guide for official conduct and are intended to enhance the ethical and professional performance of covered persons, and to preserve public confidence in TSC's mission.

This Code of Ethics is intended to supplement but not replace any applicable state or federal laws governing conflicts of interest and the ethical duties applicable to not-for-profit corporations.

**Responsibilities of Members, Directors, Officers and Staff**

1. Covered Persons shall perform their duties with transparency, without favor, and shall refrain from engaging in outside matters of financial or personal interest that could impair independence of judgment or prevent the proper exercise of official duties.
2. Covered Persons shall not directly or indirectly, make, advise, or assist any person to make any financial investment based upon information available through their official position that could create any conflict between their public duties and interests and their private interests.
3. Covered Persons shall not accept or receive any gift or gratuities where the circumstances would permit the inference that the gift is intended to influence the individual in the performance of official business, or that the gift constitutes a tip, reward, or sign of appreciation for any official act. Gifts subject to this provision may take the form of financial payments, services, loans, travel reimbursement, entertainment, hospitality, thing or promise from any entity doing business with or before the TSC. In the event that a Covered Person receives any such gift or gratuity, he or she shall immediately notify the Chairperson of the Governance Committee in order to make proper disposition of such gift or gratuity. Notwithstanding the foregoing, meals and gifts that are permissible and not deemed valuable under §2604(b)(5) of the Charter of the City of New York and implementing regulations, as defined in Title 53 of the Rules of the City of New York, shall neither require reporting nor violate this policy.
4. Covered Persons shall not use or attempt to use their official position with the TSC to secure unwarranted privileges for themselves, members of their family or others, including grants or contracts with the TSC.
5. Covered Persons must conduct themselves at all times in a manner that avoids any appearance that they can be improperly or unduly influenced, that they could be affected by the position of or relationship with any other party, or that they are acting in violation of their public trust.
6. Except as otherwise authorized pursuant to the TSC policy on Conflicts of Interest, Covered Persons may not engage in any transaction with an outside entity in which they

have a direct or indirect financial interest that may reasonably conflict with the proper discharge of their official duties.

7. Except as otherwise authorized pursuant to the TSC policy on Conflicts of Interest, Covered Persons may not engage in any transaction with an outside entity in which they hold a position as trustee, director, officer, member or employee.

8. Covered Persons shall manage all matters within the scope of the TSC's mission independent of any other affiliations or employment. Members, directors, officers and staff shall strive to fulfill their professional responsibility to the TSC without bias and shall support the TSC mission to the fullest.

9. Covered Persons shall not use TSC property or resources or disclose information acquired in the course of their official duties in a manner inconsistent with State or local law and the TSC's mission and goals.

10. Covered Persons shall make the annual filings required under N.Y. Pub. Auth. Law § 2825(3).

### **Reporting Unethical Behavior**

Covered Persons shall report unethical behavior to the Chairperson of the Governance Committee.

### **Implementation of Code of Ethics**

The Chairperson of the Governance Committee shall have the following duties:

- Counsel in confidence Covered Persons who seek advice about ethical behavior.
- Record the receipt and disposition of gifts or gratuities reported by Covered Persons.
- Receive and record reported ethical violations.
- Receive and investigate complaints regarding ethics violations.
- Dismiss complaints found to be without substance.
- Refer all matters to the Governance Committee, where further actions or investigations are deemed necessary.

In addition to any penalty contained in other provisions of law, if a Covered Person violates any provision of this Code of Ethics, the Governance Committee may prepare a report of its findings. Such report shall be submitted to the board and shall include suggested remedies that are appropriate under the circumstances.

An assessment of the effectiveness of this Code of Ethics shall be prepared annually by the Governance Committee.

THEATER SUBDISTRICT COUNCIL  
LOCAL DEVELOPMENT CORPORATION  
Annual Report  
Fiscal Year End Date: 5/31/2010

Assessment of the Internal Control Structure

Initial programmatic activities of the organization were still in progress at the close of the fiscal year. An assessment of the TSC's internal control structure, therefore, was not yet warranted. Upon conclusion of the initial grantmaking cycle (September 2010), the Governance Committee will meet in early fall to conduct an assessment of the internal control structure.

Conflicts of Interest Policy (adopted 7/30/2007)

1. No member, director or officer ("Covered Person") shall have any interest, in any grant, contract or other transaction proposed to be entered into by the Theater Subdistrict Council Local Development Corporation ("TSC"), except as provided in this policy.

For purposes of this section , an "interest" shall mean: (i) an "Ownership interest" as defined under Section 2601(16) of the New York City Charter and its implementing regulations, held by the Covered Person or such Covered Person's spouse, domestic partner or unemancipated children, in a firm or entity with respect to which the TSC proposes to enter into a grant, contract or other transaction; or (ii) a "Position", as defined under Section 2601(18) of the New York City Charter, held by the Covered Person in a firm or entity with respect to which the TSC proposes to enter into a grant, contract or other transaction.

2. In addition to the foregoing, no Covered Person shall take any action with respect to any grant, contract or other transaction of the TSC, which would or is likely to result in direct economic gain to the Covered Person or to a firm or entity in which such Covered Person has an interest.

For the purposes of this section, an "interest" shall mean: (i) an "Ownership interest" as defined under Section 2601(16) of the New York City Charter and its implementing regulations, held by the Covered Person or such Covered Person's spouse, domestic partner or unemancipated children, in a firm or entity doing business with a proposed or current TSC grantee or contractor or with respect to which a proposed TSC grantee or contractor intends to do business with the use of TSC funds ; or (ii) a "Position", as defined under Section 2601(18) of the New York City Charter, held by the Covered Person in a firm or entity doing business with a proposed or current TSC grantee or contractor or with respect to which a proposed TSC grantee or contractor intends to do business with the use of TSC funds.

3. Employment with or provision of services to the City of New York shall not constitute an interest within the meaning of this policy.

4. In the event a Covered Person becomes aware of any potential conflict of interest, such Covered Person shall make disclosure forthwith to the Chair of the nature and extent of his

or her potential conflict. Disclosure shall be entered in writing upon the minutes of the Board of Directors.

5. If timely disclosure is made, the Board of Directors may determine whether the TSC can obtain a more advantageous transaction with reasonable efforts in a manner that would not give rise to a conflict of interest. If a more advantageous arrangement is not reasonably attainable under circumstances that would not give rise to a conflict of interest, the Board may find that it is in the TSC's best interest, and that it is fair and reasonable for the TSC to enter into the transaction. Such authorization shall be made by concurring vote of at least two-thirds the whole number of uninterested directors, and shall include appropriate measures to address the conflict, including but not limited to recusal by the affected Covered Person with respect to all activities of the TSC relating to the transaction.

6. If a Covered Person fails to make disclosure when he or she knew or should have known of the potential Conflict of Interest, the Board of Directors shall: (i) in the case of a director, make recommendations to the appointing person for appropriate action; (ii) in the case of an officer who is not also a director, take such action as it deems appropriate, including, if warranted, removal.

**EXHIBIT C**

**Theater Subdistrict Council, LDC**  
**Mission Statement and Performance Measurements**

**Name of Public Authority:** *Theater Subdistrict Council LDC*

**Public Authority's Mission Statement:**

*The Theater Subdistrict Council ("TSC") is organized for the purpose of promoting theater and theater-related use and preservation within the Theater Subdistrict and promoting the welfare of the Theater Subdistrict generally. The mission of the Theater Subdistrict Council is to enhance the long-term viability of Broadway by facilitating the production of plays and small musicals within the Theater Subdistrict, developing new audiences for all types of theatrical productions, and monitoring preservation and use covenants in Broadway's "listed theaters."*

**Date Adopted:** *9/13/2010*

**List of Performance Goals:**

- *Is the TSC promoting theater related use and preservation in the Theater Subdistrict and promoting the welfare of the Theater Subdistrict generally?*
- *How efficiently or effectively has the TSC been enhancing the long-term viability of Broadway by facilitating the production of plays and small musicals?*
- *How efficiently or effectively has the TSC been in developing new audiences for theatrical productions?*
- *How efficiently or effectively has the TSC been in monitoring the preservation and use covenants in Broadway's "listed theaters"?*

**Additional questions:**

1. Have the board members acknowledged that they have read and understood the mission of the public authority? *Yes.*
2. Who has the power to appoint the management of the public authority? *The Board of Directors appoints the management.*
3. If the Board appoints management, do you have a policy you follow when appointing the management of the public authority? *Yes, the board must appoint managers in accordance with the procedures set forth in the bylaws.*
4. Briefly describe the role of the Board and the role of management in the implementation of the mission. *Management makes recommendations to the Board of Directors. The Board of Directors scrutinizes proposed activities for consistency with the authority's mission, determines the appropriate activities to pursue, and empowers management to implement these activities.*
5. Has the Board acknowledged that they have read and understood the responses to each of these questions? *Yes.*

**EXHIBIT D**

## GRANT AGREEMENT

This Agreement dated \_\_\_\_\_, 2010 entered into between the Theater Subdistrict Council Local Development Corporation ("TSC"), a not-for-profit local development corporation with offices located c/o Office of the Counsel, 22 Reade Street, New York, New York 10007, and «orgname», a \_\_\_\_\_ [corporation] with offices located at «m\_adrs» «m\_adrs2», «m\_city», «m\_state» «m\_zip» ("Grantee").

### Paragraph 1. GENERAL PURPOSE

The purpose of this Agreement is to fund Grant Services in order to promote theater and theater-related use and preservation within the Theater Subdistrict and the welfare of the Theater Subdistrict generally, in accordance with the purpose and intent of Section 81-71 of the New York City Zoning Resolution.

### Paragraph 2. SCOPE OF SERVICES

Grantee shall provide those services described in the Scope of Services, a copy of which is attached hereto and made a part hereof as Exhibit A ("Grant Services").

### Paragraph 3. MODIFICATION

If Grantee wishes to modify the scope of the Grant Services, Grantee shall make a written request for modification to the Chairperson, which may be approved in his or her discretion.

### Paragraph 4. TERM

The period of performance for the Grant Services shall be from \_\_\_\_\_, 2009 to \_\_\_\_\_, 20\_\_.

### Paragraph 5. GRANT AMOUNT

A. In consideration for the Grant Services provided under this Agreement, the TSC agrees to pay Grantee an amount not to exceed \$«FY09\_Total\_Award» (the "Grant"). The Grant is to be used by Grantee solely to pay costs and expenses incurred in performing the Grant Services. Grantee acknowledges that the Grant to be paid Grantee by the TSC under this Agreement does not constitute full reimbursement for the costs and expenses of the Grant Services.

B. In the event: i) The Grantee does not provide the Grant Services, ii) uses the Grant towards the payment of any costs and expenses other than those related to the Grant Services, or iii) if the Chairperson shall find that the Grantee has not otherwise complied with this Agreement, then this Agreement may be subject to termination pursuant to Paragraph 9(A)(i) and Grantee will be required to account for and return any unspent portion of the Grant in accordance with Paragraph 9(D).

### Paragraph 6. METHOD OF PAYMENT

A. Payment of the Fiscal 2009 Grant shall be made in accordance with the following schedule:

Initial payment of 80% of Grant upon execution of this Agreement and submission of all insurance certificates required under Section 1(C) of Exhibit B:

\$«INITIAL\_PMT\_Amt»

Final payment of 20% of Grant upon completion of Grant Services and satisfaction of all Reporting Requirements under Paragraph 7 hereof:

§«Final\_Pmt\_Amt»

B. i. The final payment under this Agreement shall be made only upon completion of the Grant Services, and submission to and approval by the Chairperson of a payment request and Final Report. Such payment request shall be signed by Grantee's Executive Director or other authorized signatory.

ii. The final payment request shall be submitted within thirty days (30) days after completion of the Grant Services, and in any event, no later than [September 30, 2010]. The Chairperson, in his or her discretion, may specify alternative dates for the submission of payment requests.

iii. Unless otherwise specified by the Chairperson, payment requests must be submitted to the Theater Subdistrict Council Grant Program, Department of Cultural Affairs, 31 Chambers Street, Second Floor, New York, NY 10007.

C. Failure to submit a payment request by the specified date or to the appropriate address may result in the delay or forfeiture of payment under this Agreement.

#### Paragraph 7. REPORTING REQUIREMENTS

A. Interim Report. An Interim Report covering the period from \_\_\_\_\_, 2009 to \_\_\_\_\_, 20\_\_, shall be due within 30 days of the end of such period. The Interim Report shall include a narrative description of project progress to date; and a comparison of the original project budget with the actual income and expenses to date and the revised budget. Any changes in budget lines of more than 20% from original budget must be explained. Additional programmatic, administrative and fiscal information, and supporting documentation may be required by the Chairperson.

B. Final Report. A Final Report shall be due within 30 days of completion of the Scope of Services, and in no event later than [September 30, 2010]. The final report should include a narrative report on the project addressing its success, effectiveness and impact, and quantifying the impact when possible; a final actual project income and expense statement should be provided and compared to the original project budget. Any changes in budget lines of more than 20% from original budget must be explained. Additional programmatic, administrative and fiscal information, and supporting documentation may be required by the Chairperson.

C. Notification and Access. Grantee shall send a schedule of all performances or other programmatic activities open to the public held in furtherance of the Grant Services to theatersubdistrictcouncil@gmail.com, and will provide the TSC and/or the staff of the Departments of Cultural Affairs and City Planning access to such programmatic activities.

#### Paragraph 8. CREDITS

All programs, brochures, flyers, posters or similar material relating to the Grant Services shall include, in a legible manner and appropriate type size, a statement that "THIS PROGRAM IS SUPPORTED[, IN PART,] BY FUNDS FROM THE CITY OF NEW YORK THEATER SUBDISTRICT COUNCIL, LDC AND THE CITY OF NEW YORK" and will display the logo of the TSC, if provided by TSC to Grantee. In his or her discretion, the Chairperson may specify or approve alternative means of crediting the TSC for the support provided to Grantee.

#### Paragraph 9. TERMINATION

A. The Chairperson shall have the right to terminate this Agreement, in whole or in part:

- i. Upon the failure of Grantee to comply with any of the terms and conditions of this Agreement;
- ii. Upon Grantee becoming insolvent;

- iii. Upon the commencement under the Bankruptcy Act of any proceeding by or against Grantee, either voluntarily or involuntarily; or

B. If the TSC, acting through its Chairperson, determines that Grantee has failed to comply with any of the terms and conditions of this Agreement, the TSC shall give Grantee written notice of default, and at least ten (10) business days to effect a cure. If the Chairperson finds that Grantee has diligently commenced and diligently prosecuted efforts to effect a cure during such ten (10) business day period, then the aforesaid ten (10) business day period shall be extended for so long as Grantee continues to proceed diligently with effectuation of such cure. If Grantee is unable to commence to effect a cure in the initial ten (10) business day period due to circumstances beyond the control of the Grantee, then upon written request by Grantee, the Chairperson, in the exercise of his or her discretion and upon such conditions as he or she may deem appropriate, may allow Grantee an additional period of time in which to commence to effect a cure.

Subject to the foregoing, if Grantee fails to cure a default or to commence to cure and thereafter diligently prosecute efforts to effect a cure in accordance with this section, then the TSC may give Grantee written notice stating its intent to terminate this Agreement and specifying the effective termination date, whereupon such date this Agreement shall be terminated.

C. Upon receipt of the notice of termination, Grantee shall not use the Grant to incur or pay any further expenses or obligations, after the termination date.

D. Within thirty (30) days of termination of this Agreement, Grantee shall:

- i. Provide the TSC with an accounting of funds spent in furtherance of Grant Services; and
- ii. Refund to the TSC any unspent funds which have been paid to Grantee under this Agreement.

E. In the event of termination, no final payment shall be made pursuant to Paragraph 6 of this Agreement, provided that a Grantee terminated pursuant to Paragraph 9(A)(ii) or 9(A)(iii) may receive equitable compensation for such services as shall, in the judgment of the Chairperson, have been satisfactorily performed by Grantee up to the date of termination. Such compensation shall be fixed by the Chairperson and subject to audit by the Treasurer of the TSC. However, Grantee's right to equitable compensation hereunder shall be contingent upon full compliance with all of Grantee's obligations required to be performed under this Agreement prior to termination by the TSC.

#### Paragraph 10. OTHER PROVISIONS

The provisions attached to this Agreement as Exhibit B are incorporated by reference into this Agreement as if set forth fully herein.

#### Paragraph 11. TAX AFFIRMATION

The Grantee affirms that it is not in arrears to the City of New York upon debt or contract, or taxes, and is not a defaulter as surety or otherwise, upon any obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the Grantee to receive public contracts.

IN WITNESS WHEREOF, the parties hereto have duly executed this AGREEMENT, as of the day and year first written below.

Theater Subdistrict Council, LDC

«orgname»

By: \_\_\_\_\_

By: \_\_\_\_\_

Margaret Morton,  
Chief Executive Officer

(signature)

\_\_\_\_\_  
(print name)

Chief Executive Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

(signature)

\_\_\_\_\_  
(print name)

Chairperson of the Board of Directors

Date: \_\_\_\_\_

**Exhibit A: SCOPE OF SERVICES**

## **Exhibit B**

### SECTION 1. INSURANCE

A. Grantee shall take out and maintain during the life of this Agreement, Worker's Compensation Insurance and Disability Benefits Insurance for the benefit of its employees in the amounts and to the extent required by law.

B. Grantee shall also take out and maintain during the life of this Agreement, with a company licensed to do business in the State of New York, Comprehensive General Liability insurance in the amount of One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury (including death) and property damage. The Chairperson of the Theater Subdistrict Council, LDC ("TSC") reserves the right, at his or her discretion, to require additional coverage. The TSC and the City of New York ("City"), their officers, agents and employees are to be added as additional insureds in any such policy. Such policy shall also provide that the TSC shall be given at least fifteen (15) days' advance notice of any cancellation of the policy.

C. Prior to receipt of the first payment under this Agreement, Grantee shall furnish the TSC with certificates of insurance effecting coverage for all required policies of insurance.

### SECTION 2. ACCOUNTS

A. This Agreement and all payments made under this Agreement are subject to audit by TSC, acting through the staff of the Departments of Cultural Affairs and City Planning, or other City agency designated by the TSC for this purpose.

B. To facilitate audit Grantee shall maintain adequate records of services performed by Grantee under this Agreement, and shall keep such records available for inspection and audit for a period of six (6) years after the termination of this Agreement.

### SECTION 3. GRANTEE'S EMPLOYEES

A. Grantee is an independent entity, and shall not be deemed to be an agent, employee, servant or representative of the TSC or the City for any purpose whatsoever.

B. All personnel provided by the Grantee to perform any service required under this Agreement shall be considered as employed by the Grantee, and not the TSC or the City. Grantee alone is responsible for their work and personal conduct while performing under this Agreement, as well as for their direction and compensation. Nothing included in this Agreement shall impose any liability or duty upon the TSC or the City to persons, firms, or corporations employed in any capacity by Grantee, or make the TSC or the City liable to any person or entity (including governmental agencies) for any act, omission, liability, obligation or taxes (including unemployment insurance and social security) of Grantee or any individual, firm or corporation employed by Grantee.

C. Grantee shall not employ any labor, material or means whose use during the course of this Agreement will in any way cause a strike, work stoppage or similar troubles.

### SECTION 4. EQUAL EMPLOYMENT COMPLIANCE/NON-DISCRIMINATION

Grantee agrees that:

A. it will not engage in any unlawful discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading,

demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment; and

B. when it subcontracts it will not engage in any unlawful discrimination in the selection of subcontractors on the basis of the owner's race, color, creed, national origin, sex, age, disability, marital status or sexual orientation.

#### SECTION 5. PERMITS; COMPLIANCE WITH LAW

A. Grantee, at its own expense, shall obtain all necessary permits, consents, certificates and licenses necessary for the purposes of performing the services described in Exhibit A. The TSC shall cooperate with Grantee and furnish such information and complete any applications that may be requested by Grantee for the purpose of enabling Grantee to comply with the requirements of this Section.

B. Grantee shall render all services under this Agreement in accordance with applicable provisions of federal, state and local laws, rules and regulations as are in effect at the time such services are rendered.

#### SECTION 6. RISK OF OPERATIONS

A. Notwithstanding anything to the contrary contained in this Agreement, Grantee shall be solely responsible for all injuries to persons, including death or damage to property, resulting from any act, omission or negligence of Grantee, its agents or subcontractors in performing this Agreement. Grantee agrees to indemnify and hold the TSC and the City, their officers, agents and employees harmless from any liability upon any claim for injuries, death or damages on account of the negligence, act or omission of Grantee, its agents or subcontractors.

B. Grantee shall be solely responsible for the safety and protection of all its employees and shall assume all liability for injuries, including death, that may occur as a result of its performance of this Agreement whether or not due to the negligence, act or omission of Grantee, its agents or subcontractors.

#### SECTION 7. RELEASE

The acceptance by Grantee of any payment made on the final payment request under this Agreement shall release the TSC and the City from all claims of liability to Grantee under this Agreement.

#### SECTION 8. ACTIONS

A. No action shall be brought against the City by Grantee upon any claims based upon this Agreement unless such action shall be commenced within six (6) months of the termination of this Agreement, or within six (6) months of the accrual of the cause of action, whichever first occurs.

B. In the event any claim is made or any action brought against the TSC and/or the City in any way relating to the Agreement, Grantee shall diligently render to the TSC and/or the City, without additional compensation, any and all assistance which the TSC and/or the City may require of Grantee.

#### SECTION 9. ASSIGNMENT

Grantee shall not assign or otherwise transfer this Agreement or Grantee's rights (including the right to payment) and obligations under this Agreement, in whole or in part, without the prior written consent of the Chairperson of the TSC.

#### SECTION 10. INFRINGEMENTS

Grantee shall be liable to the TSC and/or the City and shall indemnify and hold the TSC and/or the City harmless for any damage, loss or expense sustained by the TSC and/or the City arising out of any infringement by the Grantee of any copyright, trademark, or patent, rights of design systems, drawings,

graphs, charts, specifications or printed matter furnished or used by the Grantee in the performance of this Agreement.

#### SECTION 11. CLARIFICATION

If this Agreement contains any errors, inconsistencies, ambiguities or discrepancies including typographical errors, Grantee shall request a clarification by writing the Chairperson of the TSC, whose decision will be binding upon the parties.

#### SECTION 12. PROVISIONS OF LAW CONTROLLING

It is the intention and understanding of the parties to this Agreement that every provision of law required to be inserted in this Agreement is deemed to be so inserted. If, through mistake or otherwise, any such provision is not so inserted or is not inserted in correct form, then this Agreement shall, upon the application of either party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party.

#### SECTION 13. NO PERSONAL LIABILITY

Neither the Chairperson, nor any officer, employee, agent or representative of the TSC or the City shall be liable personally to Grantee under this Agreement.

#### SECTION 14. MERGER; MODIFICATION

This written Agreement contains all the terms and conditions agreed to by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist, or to bind any party, or to vary any of the terms contained in this Agreement. This Agreement shall not be modified except by an instrument in writing approved by the Chairperson.

#### SECTION 15. SEVERABILITY

If this Agreement contains any unlawful provision not an essential part of the general structure of this Agreement and which shall not appear to have been a material inducement to the making of this Agreement, such provision shall be deemed to be of no effect and shall, upon the application of either party, be stricken from the Agreement without affecting the binding force of the Agreement as it shall remain after omitting such provision.

#### SECTION 16. CONFLICT OF INTEREST

Grantee represents that neither it nor any of its directors, officers or employees, has any interest, nor shall they acquire any interest, directly or indirectly, which would conflict in any manner with the performance of services under this Agreement. Grantee further represents that no person having such interest shall be employed by it in the performance of this Agreement.

#### SECTION 17. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

A. This Agreement shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Grantee, and shall be governed by and construed in accordance with the laws of the State of New York.

B. The parties agree that any and all claims asserted by or against the TSC and/or the City arising under this Agreement or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Courts") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this agreement and intent, the Grantee agrees:

1. If the TSC or the City initiate any action against the Grantee in Federal Court or in New York State Court, service of process may be made on the Grantee either in person, wherever such Grantee may be found, or by registered mail addressed to the Grantee at its address as set forth in this Agreement, or to such other address as the Grantee may provide to the TSC or the City in writing; and

2. With respect to any action between the TSC and/or the City and the Grantee in New York State Court, the Grantee hereby expressly waives and relinquishes any right it might otherwise have (a) to move to dismiss on grounds of forum non conveniens, (b) to remove to Federal Court, and (c) to move from a change of venue to a New York State Court outside New York County.

3. With respect to any action between the TSC and/or the City and the Grantee in Federal Court located in New York City, the Grantee expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.

4. If the Grantee commences any action against the TSC and/or the City in a court located other than in the City, County and State of New York, upon request of the City and/or the TSC, the Grantee shall either consent to a transfer of the action to a court of competent jurisdiction located in the City, County and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Grantee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

C. If any provision(s) of this Article is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

#### SECTION 18. NOTICE

A. Grantee designates «m\_adrs» «m\_adrs2», «m\_city», «m\_state» «m\_zip» as the place where all notices to the Grantee may be delivered or mailed. Except as otherwise specified in this Agreement, the City and the TSC designate c/o Office of the Counsel, 22 Reade Street 2W, New York, N.Y. 10007, as the place where all notices to the City and/or the TSC may be delivered or mailed. All notices given by mail shall be deemed received seven days after being mailed, provided such notice is sent by certified mail, return receipt requested. Notice given by personal delivery shall be deemed received upon delivery, provided a written receipt is given.

B. Grantee may change its address at any time by writing to the TSC at c/o Office of the Counsel, 22 Reade Street, 2W, New York, N.Y. 10007.

#### SECTION 19. STIPULATIONS

This Agreement shall not be binding upon the TSC until the Grantee submits in satisfactory form any additional documentation as may be required by the TSC in connection with the approval of this Agreement.

**EXHIBIT E**

TSC ROUND 2 GRANTEES

<b>Grantee</b>	<b>Grant Amount</b>
52nd Street Project	100,000
Alliance for Inclusion in the Arts	240,000
Apollo Theater	150,000
Atlantic Theatre Company	105,000
Broadway League	50,000
Fractured Atlas	200,000
Lark Play Development Ctr	160,000
Lincoln Center Theater	200,000
New 42nd Street	200,000
Playwrights Horizons	77,000
Rosie's Broadway Kids	100,000
Roundabout Theatre	100,000
Signature Theatre	150,000
Theatre Development Fund	200,000
Walker International Comm	115,000
<b>Total</b>	<b>2,147,000</b>