**SAMPLE WHISTLEBLOWER POLICY**

**FOR**

**NYC DISTRICT MANAGEMENT ASSOCIATION, INC.**

As Approved by Board of Directors on [ / /2020]

**Prepared by Lawyers Alliance for New York**

**in partnership with the New York City Department of Small Business Services**

**Current as of** [date]

**[NOTE: Section 715-b of the New York Not-for-Profit Corporation Law does not require a District Management Associations to adopt a Whistleblower Policy unless and until it has at least 20 employees and its annual revenues in its prior fiscal year is in excess of $1 million. The adoption of such a policy, however, would be consistent with “best corporate governance practices” and is highly recommended]**

# Introduction

The District Management Association requires its directors, officers, employees, volunteers, and key persons[[1]](#footnote-2) [as well as all persons who provide the District Management Association with contracted services] (each, a “Protected Person”), to observe high standards of business and personal ethics in the performance of their duties on the District Management Association’s behalf. As employees and representatives of the District Management Association, Protected Persons are expected to practice honesty and integrity in fulfilling their responsibilities and are required to comply with all applicable laws and regulations.

The objectives of this policy are to encourage and enable Protected Persons, without fear of retaliation, to raise concerns regarding suspected unethical and/or illegal conduct or practices on a confidential and, if desired, anonymous basis so that the District Management Association can address and correct inappropriate conduct and actions

This policy is not intended as a vehicle for reporting violations of the District Management Association’s applicable human resources policies, problems with co-workers or managers, or for reporting issues related to alleged employment discrimination or sexual or any other form of unlawful harassment, all of which should be dealt with in accordance with the District Management Association’s personnel policies and procedures.

# Reporting Responsibility

It is the responsibility of all Protected Persons to report in good faith any concerns they may have regarding actual or suspected activities which may be illegal or in violation of the District Management Association’s policies with respect to, without limitation, fraud, theft, embezzlement, accounting or auditing irregularities, bribery, kickbacks, and misuse of the District Management Association’s assets, as well as any violations or suspected violations of high business and personal ethical standards, as such standards relate to the District Management Association (each, a “Concern”), in accordance with this policy.

# No Retaliation

No Protected Person who in good faith reports a Concern shall suffer intimidation, harassment, retaliation, discrimination adverse employment, or other retaliation consequence because of such report. Any director, officer or employee of the District Management Association who retaliates against someone who has reported a Concern in good faith is subject to discipline up to and including removal from the District Management Association’s board of directors and/or or termination of employment. Notwithstanding anything contained herein to the contrary, this policy is not an employment contract and does not modify the employment relationship between the District Management Association and its employees, nor does it change the fact that employees of the District Management Association are employees at will. Nothing contained herein is intended to provide any Protected Person with any additional rights or causes of action, other than those provided by law.

# Reporting Concerns

Any Concerns should be reported as soon as shall be practicable to the Chair of the District Management Association’s board of directors or to his or her designee (the “Compliance Officer”). Any questions with regard to the scope, interpretation or operation of this policy should also be directed to the Compliance Officer.

# Compliance Officer

The Compliance Officer is responsible for investigating and resolving all reported Concerns and shall advise the Audit Committee[[2]](#footnote-3) and, if the Compliance Officer deems it appropriate, the Executive Director, of all reported Concerns. The Compliance Officer shall report to the full Board of Directors at each regularly scheduled board meeting on compliance activity.

# Accounting and Auditing Matters

The Audit Committee of the Board of Directors shall address all reported Concerns regarding corporate accounting practices, internal controls or auditing (“Accounting Concerns”). The Compliance Officer shall immediately notify the Audit Committee of any Accounting Concern and shall work with the committee until its resolution. Promptly upon receipt, the Audit Committee shall evaluate whether a Concern constitutes an Accounting Concern and, if so, shall promptly determine what professional assistance, if any, it needs in order to conduct an investigation. The Audit Committee will be free in its sole discretion to engage outside auditors, counsel or other experts to assist in the investigation and in the analysis of results.[[3]](#footnote-4)

# Investigations and Deliberations

The Compliance Officer may delegate the responsibility to investigate a reported Concern, whether an Accounting Concern or otherwise, to one or more employees of the District Management Association or to any other individual, including persons not employed by the District Management Association, selected by the Compliance Officer; provided that the Compliance Officer may not delegate such responsibility to an employee or other individual who is the subject of the reported Concern or in a manner that would compromise either the identity of an employee who reported the Concern anonymously or the confidentiality of the complaint or resulting investigation. Notwithstanding anything herein to the contrary, the scope, manner and parameters of any investigation of a reported Concern shall be determined by the Audit Committee in its sole discretion and the District Management Association and its employees shall cooperate as necessary in connection with any such investigation. Employees of the District Management Association may not participate in any Board or Audit Committee deliberations or voting relating to the administration of this Whistleblower policy, and the person who is the subject of an investigation may not be present in Committee or Board deliberations or vote on the matter relating to the complaint. However, a person who is the subject of an investigation may present information as background or answer questions at a meeting of the Board of Directors or Audit Committee prior to the commencement of deliberations or voting relating thereto.

# Acting in Good Faith

Anyone reporting a Concern must act in good faith and have reasonable grounds for believing that the information disclosed may indicate a violation of law and/or ethical standards. Any allegations that prove to have been made maliciously or knowingly to be false will be viewed as a serious disciplinary offense.

# Confidentiality

The District Management Association takes seriously its responsibility to enforce this policy and therefore encourages any person reporting a Concern to identify him or herself so as to facilitate any resulting investigation. Notwithstanding the foregoing, in reporting a Concern, a Protected Person may request that such report be treated in a confidential manner (including that the District Management Association take reasonable steps to ensure that the identity of the reporting person remains anonymous). Concerns may also be reported on an anonymous basis. Reports of Concerns will be kept confidential to the extent possible, consistent with the need to conduct an adequate investigation.

# Handling of Reported Concerns

The Compliance Officer will acknowledge receipt of each reported Concern within five business days, but only to the extent the reporting person’s identity is disclosed or a return address is provided. All reports will be promptly investigated; the scope of any such investigation being within the sole discretion of the [Audit] Committee, and appropriate corrective action will be taken if warranted by the investigation.

**Records**

The Audit Committee will retain on a strictly confidential basis for a period of seven years (or otherwise as required under the District Management Association’s record retention policies in effect from time to time) all records relating to any reported Concern and to the investigation and resolution thereof. All such records are confidential to the District Management Association and such records will be considered privileged and confidential.

**Distribution**

The District Management Association shall distribute a copy of this policy to all Protected Persons. The District Management Association shall also post the policy on its website.[[4]](#footnote-5)

**Compliance Officer Contact Information**

: [Insert Name; Mailing Address; Phone Number;

and email Address of Compliance Officer]

1. A “key person” is anyone, other than a director, officer or employee, who (i) has responsibilities, or exercises power or influence over the corporation as a whole similar to the responsibilities, power, or influence of directors and officers; (ii) manages the corporation, or a segment of the corporation that represents a substantial portion of the activities, assets, income or expenses of the corporation; or (iii) alone or with others controls or determines a substantial portion of the corporation’s capital expenditures or operating budget. N-PCL § 102(a)(25). [↑](#footnote-ref-2)
2. Nonprofits generally designate the Audit Committee of the Board of Directors to receive and address whistleblower complaints, but if an organization does not have an Audit Committee, it may designate an Executive, Finance or Governance Committee to serve in this role. In the event an organization does not have any committees, it may designate the entire Board of Directors to serve in this role. [↑](#footnote-ref-3)
3. If an organization does not have an Audit Committee this report should be made to the Board. [↑](#footnote-ref-4)
4. The District Management Association may also want to make best efforts to distribute the policy to all volunteers and people providing contracted services to the District Management Association. [↑](#footnote-ref-5)