

OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF NEW YORK

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In the Matter of the

ASSURANCE NO.

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

12-068

New York City Economic Development Corporation,

**Flushing-Willets Point-Corona Local Development
Corporation,**

and

Coney Island Development Corporation,

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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 Corporations Law (“N-PCL”) and Section 63(12) of the Executive Law into complaints that the New York City Economic Development Corporation (“EDC”) had violated the N-PCL in connection with development projects for the Flushing-Willets Point-Corona area of Queens (the “Willets Point Project”) and the Coney Island area of Brooklyn (“the Coney Island Project”) and that the Flushing-Willets Point-Corona Local Development Corporation (“FWPC”) and the Coney Island Development Corporation (“CIDC”) had violated the N-PCL in connection with the Willets Point Project and the Coney Island Project, respectively.

WHEREAS, Section 1411(c) of the N-PCL provides that no local development corporation “shall attempt to influence legislation by propaganda or otherwise.”

WHEREAS, OAG's investigation revealed that EDC, FWPC, and CIDC attempted to influence legislation by propaganda or otherwise by lobbying the Council of the City of New York ("City Council") in connection with rezoning and other land use applications submitted to the City Council as part of the City of New York's Uniform Land Use Review Procedure ("ULURP").

WHEREAS, after OAG commenced its investigation, the City caused to be formed two new Type C not-for-profit corporations: (1) New York City Economic Growth Corporation ("EGC") and (2) New York City Land Development Corporation ("NYCLDC"). NYCLDC was incorporated pursuant to Section 1411 of the N-PCL. Subject to satisfying the statutory requirements for merger, EDC intends to merge into EGC. It is anticipated that NYCLDC will enter into a contract with EGC for the performance of administrative support services by EGC for NYCLDC. Upon the merger the name of EGC will change to New York City Economic Development Corporation.

WHEREAS, this Assurance contains OAG's Findings in connection with its investigation of EDC, FWPC and CIDC, and the relief to which OAG, EDC, EGC, NYCLDC, FWPC and CIDC (each a "party") have agreed.

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 EDC, FWPC and CIDC.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties that:

FINDINGS

1. EDC, FWPC and CIDC are not-for-profit local development corporations organized under Section 1411 of the N-PCL (“LDCs”). EDC serves as the economic development arm of the City of New York. Section 1411 grants LDCs unique powers to receive real property from municipalities by sale or lease without appraisal or public bidding for “exclusively charitable or public purposes,” including promoting employment and attracting industry. N-PCL § 1411(a)-(d). The statute empowers LDCs “to disseminate information and furnish advice, technical assistance and liaison with federal, state and local authorities with respect” to development projects. *Id.* § 1411(c). The statute also imposes the following prohibition: “no such corporation shall attempt to influence legislation by propaganda or otherwise.” *Id.*

2. The Willets Point Project and the Coney Island Project required rezoning and other land use approvals from the City Council through ULURP. The City Council held hearings and voted on and passed resolutions concerning the rezoning and other land use applications for the Willets Point Project in the fall of 2008 and for the Coney Island Project in the summer of 2009.

3. OAG’s investigation determined that CIDC operated out of EDC’s offices in Manhattan and was staffed entirely by EDC employees and that FWPC took direction from EDC regarding some of its work in support of the Willets Point Project.

4. OAG’s investigation also determined that EDC, FWPC and CIDC conducted campaigns of direct and indirect lobbying of the City Council in connection with the Projects. For example, EDC staff directed FWPC to use its fax machine to transmit a letter drafted by EDC concerning the Willets Point Project to City Council members because, in the

words of an EDC employee, “we felt this letter coming from our fax machine would have been lobbying from EDC.” EDC, FWPC and CIDC took steps to foster the appearance of independent “grassroots” support for the Projects in the local community. Both FWPC and CIDC retained an outside government relations firm to assist in these efforts. The lobbying activities included ghost-writing op-eds, drafting letters to the City Council, and preparing testimony, all for community members who were not officers, directors or employees of EDC, FWPC or CIDC, without disclosing the participation of FWPC or CIDC in generating those communications. FWPC and CIDC also organized transportation to City Council hearings for supporters.

PROSPECTIVE RELIEF

5. Any party to this Assurance, so long as it is incorporated under Section 1411 of the N-PCL (an “LDC Entity”), agrees to confine its communications and other activities in connection with any development project known or reasonably expected to entail any application to the City Council through the ULURP process or otherwise (a “Rezoning Project”) to the limits of the N-PCL, which authorizes LDCs “to disseminate information and furnish advice, technical assistance and liaison with federal, state and local authorities. . . .” N-PCL § 1411(c). Consistent with the statutory authorization, each LDC Entity may provide information, advice and technical assistance concerning Rezoning Projects to the City Council. Each LDC Entity may advocate or otherwise urge the approval of Rezoning Projects in written or oral testimony or other communications with the City Council only if the communication is both (i) submitted in response to a written request by City Council members, and (ii) made available to all City Council members. Each LDC Entity shall not solicit or attempt to solicit such a written request from the City Council or any subdivision, member or staff thereof.

6. Each LDC Entity agrees that it will not “attempt to influence legislation by propaganda or otherwise.” N-PCL § 1411(c).

7. Each LDC Entity also agrees that it will not direct or encourage any other entity or any individual who is not a director, officer or employee of the LDC Entity itself (“Third Parties”) to attempt to influence legislation by propaganda or otherwise. Consistent with the statutory obligation, in connection with Rezoning Projects, each LDC Entity will not undertake activities including but not limited to the following prohibited activities:

- a. employ outside lobbyists and lobbying firms and government relations consultants and firms;
- b. direct or encourage Third Parties to communicate with the City Council;
- c. coach, draft or otherwise participate in the development of the testimony of Third Parties before the City Council;
- d. draft or otherwise participate in the preparation of letters, op-eds, speeches or other documents or communications to be signed or delivered by Third Parties;
- e. provide or arrange transportation to City Council hearings for Third Parties; or
- f. organize or participate in petition drives or canvassing for signatures.

8. As successor to EDC, EGC agrees that it will not direct or encourage any LDC, or any individual employed by or contracting with any LDC, to attempt to influence legislation by propaganda or otherwise, including without limitation by engaging in any of the prohibited activities set forth in paragraph 7 of this Assurance. Any officer or employee of EGC who is also an officer or employee of NYCLDC or any other LDC whose activities relate to Rezoning Projects will not attempt to influence legislation by propaganda or otherwise and will

not direct or encourage any individual or entity to attempt to influence legislation by propaganda or otherwise.

9. Each of EGC, NYCLDC, CIDC and FWPC agrees to develop training materials, in form and substance acceptable to OAG, to educate its directors, officers and employees on the obligation to comply with Section 1411 of the N-PCL as provided below. Within sixty (60) days of execution of this Assurance, EGC will submit draft training materials to be used by EGC, CIDC and NYCLDC to OAG for review and approval. Within sixty (60) days of the execution of this Assurance, FWPC will submit draft training materials to be used by FWPC to OAG for review and approval. EGC will provide training to all directors, officers and employees of NYCLDC and CIDC and to all officers and employees of EGC who are also officers or employees of NYCLDC by the later of sixty (60) days following OAG's approval of EGC's draft training materials and October 1, 2012 and to all persons who become directors, officers or employees of NYCLDC and CIDC after such training is given, and to all persons who become officers and employees of EGC who serve as officers or employees of NYCLDC after such training is given upon election, appointment or hiring, as the case may be. FWPC will provide training to all directors, officers and employees by the later of sixty (60) days following OAG's approval of FWPC's draft training materials and October 1, 2012 to all persons who become directors, officers and employees of FWPC upon election, appointment or hiring, as the case may be. NYCLDC, CIDC and FWPC will have a continuing obligation to provide training to new directors, officers and employees and will maintain records documenting compliance with these training requirements, and EGC will have a continuing obligation to provide training to new officers and employees of EGC who will also be serving as officers or employees of NYCLDC and to maintain records documenting compliance with these requirements.

10. EGC and NYCLDC each will register with the OAG Charities Bureau.

11. EDC, EGC and NYCLDC each agrees to disclose the following information publicly on their websites, in a format acceptable to OAG, within thirty (30) days of knowledge thereof, and in an addendum to its annual filing submitted to the OAG Charities Bureau, Form CHAR500 (Annual Filing for Charitable Organizations):

- a. the identity of any LDC to which it provides funding and the date(s) and amount(s) of funding; and
- b. the name and title or position of any of its directors, officers or employees who also serve as directors, officers or employees of another LDC and the identity of that LDC.

12. OAG has agreed to the terms of this Assurance based on, among other things, the representations made to OAG by each other party 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.

13. This Assurance constitutes the entire agreement between OAG and each other party, 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. Each party 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.

19. Acceptance of this Assurance by OAG shall not be deemed approval by OAG of any of the practices or procedures referenced herein, and each other party shall make no representation to the contrary.

20. Pursuant to Section 63(15) of the Executive Law, evidence of a violation of this Assurance shall constitute *prima facie* proof of violation of Section 1411 of the N-PCL and/or Section 63(12) of the Executive Law in any action or proceeding thereafter commenced by the OAG. If any court of competent jurisdiction determines that a party has breached this

Assurance, that party shall pay to OAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses and court costs.

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

If to EDC, EGC, NYCLDC or CIDC, to:

Jeffrey D. Friedlander, Esq.
First Assistant Corporation Counsel
New York City Law Department
100 Church Street
New York, NY 10007
Fax: (212) 788-0367

and to:

General Counsel
New York City Economic Development Corporation
110 William Street
New York, NY 10038
Fax: (212) 312-3912

If to FWPC, to:

Robert J. Bishop, Esq.
Pitta & Giblin LLP
120 Broadway
New York, NY 10271
Fax: (212) 652-3891

If to OAG, to:

Janet Sabel, Esq.
Executive Deputy Attorney General for Social Justice
Office of the New York State Attorney General
120 Broadway, 26th Floor
New York, NY 10271-0332
Fax: (212) 416-6007

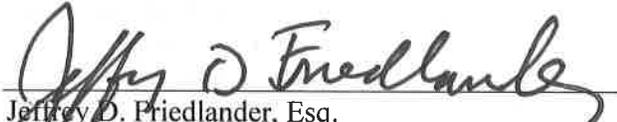
22. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

23. 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
July 2, 2012

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
Attorney for New York City Economic
Development Corporation, New York City
Economic Growth Corporation, New York City
Land Development Corporation, and Coney Island
Development Corporation

By: 
Jeffrey D. Friedlander, Esq.
First Assistant Corporation Counsel
New York City Law Department

Dated: New York, New York
July __, 2012

FLUSHING-WILLETTS POINT-CORONA
LOCAL DEVELOPMENT
CORPORATION

By: _____
Robert J. Bishop, Esq.
Pitta & Giblin LLP
Attorney for Flushing-Willets Point-Corona

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Development Corporation, New York City
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By: _____
Jeffrey D. Friedlander, Esq.
First Assistant Corporation Counsel
New York City Law Department

Dated: New York, New York
July 2, 2012

FLUSHING-WILLETTS POINT-CORONA
LOCAL DEVELOPMENT
CORPORATION

By:  _____
Robert J. Bishop, Esq.
Pitta & Giblin LLP
Attorney for Flushing-Willets Point-Corona

Dated: New York, New York
July 2, 2012

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

By: 

Janet Sabel, Esq.
Executive Deputy Attorney General
for Social Justice