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April 24, 2008

Veronica A. Xiques, Esq.
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City of Miami Office of the City Attorney
444 SW 2nd Ave., Suite 945
Miami, FL 33130

Via First Class Mail
and
Fax at 305.416.1801

Re: **RQO 08-21**, Downtown Development Authority (DDA)
Miami-Dade County Conflict of Interest and Code of Ethics at §§ 2-11.1 (c)
and (d) and City of Miami Conflicts of Interest Code at § 2-611

Dear Ms. Xiques:

The Commission on Ethics & Public Trust considered your request and rendered its opinion at a public meeting held on April 24, 2008.

YOU ASKED in your email of April 3, 2008, the following questions.

- May board members of the City of Miami Downtown Development Authority (DDA) who own real estate in downtown Miami accept free "see-through" shutters through a program sponsored by the DDA to increase safety in the downtown areas?
- May the same board members participate in a façade improvement program sponsored by the DDA that requires applicants to contribute 25% of the cost?

THE ETHICS COMMISSION FOUND that DDA board members may accept free shutters and participate in the façade improvement program and not violate the City of Miami and County Codes. Because administration and implementation of both programs is being conducted by the Downtown Miami Partnership (DMP), an independent 501(c)(6) nonprofit corporation, board members are not required to contract with their own board. Additionally, the Ethics Commission was persuaded that program benefits were equally available to all property owners throughout the DDA communities and that board members did not obtain special advantages due to the positions they held on the board.

THE FACTS as are follows: The DDA is an independent taxing district organized as a corporate body under state law to plan, coordinate, and assist in the implementation, revitalization, and redevelopment of specific downtown areas of the city. One legal requirement of the DDA is that between 8 to 12 members of the 15-member board reside, operate businesses, or own property in the city's designated downtown development areas.

The DDA is currently sponsoring two programs to improve the appearance of façades and increase safety in the development areas. The DDA has contracted with the DMP to administer both programs. The DMP is an independent nonprofit corporation that works with governments and agencies to implement various

projects; some current and past clients of the DMP include the City of Miami, HUD, the Miami CRA, and Miami-Dade County.

The free "see-through" shutter program is being offered to all property owners located within the DDA boundaries. With the façade improvement program, property owners contribute 25% of the cost to improve the appearance of the front of their buildings. The DDA supplements the remaining costs, up to \$75,000.

The DMP administers all aspects of both programs. Property owners apply directly to the DMP. The DMP then contracts with vendors, monitors the work, and pays vendors upon completion. No grant money is provided to property owners directly. The only requirements of applicants are that they own property in the designated area and agree to the installations and/or renovations.

THE LEGAL ANALYSIS of this matter focused on the following: The City of Miami Attorney's Office issued Legal Opinion No. 08-440 stating that all members of the DDA are municipal board members and subject to the City and County Ethics Codes.

The Miami-Dade County Conflict of Interest and Code of Ethics at §§ 2-11.1 (c) and (d) generally prohibits government personnel, individually or through a firm, from entering into contracts or transacting business with their own government. A limited exception is made for advisory board members at § 2-11.1 (c)(3), but the exception does not extend to board members contracting with their own boards. Similarly, the City of Miami Conflicts of Interest Code at § 2-611 does not allow board members to enter into any contract or transact any business with their own board.

Because property owners, including DDA board members, apply directly to the DMP (an entity completely independent of the DDA), board members are not contracting with their own board.

Additionally, DDA board members have not violated the Ethics Code at § 2-11.1 (v) regarding voting conflicts because initiation of the programs was strictly ministerial. Board members do not make official decisions regarding carrying out the programs, in particular, selecting applicants, directing funds to vendors, or in any other way benefiting themselves ahead of others.

THIS OPINION construes the Miami-Dade Conflict of Interest & Code of Ethics Ordinance, but is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact Victoria Frigo, Staff Attorney, at 305.350.0601, or Robert Meyers at 305.579.2594, if we can be of further assistance in this matter.

Sincerely,



ROBERT MEYERS
Executive Director

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