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June 27, 2007

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

Via First Class Mail and Fax at 305 416-1801

Re: **RQO 07-25**
Downtown Development Authority (DDA) & Department of Off-Street
Parking (DOSP)

Dear Ms. Xiques:

The Commission on Ethics & Public Trust considered your request and rendered its opinion at a public meeting held on June 26, 2007.

YOU ASKED in your letter of June 22, 2007, if the Downtown Development Authority (DDA) will violate the Ethics Code by contracting with a public relations firm, when one of the principals of the public relations firm serves on the Board of the City of Miami's Department of Off-Street Parking (DOSP).

IN SUM, the Ethics Commission opined that the DDA may enter into the contract with the public relations firm because the DDA is not subject to the regulation, oversight, management, policy-setting, or quasi-judicial authority of the DOSP.

The DDA is an independent taxing district organized as a corporate body under state law¹ to plan, coordinate, and assist in the implementation, revitalization, and redevelopment of specific downtown areas of the city.² The DOSP is a semiautonomous agency of the City of Miami³ that supervises the operation of off-street parking facilities and the collection all revenues generated from them within the City of Miami.

The relevant section of the Miami-Dade Conflict of Interest and Code of Ethics Ordinance appears at § 2-11.1 (c)(3) *Prohibition on transacting business within the [City], Limited exclusion from prohibition on autonomous personnel, advisory personnel, and quasi-judicial personnel contracting with [the City]*.

§ 2-11.1 (c)(3). Notwithstanding [that government workers, officials, and appointees shall not enter into business contracts

with their governments, this prohibition shall *not*] be construed to prohibit [autonomous personnel, advisory personnel, and quasi-judicial personnel] from entering into any contract, individually or through a firm, corporation, partnership or business entity in which the board member or any member of his or her immediate family has a controlling financial interest, with [the City] or any person or agency acting for [the City]. However, [autonomous personnel, advisory personnel, and quasi-judicial personnel are] ***prohibited from contracting with any agency or department of [the City] subject to the regulation, oversight, management, policy-setting or quasi-judicial authority of the board of which the person is a member.*** (Emphasis added.)

The DOSP appears to have no authority to regulate, oversee, manage, set policy, or adjudicate issues involving the DDA.⁴ Therefore, under Section 2-11.1 (c)(3), the DDA is not prohibited from entering into a contract with a company whose principal is a member of the DOSP Board.

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 yours,



ROBERT MEYERS
Executive Director

Endnotes:

¹ Fla. Stat. § 200.001(8)(e) (2006). Some powers of the DDA include authority to sue and be sued, enter into its own contracts, directly supervise and control all activities of the DDA through its 15-member Board, and employ its own employees, who are *not* City of Miami civil service employees. Some limitations on the powers of the DDA include that board appointees must be approved by the City Commission and the DDA cannot obtain funds or incur indebtedness without approval from the City Commission.

² Fla. Stat. § 380.031(5) (2006).

³ City of Miami Code § 2-301 (2006). Some powers of the DOSP include authority to sue and be sued; enter into its own contracts; own facilities and manage others owned by City and County governments, certain nonprofits, and the public sector, sometimes as joint venturers; and supervise and control all activities of the DOSP directly through its 5-member Board. Some limitations on the powers of the DOSP include that board appointees must be approved by the City Commission. Additionally, the DOSP must employ City of Miami employees, depend solely on funding through the City of Miami off-street parking facility revenues, with no authority to fix rates for off-street parking services or to issue revenue bonds, and post financial statements within the City's Annual Financial Report.

⁴ A tangential relationship between the two entities could occur from time to time, *i.e.*, a parking facility being built or refurbished as part of downtown redevelopment under the authority of the DDA could eventually generate income and be managed by the DOSP. However, the DOSP has no authority to act during the development stage of the project. Only after the parking facility is completed and the DDA is no longer involved would management of the facility by DOSP begin.