**CONFIDENTIAL**

[date]

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**Re: Board Case No. 12017.CNS**

This afternoon, you asked whether [E, a new City employee]Gabe Klein, Commissioner of the City’s Department of Transportation (CDOT) may have violated the Governmental Ethics Ordinance with respect to the City’s selection of C Alta Bicycle Share, Inc. (Alta) as the successful respondent to anes for Proposals RFP for a bike rental program. It is our conclusion that there has been no violation of the Ordinance. We base our conclusion on the facts that follow.

ECommissioner Klein E served as an independent consultant for C for 6 weeks in [year], and assisted the company in completing a response submitted to New York City for a bike sharing [similar] program. C paid him approximately $9,600 for his work, which ended on [date prior to his becoming a City employee]. His final payment was received on May 31, 2011. The City began working on drafting the scope of services for its own bike-sharing RFP sometime [later]2011. Commissioner Klein E was not named as a member of nor did he serve on the selection committee. The City released its RFP on September 21, 20XX. He did not play any role with respect evaluating any of the respondents to the RFP, though he was consulted on some technical aspects of the transaction–vendors’ financial models, for example. The City released its RFP on September 21, 2011.

The only issue under the Ordinance arises under §§ 2-156-030(a) and -080(a), which are entitled, respectively, “Improper Influence,” and “Conflicts of Interest; Appearance of Impropriety.” These provisions prohibit a City official or employee (such as E Commissioner Klein), from making or participating in any City governmental decisions or actions in which he or she has an “economic interest.” An economic interest, defined in § 2-156-010, means “any interest valued or capable of valuation in monetary terms [with certain exceptions, which are inapplicable here].” Our Board has recognized that a City employee would have an economic interest in his or her outside employer and outside employment, if the employer owes the employee wages or other compensation. In such a case, the City employee or official would be required to recuse himself from all City matters or decisions affecting his or her outside employment.

We also recognized, in Case No. 04009.A, that a City employee is not precluded from (and would not have a conflict of interest by) participating in or making decisions that would affect his or her pre-City employer, as long as there is no current economic interest, *i.e*. that the former employer is not, at the time of the City employee’s decision, obligated monetarily to the City person, in the form of back wages, benefits owed, etc. In this case, [his] final payment was received prior to the time that work was even begun on the RFP (on which C was the successful respondent). Thus, he had no economic interest in the matter, or in C, at any relevant time during the course of this transaction. See also Case No. 05025.Q (alderman not prohibited from participating in a City decision regarding a company in which he owned common stock, provided that stock represented less than 1% of the company’s outstanding shares).

Moreover, the record we have shows that E Commissioner Klein recused himself from any consideration, evaluation, or selection of any respondent, and had no participation in the process of considering, evaluating or selecting a respondent. In fact, he delegated that function to the [a subordinate] CDOT First Deputy Commissioner.

In Case No. 04009.A, we also addressed whether a City employee might violate his or her fiduciary duty to the City by participating in a decision regarding or affecting a pre-City employer. *See* § 2-156-020. We needn’t address that section here, because the factual record we have before us indicates that E Commissioner Klein did not do this. Even if he had, however, the Board of Ethics has interpreted this fiduciary duty provision to require a City employee to consider whether he or she can, in good faith, put the City’s interests before any personal feelings she may have regarding any particular contractor or RFP respondent, including a pre-City employer. We find nothing in the facts presented that would cause us to conclude that ECommissioner Klein was unable to do this.

For these reasons, it is our conclusion that ECommissioner Klein has not engaged in conduct that violates the City’s Governmental Ethics Ordinance with respect to the selection of C for this RFP.

Staff’s conclusion is based solely on the application of the City’s Governmental Ethics Ordinance to facts presented; other laws, rules, regulations or policies may apply to this situation. If any of the facts in this letter are incomplete or inaccurate, please inform us, as any change could alter the conclusion.

We sincerely appreciate your sensitivity to the standards contained in the Governmental Ethics Ordinance, and willingness to comply with them. Please contact us if you have any further questions.

Yours very truly,

Steven I. Berlin, Executive Director