BOARD OF ETHICS

CITY OF CHICAGO

MEMORANDUM OPINION

To: [xxxxxx]

From: Steve Berlin, Executive Director

Date: April 18, 2012 [REVISED AUGUST 15, 2012]

Re: **Infrastructure Trust Board/Applicability of the Governmental Ethics Ordinance, chapter 2-156, MCC**

On our close reading of the enabling ordinance for the CIT, and of Board case law, it is our opinion that the Infrastructure Trust is, for purposes of chapter 2-156 of the Municipal Code, an agency of the City, and its voting members are, for purposes of the Governmental Ethics Ordinance, appointed officials. Moreover, the Trust Board has the authority to disburse City funds, and thus is not wholly advisory. Hence its voting members would be required to file annual Statements of Financial Interests with the Board of Ethics. They are subject to the Ordinance in the same way that all other appointed City officials are.

Among other provisions to which they are subject—including the City's gift restrictions and conflicts of interest laws, they would be also required to sign the Ethics Pledge required of Mayoral appointees, and would be subject to all of the post-employment restrictions in the Ordinance, including §§ 2-156-105 and -015. For appointed officials, like the future appointees to this Trust's Board, the 2 year lobbying ban is not City-wide, but is limited only to the agency/board commission on which they served, in this case the Infrastructure Trust Board. Thus, someone could resign from this board after serving for a year and immediately lobby, say, the Law Department, Plan Commission, City Council or Mayor's Office. But, he or she would also be subject to the Ordinance's 1 year subject matter ban and the "permanent" contract ban if he/she exercised management authority over City contracts. The 1 year prohibition means that, for 1 year after they leave the Board, they can't work on (even behind the scenes) any deal that involves the same "subject matter" as what they worked on while with the Board. That is, this ban covers not only lobbying, but behind the scenes work too. They can still be paid by their employer for any such work their employer has, but they need to be screened off from such matters. And of course their post-Board employers can have those matters with the Trust, even if they personally would be prohibited from working on them for 1 year.

There are other conflict of interest and representation and gift provisions to which they will be subject. We anticipate that some of these will change later in the year, after the Mayor's Ethics Reform Task Force makes its recommendations, and after the Ordinance is changed to reflect those recommendations. These changes will likely apply to appointed City officials, such as Infrastructure Trust Board members. We also note that any City agency may adopt or enact rules that are more restrictive than those in the Governmental Ethics Ordinance. §2-156-450. Thus, the Board may enact its own rules or bylaws, which may impose tighter conflict of interest or recusal requirements than does the Ordinance.

When recusal is required, we recommend that the recusing Trustee-Board member state the reason, e.g. that they matter of transaction involves his or her employer. Thus: "I am recusing myself from this matter because it involves my employer, [XYZ, Inc.] so as to avoid even the appearance of impropriety. The City's recusal policy states: " (ii) The member must publicly disclose the potential conflict on the record of the public body orally or in writing, and remove herself from the room in which deliberations are taking place during the entire time or deliberations on the matter and while the vote on the matter is being taken..."

As always, my staff and I are available any time to answer questions about the application of the Governmental Ethics Ordinance to this Trust, or to any particular transaction or to the involvement of a Board member in that transaction. All our formal or informal advisory opinions are confidential. We also are available to do training if and when the members deem it appropriate.