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Atlanta Development Authority
Urban Residential Finance Authority
Downtown Development Authority
Atlanta Urban Redevelopment Agency

July 14, 2017

Jabu M. Sengova, Ethics Officer
Atlanta Board of Ethics
68 Mitchell Street, SW
Suite 1100
Atlanta, Georgia 30303

Dear Ms. Sengova:

The Atlanta Development Authority d/b/a/ Invest Atlanta ("Invest Atlanta" or "IA")¹ writes to request that the City of Atlanta Board of Ethics reconsider and rescind Formal Advisory Opinion 2013-1 issued on November 1, 2013. This Advisory Opinion is wrong as a matter of fact and law. Further, the Advisory Opinion is legally deficient because it was issued in contravention of the Ethics Code's requirement that the Ethics Board issue opinions only when requested in writing to do so and there was no written request in this instance. As explained in more detail below, Invest Atlanta therefore respectfully requests that the Ethics Board issue an Advisory Opinion finding that the contract provision governing the use of premium seating at the new Mercedes-Benz Stadium is permitted by the City of Atlanta Ethics Code.

In light of the approach of the opening of the Mercedes-Benz Stadium and use of the stadium for soccer and football games, Invest Atlanta respectfully requests that the Ethics Board expedite consideration of this letter.

Background

Invest Atlanta

Invest Atlanta exists pursuant to the Georgia Development Authorities Law (O.C.G.A. §36-62-1 *et seq.*), and was activated by City Resolution 97-R-0177. The mission of Invest Atlanta is to passionately serve the City of Atlanta and its people by strengthening Atlanta's economy and enhancing its global competitiveness. Invest Atlanta was created for a nonprofit and public purpose.

¹ By submitting this request for an Advisory Opinion, Invest Atlanta does not consent to or waive any rights regarding the authority and composition of the Ethics Board.

Through progressive leadership and strategic thinking, Invest Atlanta attracts and sustains investment in the City to create increased opportunity and prosperity for all residents. Since 2010, IA has attracted 17 headquarters relocations and expansions, totaling capital investment of over \$660 Million, including: NCR, Pulte Homes, Equifax, Porsche, Athena Health, Carter's, and Mail Chimp. IA's efforts contributed to the creation of more than 33,000 jobs and generated more than \$5 Billion in total capital investment. For our residents, IA administers housing programs that have provided 947 new homeowner grants, totaling \$103.9 Million. IA's Neighborhood Revitalization programs have created more than 3,900 multi-family housing units, including more than 2,000 affordable housing units. Thus, IA actively performs the essential public purpose of the development of trade, commerce, industry and employment opportunities at all levels of our operation, including financing the Mercedes-Benz Stadium.

Relationships are essential to success in promoting economic development in Atlanta. Indeed, business deals are discussed or finalized away from business offices, such as at cultural or sports events. For this reason, such venues across the country contain premium seating in which prominent companies and governments host clients and business prospects. These less formal interactions continue to build business relationships and they are sometimes critical to companies' investment decisions, job creation, corporate relocations and ultimately economic development. Therefore, Invest Atlanta has a valid purpose and interest in showcasing one of the City's finest amenities – the new Mercedes-Benz Stadium. Access to premium seating recognizes the importance of relationships to business attraction, expansion and retention, ensuring that the City through Invest Atlanta continues to be competitive on a national and international basis.

Mercedes-Benz Stadium

The City of Atlanta and Invest Atlanta were the integral actors in causing the development and financing of the new Mercedes-Benz Stadium to replace the aging Georgia Dome, and retain the Atlanta Falcons NFL Football Team in downtown Atlanta in 2013. As part of a complex funding structure, Invest Atlanta issued \$224,655,000 in aggregate principal amount of its Revenue Bonds supported by a portion of the City's Hotel/Motel taxes, as authorized by Georgia law. Undertaking a sports facility like the Mercedes-Benz Stadium is an authorized "project" for a development authority when such sports facilities "promote trade, commerce, industry, and employment opportunities by hosting regional, state-wide, or national events." O.C.G.A. §36-62-2(6).

The Relevant Contract Provision

As part of the financing transaction, Section 1.7 of the INVEST ATLANTA RIGHTS AND FUNDING AGREEMENT, dated February 5, 2014, by and between Invest Atlanta, the Georgia World Congress Center Authority, the Atlanta Falcons Stadium Company, LLC and Atlanta Falcons Football Club, LLC, states that "Invest Atlanta will receive premium seating and rights to certain events at the NSP

for use by Invest Atlanta consistent with its statutory economic development mission on terms to be agreed to with StadCo.”²

The Ethics Code Provision Regarding Passes, Tickets, And Gratuities

Section 2-816(a) of the Ethics Code states that:

No contract or lease with the city may require passes, tickets or gratuities to be given to officials or employees or permit reduced fees to be paid by officials or employees. The contracting party shall not provide gratuities or prerequisites to any official or employee in connection with execution of or performance under the contract or lease.

The relevant prohibition in this instance is contained in the first sentence of the Code section. This sentence prohibits a lease from “requiring” passes, tickets, or gratuities. The nature of the first sentence is clarified in the second sentence of the Code section, which clarifies that the prohibition is against gratuities. Gratuities, by definition, are something given for which there was no legal consideration (something given for free).

The Contract Does Not Violate Section 2-816(a)

The contract provision does not violate the City’s Ethics Code because Invest Atlanta provided more than adequate consideration for the seating rights. Invest Atlanta can obtain access to premium seating at the Mercedes-Benz Stadium provided there is legal consideration for the access. That is, Invest Atlanta could not obtain the use of premium seating for free. But that is not the situation with this contract because Invest Atlanta – on behalf of the City – provided significant benefits to the Falcons in exchange for premium seating and other items in the contract.

Invest Atlanta is providing the following commercially useful and financially valuable services in connection with the construction of the Mercedes Benz Stadium:

- Invest Atlanta issued \$224,655,000 in aggregate principal amount of its Revenue Bonds (New Downtown Atlanta Stadium Project), Series 2015 to provide an essential portion of construction financing.
- Invest Atlanta provided capital financing for Westside Works, a long-term neighborhood program focused on creating employment opportunities and job training for residents

² Section 1.7 of Rights and Funding Agreement is identical to Section 11.3 of a Tri-Party Memorandum of Understanding between the parties that was before the Atlanta City Council in 2013.

contiguous to the new stadium, offering training and placement in skilled positions at the Mercedes Benz Stadium.

- Invest Atlanta coordinates the City's contribution of a portion of its Hotel Motel Tax Revenues for O&M expenses of the NSP, including, among other things, refurbishment and maintenance expenses and capital improvements.
- Invest Atlanta and the City actively provide oversight of Equal Business Opportunity ("EBO") Compliance during the multi-year construction period.
- Invest Atlanta evaluates and provides oversight of construction plans and draws on the Construction Fund for the Series 2015 Bonds.
- Invest Atlanta developed and administers the Community Benefits Plan with stakeholder groups for the neighborhoods surrounding the stadium.
- Invest Atlanta manages a \$15 Million Community Improvement Fund from the Westside Tax Allocation District for grants to community organizations and businesses proximate to the stadium, from which more than \$9 Million has been deployed to date, to foster balanced growth and prosperity for all Atlantans.
- Invest Atlanta negotiated a non-relocation agreement between Invest Atlanta, the Atlanta Falcons, and the Georgia World Congress Center Authority obligating the Falcons to play all of its home games for the 30-year term of the bonds. The Falcons cannot seek relocation during the term of the agreement and includes financial penalties sufficient to repay the outstanding bonds issued by Invest Atlanta and certain other economic losses.

These services, among others, were material conditions and valuable consideration to the transaction agreements among all the parties for the bond financing provided by Invest Atlanta. As partial consideration for those services, Invest Atlanta has the right to premium seating to attract new business and investment to the City. Thus, any tickets received with respect to such seating are simply not "gifts."

The prohibition in the Ethics Code is against a situation in which the City would receive passes or tickets for free and with nothing in return for the tickets. This situation is vastly different, however, because Invest Atlanta provided more than \$224 million in funding for the new stadium and, as delineated above, provides numerous benefits to Falcons and surrounding community as part of the contract. The Ethics Code prohibits a contract that **requires** "passes, tickets or gratuities." In this instance, the tickets are in no way required. Instead, the tickets are a material contract term agreed to by all contracting parties (thus not "required" but instead agreed to by the parties) that are

legal consideration for the significant financial investment – detailed above, including more than \$220 million in financing for the stadium – as delineated in the contract.

Mercedes Benz Stadium Seating Provision Is Identical to the Example Provided by the Ethics Office

Should there be any doubt whether the seating provision is permitted under the Ethics Code, the Ethics Office's own website confirms that the seating at issue in this instance is appropriate and permitted. The Ethics Office's website and accompanying explanation confirm that Invest Atlanta is permitted to contract for access to premium seating and also permitted to use tickets, provided they are used for official business. The Ethics Office's website states that:

City officials and employees generally may not accept free tickets to any entertainment or athletic event that is offered because of the individual's position with the City, unless they are performing an official duty at the event. Examples of an official duty are throwing out the first pitch at a baseball game, meeting with officials from other governments, or officially welcoming visitors at a public event on behalf of the City.

Example: The City Attorney may accept tickets from the **Atlanta-Fulton County Recreation Authority** to attend opening day of the baseball season when attorneys representing the state and other local governments will also be present in the **authority's box**. See <http://www.atlantaethics.org/code-of-ethics-4/ethics-issues/gifts-a-gratuities> (emphasis added)

This example is critical to confirming that Invest Atlanta is permitted to contract for the premium seating at the new stadium. The example acknowledges that the Atlanta Fulton County Recreation Authority – a public authority just like Invest Atlanta – is permitted access to a box suite at the baseball stadium. The *only* way that the Recreation Authority would have a box at the stadium, of course, is if there were a contractual provision permitting such a suite. The present situation is identical to the Ethics Office's own example because Invest Atlanta would have access to premium seating at the Mercedes-Benz Stadium just like the Recreation Authority had at the baseball stadium in the Ethics Office's example. There is literally no way that the Ethics Board could distinguish between its own example of an authorized use of a box and the present situation.

Invest Atlanta Is Permitted to Use Tickets to Conduct Official Business or Official Duties

The Ethics Code contains an exemption regarding use of tickets provided the City official or employee is performing an official duty at the event. See City Code Section 2-816(b)(1) ("Any official

or employee who is performing an official duty at an entertainment event shall be exempt from this section with regard to that particular entertainment event.”).

Invest Atlanta is acting within its statutory authority in using such seating and will permit only its officials and staff performing business development and attraction duties in their official capacity to obtain access to such seating. This Agreement is part of the bond documents directly relating to financing the stadium. There is no gratuity in Invest Atlanta having seating rights in the new Mercedes-Benz Stadium.

Invest Atlanta has prepared a rigorous policy to dispense tickets obtained under the Invest Atlanta Rights and Funding Agreement for the exclusive use consistent with Invest Atlanta’s statutory economic development mission on behalf of the City of Atlanta. Such access will be provided only to officials or employees performing an official Business Development or Investment Attraction responsibility (an economic development purpose and thus an official duty) on behalf of Invest Atlanta and consistent with the authority’s statutory mission to create jobs and investment within the City. “Business Development” is the targeted and strategic effort of IA to attract new national and international businesses, expand existing businesses, retain existing businesses, engender the creation of businesses by local entrepreneurs, and foster commercial relationships, within the City. “Investment Attraction” are those strategic efforts by IA to invite commercial, cultural, employment, housing, industrial, retail, or tourism development to the City. Invest Atlanta is committed to transparency regarding use of any tickets and such transparency will ensure that the tickets are used only for a valid economic development purpose.

Formal Advisory Opinion 2013-1 Was Fatally Deficient

Among other reasons, Formal Advisory Opinion 2013-1 is deficient as a matter of law because the opinion does not comply with the Ethics Code’s requirements for issuance of an advisory opinion. City Code §2-804(j) authorizes the Ethics Board to issue advisory opinions regarding “real or hypothetical set of circumstances **when requested in writing**. (emphasis added). The subject Advisory Opinion is invalid because the impetus for the advisory opinion was “an oral inquiry” made during the March 14, 2013 meeting of the City Council’s Council on Committee regarding the contract provision authorizing use of a suite in the new Mercedes Benz Stadium. (See Formal Advisory Opinion 2013-1, “Facts” Section, p.1; “During the March 14, 2013 meeting of the Atlanta City Council’s Committee on Council, the Ethics Office received an **oral inquiry** about a provision of the Tri-Party Memorandum of Understanding for a Successor Facility to the Georgia Dome . . .”). Because the request was oral and there is no evidence that any proper party submitted a written request for an advisory opinion, and the Ethics Code states that an advisory opinion may be issued only when requested in writing, Advisory Opinion 2013-1 is fatal as a matter of law.

Based upon the foregoing, the contract provision regarding access to access to premium seating at the new Mercedes-Benz Stadium complies with the spirit and letter of the Ethics Code.

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Invest Atlanta's rights to seating at the Mercedes-Benz Stadium is not an unethical gratuity or violation of any other provision of the City's Ethics Code. Good and valuable consideration was exchanged for the tickets, as delineated above. The use of such tickets is consistent with Invest Atlanta's statutory mission and public purposes. Finally, such tickets shall be administered in transparent a manner consistent with all applicable ethics provisions and laws.

Should you have any questions regarding this request, please contact Rosalind Rubens Newell, Senior Vice President and General Counsel at (404) 614-8326 or via email at rnewell@investatlanta.com.

Very truly yours,

A handwritten signature in black ink, appearing to read 'EK', with a long horizontal flourish extending to the right.

Dr. Eloisa Klementich, CEcD,
President & Chief Executive Officer