

## CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

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August 5, 2024

Commissioner Laurie Cumbo  
New York City Department of Cultural Affairs  
2 MetroTech Center, 5th Floor  
Brooklyn, New York 11201

Re: Conflicts of Interest Board Case No. 2024-285 (Kendal Henry)

Dear Commissioner Cumbo:

This is in response to your letters to the Conflicts of Interest Board (the "Board"), dated April 17, 2024, and May 20, 2024, as well as subsequent communications between your agency and Board staff, designating, pursuant to Board Rules Section 1-13(e)(1), New York City Department of Cultural Affairs ("DCLA") employee Kendal Henry to use City time and City resources to perform work for the Mellon Foundation. You also request a determination by the Board, pursuant to Board Rules Section 1-13(e)(2), that Mr. Henry may take part in the Foundation's business dealings with the City.

### Relevant Facts

You advise that at DCLA Mr. Henry is Assistant Commissioner of the Public Art Unit. Mr. Henry directs: the Percent for Art Program, which commissions site-specific art for City-funded construction projects as well as privately-funded monuments in public spaces; the Public Artist-in-Residence program, which places artists at City agencies; City Canvas, which allows the installation of temporary visual art on eligible temporary protective structures; and the Artist Certification Program, which issues certifications for working artists to be eligible to reside in certain lofts zoned for manufacturing. He also serves as DCLA's liaison to the New York City Public Design Commission and Art Advisory Committees.

You further advise that the Mellon Foundation is a not-for-profit organization that supports arts and humanities projects across the United States, including by funding grants to cultural organizations operating in the City. The Mellon Foundation's Monuments Project is aimed at ensuring that monuments and memorials have a more complete representation of our nation's history. The Mellon Foundation is a funder of the Lyons Monument, a new monument to be placed in Central Park to honor the Lyons family, whose members owned property in Seneca Village, New York's first free black community, which was condemned and cleared to build Central Park; ran an Underground Railroad station; and co-founded one of the first women's rights and racial

justice groups in the United States. The Mellon Foundation also, as part of the Monuments Project, is convening the Cities Network, a cohort of representatives of nine city governments from across the country to share resources and learn from guest speakers and one another. New York City is not part of the Cities Network cohort.

You advise that you have designated Mr. Henry to serve as a Session Facilitator for the Cities Network. As a Session Facilitator, Mr. Henry would prepare for and moderate four 1½-hour-long videoconference sessions by introducing speakers, facilitating dialogue, and guiding participant questions and discussions. Mr. Henry will decline compensation from the Mellon Foundation for this work.

You further advise that at DCLA Mr. Henry participates in matters involving the Mellon Foundation, including by communicating with the Mellon Foundation about the Lyons Monument and possible funding opportunities for City projects.

By your letters to the Board, you approve of Mr. Henry's work for the Mellon Foundation and seek the Board's approval for his participation in business dealings between the Mellon Foundation and the City.

#### Relevant Law

Charter Section 2604(b)(2), as interpreted in Board Rules Section 1-13, prohibits a public servant's use of City time or City resources for non-City purposes.

Board Rules Section 1-13(e) provides that an agency head may designate a public servant to perform work on behalf of a not-for-profit corporation, association, or other such entity that operates on a not-for-profit basis, including serving as a board member or other position with fiduciary responsibilities, provided that: (i) there is a demonstrated nexus between the proposed activity, the public servant's City job, and the mission of the public servant's agency, and such work furthers the agency's mission and is not undertaken primarily for the benefit or interests of the not-for-profit; (ii) the designated public servant takes no part in the entity's business dealings with the City at the entity or at their agency; and (iii) within 30 days the written designation is disclosed to the Board and will be posted on the Board's website.

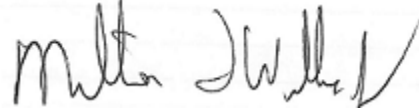
A public servant designated pursuant to Board Rules Section 1-13(e)(1) may take part in the entity's business dealings with the City at the entity and/or at their agency if, after written approval of the agency head, the Board determines that there is a demonstrated nexus between the proposed participation, the public servant's City job, and the mission of the public servant's agency; and that such participation furthers the agency's mission and is not undertaken primarily for the benefit or interests of the not-for-profit entity. See Board Rules Section 1-13(e)(2).

Advice

The Board has determined, based on the above representations and your written approval, that there is a demonstrated nexus between Mr. Henry's work at DCLA, his work for the Mellon Foundation, and the mission of DCLA. While the City is not part of the Cities Network cohort, Mr. Henry has the opportunity to share the City's experiences in dealing with public monuments at a time of major change in the thinking about the function of public monuments and to learn about other cities' experiences involving public monuments. The Board has also determined that Mr. Henry's participation in the business dealings between the City and the Mellon Foundation furthers DCLA's mission. Accordingly, Mr. Henry may use City time and City resources to perform work for the Mellon Foundation as described above and may be involved in business dealings between the Mellon Foundation and the City. See Board Rules Section 1-13(e)(2).

The advice conveyed in this letter is conditioned on the correctness and completeness of the facts supplied to us. If such facts are in any respect incorrect or incomplete, the advice we have given to you may not apply. If at any time you would like further advice based on a change of circumstances or additional information, please contact us.

Very truly yours,



Milton L. Williams Jr.  
Chair

cc: Wayne G. Hawley  
Ifeoma Ike  
Amy E. Millard  
Georgia M. Pestana

Lance A. Polivy  
Kendal Henry