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September 29, 2008

Jorge M. Gonzalez, City Manager
City of Miami Beach
1700 Convention Center Dr.
Miami Beach, FL 33139

Via First Class Mail and Fax at 305.673.7782

Re: **RQO 08-45**, Jorge M. Gonzalez
Ethics Conflicts Related to Hiring Emanuel Mayer as Construction Advisor

Dear Mr. Gonzalez:

The Commission on Ethics & Public Trust considered your request and rendered its opinion at a public meeting held on September 25, 2008.

IN YOUR CORRESPONDENCE OF SEPTEMBER 17, 2008, you stated that the City of Miami Beach wishes to employ Emanuel Mayer to advise you, the City Manager, as well as City Commissioners and senior staff, on capital construction projects. You ask if hiring Emanuel Mayer will present ethics conflicts based on Mr. Mayer's ownership of a private construction company, which he will continue to operate concurrently with his city employment.

THE ETHICS COMMISSION OPINED that Mr. Mayer may accept city employment and continue to operate his construction company simultaneously as long as he abides by several safeguards, listed below.

THE FACTS as we understand them are as follows: Emanuel Mayer, and his brother and business partner, Haskel Mayer, jointly own Mayer Development Group, Inc., a local engineering and construction company. Emanuel Mayer is a licensed Certified General Contractor, and his brother is a licensed Professional Structural Engineer.

The duties of the job offered by City of Miami Beach include that Emanuel Mayer report directly to you, the City Manager, to provide advice on the status of ongoing capital projects. In particular, Emanuel Mayer will monitor the costs and contracts of general contractors and design professionals and will suggest ways to optimize delivering capital projects within the City. You alone, the City Manager, have authority to terminate the employee.

Although Mr. Mayer will regularly interact with contractors, engineers, architects, and other related personnel performing work for the City, he will not have any direct oversight authority over any contract or agreement with any City vendor. Direct oversight of capital improvement projects is the responsibility of the City's Capital

Improvement Projects Office and/or the Public Works Department. Emanuel Mayer will not have any authority over employees in these departments nor over any other City employees.

THE LEGAL ANALYSIS of this matter focuses on the first principles on which all government ethics rules are founded, *i.e.*, that public employees are agents of the people and hold their positions for the benefit of the public; that public office is never to be used for private gain; and that private economic considerations may never override the faithful discharge of public responsibilities.¹ At the same time, governments must attract individuals from the private sector with special knowledge to serve in government positions.

THE ETHICS COMMISSION FOUND that, to avoid any situations that would impede the full and faithful discharge of Emanuel Mayer's duties to the City of Miami Beach, Mr. Mayer must agree to abide by the following provisos for the duration of his employment with the City of Miami Beach:

MEASURES AGREED TO BE UNDERTAKEN

BY EMANUEL MAYER:

- Mayer Development Group, Inc., will not contract with the City of Miami Beach.
- Mayer Development Group, Inc., will not engage in any work within the city limits of the City of Miami Beach.
- Subcontractors of Mayer Development Group, Inc., will not apply for, nor be issued, building permits in the City of Miami Beach *for any projects associated with Mayer Development Group, Inc.*
- Mayer Development Group, Inc., will have no business relationships with any vendors engaged in construction for the City of Miami Beach or reasonably anticipated to engage in construction for the City of Miami Beach, regardless of where the private construction project is expected to take place.
- A list of all Mayer Development Group, Inc., projects, subcontractors, and clients worldwide will be submitted *July 1st of each year* to the City of Miami Beach attorney's office and the Miami-Dade Commission on Ethics for review. The Ethics Commission may assign an investigator to monitor all Mayer Development Group, Inc., projects.
- Mr. Mayer must not use any government resources to conduct business for Mayer Development Group, Inc., and must limit conducting business for Mayer Development Group, Inc., to weeknights and weekends, after government hours only.
- Although Mr. Mayer is not accepting a salary for work he performs for Mayer Development Group, Inc., the Ethics Commission has opined that government employees who are *eligible to receive compensation* for work performed for outside employers are considered to be engaged in outside employment. *See RQO 07-24 and RQO 08-36.*

¹ *See, particularly,* Miami-Dade County Conflict of Interest & Code of Ethics Ordinance at §§ 2-11.1 (d), (g), (h), (j), (k), (n), and (p).

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Therefore, Mr. Mayer must submit a "Request for Outside Employment" statement annually to the City Clerk indicating his supervisors' approval of his outside employment and file an "Outside Employment [Income] Statement" with the City Clerk by July 1st of each year indicating his outside employment income and other related information.

- Since Mr. Mayer will not be available to conduct private business during regular business hours, he must either appoint a current employee or hire an individual capable of handling the day-to-day operations of his private company and provide this person's name to the Commission on Ethics and the City of Miami Beach City Attorney.

If it is determined that Mayer Development Group, Inc., must hire a Certified General Contractor to run its day-to-day operations in order to avoid ethics conflicts, Mr. Mayer will employ a Certified General Contractor and provide the contractor's license number to both the Commission on Ethics and the City of Miami Beach City Attorney. (See RQO 08-29 regarding a city employee with similar outside employment but with different city responsibilities.)

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,



ROBERT MEYERS
Executive Director

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