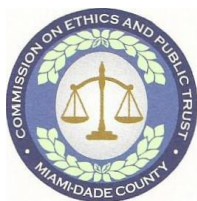


## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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ADVOCATE

August 23, 2022

Jorge E. Corzo, PE  
JorgeCorzoPE@outlook.com

Re: INQ 2022-130, Section 2-11.1(q), Continuing application after municipal service.

Dear Mr. Corzo:

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest between your anticipated private employment and your recent employment with the Town of Medley.

### Facts

You are a former employee of the Town of Medley and you have inquired as to whether any conflict of interest may arise from your anticipated private employment as the owner and operator of a private engineering consulting firm.

You are currently retired, but you are considering becoming self-employed as the owner and operator of a private consulting firm that will likely be named JECPE Consulting ("JECPE"). You advised that you were previously employed full-time as the Town Engineer and Director of Capital Projects and Economic Development for the Town of Medley from 2013 until June 2022. Prior to that, the Town of Medley employed you as an in-house consultant on engineering and capital projects starting in 2012. You retired from your municipal employment in June 2022.

You advised that the positions of Town Engineer and Director of Capital Projects and Economic Development were previously two separate positions that were then combined into one when you were hired into the newly created position. As to the Town Engineer aspects of your work for the Town, your primary responsibilities concerned the public safety and proper operation of the municipal infrastructure assets, such as roads, water mains, and flood maintenance devices. As to the Director of Capital Projects and Economic Development, your primary responsibilities concerned working with private entities interested in investing in the Town to ensure that the Town infrastructure would adequately support the proposed developments, as well as improving existing infrastructure to support long-term economic growth and development in the Town.

With regard to JECPE – your potential future private endeavor – you advised that the services you anticipate offering will primarily be at the conceptual stage, helping to draw up master plans for proposed developments in different South Florida municipalities, particularly with an eye toward the financial and infrastructure needs of the project. You further stated that you would leverage your knowledge and experience to draft due-diligence reports and to aid private developers to assess the potential impacts of their proposed projects on the infrastructure where the projects will be built. You also advised that you may be engaged to evaluate the constructability of projects in relation to right-of-way issues, and work with surveyors and other ancillary services related to right-of-way issues. Finally, you advised that you may have occasion to submit permitting applications to various municipalities for utility-related matters, such as water extension.

In contrast, you advised that you likely will not have occasion to interact with municipal inspectors or code enforcement because that would be the purview of the construction team of any future project, and your services would be focused more in the conceptual and planning stages of proposed developments. You also do not anticipate being the engineer of record during construction of any future projects. Furthermore, neither you nor your potential business JECPE plans to be a vendor providing services directly to the Town of Medley.

#### Issue

Whether there is any prohibited conflict of interest related to the operation of your potential future private endeavor – JECPE – for customers in the Town of Medley.

#### Analysis

The Miami-Dade County Conflict of Interest and Code of Ethics (“County Ethics Code”) Section 2-11.1(q)(1) provides that:

No person who has served as . . . [a municipal]<sup>1</sup> employee shall, for a period of two (2) years after his or her county service or employment has ceased, lobby any county officer, departmental personnel or employee in connection with any . . . application, RFP, RFQ, bid, request for ruling, or other determination, contract . . . or other particular subject matter in which Miami-Dade County or one (1) of its agencies or instrumentalities is a party or has any interest whatever, whether direct or indirect.

This is commonly referred to as the Two-Year Rule. *See* INQ 19-85; INQ 16-78. Under the Two-Year Rule, former municipal employees are prohibited from *lobbying* their former employer for two years after they cease municipal employment. *See* INQ 19-85. The lobbying activities prohibited by the Two-Year Rule are more expansive than those covered by the general lobbying subsection of the County Ethics Code. *See id.*

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<sup>1</sup> *See* County Ethics Code § 2-11.1(a) (stating that the County Ethics Code also applies to and sets a minimum standard of ethical conduct and behavior for employees of municipalities in the County).

As such, **within the two-year period covered by the Two-Year Rule, former municipal employees are prohibited from arranging or participating in any meetings, negotiations, oral presentations, or other discussions directly with municipal officials or staff for the purpose of influencing the municipal elected official, staff, or employee to take any type of official action, decision, or recommendation.** See INQ 16-151 (citing RQO 04-33, RQO 02-139). “[A]ctivities that entail meetings with County staff to discuss . . . requested modifications to plans or permits *may* be considered lobbying, and therefore, deemed impermissible under the [T]wo-[Y]ear [R]ule.” RQO 04-33 (emphasis added). However, interactions that are considered ministerial in nature are permissible and include: “filing/submitting permit applications, confirming receipt of permit applications, obtaining documents, asking a procedural question or requesting information about a permit.” INQ 19-85 (citing RQO 04-33). Additional activities that are not considered lobbying for purposes of the Two-Year Rule include reviewing construction documents for constructability, imparting institutional knowledge regarding a former municipal employer’s procedures, developing and executing a program to encourage public input, and estimating costs, **so long as you have no direct involvement with City officials or staff through face-to-face, telephonic, e-mail, or other communications, regarding negotiating changes for any purpose (including negotiating change orders).** See RQO 12-09; *see also* INQ 22-96.

For example, the former Director of the Office of Capital Improvement Projects for the City of Miami Beach did not violate the Two-Year Rule when he became Vice-President of a limited liability company that was bidding on a City of Miami Beach Request to Quote (“RTQ”) regarding construction services for right-of-way capital improvement projects so long as he did not engage in any lobbying activities with any municipal officials or employees. See RQO 12-09; *see also* RQO 00-08 (former Project Engineer and Project Manager/Consult Liaison for the City of Coral Gables did violate Two-Year Rule so long as she did not lobby City officials). Likewise, a former Construction Manager 3 at the Field Engineering Division of the Miami-Dade County Department of Transportation and Public Works (“DTPW”) did not violate the Two-Year Rule by working as a Senior Engineer for a private transit corporation preparing project designs, design-build analyses, and providing technical support and management oversight, where that private transit corporation was a County vendor, so long as the former County employee did not engage in any lobbying activities with County officials or staff. INQ 17-114; *see also* INQ 11-151 (former County employee who worked as a Head Field Test Engineer for the Miami-Dade County Transit Department was not prohibited from seeking employment with a County vendor so long as he did not lobby the County on behalf of his new employer). Additionally, a former Assistant Director of Wastewater for the Miami-Dade County Water and Sewer Department (“WASD”) did not violate the Two-Year Rule when his new employer, a consulting engineering firm, contracted with the County so long as he did not lobby the County for two years. INQ 15-202; *see also* INQ 13-133 (former WASD employee who owned and operated an engineering consulting corporation did not violate the Two-Year Rule so long as he did not lobby any County officials or personnel).

Here, your situation is analogous to the former municipal and County employees discussed above. As a result, the Two-Year Rule would not prohibit you from forming a corporation and working with prospective clients doing business in the Town of Medley regarding consulting and planning development projects, drawing up master plans, and sharing your knowledge and experience regarding the Town’s processes and procedures, including preparing due-diligence reports, discussing right-of-way issues, and evaluating constructability. See RQO 12-09; INQ 17-114. However, the Two-Year Rule would prohibit you from meeting or communicating with Town of Medley officials or staff to persuade them to take any official action, in particular regarding any

project, Invitation to Bid (“ITB”), Request for Proposal (“RFP”), or Request for Quote (“RFQ”) to which one or more of your clients may be interested in responding. *See* RQO 04-33; INQ 16-151. Nevertheless, some limited types of participation in meetings or presentations related to bidding on ITBs, RFPs, or RTQs is permissible: you may participate in meetings with the Town to discuss the Town’s practices and procedures and matters related to your professional knowledge of the Town and the industry where those meetings are held for informational purposes only and not for the purpose of influencing any decisions or recommendations. *See* RQO 12-09; INQ 17-114. You may respond to questions from Town of Medley selection/evaluation committee members regarding a proposed project if the question calls for technical information only. *See* RQO 12-09. Furthermore, while you may discuss contract terms, conditions, and compensation strategies with your clients, you may not participate in negotiations or other discussions related to these matters directly with Town of Medley officials or staff. *See* RQO 12-09. Finally, you may submit permitting applications to the appropriate Town of Medley officials or staff; however, you may not have any communications with said officials or staff regarding the approval of said applications beyond checking on their status. *See* INQ 19-85.

With regard to any business transactions that you or your prospective clients may have with the County or any municipality *other than the Town of Medley*, the Two-Year Rule would not prohibit or limit such transactions because they are with government entities other than your former employer. *See* INQ 17-181 (citing RQO 14-02; RQO 12-09; INQ 15-202).

### Opinion

Based on the facts presented here and discussed above, the Two-Year Rule does not prohibit you, either individually or through JECPE, from providing to prospective clients operating in the Town of Medley the services that you expect to offer, such as helping to draw up master plans for proposed developments in different South Florida municipalities, leveraging your knowledge and experience to draft due-diligence reports, and aiding private developers to assess the potential impacts of their proposed projects on existing infrastructure. *See* RQO 12-09; INQ 17-114. Furthermore, the Two-Year Rule does not prohibit you from submitting permitting applications to the Town of Medley on behalf of your prospective clients. **However, the Two-Year Rule would prohibit you from engaging in any meetings, negotiations, or other discussions with Town of Medley officials or staff regarding any proposed projects that your clients may have in the Town or permitting applications that you submit on behalf of your clients.** *See* INQ 16-151 (citing RQO 04-33, RQO 02-139). This prohibition includes any meetings, negotiations, presentations, or other discussions that are initiated or requested by Town of Medley officials or staff. *See id.* Any communications that you have with Town of Medley officials or staff regarding pending applications submitted on behalf of your clients **must** be limited to whether such applications were received, and whether they have been approved. *See* INQ 19-85 (citing RQO 04-33).

Additionally, as to your participation on behalf of your clients in ITBs, RFPs, or RTQs issued by the Town of Medley, the Two-Year Rule does not prohibit you from participating in a team that submits a response bid to these types of municipal solicitations. *See* RQO 12-09. **However, the Two-Year Rule would prohibit you from engaging in any meetings, negotiations, or other discussions with Town of Medley officials or staff regarding the solicitations with the following limited exceptions: (1) you may participate in meetings with the Town to discuss the Town’s practices and procedures where those meetings are held for informational**

**purposes only and not for the purpose of influencing any decisions or recommendations; and, (2) you may respond to questions from Town of Medley selection/evaluation committee members regarding a proposed project if the question calls for technical information only.** See RQO 12-09; INQ 17-114.

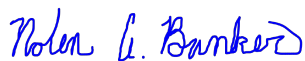
Furthermore, you should be aware of another provision of the County Ethics Code that impacts former employees and confidential information. Specifically, you are prohibited from disclosing and/or using any confidential and/or proprietary information acquired as a result of your past employment with the Town of Medley to derive a personal benefit either to yourself or to your clients. See County Ethics Code § 2-11.1(h); INQ 17-181.

In conclusion, **we emphasize that the County Ethics Code represents a minimal standard of conduct** for those who have served in government and remain subject to the Two-Year Rule. See INQ 17-181. Former employees should carefully consider the totality of the circumstances before taking action that could possibly erode the public's trust. See RQO 12-09; INQ 17-181 (citing INQ 13-197). If you are uncertain whether a specific activity constitutes lobbying, you should seek an opinion from this office prior to engaging in such activity.

This opinion is based on the facts presented. If these facts change, or if there are any further questions, please contact the above-named Staff Attorney.

Other conflicts may apply based on directives from the Town of Medley or under state law. Questions regarding possible conflicts based on Town of Medley directives should be directed to the Town Mayor's Office. For an opinion regarding Florida ethics law, please contact the Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>.

Sincerely,



Nolen Andrew "Drew" Bunker, Esq.  
Staff Attorney

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Commission on Ethics or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.