

**CONFIDENTIAL  
ADVISORY OPINION  
[John Smith]  
Case No. 08059.A  
December 17, 2008**

You were a Mechanical Engineer IV in the Department of [Q] (“Q”), until you left your City employment on xxxx, 2008. You are currently a Senior Mechanical Engineer for XYZ (“XYZ”). On xxxx, 2008, you requested a written advisory opinion from the Board of Ethics (“Board”) addressing how the City’s Governmental Ethics Ordinance (“Ordinance”) would restrict your post-City employment, and, specifically, whether you may work for XYZ on its four City contracts. As discussed in the opinion, the Board has determined that the post-employment provisions of the Ordinance prohibit you, for a period of one year from the date you left City service, that is, until xxxx, 2009, from assisting or representing any person (including your employer, its parents, subsidiaries, affiliates or clients) from personally engaging, or managing others, in the generation, modification or review of engineering contracts, bid materials, contract documents, plans, specifications, drawings or designs for, or managing of, projects in the areas of water or sewer mains or meters, air compressors, heat or water pumps or converters, water sprinklers, pump houses, piping, fire protection or plumbing systems, fans, mechanical ducts or duct flow, or heating, ventilating or air-conditioning systems involving the Department of Q. In addition, the Board has determined that you are permanently prohibited from assisting or representing any person (including your employer, its parents, subsidiaries, affiliates or clients) on the following five City contracts: (a) [Special] Protection for the Remaining Core Area; (b) Change Out of [Facilities]; (c) [Servicing of] Converters and Pumps; (d) [AA] Water Main for [Special Facilities]; and (e) Untitled: [Special Housing]. Moreover, in connection with the following contracts: (i) the Untitled: Contract to "Update Q Design and Construction Standards"; or (ii) Implementation of External [Special] Services; or (iii) [Servicing] of Sanitary Sewers; or (iv) [City Facilities] Update of Design and Construction Standards (but only if specifically incorporated in Untitled: Contract to "Update Q Design and Construction Standards"), the Board cautions that if a contract designated as (i) or (iv) is executed between the City and any person, you will be permanently prohibited from assisting or representing that person (including your employer, its parents, subsidiaries, affiliates or clients) on that contract, and if (ii) or (iii) is so executed you must contact the Board to determine whether you will be permanently prohibited from assisting or representing that person on either contract.

**FACTS: New Employer.** You said that, on xxxx, 2008, you began working for XYZ (“XYZ”), an engineering firm, as Senior Mechanical Engineer. You gave examples of what you expect to work on: most generally, you said you would be involved in diverse construction projects, including City contracts. Your example was a client desiring to increase its building’s plumbing system, requiring plans or specifications that you would generate, or perhaps cause others to so do. The plans (engineering plans or drawings) would show, among other things, graphical and electrical work

representations, measurement of linear feet of pipe, fittings, and toilets. The drawings would arise from, and be modified by, meetings between the client and several others, including you from XYZ, developing a Statement (or Scope) of Work (“SOW”). At the meetings, your responsibilities would include defining an end-point for the project and identifying the “bigger picture” of a construction project, including various construction caveats. If the plans were accepted by the client after negotiation arising from meetings and the initial plans, then the client and XYZ would sign a Professional Engineering Services Contract (“Engineering Contract”). You described engineering plans you would generate as comprising mechanical systems; operational disruption containment facts; routing and identification of different locations of underground pipe routes or suspended piping within a facility; architectural plans for a washroom; floor drains, water heaters, toilets; and general plumbing notes. You said that the specifications you would produce are similar to drawings, containing, however, more content: (i) signature documents indicating such things as payments; (ii) general legal conditions; and (iii) categories of standard specifications for this type of construction project. You also said you would possibly manage a CAD operator or engineers, as well as cost estimators on certain projects. You said that generally you would be managing people at XYZ who would be producing the above-described plans and specifications. You said that, after the meeting, you would follow-up, providing meeting minutes; clarifying any issues for the plumbing project client and XYZ’s project manager, including you; and developing the construction-related contract that the contractor would use to determine its bid to the client. Further explaining, you said that, if XYZ requested, you would work in detail with XYZ engineers, CAD operators, or cost estimators on various tasks relative to development of the construction-related contract, *e.g.*, performing tests on systems or hiring testing firms to test wall thickness for the pipe, and managing, or act as, an engineer to interpret testing results. You said that, typically, after the Engineering Contract would be finalized, you would update information and supervise CAD operators so they could justify your decisions as to what finally would be placed in the XYZ drawings and accompanying specifications, or help the XYZ project manager, if you were assigned solely to work on one discipline with which you were conversant; you would send documents to the client; and follow-up on design sign-off by the client and XYZ. Then, the client would begin its procedure to obtain a contractor through a construction contract.

You explained that after the Engineering Contract, the interested contractors would be invited by the client to “walk” the construction site. You would be involved as an engineer to answer questions, respond to their documents and disseminate XYZ documents to contractors. The contractors would prepare to make their bids to the client; you would not be involved answering contractor questions at this juncture, unless your name would be on the plans or specifications; and finally the contractors would make their bids and estimates and submit them to the client. Then the client would award the construction contract to the contractor. Between award and ground break (the project’s beginning), you might be involved in issues about special piping and accessories underground, if any, and so work with a civil engineer in XYZ, and XYZ would have to approve any new product data for proposed pipes to be placed underground; you would attend pre-construction meetings, answering more specific questions; and you would visit a manufacturing site for any particular electrical or mechanical plumbing equipment or processes involving fixtures, writing a report, if the client so desired. You said that XYZ’s client’s construction company would typically be able to break ground after it had a fully executed Design and Build Contract (“Contractor Contract”) between itself and XYZ’s client. You also advised staff that XYZ’s client might retain a separate construction contract administrator. Upon request regarding a non-

technical issue, you might meet with the contractor, client or administrator, explain their questions about, or problems with, the documents you or XYZ produced for the plumbing project, and how the contractor would have to perform under said documents. However, if the question was technical, then you would continue to properly direct the contractor in accordance with the intent of the design, *e.g.*, review and approve materials to be installed, and have meetings that were more specific and ensure proper questions were answered (directly or indirectly) by XYZ's design engineer. You said these technical meetings, to which XYZ must respond, are called a Request for Information ("RFI"). Further, you said you would be invited by client, contractor or administrator to spot-check, as work progressed, against plans and specifications, so that you could suggest modifications arising from any problems. XYZ would then supplement its documents for the contractor with sketches, and to help with any future RFI; you would draft these sketches. Moreover, you would be involved in testing installed product; upon the approach of completion of the piping-contract scope of the plumbing project, you might appear at walk-throughs (or at any phase of the whole project) and disclose issues to correct, if construction were not in accord with plans, and, further, work on the punch list, including how monies were to be paid based upon the punch list, and a payment schedule, such as providing a retainage. You said your main input in this part of the project would be explaining why there should be a re-test of an installation; or, in a technical area in the bid contract, you would identify the documents you created to which the contractor did not adhere respecting various materials. These documents would include XYZ-approved contractor's responses, and field inspection comments, causing mark-ups that in total would create the final "record" plans and specifications. Also, you said you would review the as-builts (plans produced after some or all of the construction work has been accomplished) to ensure that before, during and after actual construction, the as-builts continued correct, as they would especially be your responsibility (as part of the record plans and specifications). After the punch list would be developed, you said you may be involved in its resolution.

You described the group you are to join at XYZ, comprising engineers, a cost estimator, a computer-aided designer, support staff, *e.g.*, accounting, and you. In describing the work you would do in your XYZ group (referring to your earlier example), you said you would do what you have been doing in your current City position, *i.e.*, ensure different contract documents contain all elements, *e.g.*, exhausts, toilet rooms, fire protection features, electrical conduit, various motors, finishes, concrete, painting; all standards (public, or private, namely, from the client) to use to start the project; and compiling information for the client that is specific to that client and to that project (helping to provide the project's end-point). You said that, in addition, you would manage generating and compiling all documents, such as the SOW, to prepare a submission to the client, with engineers and the support staff doing the actual work; however, you said that you would determine if the client's standards were still good or not, as well as determining whether a materials' upgrade was needed, efficacy of toilet controls, any new necessary technology, and to ensure that all your research would be part of the submission to the client. You said that in your XYZ job you would also serve as consultant to XYZ, based upon your engineering knowledge; awareness of City methods that involve engineering in case there are City contracts or in a case where you could use your City knowledge with some other public authority, including the understanding and interpretation of codes; quality checks of engineering documents that would arise from the Engineering Contract; reviewing construction and other relevant codes in public work, ensuring that there occurred a fair advertised bid and award as to the content appearing in the plans between XYZ and the City or other public authority; be the contact on a regular basis with

and for the client for all sorts of issues on a construction project; and aid any project manager the client would retain to manage the contractor.

City Work. You began working at Q in 1993 and terminated your City service on xxxx, 2008. However, from xxxx 19xx through xxxx 19xx, you had been with the City's [P] Division, supervising 3 engineering technicians in developing engineering plans and performing general engineering work. Accordingly, virtually your entire City career has been at Q. You said that, after several years at Q, you became a Mechanical Engineer IV in xxxx 19xx. You said that your engineering work at that title involved projects based upon contracts that arose from bids sent to Q by contractors in response to (typically) the project advertisement. You either generated yourself or managed the generation of contract bid documentation, *e.g.*, engineering plans, specifications. You gave several examples. You began by describing a contract for 200 water meters to be replaced at [City facility]. Your involvement included inspecting the [facility]'s water meters to identify types, sizes, and locations; researching manufacturers for Q to place their names and product information in its bid documents; using CAD to develop bid drawings; working with contractors at pre-bid and pre-construction meetings during which you asked and answered questions, pointing out items in the engineering plans you had generated; ensuring, after meter replacement, that they were properly identified and tagged, and that the new data collection equipment worked properly; and, if it performed correctly, signing off on this job.

In a second example, you said you produced documents to enable the replacement/installation of a fire pump for the new [facility] tower as well as sprinkling for the work area for those people, working with Q Operations, to work on a portion of the old [facility]. You described your activities as similar to those regarding the water meters, using a CAD system to graphically show to those responsible for installation or replacement: (i) the fire protection pipe routing and source of water, location of the pump, and types of accessories to the pump; and (ii) as to the sprinklers, those drawings were developed by an outside firm and you reviewed to ensure there were proper sprinkler heads and sprinkling. You said you also ensured the project adhered to City building codes for the pipes and sprinkler heads. Then, third, you said you performed the investigation and development of drawings for in-house design work implementing a City project to ensure occupant comfort and equipment care in portions of the [facility], including the heat, ventilation and air conditioning ("HVAC") duct design, fans, rejection of heat from equipment rooms or to cool rooms; lighting work design; and ensuring the [facility occupants] correctly place equipment regarding chilled water for cooling.

Fourth, you stated you made recommendations on vibration and sound issues caused by mechanical equipment noise, so the [facility occupant] would not be inconvenienced; identified a "fix" with your supervisor after you did your field investigation - installing an inertia pad on or under a variable speed pump - which was the cause of the higher vibration and sound (thus deadening that effect); you give an [occupant] a copy of your recommendations; you implemented the "fix" with Q people in its Facilities Group; and you were on site if there were questions, with some simple drawings you had made, and catalog "cuts" of information that manufacturers published. Then, fifth, you said you performed [facility occupant] review work. If a[n occupant] were to perform a build-out, you would ensure materials used would conform to [facility] standards and to applicable building codes; you reviewed [occupant]'s plans and incorporated all your comments into the plans, and approved the building work; and, if a[n occupant] were performing property upgrades, you would re-review the plans

and work during the course of the project, though sometimes the plans and the work done would be reviewed by another; and you would attend meetings to coordinate any problems, *e.g.*, smoke ejection, security.

Sixth, you said you participated in an “overall job” that you titled: “[Special] Protection of Remaining Core Areas.” You advised staff that [City facilities]’s areas must be sprinkled, including [specially]-designated areas and diverse parking areas (involving hoses, which, in the garage, have 50 valves and cover two [xxxx] square feet). You stated that you managed this sprinkling project. You said you coordinated the “stakeholders”: [A] Department, various [occupants], Q and Q’s Facilities Group, contractors and their subcontractors (including special concerns about many electrical issues), and including both the “controls” company (relating to the “tie” of the existing [facility] fire alarm control panels to the new work) and the parking garage manager. For example, you said you used an outside company to identify necessary basement work that involved attaching support hangers for pipes and fireproofing materials above the drop ceiling and, further, you supervised performance of environmental and remediation work. You said you were involved prior to “kickoff” of the project in reviewing a study done by a consultant; identifying some sub-projects and weak links in the project, and meeting both with your colleagues as to the scope and with [occupant] representatives. Because of these latter meetings, you were involved in determining certain temporary designs to be used in the work because of other concomitant renovations. In addition, you asked the A Department to review such temporary work designs.

Moreover, you said that, the first part of your assignment for this job was to confirm that [facility] operations people knew just what maintenance to do. You said that, second, and of import, you confirmed that signals properly worked between equipment in a fire zone and the monitor room, and you stated that, as Q was concerned with false alarms, you were involved with assessing the electronic response from Q signaling you that the warning system not fully activated. You said that you would correct that or similar problems. During the project, you said you were working with the construction managers (who, you said, “come and go”) in managing the installation of the equipment and other facilities in the contract scope to complete the project. You accomplished this through communication in emergency situations or special hours of construction; weekly meetings; and communication by any and all means at all hours based upon problems with, *e.g.*, security credentials, permitting, as well as a wide range of questions whether or not technical, (but if an RFI, you would perform a technical review of each installed product, size of pipes, and size and location of sprinklers, meaning looking at the drawings, including sprinkler heads, valves and compressors and ensuring there were no possible freeze-ups when water was put into the pipes). You said you reviewed product before and after it was installed, including involving yourself in some actual tests, but mostly performing a “paper-review” analysis, so that there would be the right pressure in the product to supply water for firefighters. In addition, you as an engineer would divide the work area into zones, and perform an analysis of costs prior to kickoff of the project, including project planning, and giving [occupants] their budgets and the City’s budget, contract scope, justifications for the scope, and persons involved in the work. Also, there were separate portions of planning and you participated more at the end of that portion of the planning process.

Seventh, you said you worked on an elevator project, that you described as your managing of the “change out” in capital improvements of original [facilities] at elevated parking areas, [other areas] and [ancillary areas]. You stated that you were involved in 4 or 5 related projects from 2001 to 2006, including dealing with equipment issues. You said that sometimes you were limited to technical issues, *e.g.*, rooms for “cool” equipment involving ejector pumps and so your input comments were based upon and influenced certain documentation, specifically shop drawings given to others who were managing the project; eventually, you stated, you attended more meetings and became a project manager on this initiative, *e.g.*, managing contracts dedicated to the project, *i.e.*, Equipment Modernization Program (“EMP”) – [Facilities], and assisting construction managers in different sections of the EMP; and sometimes you would approve the time construction managers spent on the project, supervising the procedure for both their work and time spent. You went on to state that you were also involved in activities outside your direct discipline and office at Q described above: you learned to produce better punch lists out in the field by riding equipment and, in addition, were on-hand with those who were testing operations, smoothness and functionality of elevators, *etc.*, and safety hazards respecting them. You gave examples of projects that became your jobs and the work you performed on them, though not strictly within the ambit of your normal duties. You first explained the Fire Project: you said that for this project the planning work you did was as a supervisor of CAD drawings for replacing the fire pumps. You gave examples of planning, which focused on costs, scope, budget, taking into account the stake holders such as, the insurance company, [occupants], Q Facilities, outside engineering companies, engineers of Q vendors. You said you went to meetings and generated four alternatives to the plans, implementing two of them so that there are now two new fire pumping facilities: the [R] and the [S] Fire Pump Houses – [City facility] Core Area, serving [diverse facilities]. You said that you and others were “pulling record” drawings (graphics, including system locations, and what the system is: pipe or equipment) at the time you left Q; and, in addition, reviewing many drawings and securing record data to make decisions, once you or others performed the field work to decide (to implement next year), upon two project options, if Q could obtain funding from the [third party]’s funds. The purpose, you explained, was to install two new pump [ housings ] and demolish the old, existing one. You said this project involved a “lot of investigation, drawing reviews, meetings, field surveys,” so the operational people would be able to talk. Moreover, you said that you and others were involved in decisions, which you made, on how to define the scope on this project, and then you would brief others how the project would proceed. Recently you had been identifying public authority codes on water supply, mechanicals, and fire protection issues.

As to briefing others, you stated that your management involved mechanical work to change equipment in a tunnel that takes high-temperature water, at high pressure, and put it into different circuits of piping in the public walls in 11 [City facilities]’ locations. Your project, which you designated, [Facilities] Converters and Pumps, was the project you said you managed in the development of the bid documents (non-RFQ documents presented to interested contractors to use to bid on a City contract after City advertising) so that an accurate and complete bid could be made by a contractor, and the converters and pumps could be installed during the summers of 20xx and 20xx. Currently, you said, the plan was now to replace units with newer and efficient equipment for the [occupants] to save monies through energy savings and to reduce risks of service disruption. You stated that the project “even extended possibly eliminating frozen sprinkle pipes...” [and that] you would develop justifications and planning of this with help in Q, including plans, specifications and drawings.”

Finally, you explained your management of three studies while with Q, titled: (i) [Facility] Sanitary Sewer Study; (ii) Sanitary Sewers of [Facility] Area; and (iii) Implementation of [Facility] Sewers of [Facility] Area, which were to lead to critical infrastructure projects involving large mains. The studies included televising and identification of capacity issues and structural integrity of the sewer system, manholes and piping; you made recommendations including repair (using lining) and sewer cleaning (all to be performed under a contractor's bid). You explained how those you managed needed to be "sensitive" to sewer manholes near [entrances], noting [government] issues, *etc.* You said you would coordinate all over the [City facility] with operations as to both [City] and [occupant], involving [occupants], plumbers, [water concerns], an outside engineering company, manufacturers of lining material, and, on occasion, the City's [B] Department and Department of [C]. You explained, further, that your task was to ensure that the plumbing study would lead to a contract resulting in a plumbing system that operated properly. You added that you also supervised the task order for the outside engineering company that actually produced the bid documents, which were included in the overall contractor documents. You said that, when you reviewed the studies' reports that you managed, you then analyzed cost data and used this data in the planning of the new projects arising from the studies. You said that, as a next step, you were involved in obtaining monies to implement the planned new projects; however, you worked on only the [Facility] Sanitary Sewer Study and resultant project. You obtained money from the [Special] Fund held by Q. You said that, then, you used the same outside engineering company, respecting contractor documents, to do more field work, to provide them to Q construction and operations and to include their notes and requirements. All stake holders (including the Department of D) ("D") above had time to make comments and, with your coordination, reached final decisions and plans. Once the final plans were made, you issued them to D, which has its own technical people looking at them, and who may have issues on Original Equipment Manufacturers ("OEMs"), *etc.* At that juncture, D would then focus on contractor advertisements, which it placed and it was responded to by prospective contractors.

Moreover, you said that generally, depending on the project, you were involved while at Q in pre-bid and pre-construction meetings that included contractors who responded to Q's invitations to bid; you were answering questions leading to, perhaps, modifications or at least confirmations of facts, including those dealing with an "outside" engineer. These answers, including yours, and other limited information (such as scheduling) would be distributed by D to those interested parties who had picked up bid plans from the City. After pre-bid meetings, you said D tabulates the bids and an apparent low bidder identified. D (not you) awards the contract to a contractor. The information on that award would then be presented to Q. You met with the successful construction company's manager and the manager for Q. After such meetings, the contractor would submit data to Q, including outside workers' technical information, like credentials of welders, and security badging credentials. Further, you said, you would manage shop drawing approval processing, which are a type of drawings that included the content of the technical factors in such submissions, *e.g.*, materials, products; and you said you would ensure the timely and accurate contractor submissions to Q, which then go to the engineer of record hired by Q, and also to a Q engineer. You said that, when designated as Project Manager, you resolved the inconsistencies in the initial or modified plans and any subsequent review of them by in-house or outside engineers.

You explained that, in your work from 19xx through 19xx, while a Mechanical Engineer III for Q, you performed in-house engineering work on two major projects (one previously described as part of your work as a Mechanical Engineer IV). On a bid project, similar to that of the previously-described water meter job, you were managing others in replacing compressors ([City facility] air compressors 40Hp controlling air in one of the [facility]'s plants). You said you personally performed generation of simplified bid drawings and specifications; you met with manufacturer vendors and consulted with them (although you were not involved with contract work) to ensure the documents for contractor bids were accurate, including facts about the manufacturer of the compressor product; and you spoke to D so it would have no problems with making the award to the successful general contractor. You said that, in connection with this project, you were involved with inspections and punch lists. You further explained that, as the project went forward, though you followed up on technical issues, you did not manage the contract underlying the project. You said that, for a short time at the beginning of your City of Chicago career, while employed at the Department of P, you were a Mechanical Engineer I and then II, during which you were a developer of specifications on in-house design projects and, respecting certain design drawings, you supervised other in-house engineers to help develop the specifications, *e.g.*, installing a drainage line from the [Special City facility] plant.

You then explained that XYZ was interested in you working on four specific contracts it currently has with the City. You described each and your work on them while with the City. The first contract you titled “[AA] Water Main for [Special Facilities] [system of fuel tanks],” #xxxx, with Q. This is an infrastructure contract in which task orders were sent to your group at Q: Q Design and Construction. You stated that #xxxx (installing a water main) was combined with the second contract, #xxxx (building a pump [housing]). You informed Board staff that each contract had one general contractor. You stated that the work for each contract should be completed by xxxx 20xx. You explained that, while with the City, you performed the same work on each of these contracts, namely, design review. Elaborating, you said that you generally reviewed the plans for the main and for the pump [housing]. You then incorporated into those plans your comments. You said that these plans came from XYZ per its Q contracts. You believed that the plans would be subject to meetings between, among others, XYZ and Q, similar to your earlier description of meetings you envisioned or were told you would attend as a XYZ employee. You did not supervise anyone while doing your City work on these contracts.

You then explained the third XYZ-Q contract and titled it “[City Facilities] Update of Design and Construction Standards” (upon which you commented that it was too early for a contract or project number to be assigned). The contract began October 2008 and, originally, was to be a 7-9 month project. Upon the contract being awarded, you then presided as chair of the kick off/orientation meeting, the only meeting you attended, -between XYZ, Q Facilities and Q Design & Construction. You sent documents to XYZ to help them understand [City Facilities Program] (“CFP”) standards and Q design and construction standards. You advised Board staff that currently XYZ is in a data collection and initial analysis process, and your Q supervisor advised you (while with the City) that you were not the project manager on this initiative. You said that the fourth contract was coupled with the third contract (described above), giving it no title, as it had yet to be awarded (XYZ being one of the candidates). You stated that, while with Q, you were on the committee whose task it was to choose an outside engineering company to update Q design and construction



standards. The committee comprised engineers from Q Design & Construction (your group), and a Contract Expediter with Q. The committee had five criteria focused on issuing the RFQ. You said that the RFQ responses sent to Q from firms were selected by your City supervisor for Q contract consideration, including

XYZ. You explained that your committee ranked, between 1-5 (least to most), qualified candidates, taking into account, among other things, past compliance with minority programs, quality of understanding, and content of, the response to Q's required scope, the formatted response write-up, and understanding of the RFQ requirements. Your committee reviewed these criteria against the responses and independently submitted to your supervisor each committee member's rankings. As to these four contracts, you said you did not author, draft, negotiate, sign, stop payments to XYZ or supervise them, other than as stated above. You did not modify any associated task order nor were you involved in amending them. In addition, you told Board staff that, while in City service, you never attended any judicial or administrative proceedings on behalf of the City or Q on any initiative.

You stated there were several Q contracts or projects on which you were the project manager: (A) [Special] Protection of Remaining Core Areas; (B) [Servicing] of Sanitary Sewers; and (C) [Servicing of] Converters and Pumps. You described each as follows: (A) installation of automatic sprinkler systems in five [City facilities] and basements of parking structures; (B) Televis, and repair of, specific sections of sanitary underground sewer mains; and (C) Replace converters (building heating equipment) with more efficient converters (doing the same for the attendant pumps). You explained the work you performed on each of these contracts or projects, as project manager, included: (A) supervising the engineer in an outside firm that was generating bid contract documents (clarifying the scope of work to present to prospective bidders); ensured the design schedule and design project budget were adhered to; and managed development of the contract with the engineering company; (B) ensuring that the study above "[Special] Protection of Core Area" became the study (described above as (iii)), then the project, "[Servicing of] Sanitary Sewers"; and (C) you, as project manager, worked with outside mechanical operating engineers and with Q confirming the scope of work of the contract, and coordination with other project managers because some items in the scope were removed due to planning reasons; managing the schedule and budget (attending meetings so you could decide or coordinate who was to do construction and/or to keep performance in the proper scope or, alternatively, to rewrite the scope because of issues related to rehabilitation of buildings to ensure pumping efficiency); ensure stakeholders continued to agree with the plans, such as the Chief Operating Engineer at Q, or D; and signing off on invoices for engineering companies that produced the bid documents.

You said that the difference in your Q work and your XYZ work was based upon the City's review style and management in contrast to XYZ where there was more creation of the design. You said that the end result is the same, as to who it was that creates the plans for a project. You stated that, as to your communication with XYZ as part of your Q job, there was communication on technical issues to be understood by Q and XYZ, and you documented those, specifically on XYZ's water main design that you described above. You would provide technical comments and follow up such comments with others, such as on code requirements for plumbing and water distribution. Your communication was by telephone and email. You or XYZ would follow up with necessary questions on your comments or how XYZ incorporated your comments into its design review, or other technical issues. You stated that the skills, experience, and knowledge that you took from the

City to XYZ included the ability to coordinate and interface with a wide variety of professionals; and the proper analysis of applications of, particularly, piping systems, mechanical duct work, duct flow, and analysis for purpose of sizing fans, ducts, pumps, pipes for HVAC systems, mechanicals and plumbing systems, as well as fire protection systems. In addition, you stated that you learned how to generate a “white paper” and how to correspond on complex project issues.

**LAW AND ANALYSIS:** Post-Employment. Section 2-156-100(b), “Post Employment Restrictions,” of the Ordinance states, in relevant part:

No former...employee shall, for a period of one year after the termination of the employee’s...employment, assist or represent any person in any business transaction involving the City or any of its agencies, if the official or employee participated personally and substantially in the subject matter of the transaction during his term of office or employment; provided, that if the...employee exercised contract management authority with respect to a contract this prohibition shall be permanent as to that contract.

Permanent Prohibition: A former City employee is permanently prohibited from assisting or representing any person on a contract if he or she also exercised “contract management authority” over that contract while employed by the City. “Contract management authority,” defined in Section 2-156-010(g):

means personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract, including without limitation the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance.

You advised Board staff that you were the project manager on three City contracts, namely, [Servicing] of Sanitary Sewers (“Cleaning”), [Special] Protection for the Remaining Core Area (“Core Area”) and [Servicing of] Converters and Pumps (“HTW/LTW”). In connection with these contracts, you advised staff (in summary) that, among other things, for Core Area you supervised the outside engineer and for HTW/LTW you worked with Q and an outside engineer to formulate a scope of work. The Board concludes that, on these two contracts, based upon your activities combined with your statement to staff, you exercised contract management authority under the Ordinance. Accordingly, the Board determines that you are permanently prohibited from assisting or representing any person on those contracts.

However, on Cleaning, though you stated you were project manager, you described your activity as “ensuring that the study above ‘[Special] Protection of Core Area’...[became the project] ‘[Servicing of] Sanitary Sewers’ (“Implementation”).” You earlier described the Implementation as a study – upon which you worked – which had transmuted into the Implementation project. And, though you worked on the beginning of that project, *i.e.*, obtaining monies for the project, you stated that, at the time you left City service, the procedural posture of the plans (upon which you worked) for that contract was that “you issued them to Procurement.” Accordingly, the Board determines that, as you were personally but not directly involved in those contracts, you are not permanently prohibited from working on either project. However, the Board cautions you that when Cleaning or Implementation is a contract between the City and

another person, you contact the Board to determine whether you are permanently prohibited from assisting or representing that person on that contract.

In addition, while with Q, you were on a committee that ranked the RFQ responses of various prospective City vendors on an untitled contract upon which XYZ would like you to work, which Board staff has designated Untitled: Contract to "Update Q Design and Construction Standards" ("Standards"). You advised Board staff that you had submitted your rankings to your then-Q supervisor on this project. Further, you said XYZ desires that you work on the related contract "[City Facilities] Update of Design and Construction Standards" ("Update"), upon which you attended the kickoff meeting and sent documents to XYZ respecting construction standards. Accordingly, the Board determines that the Ordinance's permanent post-employment provisions do not apply to your possible work on this contract. Further, though you were personally involved in Update, you were not directly involved in it. Accordingly, the Ordinance's permanent post-employment provisions do not apply to your possible work on Update, as well. However, as you were involved in the formulation of Standards (which you stated is related to Update), the Board cautions you that when Standards is a contract between the City and another person, you will thereafter be permanently prohibited from assisting or representing any person on Standards (or on Update, if Update is incorporated into Standards).

Further, you advised staff that you managed a project in a contract you generally titled Change Out of [Facilities] ("[Facilities]"). In this project you did, among other things, sometimes approve work and time of construction managers. The Board concludes that, on [Facilities], based upon your activities combined with your statement to staff, you exercised contract management authority under the Ordinance. Accordingly, the Board determines that you are permanently prohibited from assisting or representing any person on that contract. Finally, XYZ desires you to work on its City contract "[AA] Water Main for [Special Facilities]" #xxxx ("Water main") and its related contract #xxxx ("Untitled: [Special Housing]"). On these contracts you not only reviewed designs but incorporated your comments in the plans and you stated you believed these contracts would be subject to the same XYZ meeting "review" as you described in reciting your probable tasks with XYZ. The Board concludes that, on Water main and on Untitled: [Special Housing], based upon your activities combined with your statement to staff, you exercised contract management authority under the Ordinance. Accordingly, the Board determines that you are permanently prohibited from assisting or representing any person on either contract.

One-Year Prohibition. Under the first clause of Section 2-156-100(b), you are, as a former City employee, prohibited for one year after leaving City service from assisting or representing any person (including XYZ, its parent, subsidiaries, affiliates or clients) in any business transaction involving the City if you participated personally and substantially in the subject matter of that transaction as a City employee. Accordingly, we first assess whether there are "business transaction(s) involving the City" on which you have been or will be asked to assist XYZ, then their "subject matter(s)," and finally, whether you "participated personally and substantially" in those subject matter(s) during your City employment. You will be prohibited from assisting or representing any person in those transactions for one year, after leaving City employment, if: (i) they involve the City; and (ii) you participated personally and substantially in their subject matter.

Transactions Involving the City. You told Board staff that, most generally, you said you “would be involved in diverse construction projects, including City contracts.” Clearly, any such City contract would be a “business transaction involving the City.”

Subject Matter. In connection with the “subject matter” of your work at your employer, you used the example of a XYZ client that desired to increase its building’s plumbing system, requiring from your employer, among other things, plans or specifications that you would generate, or perhaps cause others to so do. In brief, the plans, drawings or specifications would arise from meetings between the client and others, including you representing XYZ, to develop a Statement (or Scope) of Work (“SOW”), and, at meetings, your responsibilities would include defining an end-point for the project and identifying the “bigger picture” of a construction project, including various construction caveats. Further, you would be involved as an engineer to answer questions from the possible contractors to be retained by XYZ’s client, responding to their documents and disseminating XYZ documents to these contractors. After XYZ’s client had awarded a contract to a contractor, and upon request regarding, for instance, a non-technical issue, you might meet with the contractor, client or the contractor’s administrator, explain their questions about, or problems with, the documents you or XYZ produced for the plumbing project, and how the contractor would have to perform under said documents. Further, you said you would be invited by client, contractor or administrator to spot-check, as work progressed, against plans and specifications, so that you could suggest modifications arising from any problems. You would be prohibited for one year from engaging in work involving the underlying subject matter of a City contract or project, as just summarized through your example, if you were substantially and personally involved in that subject matter while in City service – even if you did not exercise “contract management authority” with respect to that contract.

In describing your City career, virtually all of which, you stated, was at Q, you advised Board staff that your XYZ work would be similar to that in your City position, *i.e.*, ensure different contract documents contain all elements, *e.g.*, exhausts, toilet rooms, fire protection features, electrical conduit, various motors, finishes, concrete, painting; all standards (public, or private, namely, from the client) to use to start the project; and compiling information for the client that is specific to that client and to that project (helping to provide the project’s end-point). More specifically, you enumerated a list of tasks you performed while with the City, represented by your Q activities, including, 200 water meters to be replaced at [City facilities]; replacement/installation of a fire pump for the new [facility] tower as well as sprinkling for the work area for those people, working with Q Operations, to work on a portion of the old [facility]; performed the investigation and development of drawings for in-house design work implementing a City project to ensure occupant comfort and equipment care in portions of the [facility]; reviewed [occupant]’s plans, incorporating your comments, approving work and, if a[n occupant] were performing property upgrades, you would re-review the plans and work during the course of the project; as [City facilities] areas must be sprinkled, including [specially]-designated areas and diverse parking areas (involving hoses, which, in the garage, have 50 valves and cover two [xxxx] square feet), you stated that you managed this sprinkling project; worked on an [facility] project, that you described as your managing of the “change out” in capital improvements of original [facilities] at elevated parking areas, [other areas] and [ancillary areas]; installed two new pump [housing] and demolished the old, existing one; your management involving mechanical work to change equipment in a tunnel that takes high-temperature water, at high pressure, and put it into different

circuits of piping in the public walls in 11 [City facility] locations; management of three construction studies; involvement while at Q in pre-bid and pre-construction meetings; televise, and repair of, specific sections of sanitary underground sewer mains; and replace converters (building heating equipment) with more efficient converters (doing the same for the attendant pumps).

Accordingly, the Board concludes that, in your City tenure, you were “personally and substantially” involved in engineering contracts, bid materials, contract documents, plans, specifications, drawings or designs, and projects involving water or sewer mains or meters, air compressors, heat or water pumps or converters, water sprinklers, pump houses, piping, fire protection or plumbing systems, fans, mechanical ducts or duct flow, or heating, ventilating or air-conditioning systems for Q. Thus, you are prohibited for one year from the date you left City service from assisting or representing XYZ or any person from personally engaging, or managing others, in the generation, modification or review of engineering contracts, bid materials, contract documents, plans, specifications, drawings or designs for, or managing of, projects in the areas of water or sewer mains or meters, air compressors, heat or water pumps or converters, water sprinklers, pump houses, piping, fire protection or plumbing systems, fans, mechanical ducts or duct flow, or heating, ventilating or air-conditioning systems involving Q.

**Other Relevant Ordinance Provision:**

Confidential Information. Section 2-156-070 (Use of Disclosure of Confidential Information. The Board takes this opportunity to remind you of your permanent prohibition from disclosing the City’s confidential information as set forth in Section 2-156-070 of the Ordinance.

**DETERMINATIONS:** Based on the facts presented, the Board determines that the post-employment provisions of the Ordinance prohibit you, for a period of one year from the date you left City service, that is, until xxxx, 20xx, from assisting or representing any person (including your employer, its parents, subsidiaries, affiliates or clients) from personally engaging, or managing others, in the generation, modification or review of engineering contracts, bid materials, contract documents, plans, specifications, drawings or designs for, or managing of, projects in the areas of water or sewer mains or meters, air compressors, heat or water pumps or converters, water sprinklers, pump houses, piping, fire protection or plumbing systems, fans, mechanical ducts or duct flow, or heating, ventilating or air-conditioning systems involving the Department of Q. In addition, the Board has determined that you are permanently prohibited from assisting or representing any person (including your employer, its parents, subsidiaries, affiliates or clients) on the following five City contracts: (a) [Special] Protection for the Remaining Core Area; (b) Change Out of [Facilities]; (c) [Servicing of] Converters and Pumps; (d) [AA] Water Main for [Special Facilities]; and (e) Untitled: [Special Housing]. Moreover, in connection with the following contracts: (i) the Untitled: Contract to "Update Q Design and Construction Standards"; or (ii) Implementation of External [Special] Services; or (iii) [Servicing] of Sanitary Sewers; or (iv) [City Facilities] Update of Design and Construction Standards (but only if specifically incorporated in Untitled: Contract to "Update Q Design and Construction Standards"), the Board cautions that if a contract designated as (i) or (iv) is executed between the City and any person, you will be permanently prohibited from assisting or representing that person (including your employer, its parents, subsidiaries, affiliates or clients) on that contract, and, if (ii) or (iii) is so executed, you

must contact the Board to determine whether you will be permanently prohibited from assisting or representing that person on either contract. Based upon a review of your City career, it is possible that you may be asked by XYZ or another person to represent or assist it in a City contract not set forth in this advisory opinion, but in which you may have personally and substantially been involved while with the City. If so, please communicate with us about such a contingency for further guidance separate from that which is set forth in this advisory opinion.

The Board's determinations do not necessarily dispose of all the issues relevant to your situation, but are based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented are incomplete or incorrect, please notify us immediately, as any change may alter our opinion. Other rules or laws may also apply to your situation. We also note that any City department may adopt restrictions that are more stringent than those imposed by the Governmental Ethics Ordinance.

**RELIANCE:** This opinion may only be relied upon by any person involved in the specific transaction or activity with respect to which this opinion is rendered.

Miguel A. Ruiz

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Chair