**CONFIDENTIAL**

March 2016

Name

**Re: Case No. 16009.Q**

 **Post-Employment**

Dear Ms. XX:

You contacted Board of Ethics [“Board”] staff via email on [date], 2016 to ask whether and how the post-employment or “revolving door” restrictions in the City’s Governmental Ethics Ordinance [“Ethics Ordinance” or “Ordinance”] will restrict you in your post-City position as a consultant in the area of \_\_\_ research at [Health Facility A.] You subsequently emailed our office on March \_\_, in respose to Board staff’s questions, with additional information regarding your former City job and the position you now hold at [Health Facility A].

As explained in this letter, Board staff advises you that the Ethics Ordinance does not prohibit you from working as a consultant at [Health Facility A], but it does impose certain restrictions on your activities. This letter summarizes the relevant facts and these restrictions.

**Facts.**

Your City Job. You explained that you were a [high-ranking employee] with the City’s \_\_\_\_ department from December 2012 until February 1, 2016, your last day of City service. You also said that you first joined City service when hired by [your former City department] as an \_\_\_\_\_\_\_ in 199\_, and also held the titles \_\_\_\_\_ and \_\_\_\_\_ prior to becoming [title].

You explained that, while a [high-ranking employee] with [City department], you were responsible for managing all activities within the department’s \_\_\_\_\_\_ Bureau, including funding decisions, contract awards and RFP releases.

Your [Health Facility A] Job. You told Board staff that you are now working as a Consultant in the area of \_\_\_\_ research at [Health Facility A]. In this position, you conduct, and write grant applications to fund \_\_\_\_ research, and analyze data, write manuscripts, and evaluate ongoing \_\_\_\_ research programs operated by [Health Facility A].

You also said that you began conversations or employment negotiations with [Health Facility A] about the Consultant position you currently hold in early \_\_\_\_\_\_\_ 2015, and that [Health Facility A] did not at that time have any matters pending before you in your [City department] position.

You also stated that, in November and early December 2015, as a [title] in [City department], you reviewed, and provided feedback on content and format, the first couple drafts of an RFP that had been prepared by two (2) staff members of the \_\_\_\_ Bureau. Thereafter, \_\_\_\_ Bureau staff, as well as [your former City department’s] First Deputy and Managing Deputy Commissioners, and the new Deputy Manager for \_\_\_\_\_ Services, took over the responsibility for this RFP. This RFP has not yet been released by [your former City department], but you expect that it will be released in the near future. You also told us that [Health Facility A] will be responding to the RFP once it is released.

**Law and Analysis.**  The primary section of the Ethics Ordinance at issue with respect to your inquiry is §2-156-100, entitled “Post-Employment Restrictions,” specifically subsection (b), which states:

*No former official or employee shall, for a period of one year after termination of the official’s or employee’s term of office or 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 official or employee exercised contract management authority with respect to a contract this prohibition shall be permanent as to that contract.*

Section 2-156-010(g) defines “contract management authority” as follows:

*“Contract management authority” 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.*

By way of plain language explanation, this subsection prohibits you, as a former City employee, from “assisting or representing” any person, such as [Health Facility A], in any business transaction involving the City for one year after the effective termination date of your City service (that is, until February \_\_, 2017), if you “participated personally and substantially in the subject matter of that transaction” while you were a City employee.  It further provides that, if you “exercised contract management authority” with respect to a City contract during your City service, the prohibition shall be permanent as to that contract. The Board has recognized that assisting and representing a person in a business transaction involving the City includes helping the person to seek, as well as perform, a City contract, and also includes rendering advice, negotiating contracts, or preparing or submitting documents to the City on behalf that person.  *See* Case No. 04058.A.

One-Year Prohibition.

Having reviewed the facts you presented about your positions with [your former City department] and at [Health Facility A], we advise you that, for purposes of §2-156-100(b) of the Ordinance, the “subject matter” in which you were “personally and substantially involved” while with the City is the administration and management of [your former City department’s] \_\_\_\_ Bureau, including any funding decisions, contract awards and RFP releases in which that Bureau becomes involved. *See* Case No. 04058.A.

Thus, we conclude that, for one (1) year from the date you leave your City service, that is, until February \_\_, 2017, you are prohibited from assisting or representing [Health Facility A] (or any other person) with respect to grant proposals or any other kind of funding request that would be sent to [City department’s] \_\_\_\_\_\_ Bureau, as well as contracts and Requests for Proposals (RFP’s) or Requests for Qualifications (RFQ’s) that this Bureau would release or award. This would include answering questions about, or discussing or advising your colleagues at [Health Facility A] on, funding, contract and RFP matters involving [your former City department’s] \_\_\_\_\_ Bureau--not only with or to personnel [of your former City department], but also with [Health Facility A] personnel, as well, even “behind-the-scenes.”

Permanent Prohibition.

The Ordinance also prohibits you from assisting or representing any person in any City contract over which you exercised “contract management authority” as defined above.

In this context, we address whether and how the Ordinance might restrict you from assisting [Health Facility A] with respect to the RFP to be issued soon by [your former City department’s] \_\_\_ Bureau, which RFP, you explained, [Health Facility A] will respond to in the next few months. While we note that you are subject to a one-year subject matter ban as to assisting or representing [Health Facility A] in any aspect of responding to or performing any grant agreement or contract that might be awarded pursuant to this RFP, we also address whether you are subject to a “permanent” ban with respect to this RFP—that is, for as long as any such grant agreement or contract lasts. Our analysis turns on whether you exercised “contract management authority” over any such grant agreement or contract that would arise or be awarded from this RFP.

In a prior case, Case No. 94044.A, the Board addressed whether a City employee who had worked on preparing contract specifications had exercised contract management authority over a contract that might eventuate, even though no contract had yet been negotiated at the time he left City service. The Board, noting that the employee was personally involved in the preparation of contract specifications, determined that the employee did exercise contract management authority over any contract that might ensue.

Like the employee above who was personally involved in the formulation of contract specifications, the work you did while at [City department] included personal involvement in, and supervisory responsibility over, the RFP that will be released by the City. Specifically, as you reviewed drafts of the RFP and provided feedback on its content and format, we conclude that you exercised contract management authority over any grant agreement or contract with the City into which [Health Facility A] may enter. Accordingly, then, we advise you that the permanent prohibition in §100(b) will restrict you from representing or assisting [Health Facility A] in applying for funding by means of responding to the RFP in question, as well as working on any work or projects funded through this RFP, were [Health Facility A] to subsequently be awarded a grant agreement or contract from this RFP.

The Board of Ethics has adjudicated a series of cases interpreting the permanent prohibition, finding that this prohibition broadly applies to all aspects of assistance, including even “behind the scenes” or administrative work. Accordingly, we also advise you to ensure that an effective ethical screen is established so that, for the life of the contract, should it be awarded to [Health Facility A], you have no connection with or communications regarding this contract, including, but not limited to: access to any documents; management; discussions; decision-making; and/or input concerning the contract. This restriction does not, of course, prohibit you from communicating or working with [Health Facility A] personnel who work on this contract, as long as that communication or work does not involve this contract, but involves other matters that are not subject to this permanent or the one-year prohibition summarized above.

**Two-Year Lobbying Prohibition**. As a Shakman exempt employee of [City department], you are also subject to a ban on lobbying your [former City department] that lasts for two years after your termination from City service. The applicable Ordinance language is in §2-156-105(b), which states, in relevant part:

An employee who serves in an exempt position in a city department…shall be prohibited from lobbying the department… in which he or she was employed for a period of two years after *that employment ends.*

In effect, this provision prohibits you from meeting with or contacting *any* personnel [of your former City department] regarding *any* matter in which you would be seeking to influence their decisions or actions on behalf of [Health Facility A] (or any other person, for that matter), including but not limited to pursuing a contract or a policy or legal change, and any matters involving contracts that [Health Facility A] may wish to seek with [your former City department.]

Section §2-156-010(p) defines “lobbyist,” in relevant part, as follows:

‘Lobbyist’ means any person who, on behalf of any person other than himself, or as any part of his duties as an employee of another, undertakes to influence any legislative or administrative action, … however a person [will] not be deemed to have undertaken to influence any legislative or administrative action solely by … responding to a City request for proposals or qualifications.

**Confidential Information**.  Finally, Ordinance §2-156-070, “Use or Disclosure of Confidential Information,” permanently prohibits you from using or revealing confidential or non-public information you acquired through your City employment.  “Confidential information,” for purposes of this section, means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

**Penalties for Violating the Ordinance’s Post-employment Provisions**.  Staff reminds you that the penalties for being found to have violated the Ordinance’s post-employment provisions are severe: violators shall be subject to a fine of not less than $500.00 and not more than $2000.00 for each offense, pursuant to Ordinance §2-156-465(b)(7). Further, §2-156-510 of the Ordinance provides that any contract negotiated, entered into, or performed in violation of any provisions of the Ordinance can be voided by the City.  Additionally, any permit, license, ruling, determination or other official action of a City agency applied for or sought, obtained or begun in violation of the Ordinance is invalid.

**Reliance.**  Board staff’s conclusions and advice are based solely on the application of the Ethics Ordinance to the facts summarized in this letter.  If these facts are incorrect or incomplete, please notify our office immediately, as any change may alter our conclusions or advice. Please note, as well, that this opinion may be relied upon by any person involved in the specific transaction or activity with respect to which this opinion is rendered.

Our office appreciates the opportunity to advise you. If you have further questions about this, or any other matter, please contact me.

Sincerely,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Lisa Eilers, Deputy Director

Approved by:

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Steven Berlin, Executive Director