**CONFIDENTIAL**

January \_\_, 2016

Mr. \_\_\_\_\_\_\_\_\_

City Department

**Re: Case No. 16001.Q / Post-Employment**

Dear Mr. \_\_\_\_\_\_\_:

You contacted Board of Ethics [“Board”] staff via email on January \_\_, 2016 to ask whether and how the Governmental Ethics Ordinance [“Ethics Ordinance” or “Ordinance”] will restrict you in your imminent post-City position as the Financial Controller for [Company A].[[1]](#footnote-1) You subsequently emailed our office a proposed job description, as well as a brief summary of your responsibilities in your City position. Then, on January \_\_, Board staff spoke with you by telephone to learn more about your current position with the City and the job you anticipate taking at [Company A] upon leaving City service.

As explained in this letter, Board staff advises you that the Ethics Ordinance does not prohibit you from accepting this position with [Company A], but we caution you that 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 have served in your current position \*\*\* for [your City department] since 2006. You told Board staff that you first joined City service when hired by your [City department] in \_\_\_\_\_ 1999, and served in that position until \_\_\_\_\_ 2000. You said that, in this position, you managed Accounts Payable Operations and the Maintenance budget for [your City department].

You also said that from \_\_\_\_\_ 2001 until \_\_\_\_\_ 2006, you served as \_\_\_\_\_\_\_\_\_\_ and that, in this position, your job responsibilities remained unchanged from the Financial Analyst position.

You explained that, in your current position as \_\_\_\_\_\_\_ for [your City Department], you are responsible for processing and forwarding vendor invoices to the City Comptroller’s Office for payment. You said that these invoices are first approved for payment by the user section within [your City department] that supervises and oversees the particular vendor’s contract, and that, ultimately, an invoice routing slip is sent to you, but that you do not perform any review of the underlying invoices or any due diligence or investigation into whether the vendor provided the services invoiced or question the user section that approved payment.

In the case of [Company A], its contract falls under the purview of the \_\_\_\_\_\_ Section of your [City department]. Accordingly, when [Company A] presents an invoice to your City department for payment, both the Managing Deputy Director for [departmental section] and that section’s Project Manager for [Company A’s] contract sign off on an invoice routing slip to indicate that they have reviewed the invoice and authorized payment of the invoice. The invoice next goes to [your City department’s] auditing section for review. You explained that, after the auditing section does its work, you receive the invoice and a routing slip following the invoice’s review by an auditor, then check to make certain that all signatures that are to precede yours have been affixed to the routing slip, and if so, sign the routing slip to indicate that a [City department] Accounting Tech should create an invoice receipt and send it to the City Comptroller for payment. You told us that your signature is ministerial in nature and does not represent approval or authorization of any kind with respect to the invoice that has been presented for payment.

The [Company A] Job. You explained that the Financial Controller of [Company A], the position you are considering, is primarily responsible for “maximiz[ing] return on [the company’s] financial assets by establishing financial policies, procedures, controls and reporting systems.”

You told us that you first interviewed for this position with [Company A] on January\_\_, 2016. Thereafter, you had discussions with [Company A] management about the prospective job and were then offered the position of Financial Controller with the company. You said that you would like to start the job with [Company A] on February\_\_, 2016. You also told us that no [Company A] invoices have come before you since the time you interviewed for the position with the company. Board staff advised you that, pursuant to the Ordinance,[[2]](#footnote-2) should a [Company A] invoice come before you while you are still serving as the \_\_\_\_\_\_\_ for [your City department], you must delegate the signing of the routing slip to someone else in [your City department].

**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 would prohibit you, as a former City employee, from “assisting or representing” any person, such as [Company A], in any business transaction involving the City for one year after the effective termination date of your City service, 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.

 We advise you that for purposes of §2-156-100(b) of the Ordinance, and based upon the facts presented, the “subject matter” in which you were “personally and substantially involved” is the system by and through which [your City department] processes and approves for payment its vendors’ or consultants’ invoices. *See Case No. 04058.A.*  Thus, we conclude that, for one year from the date you leave your City service, you will be prohibited from assisting or representing [Company A] (or any other person) with respect to getting its invoices processed or paid by [your City department]. This would include answering questions about, or discussing or advising on, general invoice processing or on specific invoices, not only with or to personnel at [your City department], but also with [Company A] personnel, as well, even “behind-the-scenes.”

Permanent Prohibition.

You further stated that, as a City employee, you had no involvement in any aspect of the award or negotiation of [Company A’s] contract with the City. You also stated that, as a City employee, you were not responsible for supervising any aspect of [Company A’s] contract with the City, nor did you play any role in authorizing payment to them. Based upon the facts presented, and our review of your job responsibilities, Board staff concludes that you have not exercised contract management authority over [Company A’s] contract with [your City department], and we advise you that the permanent prohibition in §100(b) would not restrict you in your anticipated job duties as the Financial Controller for [Company A].[[3]](#footnote-3)

**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:

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

Steven Berlin, Executive Director

1. You have told us, and Board staff have verified, via the City’s website, that [Company A has one current contract with your City department.]

   You told us that you have had no involvement with any aspect [Company A’s] contract with [your City Department] at any time while a City employee. Further, you said you have never been involved in any aspect of the award, negotiation or formulation of [Company A’s] contract with the City. Moreover, you advised us that you do not supervise the contract nor do any City work in the contract’s performance. [↑](#footnote-ref-1)
2. Our advice is based on §2-156-111(c) of the Ordinance, which provides “no employee … shall knowingly negotiate the possibility of future employment with any person … that has a matter currently pending before such employee…” [↑](#footnote-ref-2)
3. We further advise you to contact us if your post-employment plans change. [↑](#footnote-ref-3)