**CONFIDENTIAL**

June \_\_, 2016

Name

Address

Chicago, IL 606\_\_

**Re: Case No. 16021.Q / Post-Employment**

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

You contacted Board of Ethics [“Board”] staff via email on June \_\_, 2016 to ask whether and how the Governmental Ethics Ordinance [“Ethics Ordinance” or “Ordinance”] would restrict you were you to leave your City job and take a position with COMPANY A. You subsequently provided our office with your resume, as well more detailed information regarding your responsibilities in your City position and the projects on which you have worked. This letter will explain the restrictions to which you would be subject should you accept this position with COMPANY A.

**Facts.**

Your City Job.

You explained that you have served in your current position, TITLE, for the City’s Department of \_\_\_\_\_\_\_\_\_\_ at YOUR JOB SITE since 201\_. Prior to that, from the time you were hired by the City in 198\_, you held various positions at YOUR JOB SITE, all of them involving THE SUBJECT MATTER OF YOUR WORK, INCLUDING CONSTRUCTION OVERSIGHT ON BEHALF OF YOUR CITY DEPARTMENT. You further explained that, in your current position at CITY DEPARTMENT, you are responsible for LIST OF JOB RESPOSIBILITIES AND DUTIES. Your resume states that you \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

When asked to provide a list of the construction projects on which you have worked that are supervised by COMPANY A, you provided the following:

* DESCRIPTION OF PROJECT (Project # \_\_\_\_\_\_\_\_ )
* DESCRIPTION OF PROJECT (Project # \_\_\_\_\_\_\_\_ )
* DESCRIPTION OF PROJECT (Project #\_\_\_\_\_\_\_\_\_)
* DESCRIPTION OF PROJECT (Projects #s \_\_\_\_\_\_\_)
* DESCRIPTION OF PROJECT (Project # \_\_\_\_\_\_\_\_ )
* DESCRIPTION OF PROJECT (Project # \_\_\_\_\_\_\_\_)
* DESCRIPTION OF PROJECT (Project # \_\_\_\_\_\_\_\_ )
* DESCRIPTION OF PROJECT (Project # \_\_\_\_\_\_\_\_ )
* DESCRIPTION OF PROJECT (PRELIM PROJECT, under design)

You stated that you have been involved in PARTICULAR JOB RESPONSIBILITY for all of the SUBJECT MATTER projects at YOUR JOB SITE. You told us that “these projects have been funded and are waiting to go out to bid, waiting for award or are already under construction.”  Your told us that your work included preparation of contract specifications and assistance with the drafting of RFPs and RFQs. You also stated that you “have been involved on the city side on most major construction projects at YOUR CITY JOB SITE,” and that you have no involvement in any construction projects at A SEPARATE JOB SITE THAT IS PART OF YOUR CITY DEPARTMENT.

The COMPANY A Job.

COMPANY A, a Chicago based LLC, provides SUBJECT MATTER services. DESCRIPTION OF COMPANY A.

You do not currently have an employment offer from COMPANY A, but said that the company has told you that, were you to be hired, your position would be as a project manager or an inspector for construction projects at YOUR FORMER JOB SITE.

**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, there are two (2) relevant prohibitions to which you will be subject. First, 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.  Second, if you “exercised contract management authority” with respect to a City contract during your City service, you will be permanently prohibited from assisting or representing any person, such as COMPANY A, 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 are and have been “personally and substantially involved” is the design and supervision of all SUBJECT MATTER projects at YOUR CITY JOB SITE. *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 any SUBJECT MATTER work at YOUR CITY JOB SITE. This would include answering questions about, or discussing or advising on, any such projects (including the ones specifically listed above), whether they would be ongoing or newly conceived or let during your first year of post-City employment, not only with or to YOUR CITY DEPARTMENT personnel, but also with COMPANY A personnel, “even behind the scenes.” This restriction does not extend to non-SUBJECT MATTER projects at YOUR CITY JOB SITE; accordingly, you would be able to work for COMPANY A as a project manager or inspector on projects that in no way involve SUBJECT MATTER-related work.

Permanent Prohibition.

As COMPANY A provides SUBJECT MATTER services for several CITY DEPARTMENT projects on which you were directly involved, with the possibility of there being more in the future, and as you have been directly involved in the preparation of contract specifications, review of RFPs and RFQs and supervision of these projects, we conclude that you exercised contract management authority over the contracts listed in the fact section above. *See* Case Nos. 93032.A, 14023.A and 04058.A. Further, with respect to any projects on which you have worked that have not yet gone out to bid or are awaiting award, we conclude, consistent with Board precedent, that you similarly exercised contract management authority over these future projects. *See* Case Nos. 94044.A and 16009.Q (working on contract specifications and reviewing RFPs and RFQs both constitute “contract management authority.”) The Board of Ethics has issued a series of cases and advisory opinions interpreting this permanent prohibition, finding that it applies broadly, to all aspects of assistance, including even “behind the scenes” or administrative work.

Thus, we advise you that §2-156-100(b) of the Ordinance prohibits you from assisting or representing COMPANY A (or any other person) on *these* existing contracts until they expire, as well as on any contract for which COMPANY A provides construction management services in the future, *if* you worked drafted scopes of services or the contract specifications and/or reviewed the relevant RFPs or RFQs while with CITY DEPARTMENT. You did explain that you have not evaluated COMPANY A’S performance, nor have you been involved in any way with reviewing vouchers/invoices or signing off on paperwork that would approve payment to COMPANY A or enable it to be paid. Thus, we conclude that you have not had or exercised contract management authority with respect to COMPANY A’S CITY DEPARTMENT contracts. However, COMPANY A’S contract requires it to manage or supervise contracts and projects between CITY DEPARTMENT and other vendors. As you exercised management authority with respect to the underlying contracts listed above, you are prohibited from assisting or representing COMPANY A in its work supervising these vendors’ performance under them.

Accordingly, we advise you, should take this position with COMPANY A, to work with COMPANY A’S legal and human resources staff to ensure that an effective ethical screen is established so that, for the life of the existing contracts discussed herein, as well as contracts that may eventuate from work you have done on contract specifications and or RFQs and RFPs, should the projects be managed by COMPANY 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.

**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 S. Eilers

Deputy Director

Approved:

Steven I. Berlin

Executive Director