



**BOARD OF ETHICS  
CITY OF CHICAGO**

In the Matter of: )  
)  
Thomas Wagner ) Case No. 19029.IG  
Respondent )  
)  
)

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is made and entered into between the Chicago Board of Ethics (“Board”) and Thomas Wagner (“Respondent”), a former City employee, pursuant to §2-156-385(4) of the City of Chicago Governmental Ethics Ordinance (“Ordinance”). On July 13, 2020, the Board sustained its October 18, 2019 probable cause finding, based on all the available evidence at this stage in the proceeding, including the results of an investigation conducted by the Office of the Inspector General (“OIG”) and information provided to the Board by the Respondent and his counsel, that the Respondent violated several provisions of the Ordinance, but due to the mitigating factors raised, the Board voted to reduce Respondent’s fines to the minimum amount for each such violation.

The parties agree to the following terms to resolve this matter.

**RECITATION OF RELEVANT FACTS**

- (1) Respondent was an employee of the City of Chicago. Respondent began working for the Chicago Department of Fire (“CFD”) on or about February 19, 1980. On December 16, 2000, he was promoted to Lieutenant. In late 2014, Respondent applied for and received authority to receive an early retirement package from the City of Chicago. Pursuant to the terms of the early retirement package, Respondent retired from his City employment on or about November 17, 2015.
- (2) In 1996, CFD assigned Respondent to the position of Fire Training Specialist at Chicago O’Hare International Airport (“O’Hare”). As the Fire Training Specialist at O’Hare, Respondent oversaw and operated the existing Specialized Aircraft Fire Simulator (“Small Simulator”) facility used to train firefighters, and he provided tours of the facility.
- (3) Respondent helped to draft a Request for Proposals (“RFP”), as requested by CFD for its desire for a Large Frame Aircraft Fire Training Simulator (“Large Simulator”), the drafting of which began sometime in early 2015 and ended in early December 2017. Respondent also answered questions and provided information, while still employed with the City and after his retirement, when asked by those who were also working to finalize the Request for Proposal for the Large Simulator.

- (4) While employed with the CFD, Respondent knew that Simulation Live Fire Training Solutions (“Simulation”) was one of the companies that expressed interest in bidding on the contract for the Large Simulator.
- (5) Respondent received a written offer from Simulation on or about September 24, 2015. Respondent began negotiating his future employment and his compensation package shortly thereafter.
- (6) While employed with the CFD, one of Respondent’s duties was to give tours of the existing Simulator to companies that expressed interest in bidding on the contract for the Large Simulator. Respondent did so multiple times both at the direction of his superiors and without the necessity of obtaining their preapproval, since he was the “subject matter expert,” having worked with the existing Simulator since 1996. Respondent gave Simulation a tour of the existing facility at O’Hare in early October 2015, at the request of Simulation, approximately one week before the October 16, 2015 pre-bid conference.
- (7) Respondent understood that he was placed on and was one of the voting members on the bid evaluation committee for the Large Simulator. Respondent resigned from the bid evaluation committee before it ever convened and Respondent never cast a vote as a voting committee member.
- (8) Respondent had a fully executed employment contract with Simulation as of December 4, 2015. The effective date of the employment contract was January 2, 2016. Respondent began working for Simulation as a technical sales specialist on January 2, 2016.
- (9) Simulation placed its bid on the Large Simulator on January 29, 2016. The City’s Department of Procurement Services (“DPS”) invited Simulation to make an Oral Presentation to the Bid Evaluation Committee in July 2016. In October 2016, DPS notified Simulation that it was the preferred supplier. In August 2017, Simulation was awarded the Large Simulator contract, which included maintenance of the existing Small Simulator.
- (10) At the request of his former colleagues at the CFD, Respondent continued to provide maintenance-related service to the existing Small Simulator after he retired on November 17, 2015 from the CFD. Respondent continued this work during his employment with Simulation at the request of his former colleagues at the CFD.
- (11) Respondent was subject to a one-year subject matter ban as to the Small Simulator or to matters related to the work he did at CFD O’Hare, and he believed this was the only ban to which he was subject. After that ban expired on November 17, 2016, Respondent reviewed and commented on portions of the Large Simulator contract during Simulation’s negotiation period with the City. Respondent obtained proposals from potential subcontractors to the Large Simulator in or about August 2017 for Simulation. Respondent also attended pre-construction meetings for the Large Simulator on behalf of Simulation in August and September 2017.
- (12) Respondent timely completed his required annual ethics trainings every year. The Board covered the topic of the post-employment restrictions in 2008, 2009, 2011 and 2014. At



no time during the period in question did Respondent contact the Board for an opinion on the application of the Ordinance to his post-employment activities.

#### STATEMENT OF RELEVANT LAW

- (13) The specific issues in this case were whether Respondent violated the Ordinance by:
- (i) negotiating future employment with Simulation when he knew they were going to bid on the Large Simulator contract, over which he exercised contract management authority and from which he did not recuse himself and continued to work;
  - (ii) negotiating future employment and a salary and compensation package with Simulation, a company that he knew intended to bid on a contract over which he exercised management authority, from which he then reasonably expected to derive income or compensation in the following twelve months;
  - (iii) working on issues or problems arising with the Small Simulator, with which he was personally and substantially involved during his City employment, after he retired on or about November 17, 2015, and before his one-year subject matter ban on such work expired; and
  - (iv) working for Simulation on matters related to its City contract, over which he had exercised contract management authority by helping to draft its RFP.
- (14) Section 2-156-111(c), entitled *Prohibited Conduct*, prohibits a City employee from “negotiat[ing] the possibility of future employment with any person ... that has a matter currently pending before such employee.”
- (15) Section 2-156-080(a), entitled *Conflicts of Interest; appearance of impropriety*, provides, in relevant part, “No ... employee, shall make or participate in the making of any governmental decision with respect to any matter in which he has any financial interest distinguishable from that of the general public ... or from which he reasonably expects to derive any income or compensation in the following twelve months.”
- (16) Section 2-156-100(b), entitled *Post-employment restrictions on assistance and representation*, states that “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 ... employee participated personally and substantially in the subject matter of the transaction during his ... employment; provided, that if the ... employee exercised contract management authority with respect to a contract this prohibition shall be permanent as to that contract.”

The Ordinance defines *contract management authority* in §2-156-010(g) as “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.”

## BOARD CONCLUSIONS AND DETERMINATIONS

- (17) At its July 13, 2020 meeting, based on the evidence adduced in an investigation completed by the OIG, and information provided by the Respondent and his counsel, the Board reached the following factual conclusions:
- a) Respondent was an employee of the City of Chicago when he began negotiating future employment and his compensation package with Simulation on or about September 24, 2015.
  - b) Respondent knew that Simulation intended to bid on the Large Simulator contract.
  - c) Respondent continued to work on the RFP once he began negotiating his future employment and compensation package with Simulation, although he believed he had resigned from the bid evaluation committee in early 2015 when he advised his superior of his desire to do so.
  - d) Respondent was considered the subject matter expert on the existing Small Simulator and was personally and substantially involved in its operation. Respondent was prohibited from working on the Small Simulator for one-year after his City retirement.
  - e) Respondent had contract management authority because he was personally involved in the formulation of RFP #129373, which became the basis for the Large Simulator contract, P.O. 56283, by drafting, reviewing, editing, and commenting on its scope of services, and answering specific and technical vendor questions. Respondent was thus permanently prohibited from working on the Large Simulator contract, P.O. 56283, for anyone other than the City, for the entire term of that contract.
  - f) Respondent had contract management authority because he was a voting member on the bid evaluation committee for the Large Simulator for a period of time until he resigned from the committee. Respondent would thus have been permanently prohibited from working on the Large Simulator contract P.O. 56283, for anyone other than the City, for the entire life of that contract.
  - g) Respondent acted in a manner that, he believed, in good faith, was in compliance with the requirements of the Governmental Ethics Ordinance, because he continued to work on the Small Simulator and the RFP at the continued request of his former CFD colleagues.
  - h) Respondent never contacted the Board of Ethics to seek guidance regarding the propriety of negotiating employment with someone that had a matter pending or an advisory opinion to address the applicability of the post-employment restrictions to his post-employment activities.
- (18) At its July 13, 2020 meeting, the Board issued sustained its October 18, 2019 determination that there was probable cause to conclude that the Respondent violated the Ordinance's provisions on Prohibited Conduct §2-156-111(c); the Post-Employment's §2-156-100(b) one-year restriction; the Post-Employment's §2-156-100(b) permanent restriction; and Conflicts of Interests §2-156-080(a).



## TERMS OF THE SETTLEMENT AGREEMENT

The above recitation of facts and law, and the Board's conclusions and determinations are incorporated into and made a part of this Agreement.

- (19) The parties agree to enter into this Agreement to resolve all factual and legal issues that arose in this matter and to reach a final disposition without the necessity of an evidentiary hearing, pursuant to §2-156-392 of the Ordinance, to determine whether the Respondent violated the Ordinance.
- (20) Respondent acknowledges that, from the record before it, the Board has sustained its probable cause determination and concluded that he violated the Ordinance provisions on Prohibited Conduct §2-156-111(c), the Post-Employment's §2-156-100(b) one-year restriction, the Post-Employment's §2-156-100(b) permanent restriction, and Conflicts of Interests §2-156-080(a), and that, were the matter to proceed to an evidentiary hearing, pursuant to §2-156-392 of the Ordinance, the Board, based on the evidence presented to it to date, would make a final determination that he violated the Ordinance on these facts.
- (21) Respondent maintains that, at all times pertinent to this matter, he acted in a manner that he believed, in good faith, was in compliance with the requirements of the Governmental Ethics Ordinance, and the Board has not made a final determination otherwise.
- (22) Pursuant to §2-156-385(4)(i), the Board may seek to settle the matter by fine.
- (23) The Board has the authority to impose a fine between \$500 and \$2,000, pursuant to §2-156-465(b)(7), in effect prior to September 28, 2019, for each violation of the Ordinance. The Board determined at its July 13, 2020 meeting that it would be appropriate to seek to settle this matter by assessing a \$2,000 fine against the Respondent.
- (24) In recognition of the foregoing, Respondent agrees to pay a total fine of TWO THOUSAND AND 00/100 DOLLARS (\$2,000.00) – the minimum fine for each of the four violations – to the Board within thirty (30) days of this Disposition, by money order, cashier's or certified check, made payable to the "Board of Ethics," and that, if the Board has not received such amount by that date, Respondent shall pay interest of nine percent (9%) per annum on the unpaid balance until paid-in-full; provided, however, that no interest shall be due and owing that is greater than provided for in 815 ILCS 205/4.
- (25) Respondent acknowledges that this Agreement is a public and final resolution of the potential violations and recommendations made by the OIG in its investigative report as presented to the Board of Ethics in this matter. Respondent also acknowledges that the Board shall make this Agreement public, pursuant to §2-156-385(4), and, except as may be provided by applicable law, all writings or records with respect to the settlement agreement or its negotiations in the Board's possession will remain confidential.
- (26) Respondent confirms that he has entered into this Agreement freely, knowingly and intentionally, without coercion or duress; and, after having had the opportunity to be

represented by an attorney of his choice, accepts all the terms and conditions contained herein without reliance on any other promises or offers previously made or tendered by any past or present representative of the Board. Respondent confirms that he fully understands all the terms of this Agreement. The terms of this Agreement are contractual and not mere recitals. If any of the provisions of this Agreement shall be found invalid or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

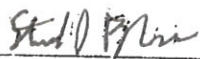
- (27) Respondent understands and voluntarily waives and assigns, on his and his successors' behalf, any and all: (i) procedural rights under the City's Municipal Code, including a merits hearing pursuant to §2-156-392 of the Ordinance, or to subpoena witnesses to testify, confront, and cross-examine all witnesses; and (ii) rights to commence any judicial or administrative proceeding or appeal before any court of competent jurisdiction, administrative tribunal, political subdivision or office of the State of Illinois or the United States, arising out of the this matter or Respondent's conduct under the Ordinance's Prohibited Conduct, Post-Employment and Conflicts of Interests provisions.
- (28) Respondent releases and holds harmless the Board and its staff from any potential claims, liabilities, and causes of action arising from the Board's enforcement and settlement of the violation described in the Agreement, and agrees not to contest the lawfulness, authority, jurisdiction, or power of the Board in imposing the sanction which is embodied in this Agreement, and the right to make any legal or equitable claim or to initiate legal proceedings of any kind against the Board, or any members or employees thereof, relating to or arising out of this Agreement or the matters recited herein.
- (29) Once executed by Respondent, the Board staff shall submit this Agreement to the Board at its next regularly scheduled meeting. The Board must determine by a majority vote that it approves the Agreement and the Board must execute and date the Agreement before the Agreement becomes effective.
- (30) The parties agree that this Agreement shall become invalid in the event that the Board refuses to approve it. Respondent acknowledges that if the Agreement is not approved or executed by the Board that the Board may seek to proceed to a hearing on the merits, pursuant to §2-156-392 of the Ordinance. Respondent further agrees that no member of the Board or its staff shall be disqualified from participating in any subsequent proceedings in this matter held pursuant to §2-156-392 of the Ordinance. If the Board does not approve this Agreement, the parties agree that no statements or representations of any kind made in the course of negotiating this agreement will be used by either party for the purpose of establishing liability at any future hearing or proceeding.
- (31) Respondent agrees that failure to comply with the terms of this Agreement constitutes a breach of the Agreement and that the Board can proceed to a hearing on the merits or take any other action as permitted by law.
- (32) In consideration of Respondent's full compliance with all of the terms pursuant to this Agreement, the Board waives any further penalties or fines against Respondent for any further proceedings arising out of the investigation and/or recommendations described in this Agreement.

(33) The Agreement contains the entire agreement between the Board and the Respondent and it may not be modified unless the modified Agreement is re-executed and re-dated by both parties. This Agreement is entered into in the State of Illinois and shall be construed and interpreted in accordance with its laws.

(34) This Agreement shall not be effective until all parties have affixed their signature below.

Dated as written above and executed below:

**FOR THE CITY OF CHICAGO BOARD OF ETHICS**


  
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Steven I. Berlin, Executive Director

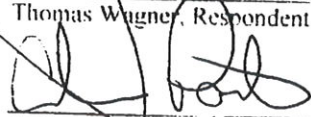
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Date

  
\_\_\_\_\_  
William Conlon, Board Chair

9-14-20  
\_\_\_\_\_  
Date

**FOR THE RESPONDENT**

  
\_\_\_\_\_  
Thomas Wagner, Respondent

  
\_\_\_\_\_  
Andrew Porter  
Counsel for the Respondent

9-17-2020  
\_\_\_\_\_  
Date

9/18/20  
\_\_\_\_\_  
Date