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[REDACTED]
C O N F I D E N T I A L

[REDACTED]
[REDACTED], City of Chicago
121 N. LaSalle Street
Room 105
Chicago, IL 60602

RE: Case No. 94002.Q

Dear [REDACTED]

On January 24, 1994, you contacted our office and asked whether the Ethics Ordinance permits the City to enter into a contract for consulting services with Mr. "X", a former [REDACTED] Department employee.

After reviewing the proposed contract between the City and Mr. "X" and discussing the agreement with you, staff concludes that nothing in the Ethics Ordinance prohibits the City from entering into the contract under the circumstances you described, as presented in this letter.

FACTS: Mr. "X" former Deputy [REDACTED] Commissioner in the [REDACTED] [REDACTED], was mandatorily retired from City employment effective [REDACTED] recently [REDACTED]. Since 1980, Mr. "X" had acted as his Department's liaison and representative in contract negotiations with the Chicago [REDACTED] Union Local [REDACTED]. In this capacity, he developed and implemented the City's policy and strategy in these negotiations. The City is currently negotiating the 1992-1995 labor contract with this Union. In addition, Mr. "X" had been, since 1978, the Department's liaison with the Departments of Personnel, Law, and outside consultants for the his Department's entrance and promotional examinations.

In November, [REDACTED] Department officials determined that, because Mr. "X"'s services are invaluable to the City, it would be in the City's best interests to retain him as a consultant to complete the contract negotiations, assist the City in completing Uniform Promotional Examinations, and to train his replacement in the technical aspects of labor contract negotiations.



Mr. X recently [redacted] signed the agreement on his own behalf, not on behalf of any entity. You stated that he alone will perform the obligations and enjoy the rights of the "Consultant" under the agreement. The agreement provides that all services will commence on November 5, 1993 (the contract is retroactive to that date), and will terminate on either November 4, 1994, or the completion of the [redacted] contract negotiations, whichever is earlier.

Section 3.02 of the agreement provides that Mr. X "shall at all times act in the best interest of the City, consistent with the professional and fiduciary obligations assumed by entering into this agreement ... [and] accepts the relationship of trust and confidence established between [him] and the City." Section 10.06 also provides that "This agreement is expressly subject to the terms and conditions of Chapter 2-156 of the Municipal Code of Chicago." Section 3.08 of the agreement provides that [redacted]

Mr. X may not assign or transfer any rights or obligations without the written consent of the City's Purchasing Agent and the Department. Page 3 of City form "Justification for Non-Competitive Procurement" for this contract states: "because the requirement is requesting labor only there cannot be a joint venture."

LAW: Section 2-156-100 (b) of the Governmental Ethics Ordinance, entitled "Post-employment Restrictions," states:

(b) No former official or employee shall, for a period of one year after the 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.

ANALYSIS: The Board has held that the Ethics Ordinance does not prohibit consulting agreements between the City and its former employees when two conditions are present: (1) the City seeks the services of the former employee as a consultant; and (2) the former employee does not represent the interests of any other entity in connection with his or her consulting responsibilities to the City. 93018.A. The Board reasoned that the primary purpose of these post-employment provisions is to prevent former employees from using "inside knowledge" to benefit third parties, thus impairing the integrity of government services and creating the appearance of impropriety. However, this purpose is not served by preventing the

City from retaining its former employees when these two conditions are met, as any "inside knowledge" is used to benefit only the City, and no other party would have the benefit of the former employee's knowledge. The former employee is serving only the City and owes loyalty only to it. 93018.A.

As in Case No. 93018.A, both of these conditions are present in [REDACTED] situation, as described here. This remains the case even though *Mr. X* appears to have exercised "contract management authority" over the [REDACTED] Local [REDACTED] contract while employed by the City. This is because *Mr. X's* proposed contract provides that as a consultant, he will be assisting only the City, not any third party. Moreover, as in Case No. 93018.A, *Mr. X's* agreement likewise obligates him to act at all times in the best interests of the City.

CONCLUSION: Staff concludes that, under the holding of Case No. 93018.A, and the facts as they are described here, nothing in the Governmental Ethics Ordinance prohibits this consulting agreement between the City and *Mr. X*. This conclusion is based solely on the application of the Ordinance to the facts stated in this letter. If the facts presented are incorrect or incomplete, please notify us immediately, as any change may alter our conclusion. Please note that other City rules may apply to this situation, and that any City department may adopt restrictions more stringent than those imposed by the Ethics Ordinance.

We appreciate your bringing this matter to our attention and your willingness to abide by the standards embodied in the Ethics Ordinance. If you have any further questions about this or any other matter, please do not hesitate to contact us.

Sincerely,



Steven I. Berlin
Deputy Director

approved by:



Dorothy J. Eng
Executive Director

cc: Susan Sher, Corporation Counsel
[REDACTED]