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STATE ETHICS COMMISSION

PRE-COMPLAINT DISPOSITION AGREEMENT

This Pre-Complaint Disposition Agreement (hereinafter "the Agreement") was made on the 26 day of October, 2011, by and between Cheryl Mildenberger and William J. Colquhoun, Staff Counsel to the State Ethics Commission ("Staff Counsel").

The State Ethics Commission ("the Commission") is the executive agency of the State of Maryland established by Chapter 513, Acts of 1979 for the purpose of enforcing the Maryland Public Ethics Law (State Government Article, Title 15, Annotated Code of Maryland), including the provisions of Subtitle 5, Conflicts of Interest.

AGREED STATEMENT OF FACTS

1. Cheryl Mildenberger was an employee of the Maryland Department of the Environment (MDE), an executive agency of the State of Maryland, at times relevant to this matter, and was defined as a public official subject to the conflict of interest provisions of the Public Ethics Law.

2. Ms. Mildenberger was employed at MDE as a Division Chief of the Operational and Administrative Services Division, Air and Radiation Management Administration (ARMA), and was responsible, under the Program Manager, for all administrative, budget, fiscal and operations functions within ARMA. In late 2006, Ms. Mildenberger informed her supervisor that she would be retiring in 2007. Later that year, following guidance provided in the State Retirement and Pension System of Maryland Benefits Handbook, she met with a retirement benefits counselor six months prior to retirement.

3. In January 2007, MDE asked Ms. Mildenberger if she would be interested in returning to MDE post retirement to train her replacement. MDE's Contract Officer recommended that development of the contract should begin at least six months prior to Ms. Mildenberger's retirement date to allow for processing time.

4. In January 2007, Ms. Mildenberger sought guidance from the State Retirement and Pension System regarding rules pertaining to State of Maryland retirees working as private contractors post retirement.

5. In an effort to separate retiree from contractor, on February 9, 2007, Ms. Mildenberger registered CLM Consultants as a Trade Name with the State Department of Assessments and Taxation. On the Application for the Trade Name, she indicated that CLM Consultants was in the business of "management consulting."

6. In March 2007, MDE attempted to retain Ms. Mildenberger's services beyond her planned retirement date via sole source procurement for CLM Consultants. The sole source procurement was not approved by MDE's Senior Staff in charge of procurement and human resource. The MDE Senior Staff did not communicate to the MDE staff involved in the development of the contract the rules prohibiting the discussion of post retirement employment with intended retirees or that the processing of a contract before Ms. Mildenberger officially

retired would violate the Public Ethics Law. Neither MDE nor Ms. Mildenberger requested advice from the Commission regarding restrictions on entering into a contract with one's agency.¹

7. On April 2, 2007, Ms. Mildenberger met with MDE's Human Resources and signed retirement paperwork establishing June 1, 2007 as her retirement date. Also, in following State Retirement and Pension System of Maryland guidance, on April 30, 2007 Ms. Mildenberger submitted a formal letter of retirement to her supervisor one month prior to her retirement date.

8. On April 18, 2007, a small procurement for financial services solicitation was placed out for competitive bid and MDE's Office of Procurement e-mailed an invitation to bid to Ms. Mildenberger's personal email account. Shortly thereafter, CLM Consultants submitted a Response to Request for Bids to MDE for proposed work post retirement. On May 17, 2007, MDE's Office of Procurement produced a purchase order to CLM Consultants. The effective date of the contract in Maryland's Financial Management Information System was established as July 16, 2007. On June 1, 2007, Ms. Mildenberger retired from the State of Maryland. MDE released the purchase order to CLM Consultants after MDE requested and received written correspondence, dated June 14, 2007, from the State Retirement and Pension System of Maryland approving Ms. Mildenberger's return as a contractor post-retirement.

9. On July 16, 2007, following a 45 day hiatus in work as required by State Retirement and Pension System procedures, Ms. Mildenberger began work as a contractor (CLM Consultants) for ARMA. CLM Consultants later entered into contracts for the 2009 and 2010 fiscal years as well. After reviewing information obtained from MDE and Ms. Mildenberger regarding the award and management of the 2009 and 2010 contracts, Staff Counsel has determined that these contracts do not appear to violate §15-504 of the Public Ethics Law, governing post-employment restrictions.

10. In response to a recommendation from the Office of Legislative Audits (OLA), MDE referred the matter regarding Ms. Mildenberger to the State Ethics Commission for its review. Staff Counsel and other Commission staff spent numerous hours interviewing witnesses and reviewing documents in this inquiry. During the inquiry of this matter, the Legislative Auditor and his staff cooperated and provided assistance to Commission staff. As a result of the audit and the Commission's investigation, MDE has since made a greater effort to provide ethics training and information regarding the Public Ethics Law to its employees, including the creation of an internal website containing links to various Commission informational memoranda and advisory opinions.

11. Based upon the OLA audit, MDE met with Ms. Mildenberger on March 29, 2011 and informed her that her two current contracts with MDE were being temporarily severed pending the outcome of the Commission's investigation.

12. Section 15-502 of the Public Ethics Law prohibits State employees from being employed by or having a financial interest in an entity ". . . that is negotiating or has entered a contract with

¹ Commission staff provided informal advice regarding the application of the Public Ethics Law in over 500 matters in calendar year 2010.

that governmental unit or an entity that is a subcontractor on a contract with that governmental unit.” A “financial interest” is defined in §15-102(n)(2)(i)(3) as including ownership of more than 3% of a business entity by an official or employee or the spouse of an official or employee.

13. Ms. Mildenberger has voluntarily entered into this Pre-Complaint Disposition Agreement to admit certain violations of the Public Ethics Law, to accept certain sanctions, and to resolve the matter now pending against her without the issuance of a complaint and a hearing before the Commission.

14. Ms. Mildenberger has been represented by Brennan C. McCarthy, Esq. in the investigation into this matter and in the execution of this Agreement.

NOW THEREFORE, in consideration of the agreements herein contained, and effective on the Commission’s acceptance of the terms of this Agreement, Cheryl Mildenberger and William J. Colquhoun, Staff Counsel, agree as follows:

A. That Ms. Mildenberger admits that she violated the prohibition contained in §15-502 against being employed by or having a financial interest in an entity “. . . that is negotiating or has entered a contract with that governmental unit or an entity that is a subcontractor on a contract with that governmental unit” by submitting a contract proposal for post- retirement work prior to her official retirement date.

B. That the Commission will issue an official reprimand to Ms. Mildenberger for the above admitted violations of the Public Ethics Law effective the date of the Commission’s acceptance of the Agreement.

C. That Ms. Mildenberger further understands that violations of the conflict of interest provisions of the Public Ethics Law may result in civil fines pursuant to §15-902 of the Public Ethics Law and that such fines may be in an amount up to \$5,000 for each violation of the law. As a settlement for the above admitted violations, Ms. Mildenberger hereby agrees to pay, in lieu of potential fines, the sum of \$500 for the above admitted violation of the law, and that said sum will be paid by certified check or money order payable to the State of Maryland in care of the State Ethics Commission on or before October 27, 2011.

D. That the Commission will transmit a copy of the reprimand and this Agreement to the Governor and the Secretary of the Maryland Department of the Environment pursuant to §15-407 of the Public Ethics Law.

E. That Ms. Mildenberger waives any formal proceedings and hearings in this matter if the Commission accepts the Agreement and agrees that the Agreement and materials related to this matter are not subject to the confidentiality provisions of the Public Ethics Law and will be public information unless otherwise protected.

F. That upon execution of this Agreement by Ms. Mildenberger, Staff Counsel will recommend that the Commission suspend further proceedings against Ms. Mildenberger

and recommend further that the Commission issue a Final Order consistent with the terms of this Agreement. Should Ms. Mildenberger fail to comply with the provisions of the Agreement, the Commission reserves the right to issue a further order regarding this matter, to refer the matter to the Attorney General for collection, or to schedule a hearing in this matter.

G. That in the event that the Commission declines to accept this Agreement, both Ms. Mildenberger and Staff Counsel are relieved of their respective obligations hereunder; and neither this Agreement nor any admission it may contain shall be admissible in any subsequent proceeding of the Commission.

H. That Ms. Mildenberger and Staff Counsel are entering into this agreement for the sole purpose of resolving the matters arising under the Commission's Preliminary Inquiry matter and for no other purpose.

IN WITNESS WHEREOF, Cheryl Mildenberger and William J. Colquhoun, Staff Counsel, State Ethics Commission, have hereunto set their hands.

SIGNATURE APPEARS ON ORIGINAL AGREEMENT

William J. Colquhoun, Staff Counsel
State Ethics Commission
45 Calvert Street, 3rd Floor
Annapolis, Maryland 21401

SIGNATURE APPEARS ON ORIGINAL AGREEMENT

Cheryl Mildenberger

SIGNATURE APPEARS ON ORIGINAL AGREEMENT

Brennan C. McCarthy, Esq.
Souza LLC
2543 Housley Road
Annapolis, Maryland 21401
Counsel for Ms. Mildenberger

State of Maryland
County of Anne Arundel

Before me, the undersigned, a Notary Public in and for the State and County aforesaid, personally appeared Cheryl Mildenberger who made oath on this 21st day of October, 2011 in due form of law that the matters and facts hereinabove set forth are true to the best of her knowledge, information and belief and it is her voluntary acts that she executed this document for the purpose set forth herein.

SIGNATURE APPEARS ON ORIGINAL AGREEMENT

Notary Public ✓

My Commission Expires: September 29, 2013

NEIL J ADAMUS
Notary Public-Maryland
Anne Arundel County
My Commission Expires
September 29, 2013

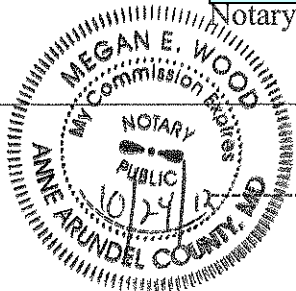
State of Maryland
County of Anne Arundel

Before me, the undersigned, a Notary Public in and for the State and County aforesaid, personally appeared William J. Colquhoun, Staff Counsel, who made oath on this 24 day of October, 2011 in due form of law that the matters and facts hereinabove set forth are true to the best of his knowledge, information and belief that he executed this document for the purposes set forth herein.

SIGNATURE APPEARS ON ORIGINAL AGREEMENT

Notary Public

My Commission Expires: _____



Accepted by the Commission,

SIGNATURE APPEARS ON ORIGINAL AGREEMENT

Robert F. Scholz, Chair
For the Commission

Date: 12/8, 2011