

RESOLUTION NO. 2017- 46

**A RESOLUTION RATIFYING THE EXECUTION BY THE VILLAGE ATTORNEY
OF A CONFIDENTIALITY AGREEMENT REGARDING THE
SHARING OF INFORMATION IN *CITY OF CHICAGO V. SESSIONS*, 17 CV 5720,
CONCERNING FEDERAL FUNDING SUB-RECIPIENT AWARDS, THE SUBMITTAL
OF A STATEMENT OF INTEREST FOR INCLUSION IN A RELATED AMICUS BRIEF,
AND THE EXECUTION BY THE VILLAGE ATTORNEY OF THE AMICUS BRIEF**

WHEREAS, the City of Chicago ("Chicago") has filed a lawsuit, entitled *City Of Chicago v. Sessions*, 17 CV 5720 (the "Litigation"), challenging certain administrative regulations that the United States Federal Government has imposed on federal sub-grant recipients, which in Chicago's opinion pose a risk of violation of individuals' civil rights and creates the risk of liability for the federal sub-grant recipients who comply with the administrative regulations; and

WHEREAS, these same administrative regulations that are being contested by Chicago are being imposed on sub-grant recipients of the Justice Assistance Grant ("JAG") Program funding, including the Village of Maywood. The administrative regulations consist of two requirements: (a) detention facility access; and (b) minimum forty-eight (48) hours advance notice of scheduled release dates and times; and

WHEREAS, on August 15, 2017, the President and Board of Trustees of the Village of Maywood reached a consensus to support the legal arguments being raised by Chicago and other jurisdictions challenging the validity and legality of the contested administrative regulations, and further directed that (a) the Village Staff and the Village Attorney prepare and submit to Cook County a Statement of Interest for inclusion in the Amicus Brief to be written by the Cook County State's Attorney's Office in response to the Litigation; (b) the Village Attorney execute on behalf of the Village the Amicus Brief; and (c) the Village Attorney execute a confidentiality agreement prepared by Cook County relating to the litigation strategies and communications exchanged by legal counsel for Cook County, Chicago and the participating federal sub-grant recipients who work on and execute the Amicus Brief; and

WHEREAS, the Village President and Board of Trustees of the Village of Maywood desire to ratify the execution by the Village Attorney of the document entitled "CONFIDENTIALITY AGREEMENT REGARDING THE SHARING OF INFORMATION IN *CITY OF CHICAGO V. SESSIONS*, 17 CV 5720, CONCERNING FEDERAL FUNDING SUB-RECIPIENT AWARDS" (the "Agreement"), a copy of which is attached hereto as **Exhibit "A"** and made a part hereof. The Village Board further desires to ratify the submittal of a Statement of Interest to Cook County for inclusion in a related Amicus Brief by Village Staff and the Village Attorney, and the execution by the Village Attorney of the Amicus Brief; and

WHEREAS, the Village President and Board of Trustees of the Village of Maywood, a home rule Illinois municipal corporation, have the authority to enter into the

attached Agreement pursuant to their home rule powers as provided by Article VII, Sections 6 and 10(a) of the Illinois Constitution of 1970, and the Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*), and find that ratifying the execution of the Agreement is in the best interests of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF MAYWOOD, COOK COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: Each Whereas paragraph above is incorporated by reference into this Section 1 and made a part hereof as material and operative provisions of this Resolution.

SECTION 2: The Village President and Board of Trustees of the Village of Maywood ratify the execution by the Village Attorney of the document entitled "CONFIDENTIALITY AGREEMENT REGARDING THE SHARING OF INFORMATION IN *CITY OF CHICAGO V. SESSIONS*, 17 CV 5720, CONCERNING FEDERAL FUNDING SUB-RECIPIENT AWARDS" (the "Agreement"), a copy of which is attached hereto as **Exhibit "A"** and made a part hereof. The Village Board further ratifies the submittal of a Statement of Interest to Cook County for inclusion in a related Amicus Brief by Village Staff and the Village Attorney, and the execution by the Village Attorney of the Amicus Brief.

SECTION 3: The Village President and Board of Trustees of the Village of Maywood authorizes and directs the Village President, the Village Clerk, the Village Manager, the Police Chief and the Village Attorney, or their designees, to take all necessary actions, to prepare and submit any required documents and to fulfill each of the Village's obligations under the Agreement.

ADOPTED this 5th day of September, 2017, pursuant to a roll call vote as follows:

AYES: Trustee(s) H. Yarbrough, I. Brandon, A. Sanchez, K. Wellington, M. Lightford and R. Rivers

NAYS: Mayor Perkins

ABSENT: None

APPROVED by me this 6th day of September, 2017 and attested to by the Village Clerk this same day.

Village President

ATTEST:

Village Clerk

Exhibit "A"

**CONFIDENTIALITY AGREEMENT REGARDING THE
SHARING OF INFORMATION IN *CITY OF CHICAGO V. SESSIONS*, 17 CV 5720,
CONCERNING FEDERAL FUNDING SUB-RECIPIENT AWARDS**

(attached)

PRIVILEGED & CONFIDENTIAL
CONFIDENTIALITY AGREEMENT REGARDING THE SHARING OF
INFORMATION IN *CITY OF CHICAGO V. SESSIONS*, 17 CV 5720, CONCERNING FEDERAL
FUNDING SUB-RECIPIENT AWARDS

The parties to this confidentiality agreement (the "Agreement"), specifically the County of Cook and any other State, municipality, or other governmental entity that completes the attached Addendum (collectively "Sub-recipients"), reasonably anticipate participation as litigants or counsel for Sub-recipients participating in judicial challenges that are expected to be brought before courts, in which various entities are expected to challenge certain actions of the federal government as described below.

RECITALS

WHEREAS, the Edward Byrne Justice Assistance Grant ("JAG") program is a formula based grant, in which funds are awarded to local governments based on their state's population and the ratio of violent crime in the locality to violent crime in the state, to support local programs such as law enforcement, prosecution, indigent defense, courts, crime prevention and education, and community corrections. *See* 42 U.S.C. § 3755(d)(2)(A).

WHEREAS, the parties to this Agreement are identified as sub-recipients of FY 2017 JAG grant funding or have historically been awarded JAG grant sub-recipient funding through the City of Chicago's direct application.

WHEREAS, in late July 2017, the Department's Office of Justice Programs released an alert on its website stating they intend to include additional express conditions with respect to any "program or activity" funded by the FY 2017 award ensuring that States and units of local government that receive funds from the JAG award comply with the two new conditions.

WHEREAS, on August 3, 2017, the Department released the FY 2017 JAG grant application containing two new unprecedented conditions on Byrne JAG grantees decreeing that it would condition those funds on the City of Chicago's agreement (1) to permit personnel of the U.S. Department of Homeland Security ("DHS") to access any correctional or detention facility in order to meet with an alien (or an individual believed to be an alien) and inquire as to his or her right to be or remain in the United States; and (2) to provide at least 48 hours' advance notice to DHS regarding the scheduled release date and time of an alien in the jurisdictions' custody when DHS requests such notice in order to take custody of the alien pursuant to the Immigration and Nationality Act.

WHEREAS, the imposition of unlawful and unconstitutional conditions for federal law enforcement grants under the JAG program on the City of Chicago or the Sub-recipients would impact the ability of local law enforcement to obtain cooperation from the immigrant community to solve crimes and prosecute criminal offenders, and thus detrimentally effect the overall safety of the Sub-recipients communities and residents.

WHEREAS, each of the new conditions threatens the ability of Sub-recipients to receive federal funding as well as opens the Sub-recipient to potential Constitutional violations.

WHEREAS, the Sub-recipients reasonably anticipate filing or participating in litigation as described in this Agreement; this litigation may include affirmative litigation, defensive litigation and/or the filing of amicus brief(s)(the "Litigation").

WHEREAS, the Sub-recipients have a common interest in the success of the Litigation. In furtherance of this common interest, the Litigation has required and will continue to require counsel to direct the sharing of information, legal analysis, draft briefs and other draft court filings, and other documents, among the Sub-recipients.

WHEREAS, the Sub-recipients wish to pursue their common interest throughout the preparations for, and the course of, the Litigation involving these matters by exchanging privileged materials, while avoiding any waiver of the confidentiality of those privileged materials. The Sub-recipients agree to share information for the purpose of advancing their common interest, to keep such information and materials confidential, and to protect any privileges attaching to such information and materials to the maximum extent authorized by law.

WHEREAS, the Sub-recipients also agree that the sharing of information at the direction of counsel, both written and oral, among their governing boards, staff, management, consultants, experts, clients, and counsel will further their common objectives.

WHEREAS, the Sub-recipients and their respective governing boards, staff, management, consultants, experts, clients, and counsel will manage and protect confidential and/or privileged information shared and exchanged in preparation for, and during the course of, the Litigation.

Therefore, the Sub-recipients agree as follows:

1. **Sub-recipients.** The Sub-recipients to this Agreement are the County of Cook and any other State, municipality or other governmental entity that joins this Agreement by executing the attached Addendum and circulating a copy to all Sub-recipients.
2. **Definition of Counsel.** For purposes of this Agreement, the term "Counsel" means and includes both outside and in-house Counsel for any Sub-recipient, and execution of this Agreement by either outside or in-house counsel for a Sub-recipient binds that Sub-recipient and all in-house and outside Counsel retained to provide legal services in connection with the Litigation.
3. **Purpose.**
 - (a) The Sub-recipients' Litigation presents common issues of fact and law. The Sub-recipients recognize that the sharing and disclosure of privileged and confidential information among them, both in preparation for and throughout the legal proceedings, is essential in the Litigation of these actions. The purpose of this Agreement is to ensure that the privileged and/or confidential information shared will be used solely in

preparing for and developing an efficient joint defense, or affirmative cases, or both, including development of litigation strategy and the preparation of legal briefs and other court filings, in furtherance of the Sub-recipients' common goal and effort in the Litigation, and that this privileged and/or confidential information will not be disclosed to third parties or otherwise disclosed such that any privileges or other bases for confidentiality attached to these communications and documents are waived.

(b) The Sub-recipients share one or more of the following common legal interests and goals, including but not limited to the common interests identified on their signature page appended to this Agreement, listed below:

1. The Sub-recipient is identified as sub-recipient of FY 2017 JAG grant funding or has historically been awarded JAG grant sub-recipient funding through the City of Chicago's direct application, which is the subject of the Litigation.

4. Information. "Information," as used in this Agreement includes, but is not limited to, written communications, documents, factual and legal analyses, summaries, and memoranda, opinions, legal strategies, interview reports and reports of experts, consultants or investigators, joint meetings between counsel, elected officials, the Sub-recipients, their representatives and employees, and any meetings with prospective witnesses or consulting experts or litigation support service providers in connection with the Litigation in person, by telephone, or in any other form, and records or reports of such communications, all of which are included within the term "Information" used herein, that is exchanged among the Sub-recipients' elected officials, governing boards, staff, management, consultants, experts, clients, and/or Counsel. However, nothing in this Agreement shall be construed to affect the separate and independent representation of each client by its respective Counsel.

5. Confidential and/or privileged information. "Confidential and/or privileged information" is Information provided by or exchanged between one Party and another with the expectation of confidentiality and which is subject to one or more applicable privileges, protections, immunities, or exemptions from disclosure, including but not limited to, the attorney-client, attorney work product, deliberative process, and official information privileges and protections. Further, whereas the Sub-recipients identified their shared common interests prior to executing this Agreement, and prior to sharing any Information, "Confidential and/or privileged information" shall include Information provided by or exchanged between the Sub-recipients prior to the execution of this Agreement.

6. Attorney-client privilege. We understand the attorney-client privilege to include communications with, by, or between counsel, including communications between clients when done at the direction of counsel and in furtherance of the Common Interest and as needed to obtain Information requested by and needed to inform counsels' legal advice in furtherance of the common interest.

7. No Waiver of Privilege. It is the intention and mutual understanding of all Sub-recipients hereto that: (a) the sharing of Information among one another is not intended to, and shall not waive or diminish in any way the confidentiality of such materials or their

continued protection under the attorney-client privilege, the work product doctrine or other applicable privileges, protections or immunities; and (b) all Information provided by a Sub-recipient pursuant to this Agreement that is entitled to protection under the attorney-client privilege, the work product doctrine or other such applicable privileges, protections or immunities, shall remain entitled to such protection under the common interest doctrine, and may not be disclosed to persons other than those described in Paragraph 1 without the prior, written consent of the all Sub-recipients. The Sub-recipients also intend and understand that any disclosure of Information pursuant to this Agreement will not constitute a waiver of any available privilege, protection or immunity. And the signing of this Agreement shall not waive any applicable privilege, protection, immunity or exemption from disclosure or otherwise affect the status of "confidential and/or privileged information" exchanged prior to the signing of this Agreement by the Sub-recipients.

8. Common Interest Privilege. The Sub-recipients to this Agreement represent that the federal and state law in their jurisdiction provides for the sharing of confidential and/or privileged Information among those with common interests during the course of and in anticipation of litigation, without a waiver of any otherwise applicable privileges, protections, immunities, and exemptions from disclosure, so that the claims and defenses of the Sub-recipients may be thoroughly investigated and prepared without giving undue advantage to the opposing side. Maintaining such confidentiality is necessary for the accomplishment of the Sub-recipients' objectives with respect to the Litigation.

9. Legend. To avoid misunderstandings or inadvertent disclosure, all documents exchanged pursuant to this Agreement should bear the legend "Confidential-Protected by Common Interest Privilege" or words to that effect. However, the inadvertent failure to include such a legend shall not waive any privilege or protection available under this Agreement or otherwise. In addition, any Sub-recipients may, where appropriate, also label documents exchanged pursuant to this Agreement with other appropriate legends, such as, for example, "Attorney-Client Privileged" or "Attorney Work Product." Oral communications among the Sub-recipients shall be deemed confidential and protected under this Agreement when discussing matters related to the Litigation.

10. Confidentiality Statement. The Sub-recipients agree to protect all Information exchanged among them related to the Litigation, regardless of whether such communications or document exchanges occurred before or after the effective date of this Agreement, as confidential and privileged to the maximum extent allowable under all applicable law and rules, based upon all applicable privileges including, but not limited to, the attorney-client privilege, attorney work-product protections, joint defense privilege, and governmental privileges including, but not limited to, the deliberative process privilege and legislative privilege, where applicable. Pursuant to this Agreement, rights in the confidentiality of Information, and the confidences attached thereto, have not and will not be waived except as provided in paragraphs 11 and 13 of this Agreement.

11. Non-disclosure. Information is to be used by the recipient solely in connection with preparing and presenting the Sub-recipients' positions regarding the Litigation and may not

be shared by a recipient with any non-party to this Agreement without first complying with the notice provisions set forth in paragraph 13(a), and without the prior written waiver of the all Sub-recipients.

12. Inadvertent Disclosure. If, notwithstanding the provisions of this Agreement, a Sub-recipient discloses Information that it has received to a person not entitled to receive such Information under this Agreement, that disclosure shall be deemed, as to all other Sub-recipients, to be inadvertent and unintentional and shall not be construed as a waiver of any Sub-recipients' rights under applicable law: (a) to refrain from disclosing such Information, and (b) to seek such additional relief as may be authorized by law.

13. Notice of Potential Disclosure and Required Action. When a Sub-recipient becomes aware that Information is subject to any order, subpoena, discovery request, or other form of compulsory process in any legal or administrative action or proceedings, arbitration or alternative dispute resolution mechanism, or to an access request under a public access law (collectively a "Request"), the Sub-recipient who receives or is subject to the Request shall: (a) immediately notify in writing all other Sub-recipient (or their designees) of the Request so that any notified Sub-recipient may take such action as it deems appropriate to preserve and assert all applicable privileges; (b) unless all Sub-recipients consent to disclosure or release of the Information, assert, to the extent authorized by law, all relevant and applicable privileges and other objections to the disclosure of such Information; and (c) refrain from disclosing Information described in subparagraph (b) pending a determination regarding disclosure by a court or other tribunal of competent jurisdiction.

14. Permissible Use of Information. Notwithstanding the foregoing, any Sub-recipient may release, disclose, discuss, or make available Information to or with its governing body, staff, management, consultants, experts, clients, and/or counsel who have a need for such Information as part of their responsibilities associated with the Litigation, provided that: (a) under applicable law, disclosure to such persons will not be deemed a waiver of any Privileges, and (b) any such persons are notified of their obligation to keep such Information confidential pursuant to this Agreement.

15. No Agency or Additional Attorney-Client Relationships. This Agreement shall not create any agency or similar relationship among the Sub-recipients. Nor shall this Agreement alter the existing attorney-client relationships among the Sub-recipients or create any new attorney-client relationships. No Sub-recipient shall have authority to waive any applicable privilege or other confidentiality protection on behalf of any other Sub-recipient; nor shall any waiver of an applicable privilege or protection by the conduct of any Sub-recipient be construed to apply to any other Sub-recipient. Nothing in this Agreement is intended or shall be construed to obligate any of the Sub-recipients to disclose or share any Information or material relating to the Litigation.

16. Enforcement. The Sub-recipients agree that a breach of a provision of this Agreement by a Sub-recipient may cause irreparable harm to the other Sub-recipients and therefore

agree that injunctive relief is the appropriate means to enforce this Agreement. No Sub-recipient shall be subject to any claim for damages as a result of a breach of this Agreement.

17. Scope of Protection. This Agreement shall be interpreted so as to afford the broadest and greatest protection possible of the Information from disclosure to third parties.

18. Integration. This written Agreement memorializes the entirety of the Sub-recipients preexisting oral agreement regarding the confidentiality of their communications. It is agreed that this Agreement, any amendments thereto, and all discussions among the Sub-recipients related to the Agreement are themselves subject to the attorney-client privilege, common interest privilege, and work product doctrine, among others.

19. Additional Parties. Upon the written approval of all Sub-recipients, additional states, municipalities, or other governmental entities (“Additional Sub-recipients”) will be permitted to join this Agreement at a future time by signing a copy of the attached Addendum to this Agreement.

20. Modification. It is agreed that any modifications to this Agreement, including expansions to include additional subjects of common interest, shall be in writing and signed by all Sub-recipients. The inclusion of additional States, municipalities, or other governmental entities to this Agreement shall not be considered a modification and shall be accomplished in accordance with Paragraph 19 and by having the new Sub-recipient execute the attached Addendum and distribute a copy to all Sub-recipients.

21. Withdrawal. Notwithstanding a Sub-recipient’s withdrawal, this Agreement shall remain operative as to: all other remaining Sub-recipients to this Agreement; and all previously furnished Information. Any withdrawal will be solely on a prospective basis and any Information provided pursuant to the Agreement prior to such withdrawal shall continue to be governed by the terms of this Agreement.

(a) **Mandatory Withdrawal.** In the event a Sub-recipient determines that it no longer has a commonality of interest in the Litigation, such Sub-recipient shall withdraw from the Agreement. Each undersigned Counsel and counsel for any Sub-recipient that joins this Agreement as set forth in paragraph 19 has a duty to withdraw from the Agreement when, in good faith, that Counsel reasonably believes that a commonality of interest no longer exists and to give prompt written notice of such withdrawal to each of the Sub-recipients.

(b) **Voluntary Withdrawal.** Any Sub-recipient may withdraw voluntarily from this Agreement on written notice to all of the Parties.

22. Settlement or Dismissal. A Sub-recipient who disposes of all Litigation will be deemed to have withdrawn from the Agreement in accordance with the terms of Paragraph 21 as of the date of the dismissal, settlement, or conclusion.

23. Return of Confidential Communications. Upon request, specifically identified documents and materials provided by a Sub-recipient, including any copies, shall be

promptly returned to that Sub-recipient, unless the return of those documents and materials is prohibited by any local, state, or federal law.

24. Continuing Obligation. This Agreement shall continue in full force and effect notwithstanding any conclusion or resolution as to any Sub-recipient in the Litigation.

25. Non-disqualification Agreement. The Sub-recipient agree that no Sub-recipient or Counsel for a Sub-recipient to this Agreement may attempt to use, in any other legal proceeding or cause, either the fact of the Agreement or any Information learned as a result of this Agreement as a reason to disqualify any other counsel or law firm acting as counsel in the Litigation or from acting as legal counsel in any other legal matter or proceeding. Nothing in this Agreement diminishes or waives in any way the ability of a Sub-recipient thereto to file challenges seeking to strengthen (rather than weaken) that Sub-recipient's prerogative to maintain policies and/or laws which enable it to protect its immigrant residents, or to determine the appropriate type of engagement (or lack of engagement) with the federal government on its immigration enforcement goals, or both.

27. Severability. If any term of this Agreement is to any extent invalid, illegal, or incapable of being enforced, such term shall be excluded to the extent of such invalidity, illegality, or unenforceability; all other terms hereof shall remain in full force and effect.

28. Counterparts. This Agreement may be executed in counterparts.

29. Effective Date. This Agreement becomes effective on the last date of execution by the Sub-recipients and is executed *nunc pro tunc* to that date. This Agreement becomes effective as to any Additional Sub-recipient on the date such Additional Sub-recipient executes the attached Addendum. All of the Sub-recipients' communications with each other concerning this Litigation and/or Agreement made prior to execution of this Agreement are fully subject to this Agreement.

It is so AGREED.

PRIVILEGED & CONFIDENTIAL
CONFIDENTIALITY AGREEMENT REGARDING THE SHARING OF
INFORMATION IN *CITY OF CHICAGO V. SESSIONS*, 17 CV 5720, CONCERNING FEDERAL
FUNDING SUBRECIPIENT AWARDS

The Village of Maywood, by and through the City of Chicago, is a Sub-recipient to the attached Agreement. Now, therefore, counsel for the Village of Maywood agrees that their State, municipality, or other government entity meets the selected prerequisites for participation in this Agreement and agrees to the terms of the Agreement and to deliver copies of this executed Signature Page to all Sub-recipients to the Agreement within 5 (five) business days. The Village of Maywood represents that the individual signing for the Party is duly authorized to do so.

DATED: August 22, 2017

NAME OF SUB-RECIPIENT: Village of Maywood

By: 

Michael T. Jurusik

Title: Village Attorney, Klein, Thorpe and Jenkins, Ltd.
Address: 20 North Wacker Drive, Suite 1660, Chicago, Illinois 60606
Phone: 312-984-6400
Fax: 312-984-6444
Email: mtjurusik@ktjlaw.com

On August 15, 2017, the corporate authorities of the Village of Maywood directed the Village Attorney (Michael T. Jurusik) to execute this Agreement and agreed to ratify the approval of this Agreement at its Special Village Board Meeting to be held on September 5, 2017.

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

CLERK'S CERTIFICATE

I, Viola Mims, Clerk of the Village of Maywood, in the County of Cook and State of Illinois, certify that the annexed and foregoing is a true and correct copy of that certain Resolution now on file in my Office, entitled:

RESOLUTION NO. 2017-46

A RESOLUTION RATIFYING THE EXECUTION BY THE VILLAGE ATTORNEY OF A CONFIDENTIALITY AGREEMENT REGARDING THE SHARING OF INFORMATION IN *CITY OF CHICAGO V. SESSIONS*, 17 CV 5720, CONCERNING FEDERAL FUNDING SUB-RECIPIENT AWARDS, THE SUBMITTAL OF A STATEMENT OF INTEREST FOR INCLUSION IN A RELATED AMICUS BRIEF, AND THE EXECUTION BY THE VILLAGE ATTORNEY OF THE AMICUS BRIEF

which Resolution was passed by the Board of Trustees of the Village of Maywood at a Regular Village Board Meeting on the 5th day of September, 2017 at which meeting a quorum was present, and approved by the President of the Village of Maywood on the 6th day of September, 2017.

I further certify that the vote on the question of the passage of said Resolution by the Board of Trustees of the Village of Maywood was taken by Ayes and Nays and recorded in the minutes of the Board of Trustees of the Village of Maywood, and that the result of said vote was as follows, to-wit:

AYES: Trustee(s) H. Yarbrough, I. Brandon, A. Sanchez, K. Wellington, M. Lightford and R. Rivers

NAYS: Mayor Perkins

ABSENT: None

I do further certify that the original Resolution, of which the foregoing is a true copy, is entrusted to my care for safekeeping, and that I am the lawful keeper of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Village of Maywood, this 6th day of September, 2017.

Village Clerk

[SEAL]