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March 3, 2003

Becky Schaeffer, Esq.  
Senior Vice-President/ Corporate Counsel  
PBSJ  
2001 N.W. 107<sup>th</sup> Avenue  
Miami, Fl 33172

**RE: REQUEST FOR ADVISORY OPINION 03-25**

Dear Ms. Schaeffer:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on February 28, 2003 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding your firm's ability to bid on a Department of Water and Sewer (WASD) contract.

In your request, you advised the Commission that the Department of Water and Sewer is seeking a program manager for the Comprehensive Lateral Investigation and Replacement Program. The Program Manager's responsibilities will include: managing the program and the 10 million dollar budget for inspection and repair of laterals; writing specifications for lateral repair, project tracking and scheduling; planning and preparing written progress reports and maintaining a database for the peak flow model.

The Lateral Investigation and Replacement Program is one phase of a Water and Sewer Department project to comply with two federal

consent decrees between the Environmental Protection Agency and the Department of Water and Sewer. Other phases of the project included a pump station improvement program and Infiltration, Exfiltration and Inflow analysis.

The Notice to Professional Consultants for the Lateral Investigation and Replacement Program requires consultants to file notice of any potential conflicts and seek an advisory opinion. The addendum states that "Prime Consultants must identify whether they or any of their subconsultants, or members have participated in any Miami-Dade Water and Sewer Department's current and previous design and program management services for sanitary sewer systems. In identifying themselves or any such subconsultants, or members, the Prime Consultant must identify the specific work that they, the subconsultant, or member performed or work to be performed on any Miami-Dade Water and Sewer Department's current and previous design and program management services for sanitary sewer systems as well as the work to be performed as part of this solicitation, Program Manager for Comprehensive Lateral Investigation and Replacement Program. Additionally, a statement is required as to how this work is sufficiently different so as not to pose a conflict of interest. Determinations by the Ethics Commission shall be deemed final. Any Prime Consultant, subconsultants, or members found to have a conflict of interest will render the Prime Consultant's submittal non-responsive.

PBSJ has held a number of contracts with WASD related to the two consent decrees. For example, PBSJ served as Program Manager for the Pump Station Improvement Program, conducted the Peak Flow Study and did Database Development for Sewer System Improvements. PBSJ also has two key employees that worked on consent decree projects. Patricia Carney served as project manager on

the spare parts program and project manager for the design, permitting and construction administration of 85 pump station improvements and design of 15 miles of force main. Roberto Ortiz, another PBSJ employee, provided construction management and inspection services on the pump station improvement program.

The PBSJ team includes CES Consultants, Inc. and BND Engineers. CES employees have worked on the Peak Flow program, the Infiltration, Exfiltration and Inflow program, the Pump Station Improvement Program and force main projects. BND Engineers also worked as a subconsultant to PBSJ on the Pump Station Improvement Program.

The Commission found the Conflict of Interest and Code of Ethics ordinance permits PBSJ to serve as Program Manager for the Lateral Investigation and Replacement Program. PBSJ may serve as program manager because the scope of work for the other consent decree programs including the pump station improvement project and the peak flow study do not overlap with the scope of work on the Lateral program. Further, PBSJ's work on the capital improvement program does not constitute a conflict with the Lateral program. Finally, the work done by PBSJ staff for other companies on consent decree projects is not a conflict because the scope of work does not overlap with the Lateral program.

Moreover, BND Engineering and CES Consultants do not have a conflict of interest in regard to the Lateral program. BND's work on the Pump Station Improvement Program is not a conflict because the scope of work does not conflict. Similarly, CES Consultants' staff work on consent decree projects is not a conflict because the scope of work does not overlap.

Therefore, PBSJ and the other team members may serve as Program Manager. However, PBSJ must ensure that the firm does supervise any firm as part of the Lateral program with whom it serves as a subcontractor on another project and that an affiliated firm does not work on any part of the Lateral Investigation program. Finally, the scope on work on the Lateral contract must be monitored to ensure that it does not overlap with any current contract performed by PBSJ.

This opinion construes the Miami-Dade Conflict of Interest and Code of Ethics ordinance only and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics if you have any questions regarding possible conflicts under state law.

If you have any questions regarding the opinion, please call the undersigned at (305) 579-2954 or Ardyth Walker, Staff General Counsel at (305) 350-0616.

Sincerely Yours,

A handwritten signature in cursive script, appearing to read "Robert Meyers", with a horizontal line extending to the right.

ROBERT MEYERS  
Executive Director