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March 3, 2003

Thomas Marwood
Vice-President
Earth-Tech
3750 N.W. 87th Avenue
Suite 300
Miami, Florida 33178

RE: REQUEST FOR ADVISORY OPINION 03-33

Dear Mr. Marwood :

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on February 27, 2003 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding any conflicts between Earth's Tech current position as a Program Manager for the Florida Department of Transportation on the MIC-MIA project and serving on a team for the Aviation Department's Automated People-Mover project.

In your request, you advised the Commission that the Aviation Department and the Florida Department of Transportation are currently involved in the development of the Miami Intermodal Center. The program will link various forms of transportation, including a rental car facility, rail stations and passenger parking in the area of Miami International Airport. The Florida Department of Transportation is responsible for roadway

improvements, the MIC Core, the Rental Car Facility and land acquisition. The Aviation Department is responsible for the Automated People-Mover (APM) and maintenance and operation of the Rental Car Facility.

Earth-Tech has served as program consultant to the Florida Department of Transportation for the Miami Intermodal Center. In that role, Earth-Tech has handled coordination between the Florida Department of Transportation and other agencies including the Aviation Department, coordinated the work of the Management team responsible for the Florida Department of Transportation portion of the work and provided technical and engineering services.

The airport is currently preparing to issue a solicitation for a firm or a joint venture to design, build and operate the MIC facility. Phase 1 of the project will require the selected firm to complete design, analysis and construction of the Automatic Train System, vehicles, communications system and guideway equipment. The firm will also be responsible for design and construction of fixed facilities including the guideway facilities, all trackwork, central control facilities and power distribution systems.

The Commission found that Earth Tech may serve as a member of a team for the APM Mover system as long as the company relinquishes any management responsibilities related to coordination with the Aviation Department on MIC related activities.

In a series of opinions, the Ethics Commission has opined that certain contractual arrangements create an inherent conflict of interest and should be determined prior to award. For example, a conflict exists if a contractor has overlapping responsibilities on different phases of the same project (i.e. AE on one phase of the project and serving as value engineer, CIS or

CM partner on another phase of the project; supervisor or prime on one phase of the project and subcontractor on another or related phase or project). Further a conflict may exist if there are overlapping roles or responsibilities between various members of a team (i.e. a member serves as prime contractor on one contract and as a subcontractor to another contractor on another contract). These arrangements create conflict because they lead to disclosure of confidential information and impair independent judgment by the contractor in the performance of their contractual obligations.

Accordingly, Earth-Tech may work on the Automated People Mover system if the firm relinquishes any management coordination responsibilities with the Aviation Department relating to overlapping areas in the MIC project. Earth-Tech may not continue those responsibilities because the firm would serve as manager and contractor on the same project.

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,



ROBERT MEYERS
Executive Director