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August 19, 2004

B. Douglas Cloomer
Kimley-Horn and Associates, Inc.
Suite 411
8603 South Dixie Highway
Dadeland, FL 33134

RE: REQUEST FOR ADVISORY OPINION 04-160

Dear Mr. Cloomer:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on August 18, 2004 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding the Kimley Horn team's ability to provide security and communications services under a pending contract at the Seaport. The other team members are Perez and Perez Architects Planners, William A. Berry, Inc., Sea Secure, L.L.C. and IMS Worldwide, Inc.

In your letter, you informed the Commission that the Office of Capital Improvements Construction Coordination (CICC) recently issued a Notice to Professional Consultants to provide Security and Communications Services at the Seaport. The consultant will assist the Seaport in "the supervision of the installation and implementation of the security equipment." The scope of services consists of "design and development of technical specifications, production of Auto CADD drawings and details for the installation of security fences and gates,

lighting, access controls (including biometrics), I.D. card readers, public address and security warning systems, intelligent transportation systems, cargo security gates, command and control centers, communications networks and other security communications related technologies including required underlying physical infrastructure." Consultants must also have extensive knowledge of the standards and regulations of the Department of Homeland Security, FDLE, FBI, US Customs, US Coast Guard and other state and federal agencies. Finally, firms are required to know the operational and security details of cargo yards and cruise terminals.

Addendum #2 to the NTPC provides that "Prime Consultants must identify whether they or any of their subconsultants or members have participated in any way on any Port of Miami projects for the Miami-Dade Seaport Department related to security and communications including but not limited to the services described in the Scope of Services. In identifying themselves or any such subconsultants or members, the Prime Consultant must identify the specific work that they the sub-consultant or member performed or work to be performed on previous security and communications projects as well as the work to be performed as part of this solicitation."

Kimley Horn is currently providing consultant services to the Seaport. In that capacity, Kimley-Horn is currently providing Interim Security and Communications Services to the Seaport. The scope of work under the work order requires the firm to review the Security Master Plan.

Perez and Perez worked on the Port of Miami 2020 Implementation plan that established security zones and parameters. The work was incorporated into the Security Master Plan.

William A. Berry and Associates previously did design work on a stolen vehicle recovery system and a signage project for the Seaport. Berry has never done any security related work for the Seaport.

Sea Secure, L.L.C. assisted the Seaport in the development of the security master plan, did risk and vulnerability assessments and coordinated security planning with state and federal agencies.

IMS Worldwide has never done any work at the Seaport.

The Commission found Kimley Horn and the other team members may provide security and communication services related to the development of technical specifications and installation of security equipment. The proposed agreement is a continuation of the prior work which was done by team members. However, Kimley-Horn is prohibited from performing any work related to the security master plan under their current contract if the team is awarded the security and communications contract.

The Ethics Commission has previously held that a firm may work on a project where the firm worked on a prior phase of the project as long as the work does not involve oversight or review of the prior work. In RQO 02-166, the Ethics Commission opined that a contractor could serve as a gantry crane consultant where the firm had previously provided related services on an earlier phase of the same project. In RQO 03-36, the Ethics Commission opined that a conflict is not created by continuation of prior work as long as the scope of work does not overlap.

Similarly, in this case, Kimley-Horn and the other team members may work on technical specifications and installation of security equipment where the team members have previously worked on a prior phase of the

development of the security master plan. However, Kimley-Horn and the other team members may not perform any work related to review or oversight of the security master plan under any other agreement while performing work under the security and communications contract.

Finally, if the Kimley-Horn is awarded the contract, Kimley-Horn must provide the Ethics Commission with a report regarding its compliance with the restrictions in this opinion within 60 days of the Notice to Proceed and within 60 days of the issuance of each work order.

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 this opinion, please call the undersigned at (305) 579-2594 or Ardyth Walker, Staff General Counsel at (305) 350-0616.

Sincerely Yours,



ROBERT MEYERS
Executive Director

cc: Faith Samuels, CICC
Christopher Mazzella, Inspector General