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June 24, 2005

Ben H. Chen
President
Chen and Associates
420 Lincoln Road
Suite 240
Miami Beach, FL 33139

RE: REQUEST FOR ADVISORY OPINION 05-53

Dear Mr. Chen:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on June 23, 2005 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether your firm can respond to a solicitation to provide hydraulic computer modeling services for the Water and Sewer Department (WASD).

In your request, you advised the Ethics Commission that the Office of Capital Improvements Construction Coordination (CICC) recently issued a Notice to Professional Consultants to provide hydraulic modeling services for WASD. The selected consultant will be required to assist the County in the continued development and maintenance of its steady-state and dynamic wastewater system and steady-state waste system hydraulics computer model. The water and wastewater steady state models include pressure lines

and pumping stations. The work may include updating of the water and wastewater system computer models with new pumping and piping facilities, performing and/or assisting in model calibration including the review of calibration procedures, conducing various analyses with the computer models including local system capacity evaluations, operational studies, assisting in the provision of links between the computer models and the WASD SCADA, Geographic Information and Asset Management Systems (GIS) and market review of computer software available for modeling. Local capacity evaluations will be conducted with high priority on residential development in the downtown Miami area.

The current dynamic wastewater computer model used by WASD was developed in the late 90's as a result of a consent decree between the Environmental Protection Agency and WASD. The model is used as part of the Peak Flow Management Plan required by the federal consent decree. The original model was completed using data provided by several WASD contractors and Post Buckley, Schuh & Jerningan (PBSJ) completed the final design.

The current models will be used for long range planning including determining system upgrades to maintain an adequate water system, the need for larger regional facilities to accommodate growth and development of a localized model for areas of high growth and development.

The NTPC requires proposers to identify "whether they or any of their subconsultants or members have participated in any way in the development of the dynamic wastewater model currently utilized by WASD including but not limited to model design, model calibration, field testing and/or design construction work. In identifying themselves or any such sub-consultants or members, the Prime Consultant must identify the specific

work that they the subconsultant or member performed or work to be performed on the the dynamic wastewater computer model currently utilized by WASD."

Chen and Associates is currently providing professional services to WASD to update the sewer atlas GIS for Pump Station Basin #1 and #2 collection areas. The work requires the firm to collect as built information (existing pump lines and pumps stations), input the information and provide the information in a format suitable for GIS application. The data may be used in the hydraulic computer model. The firm's current WASD project is scheduled to expire in the summer of 2005. The hydraulic modeling contract should be awarded in early 2006.

The Ethics Commission found Chen and Associates may serve as a member of a team on the Hydraulic Computer Modeling contract. The scope of work under the firm's current work order on the Sewer Atlas GIS for Pump Station Basin #1 and #2 does not conflict with the scope of work under the Hydraulic Computer Modeling Contract.

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 two related contracts. These arrangements create conflict because they lead to disclosure of confidential information and impair

independent judgment by the contractor in the performance of its contractual obligations.

Since Chen and Associates does not have any of the conflicts enumerated above, Chen and Associates may serve as a member of a team on the Hydraulic Computer Modeling contract for WASD. Although the data from the firm's current work for WASD may be incorporated into the computer model, the scope of work under the proposed hydraulic computer modeling contract is a continuation of the firm's current work. Further, the firm's current work order to provide work for WASD should be completed later this summer. Therefore, Chen and Associates may serve as a member of the team on the Hydraulic Computer Modeling contract for WASD.

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: Fernando Ponassi, CICC
    Christopher Mazzella, Inspector General