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July 2, 2007

Brenda Clark
HDR Engineering, Inc.
15450 New Barn Road
Suite 304
Miami Lakes, FL 33014

RE: REQUEST FOR ADVISORY OPINION RQO 07-23

Dear Ms. Clark:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on June 26, 2007 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding potential conflicts between HDR's current engagements and serving as bond engineer for the Department of Solid Waste.

The Miami-Dade Solid Waste Department provides solid-waste collection, transfer, disposal and recycling services for the residents of Miami-Dade County. Miami-Dade County owns or has long-term leases for three solid-waste transfer stations: Northeast Transfer Station, Central Transfer Station and West Transfer Station. Miami-Dade County owns four active disposal sites: the South Dade Landfill, the North Dade Landfill, the Ash Landfill and the Resource Recovery Facility. Waste Management owns a fifth facility that has a long-term agreement with Miami-Dade County.

Miami-Dade County currently has long-term interlocal agreements with 27 municipalities for solid waste disposal. Miami-Dade County

must approve construction or modification of any private solid waste facility that would compete with Miami-Dade County for the delivery of solid waste disposal services.

The Office of Capital Improvements recently issued a Notice to Professional Consultants (NTPC) for a Bond Engineer for the Department of Solid Waste. The scope of services provides that the Bond Engineer "will conduct an annual evaluation of the County solid waste system, including the Resources Recovery facility and prepare an annual report on the condition of the system and financial records pursuant to Section 607 of the Bond Ordinance. Further, pursuant to the Operating and Management agreement between Montenay and Miami-Dade County, the Bond Engineer shall evaluate the physical condition and operating efficiency of the Resource Recovery facility and make recommendations regarding rates, charges and necessary capital improvements.

The Bond Engineer is also responsible for making recommendations and approvals regarding the County's landfills including closure plans in effect with the City of North Miami for the Munisport Landfill, the City of Miami for the Virginia Key Landfill and the City of Homestead for the Homestead Landfill. Specifically, the Bond Engineer is responsible for conducting inspections and approving grant payments pursuant to existing interlocal agreements between the County and the respective municipality.

Finally, the Bond Engineer may be tasked with other miscellaneous responsibilities that do not conflict with other tasks required under the Solid Waste bond ordinances and other agreements.

HDR is currently preparing a RFP for the Department of Solid Waste for the development of landfill gas utilization projects for the North Dade and South Dade Landfills. The

project should be completed in December, 2007.

HDR is also working for Waste Management on other projects in the State of Florida. None of the projects concern any facilities that compete with Miami-Dade County.

Finally, HDR is acting as Project Manager for the City of Miami on the Virginia Key Landfill project. The City of Miami owns the Virginia Key Landfill which is adjacent to the Wastewater Treatment Plant. The Virginia Key Landfill was closed, pursuant to a consent decree from the Florida Department of Transportation, in 1978. In 2004, Miami-Dade County and the City of Miami entered into a grant agreement for the drafting of the Contamination Assessment Plan (CAP) and Site Assessment Report (SAR) for the Virginia Key Landfill. A grant agreement between the City of Miami and Miami-Dade County for cleanup and closure of the landfill should be presented to the Board of County Commissioners in the fall of 2007.

As Project Manager, HDR is responsible for oversight of the project including the preparation of work orders and assessment of the progress and quality of the work. The CAP will be used to determine the grant amount necessary to complete the cleanup and closure of the Virginia Key Landfill. The preparation of the CAP and SAR is slated to be completed in the middle of 2008.

The Ethics Commission found that HDR may provide bond engineering services to the Miami-Dade County if it has completed any related engineering services such as work on the RFP for the North Dade And South Dade Landfill or the Virginia Key Landfill prior to commencement of work under the bond engineering contract.

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 on 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) or if there are overlapping scopes of work between two agreements. 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, HDR may not simultaneously provide services to the Department of Solid Waste for the North and South Dade Landfill and serve as bond engineer. The Department of Solid Waste prohibits bond engineers from providing engineering services under other agreements to the Department of Solid Waste.

Similarly, HDR may only serve as bond engineer if the firm has completed its work as Project Manager for the City of Miami prior to commencement of the bond engineering agreement. The bond engineer has oversight responsibility for the Virginia Key landfill project. Therefore, HDR would have overlapping responsibilities if HDR served in both capacities.

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,

A handwritten signature in black ink, appearing to read "Robert Meyers", with a long horizontal flourish extending to the right.

ROBERT MEYERS
Executive Director

cc: Faith Samuels, Office of Capital
Improvement