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July 26, 2007

Roberto S. Ortiz
Vice-President
Brown and Caldwell
8300 N.W. 33rd Street
Suite 100
Miami, FL 33122

RE: REQUEST FOR ADVISORY OPINION RQO 07-33

Dear Mr. Ortiz:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on July 25, 2007 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether Brown and Caldwell may serve as bond consultant to the Department of Solid Waste. Brown and Caldwell is the current 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.

Brown and Caldwell has served as bond engineer for the Department of Solid Waste since 1987. The firm has six active work orders including preparation of the annual systems report, landfill capacity analysis calculation, oversight of the closure of the Munisport Landfill in North Miami and the Virginia Key Landfill on Key Biscayne.

Brown and Caldwell may continue to serve as Bond Engineer for the Department of Solid Waste. The Ethics Commission has previously opined that a firm may continue to provide similar services under a successor agreement. Accordingly, Brown and Caldwell may continue to serve as bond engineer.

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 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.

Further, pursuant to the NTPC, the prime consultant and its subconsultants will be prohibited from performing any engineering design services under this agreement.

However, the prime consultant and its subconsultants will be permitted to perform engineering services which do not pose a conflict of interest such as planning, feasibility and process studies.

Since Brown and Caldwell does not have any of the conflicts enumerated in the Ethics Commission's prior opinions, Brown and Caldwell may serve as bond engineer for the Department of Solid Waste subject to the restrictions contained in the NTPC.

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