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ETHICS COMMISSIONERS March 27, 2008

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Charles Sinclair
Senior Vice-President
HDR Engineering, Inc.
15450 New Barn Road
Suite 304
Miami Lakes, FL 33014

RE: REQUEST FOR ADVISORY OPINION RQO 08-07

Dear Mr. Sinclair:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on March 26, 2008 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether Malcolm Pirnie may serve as a member of a team for the preparation of a Solid Waste Master Plan. Malcolm Pirnie is currently serving as Bond Engineer for the Department of Solid Waste.

In your request, you advised the Commission that the Department of Solid Waste is preparing to issue a solicitation for a firm to prepare a Solid Waste Master Plan. The anticipated scope of services provides that the contractor will study operational efficiencies, funding mechanisms and facility needs and make a long-range plan for the department.

Malcolm Pirnie, Inc. is currently serving as Bond Engineer for the Department of Solid Waste. In that capacity, the firm is responsible for conducting an annual evaluation of the County solid waste system,

including the Resources Recovery facility and preparing 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 contract between Malcolm Pirnie and Miami-Dade County specifically provides that "the Engineer may also provide other engineering services for the Department, which do not present conflicts of interest relative to its bond engineering services, including but not limited to planning, feasibility and process studies." The contract also requires the bond engineer to seek a conflict of interest opinion.

The Commission found that Malcolm Pirnie may serve as a member of the team for the Solid Waste Master Plan as long as the bond engineer is not assigned any oversight or evaluation responsibilities related to the Solid Waste Master Plan. Pursuant to the contract, the firm may perform planning studies for the Department of Solid Waste that are outside the bounds of the bond engineering contract. However, due to potential conflicts, the firm and its subconsultants may not serve as Prime Consultant on the Solid Waste Master Plan 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.

In the instant case, although both the Bond Engineer and the firm that prepares the Solid Waste Master Plan will make recommendations regarding necessary improvements to departmental facilities, the master plan contractor will make recommendations from a policy perspective whereas the bond engineer seeks to evaluate the fiscal health and financing needs of the department. Further, the bond engineer does not evaluate departmental needs from such a long-term perspective.

However, the Bond Engineer may be assigned the task of evaluating the financial assumptions and risks contained in the Solid Waste Master Plan recommendations. In order to avoid potential conflicts, Malcolm Pirnie and its subconsultants may not serve as Prime Consultant on the Master Plan contract and team assignments must be devised to avoid any potential conflicts.

Finally, Malcolm Pirnie must provide the Ethics Commission with quarterly reports, beginning with the quarter following the Notice to Proceed, regarding its compliance with the restrictions contained in this opinion if the firm serves on the team that is awarded the Solid Waste Master Plan contract. The reports should be sent to

Robert Meyers, Executive Director, 19 West
Flagler, Suite 820, Miami, FL 33130.

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 cursive script, appearing to read "Robert Meyers", with a long horizontal flourish extending to the right.

ROBERT MEYERS
Executive Director