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April 25, 2008

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Sara Leu
Department of Water and Sewer
3071 S.W. 38th Avenue
Suite 435
Miami, FL 33146

RE: REQUEST FOR ADVISORY OPINION RQO 08-20

Dear Ms. Leu:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on April 24, 2008 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether language should be added to an upcoming solicitation on a Coastal Wetlands Rehydration Project limiting the participation of Camp, Dresser and McKee (CDM). CDM, along with its subconsultants, CH2MHill and MSA, provided architectural and engineering services on a different version of the project to WASD under a miscellaneous engineering agreement.

In your request, you advised the Commission that in 2006, the Department of Water and Sewer received an Interim Consumptive Use Permit from the South Florida Water Management District. Pursuant to that agreement, WASD was required to provide plans for re-use of water. WASD created a plan for a 1 million gallon a day pilot program which would use treated water to rehydrate coastal wetlands in the Biscayne National Park area. The plant would be housed on the grounds of the South District Wastewater Treatment Plant. The initial design work for the project was done by CDM under its miscellaneous agreement with WASD.

Subsequently, after review by major stakeholders in the project including WASD, the Florida Department of Environmental Protection and Biscayne National Park, WASD decided to scale down the pilot project to 230,000 gallons a day. The scaled-down project will evaluate the effects of the treated water on native plant and animal species in the Biscayne National Park area including the effects on development, growth and reproduction. The proposed scope of services includes preparation of a monitoring plan to evaluate water quality, ecological testing and aquatic toxicity studies. The selected firm will oversee design, permitting, bid and construction management services for the pilot testing facility. The selected firm will also be responsible for overseeing the operation and management of the study including coordination with Florida International University. FIU will be responsible for conducting portions of the ecological and toxicity studies. CDM's earlier work on the larger project may be distributed to proposers on the smaller project.

The Commission found CDM and its subconsultants may provide services on the Coastal Wetlands Rehydration Demonstration Project. The firm's prior work on the larger project does not overlap with the scope of work under the proposed smaller scale project. Further, the firm will not have any oversight, contracting or bidding services related to the selection of a firm to provide services under the smaller project.

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.

Accordingly, WASD does not have to add language limiting the participation of CDM and its subconsultants in the solicitation for an AE firm to provide services for the pilot study on the Coastal Wetlands project. CDM's prior work on a larger scale pilot study does not conflict with the scope of services under the proposed solicitation and the firm does not have any continuing responsibilities under that work order. Therefore, CDM does not have a conflict under the Commission's standard of review.

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