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November 18, 2009

Eduardo Vega
Assistant Director
Department of Water and Sewer
3071 S.W. 38th Avenue
Miami, FL 33146

RE: REQUEST FOR ADVISORY OPINION RQO 09-43

Dear Mr. Vega:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on November 17, 2009 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether Brown and Caldwell may provide construction manager at-risk services for the construction of a disinfection system at the North Dade Wastewater Treatment Plant. Brown and Caldwell is currently providing related engineering services for the North Dade Wastewater Treatment Plant.

In your request, you advised the Commission that Brown and Caldwell is currently providing engineering services to WASD under a contract to make recommendations regarding necessary replacement and repair of facilities and equipment at the North Dade Wastewater Treatment Plant. The firm has recommended that Miami-Dade County change its current chlorination system at the plant. In order to implement this new system, WASD would have to construct a new facility to

deliver the alternative technology. Brown and Caldwell has recommended that WASD enter into a construction manager at risk (CM-at risk) contract for construction of the new facility.

The CM-at risk would be responsible for overseeing the final design including construction documents, hiring the contractor and subcontractors for the project and overseeing the construction of the project. The CM-at risk will submit a guaranteed maximum price for the project and is responsible for ensuring that the project is delivered on time and on budget. The CM-at risk is responsible for any cost overruns.

Brown and Caldwell has a construction division, Brown and Caldwell Constructors, which would like to bid on the proposed CM-at risk contract.

The Commission found Brown and Caldwell or a related division is not currently barred from providing CM-at risk services. Brown and Caldwell is not currently providing design or engineering work for the disinfection system at the facility. Brown and Caldwell has only provided analysis regarding possible disinfection alternatives at the NDWWTP. However, Brown and Caldwell and any related divisions would be prohibited from providing CM-at risk services if the firm is assigned any portion of the design work for an alternative disinfection system at the NDWWTP.

In several prior opinions, the Ethics Commission has opined that work on planning studies does not preclude participation on the design phase of a project. In RQO 02-166, the Ethics Commission opined that a seaport contractor could work on the construction phase of a project where the firm had previously done studies related to the same project. In RQO 05-60 the Ethics Commission opined that MC Harry could perform work on a

courthouse renovation project although it had performed the original studies that led to the current agreement. In RQO 09-19, the Ethics Commission opined that WASD contractors could do design work on a project on which they had previously provided work.

However, Brown and Caldwell may not simultaneously provide engineering services related to the design of a new disinfection facility while a related division provides CM-at risk services. The Ethics Commission has consistently opined that a firm (or a related division) may not provide design services while simultaneously serving as CM-at risk on a project. Therefore, Brown and Caldwell (or a related division) would be prohibited from providing CM-at risk services if the firm was assigned any design responsibilities for the new disinfection system under the repair and replacement contract.

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