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March 22, 2011

Alberto Argudin  
Vice-President  
ADA Engineering, Inc.  
8550 N.W. 33<sup>rd</sup> Street  
Suite 101  
Miami, FL 33122

**RE: REQUEST FOR ADVISORY OPINION-RQO 11-8**

Dear Mr. Argudin:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on March 21, 2011 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether the firm may simultaneously provide services as an independent consultant on the Munisport Landfill for the Department of Solid Waste and serve as an owner's representative on the Winson Water Treatment Plant for the City of North Miami.

In your request, you advised the Commission that the City of North Miami recently issued a Request for Qualifications (RFQ) for an owner's representative for the design of upgrades to the City's water treatment plant. The City has contracted with a firm to design the necessary upgrades. If the City proceeds with the upgrades, the Owner's Representative will provide oversight and review of the work of the engineering team during construction of the upgrades. The Owner's Representative will also be responsible for developing the final scope of services and budget for the

project; assist with selection of the construction contractor and oversee final scheduling and budgets. The Owner's Representative may also assist the City on other utility related work include performing studies and assisting with intergovernmental utility negotiations.

The Munisport Landfill is a former municipal landfill located in the City of North Miami. In the 1990's the City of North Miami and the Environmental Protection Agency entered into a consent decree for clean-up of the landfill. The clean-up consists of a cap on the waste deposits; constructing a stormwater management system; restoring certain wetlands; managing landfill gas and collection and treatment of the groundwater. In 2004, Miami-Dade County established an escrow fund to pay the City's expenses for cleanup of the Munisport Landfill. The Department of Solid Waste Management (SWM) is responsible for administering this fund. Pursuant to the agreement between Miami-Dade County and the City of North Miami, the County must approve all plans related to the cleanup of the landfill. The plans must be approved prior to payments from the escrow fund.

ADA Engineering is the Department of Solid Waste's independent engineer in charge of the Munisport Landfill. ADA is responsible for evaluating the City's progress on the clean-up and making recommendations regarding the City of North Miami's clean-up payment requests. ADA also advises the Department of Solid Waste regarding the City's various strategies for clean-up of the landfill.

The Commission found ADA Engineering may not simultaneously serve as the independent consultant for the Munisport Landfill for the Department of Solid Waste and serve as the Owner's Representative for the Winson Water Treatment Plant upgrades for the City Of North Miami. Under the Commission's prior



opinions, ADA will have an impermissible conflict under the two roles.

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.

In the instant case, ADA will have overlapping responsibilities if the firm is reviewing North Miami's plans for the Munisport Landfill for the Department of Solid Waste at the same time as it serves as an Owner's Representative on the Winson Water Treatment Plant upgrades. The City of North Miami retains final responsibility for the cleanup under its agreement with the developer. As a consultant for the City of North Miami, ADA's independence of judgment in providing oversight on the landfill closure for the Department of Solid Waste may be compromised by any work for the City of North Miami on utility projects. Therefore, ADA has an impermissible conflict of interest and may not simultaneously serve 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 'R. Meyers', with a stylized, flowing script.

ROBERT MEYERS  
Executive Director