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December 19, 2002

Eloise Gonzalez
President
Commercial Interior Contractors
2500 N.W. 39th Street
Miami, FL 33142

RE: REQUEST FOR ADVISORY OPINION 02-159

Dear Ms. Gonzalez:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on December 18, 2002 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding any conflicts between the firm's work as a subconsultant to Parson-Odebrecht, J.V. on the South Terminal program and the firm working as a subconsultant to another team on the South Terminal.

In your letter, you advised the Commission that Commercial Interior Contractors, Corp. is a subcontractor to Parsons-Odebrecht, J.V. on the South Terminal program. Parsons Odebrecht, J.V. is the Construction Manager for the South Terminal Program at Miami International Airport. The South Terminal program consists of eight major capitol projects. The Construction Manager at Risk (CM) is responsible for managing all construction work and services provided by all contractors, subcontractors, vendors, suppliers, etc. and monitoring quality,

safety and environmental standards. The CM is also responsible for entering into agreements providing for General Contractor or Design/Build Services for the various project phases.

Under the subconsultant agreement, Commercial Interiors Corporation is to provide three employees to the project: an Executive Secretary, a Lien Release Clerk and a Superintendent of Finishes. Currently, the firm provides an Executive Secretary to the Project Director. The firm does not have management responsibilities and does not participate in the selection process for consultants on the project.

The Commission found Commercial Interior Contractors ("Commercial") may work as a subconsultant to a consultant on a project at the South Terminal program. Since Commercial does not have management responsibilities or selection responsibilities, work for another contractor will not conflict with their current responsibilities on the South Terminal project.

In a series of opinions, the Ethics Commission has defined the types of relationships between Construction Management firms, contractors and subcontractors that raise the potential for conflict. In RQO 00-129, the Commission opined that ADA Engineering may not work as a member of the CM team on the South Terminal program where they had served as a member of the design team. The Commission found that there was an inherent conflict between the role of designer and contractor. In RQO 00-137, the Commission opined that HJ Ross had a potential conflict of interest where they would regulate a firm that served as a partner on another contract. The Commission found that the two firms' current business relationship might impair Ross' independence of judgment. In RQO 02-80, the Commission opined that MCO Construction could serve as a

subconsultant to a contractor on a South Terminal project while serving as a member of the Parson-Odebrecht, J.V. team.

The Subconsultant Agreement between Parsons-Odebrecht and its subconsultants uses the prior opinions to establish a conflict of interest for subconsultants on the South Terminal program. The provisions provide "To assist Subconsultants in avoiding a real or perceived conflict of interest, the following provisions shall apply:

- a. Subconsultant employees shall be prohibited from performing assigned work on any portion of the South Terminal Expansion Program Pre-Construction And Construction efforts for which Subconsultant had any prior design or other professional responsibility.
- b. Subconsultant employees shall be excluded from meetings at which work for which Subconsultant had any prior design or other professional service responsibility will be discussed."

Under the standard established by the Commission's prior opinions and the contract language, Commercial Interiors does not have a conflict in regard to performing different work for another contractor on the South Terminal program. Since Commercial does not have management or selection responsibilities, its work for another contractor will not conflict with its current responsibilities. Therefore, Commercial Interior Contractors may work as a subconsultant to another firm providing services to Parsons-Odebrecht on the South Terminal program.

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