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March 3, 2003

James Cowgill  
Vice-President  
Hazen and Sawyer  
4000 Hollywood Boulevard  
Seventh Floor, North Tower  
Hollywood, FL 33021

**RE: REQUEST FOR ADVISORY OPINION 03-36**

Dear Mr. Cowgill:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on February 27, 2003 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding your firm's ability to bid on a Department of Water and Sewer (WASD) contract.

In your request, you advised the Commission that the Department of Water and Sewer is seeking a program manager for the Comprehensive Lateral Investigation and Replacement Program. The Program Manager's responsibilities will include: managing the program and the 10 million dollar budget for inspection and repair of laterals; writing specifications for lateral repair, project tracking and scheduling; planning and preparing written progress reports and maintaining a database for the peak flow model.

The Lateral Investigation and Replacement Program is one phase of a Water and Sewer Department project to comply with two federal consent decrees between the Environmental Protection Agency and the Department of Water and Sewer. Other phases of the project included a pump station improvement program and Infiltration, Exfiltration and Inflow analysis.

The Notice to Professional Consultants for the Lateral Investigation and Replacement Program requires consultants to file notice of any potential conflicts and seek an advisory opinion. The addendum states that "Prime Consultants must identify whether they or any of their subconsultants, or members have participated in any Miami-Dade Water and Sewer Department's current and previous design and program management services for sanitary sewer systems. In identifying themselves or any such subconsultants, or members, the Prime Consultant must identify the specific work that they, the subconsultant, or member performed or work to be performed on any Miami-Dade Water and Sewer Department's current and previous design and program management services for sanitary sewer systems as well as the work to be performed as part of this solicitation, Program Manager for Comprehensive Lateral Investigation and Replacement Program. Additionally, a statement is required as to how this work is sufficiently different so as not to pose a conflict of interest. Determinations by the Ethics Commission shall be deemed final. Any Prime Consultant, subconsultants, or members found to have a conflict of interest will render the Prime Consultant's submittal non-responsive.

Hazen and Sawyer has participated in several tasks related to the consent decree programs. Hazen and Sawyer and other team members served as part of the Program Management team for the Infiltration/Exfiltration/Inflow program. The team managed outside contractors

who repaired sewer leaks, monitored progress and prepared required reports for the Environmental Protection Agency. Hazen and Sawyer also provided technical assistance to WASD for the Lateral Program Study and attended Comprehensive Lateral Improvement Program meetings.

Two members of Hazen and Sawyer's team have also worked on sanitary sewer contracts. Earth Tech and San Martin and Associates also worked as part of the program management team for the Infiltration/Exfiltration/Inflow program. Additionally, Earth Tech provided program management services to the Needs Assessment program. The program supervises the work of six design consultants.

The Commission found that Hazen and Sawyer may serve as Program Manager for the Lateral Investigation and Replacement Program. Although Hazen and Sawyer has participated in related lateral work, the scope of work does not overlap with the scope of work under the Lateral Investigation and Replacement program. Additionally, Earth-Tech and San Martin and Associates do not have conflicts between their prior WASD work and the Lateral Investigation and Replacement program.

Hazen and Sawyer's prior work for the Lateral Program Study and the Comprehensive Lateral Improvement project does not overlap with the scope of work on this program. These two projects were part of WASD's efforts to correct all parts of the system covered by the consent decree. The committees reviewed possible problems with the lateral system and the need for lateral repair work. The preliminary work done by these committees will be continued under the Lateral Investigation and Repair program and the scope and breadth of the work will be much larger. A conflict is not created by continuation of prior work as long as the scope of work does not overlap.

Further, the work done by Hazen and Sawyer and its subcontractors on the Infiltration program does not overlap with the scope of duties on the Lateral program. Therefore, Hazen and Sawyer does not have a conflict in regard to the scope of work.

However, Hazen and Sawyer may not supervise a firm for whom it has served as subcontractor on another project or work with an affiliated firm on any part of the Lateral Investigation and Replacement program.

Therefore, Hazen and Sawyer and its proposed team may serve as Program Manager for the Lateral Investigation and Replacement Program. However, Hazen and Sawyer may not work with any firm for whom it serves as subcontractor on another project or an affiliated firm on any part of the Lateral 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 the opinion, please call the undersigned at (305) 579-2954 or Ardyth Walker, Staff General Counsel at (305) 350-0616.

Sincerely Yours,



ROBERT MEYERS  
Executive Director