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February 28, 2008

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Burt E. Baldo, P.E.
Vice-President
Kimley-Horn Associates, Inc.
9130 S. Dadeland Boulevard
Suite 102
Miami, FL 33156

RE: REQUEST FOR ADVISORY OPINION 08-05

Dear Mr. Baldo:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on February 27, 2008 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether the firm may provide architectural and engineering (AE) services on the Miami River Greenway project.

In your request, you advised the Commission that the Office of Capital Improvements recently issued a Notice to Professional Consultants (NTPC) for the Miami River Greenway project. The scope of services provides that the selected consultant will provide planning, design, post-design and public involvement services in the preparation of complete construction plans for six County owned parcels along the Miami River Greenway network. The work will include design of seawalls, drainage, utility connections, and all other services necessary for completion of the project. The work also includes coordination with other entities including the City of Miami, the Trust for Public Land and the Miami River Commission.

Kimley-Horn and Associates (KHA) has been involved in a number of projects related to the Miami River. In 2001, KHA was retained by the Miami River Commission to develop an urban infill plan for the development along the Miami River. The Urban Infill plan is a comprehensive plan for development along the riverfront including transportation, housing and public improvements. KHA also developed design standards for future public and private development along the Miami River for the City of Miami. The Metropolitan Planning Organization also retained KHA to develop a transportation plan for the Miami River area that included pedestrian, bicycle, water and public transportation along the Miami River. Finally, KHA is currently under contract with the Trust for Public Land to provide construction documents for the redesign of North and South River Drives. The project includes design of signage, mini-parks and enhancement of the tree canopy along the Miami River.

The firm of Millian, Swain and Associates (MSA) is one of the subconsultants on the KHA team. Arsenio Millian, one of the principals of MSA, serves on an advisory committee for the Trust for Public Land.

The Commission found KHA may provide AE services for the Miami River Greenway project although the firm is currently providing related services to the Trust for Public Land (TPL). The firm's work for TPL should not interfere with the firm's independence of judgment in the performance of its obligations to Miami-Dade County.

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 various members of a team (i.e. a member serves as prime contractor on one contract and as a subcontractor to another contractor on another contract) or if there are overlapping scopes of work between two agreements. These arrangements create conflict because they lead to disclosure of confidential information and impair independent judgment by the contractor in the performance of their contractual obligations.

KHA and Associates does not have any of the conflicting contractual arrangements enumerated above. The Ethics Commission has generally held that a firm's conflicts are limited to agreements with other county agencies or entities and does not include agreements with other entities that are doing related work. In 2004, the Ethics Commission opined in a series of opinions related to the People's Transportation Plan that the firms did not have a conflict of interest related to agreements with other entities such as the Metropolitan Planning Organization (MPO), the Miami-Dade Expressway Authority (MDX) and the Florida Department of Transportation (FDOT) that were conducting work related to projects included in the PTP.

Similarly, in the instant case, KHA does not have a conflict because of its current work for the Trust for Public Land on projects related to the Miami River Greenway. Further, the Ethics Commission has consistently opined that a firm does not have a conflict of interest because it provided related planning or studies on earlier phases of the same or a related project. Accordingly, KHA may serve as a consultant on the Miami River Greenway project.

Civic Involvement

The Conflict of Interest ordinance permits Arsenio Millian and MSA to provide subcontractor services related to the Miami River Greenway. The Conflict of Interest ordinance does not extend to the civic activities of contractors and vendors.

In RQO 06-55, the Ethics Commission opined that an architect could provide AE services related to GOB historic preservation project although he served as immediate past president of the Dade Heritage Trust and the Dade Heritage Trust would administer the preservation fund. The Ethics Commission opined that the board members of outside agencies were not precluded from providing services because the ordinance did not extend to members of private entities.

Similarly, Millian is not precluded from providing subcontractor services because he is a member of an advisory committee for an organization that is conducting work related to Miami River redevelopment. Accordingly, MSA may serve as a member of the KHA team.

This opinion construes the Miami-Dade County Conflict of Interest and Code of Ethics ordinance only. Please contact the Florida Commission on Ethics if you have questions regarding any conflicts under state law.

If you have any questions regarding this opinion, please call Ardyth Walker, Staff General Counsel at (305) 350-0616 or the undersigned at (305) 579-2594. 0000

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