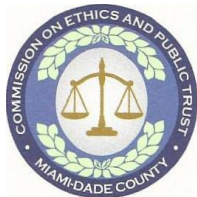


## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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July 20, 2021

Mr. Robert W. Barlett, Esq.  
Senior Legal Counsel  
Pure Technologies, a Xylem Brand  
Via Email @ [Robert.Barlett@xylem.com](mailto:Robert.Barlett@xylem.com)

RE: INQ 2021-105, Section 2-11.1(q), County Ethics Code (Continuing application after County service *aka* “Two-Year Rule”)

Dear Mr. Barlett:

You inquire on behalf of Mr. Luis Airado, former County employee and President of L&M Enterprises Group, Inc. (L&M), whether a prohibited conflict of interest exists between his former County employment and his prospective work as subconsultant for Pure Technologies (and/or parent company Xylem Inc.) on an upcoming project (hereinafter “Project”) with the County’s Water and Sewer Department (WASD).

### **Background**

Pursuant to the information provided to this office, we note that, Mr. Airado was employed in Miami-Dade County for 34 ½ years, retiring on May 28, 2021. He was employed as Water Distribution Supervisor for WASD. His duties involved the operations, management, and oversight of the water valves/pipe section of WASD. Mr. Airado is also the President of L&M.<sup>1</sup>

Mr. Airado stated that he was involved with the Project in a supervisory capacity while employed with WASD.

Pure Technologies is a Maryland-based company which utilizes its expertise and patented technology-driven solutions around the world to help utility operators reduce the impact of deterioration while maximizing capital budgets for rehabilitation and replacement programs. In

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<sup>1</sup> Although L&M is a company specializing in the management of rental properties, in this instance, it will serve Pure Technologies in an advisory capacity, reviewing proposed plans of actions, offering guidance and inspection services for the Project.

the specific area of pipeline assessments, it monitors and manages a variety of pipe materials – including those that transport water, wastewater, oil, and gas.

The Project: Contract No. SS9537-0/21, Pipeline Inspection, is a sole source contract awarded to Pure Technologies for the delivery of pipeline inspection services for WASD.<sup>2</sup> In 2010, the County’s Water Distribution Division sought the services of a company for the inspection of water concrete pipes in the County.<sup>3</sup> The contract between Pure Technologies and the County has been renewed consistently.

L&M: The services expected of this prospective Subcontractor are enumerated in your letter to this office. In general, the scope of work will involve the following: reviews of the Project plan; site visits; attendance at client kick-off meeting to review Project’s plan; provide support to Contractor Pure Technologies in the field of pipeline inspections; review WASD’s procedures; assist with client coordination; and communicate to Contractor Pure Technologies an installation/ pipe verification plan. Essentially, Mr. Airudo advises that, four times a year, he will attend the inspections of the County’s water valves/pipes infrastructure. With regard to attendance at meetings with County personnel, he advises that his participation will involve scheduling and overall coordination of these inspections.

### **Issue**

Whether a conflict of interest prohibits Mr. Airudo from performing sub-consulting services for Pure Technologies, a County contractor, on a WASD Project he oversaw in his County employment.

### **Jurisdiction**

The Miami-Dade Commission on Ethics and Public Trust (COE) has jurisdiction to provide advisory opinions on *prospective* issues to (former) County employees whose actions may be subject to relevant provisions under the County Ethics Code or to “suitable surrogates who ask for opinions on behalf of persons subject to the Code.”<sup>4</sup> Accordingly, we provide you with the following guidance. *See* INQ 18-161, citing to Section 2-1074(y), Miami-Dade County Code

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<sup>2</sup> Per Miami-Dade County Resolution R-745-17, the primary use of the pipes is to facilitate the flow of water at high pressure.

<sup>3</sup> Mr. Airudo explained that, after a catastrophic water main break in 2010, the County, identifying a dire problem with its concrete pipes, sought out a company with the technological means to perform inspections which could assist in predicting the breakage of wires which causes pipes to explode. Pure Technologies has the unique technology needed to provide these thorough inspections while affording the County the information needed to assess the condition of the pipes and take the precautions necessary to prevent damage or main break.

<sup>4</sup> Mr. Airudo was made aware of your request to this office and proffered no objection.

## **Discussion**

The Conflict of Interest and Code of Ethics ordinance at Section 2-11.1(q)- Two-Year Rule- does not prohibit former County employees from working with or for a County contractor, provided the former employee does not engage in lobbying on behalf of the County contractor for the requisite two-year period.<sup>5</sup>

The remaining question is whether Mr. Airado may be involved in certain activities concerning the existing agreement between Contractor Pure Technologies and WASD. To that end, Section 2-11.1(q) of the County Ethics Code prohibits a County employee who separated from County employment less than two years, from *lobbying* any County officer, departmental personnel, or employee.

The ordinance is designed to limit a former employee's ability to use his or her former County service and contacts for personal benefit or business interests through lobbying, to the detriment of others who do not have County connections.

Lobbying activities described in the Two-Year Rule are *more expansive* than those found under the general Lobbying ordinance at Section 2-11.1(s).<sup>6</sup> Whereas the Lobbying ordinance characterized lobbying as advocating for items that will foreseeably be decided or recommended by the Board of County Commissioners, the Mayor or a County board or committee, the Two-Year Rule makes no such limiting connection to matters that will foreseeably be brought before voting bodies or the Mayor.

In the early part of the Commission's existence, the Ethics Commission interpreted this ordinance to prohibit former County employees for a period of two years after their County service from "acting as an agent for anyone other than [the] County in any matter in which they participated personally and substantially as an official, officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise employed in County service."<sup>7</sup>

Later on, the Ethics Commission modified its interpretation of the Two-Year Rule in RQO 09-36 concluding that, a soon-to-be former County employee who had oversight over the baggage handling system section of the Aviation North Terminal Development project (including coordinating work with the contractor), was not prohibited from working for the subconsultant on the same project and in addition, assume oversight of the same baggage handling system section

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<sup>5</sup> See RQO 06-54; RQO 11-24; INQ 14-133; INQ 15-125; INQ 16-109; INQ 16-151; INQ 18-37

<sup>6</sup> See RQO 01-38

<sup>7</sup> See RQO 98-13 (former County employee was precluded by Section 2-11.1(q) from working for anyone or providing services to anyone other than the County on a project in which he had personal and substantial participation)

of the project, including meeting with County staff, *as long as the meetings are not on behalf of his company or any other third party*” because he will not be engaged in lobbying activities.”<sup>8</sup>

For example, in RQO 12-09, the Ethics Commission concluded that, a former municipal director of the Office of Capital Improvement Projects may serve as subcontractor to the prime contractor on a project for capital improvement projects and arrange and participate in meetings for the purpose of discussing the government’s practices and procedures and other matters related to his professional knowledge, as long as there is no attempt on the part of the former employee to influence government officers or personnel regarding the terms of the agreement or the project. *See also* INQ 18-37 (citing to RQO 12-09, former MDAD Project Administrator may work as subcontractor technical consultant for MDAD Contractor on a project he oversaw in his County position as long as he does not advocate for decisions made at the sole discretion of County personnel)

### **Conclusion**

Consequently, Mr. Airuda is not prohibited from being retained by Contractor Pure Technologies to perform sub-contracting services related to County WASD projects including the Project in question. Mr. Airuda may meet with County personnel and appear before County boards or committees provided it is related to an awarded contract (or existing project) and it is done without any intent or purpose to influence any change or modifications to the contract or the project. (Emphasis added)

Specifically, Mr. Airuda is prohibited from advocating for decisions that may be made at the sole discretion of any County personnel. For example, he is prohibited from arranging, representing, or participating in any meetings, negotiations, presentations, interactions, or other discussions on behalf of L&M or Contractor Pure Technologies if the meetings or discussions are convened for the purpose of persuading or influencing County personnel (or elected officials) to take official action or make an official decision or recommendation regarding any aspects of the Project.<sup>9</sup> In other words, while Mr. Airuda may interact with County personnel in connection with ministerial, informational, or technical matters, he must be careful not to attempt to influence anyone in connection with a discretionary decision.<sup>10</sup>

Another important provision of the County Ethics Code is Section 2-11.1(h), *Confidential Information*, which prohibits the disclosure of confidential information gained through one’s position with the County or the use of such information, directly or indirectly, for personal gain or benefit. If the decision-making process for the services WASD Contractor Pure Technologies provides to the County is related to the work Mr. Airuda formerly performed for WASD (as is the

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<sup>8</sup> As early as 1999, the Ethics Commission recognized that, a former Aviation management employee may work as subcontractor providing technical assistance to a County Aviation contractor as long as he does not interact with County officials or their staff or represents the Contractor as a lobbyist. *See* RQO 99-54

<sup>9</sup> *See* Section 2-11.1(s), County Ethics Code; RQO 00-145; RQO 12-09

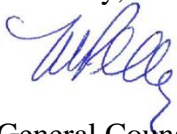
<sup>10</sup> *See* RQO 12-09; INQ 16-75; INQ 17-114; INQ 18-37

case here), Mr. Airuda should consider refraining from using confidential information gained through his County service which may give him and/or Contractor Pure Technologies an advantage in its dealings with the County. <sup>11</sup>

We encourage your company and Mr. Airuda to reach out to this office in the event there are further inquiries or concerns regarding the interpretation of the Two-Year Rule or any other provision of the County's Conflict of Interest and Code of Ethics.

This opinion is based on the facts which have been submitted to this office. It is not applicable to any other conflict under State law. Inquiries regarding possible conflicts under State law should be directed to the State of Florida Commission on Ethics. Please contact us if we may be of further assistance.

Cordially,



General Counsel

Cc: Mr. Luis Airuda ([luisairuda@gmail.com](mailto:luisairuda@gmail.com))  
COE Legal Staff

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<sup>11</sup> See INQ 16-109; INQ 17-100; INQ 17-114; INQ 18-37