

# MINUTES

## Key Largo Wastewater Treatment District (KLWTD) Board of Commisisoner's Meeting

October 6, 2004 5:00 PM,  
Key Largo Civic Club, 209 Ocean Bay Drive

The KLWTD Board of Commissioners met for a regular meeting on Oct. 6, 2004 at 5:00 PM. Present were Chairman Gary Bauman, Commissioners Charles Brooks, Jerry Wilkinson and Cris Beaty. Commissioner Andrew Tobin arrived at 5:05 PM. Also present were General Manager Charles Fishburn, Board Clerk Carol Simpkins, District Counsel Thomas Dillon, Financial Officer Martin Waits, and all appropriate District staff.

Chairman Gary Bauman led the Pledge of Allegiance.

### ADDITIONS/DELETIONS TO THE AGENDA.

General Manager Charles Fishburn requested that the proposed new contract for District Counsel Thomas Dillon be added under Legal Report for discussion.

**Motion: Commissioner Jerry Wilkinson made a motion to approve the agenda as amended. The motion was seconded by Commissioner Charles Brooks**

Vote on motion:

Board Member	Yes	No	Other
Commissioner Andrew Tobin			Absent
Commissioner Charles Brooks	X		
Commissioner Jerry Wilkinson	X		
Commissioner Cris Beaty	X		
Chairman Gary Bauman	X		

Motion passed 4 to 0

**PUBLIC COMMENT:** The following persons addressed the Commission: Robert Burt, resident of the Key Largo Village stated that he and his neighbors are very pleased that the trenching has begun. They have been waiting 20 years for the start of the wastewater system. He thanked the Board for all of their efforts. Steve Gibbs, resident of Key Largo, thanked the Board for rising over some very serious odds against them from the very beginning and he feels that the Board is on the way to a very big success and he is very proud of them.

### ACTION ITEMS

*Copier Contract*

General Manager Charles Fishburn stated that District was able to take advantage of very favorable rates in a Miami-Dade School District contract to achieve the lowest cost possible.

**Motion: Commissioner Charles Brooks made a motion to approve the copier contract with Toshiba. The motion was seconded by Commissioner Andrew Tobin.**

Vote on motion

Member	Yes	No	Other
Commissioner Tobin	X		
Commissioner Brooks	X		
Commissioner Beaty	X		
Commissioner Wilkinson	X		
Chairman Bauman	X		

Motion passed 5 to 0

*General Liability Insurance and Workers' Compensation Insurance*

The Board directed staff to place the cost of the General Liability Insurance and the cost of the Workers' Compensation Insurance on separate lines in the spreadsheets.

**Motion: Commissioner Jerry Wilkinson made a motion to accept the General Liability Insurance and Workers' Compensation Insurance and approve the first quarter payment. The motion was seconded by Commissioner Andrew Tobin.**

Vote on motion

Member	Yes	No	Other
Commissioner Tobin	X		
Commissioner Brooks	X		
Commissioner Beaty	X		
Commissioner Wilkinson	X		
Chairman Bauman	X		

Motion passed 5 to 0

**CHIEF FINANCIAL OFFICERS REPORT**

*Pending Payments*

Financial Officer Martin Waits presented the pending payments schedule for October 6, 2004.

Commissioner Cris Beaty questioned the cost of the office rent at \$250. Mr. Waits explained that it was for two months rent on the small office (suite 202) at \$125 a month.

Commissioner Beaty asked if the Contractor would be paying for the cost of the construction signs. Mr. Fishburn answered that the Contractor would probably not pay for the signs. The cost will be charged to the FEMA Phase II grant since the sign is a requirement of the grant.

Commissioner Andrew Tobin questioned whether the District was earning as much interest as possible on its funds. Financial Officer Martin Waits explained that the District is keeping the money in its checking account for the present because the funds are expected to be paid out in a fairly short time frame. Mr. Miles of GSG has advised that there is little incentive to obtain a high rate of interest, since the amount of the grant will be reduced by the amount of any interest earned. However, Mr. Waits will look into opportunities to increase the interest earned on the funds.

Chairman Gary Bauman asked if the salary amounts would be capitalized. Mr. Waits said that an allocated portion of salaries will be capitalized to the extent permitted by the grants.

**Motion: Commissioner Cris Beaty made a motion to approve the pending payments list subject to the availability of the funds for October 6, 2004. Commissioner Andrew Tobin made the second.**

**Vote on motion:**

<b>Board Member</b>	<b>Yes</b>	<b>No</b>	<b>Other</b>
Commissioner Andrew Tobin	X		
Commissioner Charles Brooks	X		
Commissioner Jerry Wilkinson	X		
Commissioner Cris Beaty	X		
Chairman Gary Bauman	X		

**Motion passed 5 to 0**

**LEGAL COUNSEL REPORT**

District Counsel Thomas Dillon has worked with General Manager Charles Fishburn to provide the Haskell Co. with a written explanation of the Board's decision not to honor that request. See exhibit "A".

Also, they have prepared a "Notice to Proceed" to Higgins Inc. Mr. Dillon explained that the notice to proceed is a "soft" notice, which invites Higgins to provide suggestions as to compensation and contract time in light of changes to the project. See exhibit "B".

Commissioner Andrew Tobin stated that the letter and memo were good.

District Counsel Thomas Dillon has provided a suggested contract to cover legal services beginning November 1, 2005, which is the anniversary of the current contract. The proposal is the same as the current contract with the exceptions that the payment for time in excess of 15 hours would be increased from \$135/hour to \$150/hour and that travel off of Key Largo be compensated. He requested that the contract be brought back to the October 20, 2004 meeting for action.

Commissioner Charles Brooks asked if the money for an increase in the legal cost for the year be covered in the budget. Mr. Dillon said that it would likely come in just under \$60,000 for the year.

#### ENGINEERS REPORT

Mr. Castle is at meetings on the West Coast.

#### GENERAL MANAGER'S REPORT

##### *Key Largo Trailer Village*

General Manager Charles Fishburn reported that trenching will begin on Kay Drive on Thursday October 7, 2004. The contractor is not going to use horizontal boring on Kay Drive. They are planning on using horizontal boring to cross US 1. The District is getting a very good response on its request for septic tank placement information.

The Board suggested that there be documentation concerning the District locating the septic tanks.

The County requested a five year funding forecast from the District and it will be send to them on Friday, October 8, 2004. The information is needed to help the County determine bonding needs in the future to help fund Wastewater Treatment in Monroe County. General Manager Charles Fishburn explained that the forecast is flexible and items can be added or subtracted from the projections as available funding requires.

##### *Treatment Plant*

The clearing of the exotics was started the last week in September, 2004. General Manager Charles Fishburn explained that the permit for clearing the entire site is ready for pick up. Work should be started on October 11, 2004. The contractor could have started a week earlier but there was a delay in picking up the permit by Haskell. The FDEP permit for the Treatment Plant has not been approved. Representatives from the Haskell Company will be meeting with the FDEP in Ft. Myers on Thursday October 7, 2004. There is quite a bit of work to be done but Haskell feels that they can go forward "At Risk" to do the foundations but there will defiantly be changes to the Fluidyne Plant but the main tank will be alright for production. The District will be represented by someone from Weiler Inc. at the meeting.

##### *Key Largo Park*

A letter was sent to Daniel N. Higgins, Vice President of Higgins, Inc. See exhibit "B".

##### *Fluidyne Purchase Order*

The purchase order has been signed. District Counsel Thomas Dillon prepared a letter to confirm that if there were any changes or cost impacts that the Haskell Company will bear the cost.

#### *Roevac Purchase Order*

Tom Evans, Sales Representative for Roevac requested that the purchase order be held off one week. Commissioner Andrew Tobin expressed concern over signing the purchase order and then trying to retrieve the extra cost back from the Haskell Company. District Counsel Thomas Dillon stated that the procedure from the beginning was that the District would issue the purchase order and then the District would get a deductive change order on the Haskell contract for the amount of the purchase order and the amount of the sales taxes which would have accrued on it. If Haskell only allows the lower price for credit then a unilateral change order will be issued and then it will become a dispute to be settled at a later date.

#### COMMISSIONER COMMENTS

##### *Inter-local Governmental / Task Force*

Chairman Gary Bauman stated that what he would like to understand is whether or not the Board would like to continue to go forward with the Task Force for Federal money or leave it to the politicians, the County, the Municipalities, the KLWTD, and public officials to allocate any Federal monies that would be available in the future.

Commissioner Charles Brooks stated that Representative Sorensen has made the charge that the Task Force has been worthless. He takes great exception to that in the sense that the Task Force has evolved into a very good committee to bring about consensus for the Federal money and with some implications but no clear understanding for the State money. The Task Force has evolved into the Product Development Team which was set up by the Army Corp of Engineers. The Task Force was designed to bring about and convince the State government that the County could take grant money and not squabble over it. That is what the Task Force has done. Mr. Brooks finds it disturbing that some of the Press has stated that Representative Sorensen wanted to disband the Task Force, this is not true. Mr. Brooks had talked to Rep. Sorensen at the Way Station meeting and Rep. Sorensen stated that his authority does not lie within the Task Force and that he has no desire to disband it. Mr. Brooks has also heard from Mayor Murray Nelson that he has no objection to the Task Force meeting in the future.

Commissioner Charles Brooks stated that his position is that the District has been charged with doing everything that can be done to bring about the building of the Wastewater System. If there is some plan to bring about wastewater in Monroe County then the District should be at the meeting. If the State does not want to use the Task Force that is the State's prerogative. They can say how the money can be distributed. He sees a lot of trouble with the State doing this. He is worried about a possible Sunshine Law violation. Mr. Brooks stated that he thinks that if the Task Force meets again the District should be there.

Commissioner Jerry Wilkinson asked if the Task Force has any power behind it. He does not see any Federal Money coming in to help with the unfunded mandate. He stated that the Sunshine Law should be taken care of by the governmental group. He has been opposed in the way that the Task Force has come up with the split of the money, 29 ½ per cent.

Commissioner Cris Beaty stated that as long as the Task Force is in existence then the District should be a part of it. Who does have the authority to disperse the Federal Funds if the money ever comes? Chairman Gary Bauman explained that sometimes the legislation itself states who gets the money.

Commissioner Andrew Tobin agrees that wherever the District is invited, they should go, whether it is the Task Force or the Council of Mayors. The purpose of the groups is to try to establish rapport amongst competitors for the monies. He thinks that it would be in the best interest of the District to attend and be cooperative with the District's neighbors.

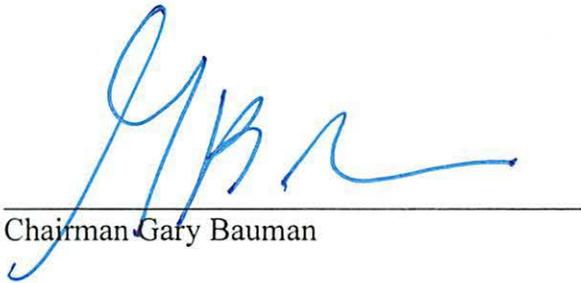
Chairman Gary Bauman commented that the Sunshine Law could be covered by advertising the meeting. The District does not have any inter-local agreement with the Task Force and if the Board thinks that it would be a good ideal then an agreement should be put in place. He does not want the FKAA or anyone else on the Task Force to tell the District what funds the District would be getting. The distribution should be negotiated out by the politicians and that they should decided where in Monroe County the funds should go. It should not be arbitrarily decided by a certain percentage. Mr. Bauman recognizes that the Task Force has been in place for quite sometime and they have been able to agree on some allocations. He thinks that if Mr. Sorensen and Mayor Nelson think that it is still a good idea for the Task Force to meet then it is a null issue at this point. But, when it come to allocating funds to say the District gets an arbitrary 30% is rather bizarre.

Commissioner Charles Brooks stated that neither the Task Force nor the Mayors Council is a legal entity to say where the money goes. It will come down to the DEP, on the Readiness to Proceed criteria, to decide where the money will go. The Task Force or the Mayors Counsel will go to the DEP and say what they feel the best course of action will be for the money.

#### ADJOURNMENT

After a motion and second to adjourn the meeting adjourned at 6:45 PM.

The KLWTD minutes of October 6, 2004 were approved on Oct. 20, 2004.



Handwritten signature of Gary Bauman in blue ink, consisting of stylized initials 'GB' followed by a horizontal line.

Chairman Gary Bauman



Handwritten signature of Carol Simpkins in black ink, written in a cursive style.

Carol Simpkins, CMC  
Board Clerk

Phone & Fax: 305-451-5105  
91831 Overseas Hwy. Suite 200  
Tavernier, FL 33070  
Mailing Address: P.O. Box 491 Key Largo, FL 33037

**Key Largo  
Wastewater  
Treatment District**

# Memo

**To:** Peter Kinsley, Haskell Company  
**From:** Charles F. Fishburn, General Manager  
**CC:** District Counsel Thomas Dillon  
**Date:** October 6, 2004  
**Re:** Change Order Proposal No. 004

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In Change Order No. 002, Haskell and the District agreed that it would consider future requests for additional compensation "to determine whether Haskell has demonstrated entitlement, causation, and quantum." Upon review of the Haskell change proposal No.004 "Material Escalation Claim" request for additional compensation, the Board concluded that Haskell had not demonstrated that the delays it has incurred were the result of causes beyond Haskell's control, or that Haskell will actually incur the cost increases claimed. Further, the board did not believe that awarding the Key Largo Park work to Haskell was in the best interests of the District.

In the interest of settlement of this issue the district is willing to continue to negotiate a change order that would allow the District and Haskell to remove this cloud from our project.

EXHIBIT "B"

**Thomas M. Dillon KEY LARGO WASTEWATER TREATMENT  
DISTRICT  
POST OFFICE BOX 491; KEY LARGO, FLORIDA 33037  
(305) 451-5105**

October 5, 2004

Daniel N. Higgins, Vice President  
D. N. Higgins, Inc.  
3390 Travis Pointe Road, Suite A  
Ann Arbor, Michigan 48108

By Facsimile: 734-995-5480, and first class mail

Dear Mr. Higgins:

Pursuant to that certain Contract dated June 25, 2003, between the Key Largo Wastewater Treatment District ("District") and D. N. Higgins, Inc. ("Higgins"), the District hereby gives to the Higgins notice to proceed with the construction of the project.

As you know, the layout and specific design of the project is being changed to reflect design work performed by the engineering group, Brown and Caldwell. Generally speaking, the principal changes include layout of the piping, and switching to vacuum pits manufactured by Roediger. On this date we have requested Haskell Inc. to direct Brown and Caldwell to Fed Ex to Walt Messer the signed and sealed drawings of the revised KLP drawings. In order to expedite this process I would ask that Walt Messer use the signed and sealed (dated 9.20.04) "construction set" of drawings for the "vacuum collection system for the Key Largo Park and the Key Largo Trailer Village", specifically G1 through G4, C1 through C7, C10, C100, through C103, C200 through C227. Also include the increased piping required to connect Calusa Camp Ground to the collection system. We ask that you examine the revised plans and specifications and prepare a change order for District consideration, covering changes in compensation and project timing that may be required as a result of these project changes. Bear in mind this project is a unit price contract that should protect Higgins and the District from any estimating errors. For changes in quantities of unit-priced items already included in the Contract, Higgins may seek an adjustment pursuant to Paragraph 8.2, only.

Pursuant to the Contract, Paragraph 1.15, this notice to proceed is supposed to specify the date upon which Contract Time will begin to run. In addition, Paragraph 2.6 requires a Preconstruction Conference, and Paragraph 7.2 specifies preparation and submission of a project schedule for the work. However, we would like to cover the timing for those matters in the change order requested in the preceding paragraph.

It is the intent of the District to work cooperatively with Higgins and to accommodate Higgins's reasonable requirements in accomplishing the work in an expeditious manner. After you have completed your review of the revised plans and specifications, please contact me so that we can finalize these matters. I am hopeful that you will be able to do so within ten working days from the date of this letter; if that is not possible, please let me know when you will be in a position to proceed.

Yours,

Charles F. Fishburn  
General Manager

CC: Mr. Walt Messer, Faxed 305-292-7717  
Key Largo Wastewater Treatment District Board  
Thomas M. Dillon