January 7th
2004
Key Largo Wastewater Treatment District
Board of Commissioner's Meeting Agenda
5:00 PM Wednesday, January 7, 2004
Key Largo Civic Club, 209 Ocean Bay Drive
Key Largo, Monroe County, Florida

A. Call to Order
B. Pledge of Allegiance
C. Additions, Deletions or Corrections to the Agenda
D. Public Comment
E. Action Items
F. General Manager's Report
   1. DCA Bonding Proposal
   2. Overview of Funding Scenarios
G. Legal Counsel's Report
   1. Notice of Delay from Haskell
   2. Draft Policy for Handling Unsolicited Requests for District Positions
   3. Term Consulting Contract Revision
   4. Term Consulting Contract – Prompt Pay Act Amendment
   5. Use of County Funds for KLWTD Administrative Expenses
   6. Secondary Treatment Issue
H. Engineer's Report
   1. Status of Haskell Invoices
   2. Engineer's Status Report as of December 30, 2003
I. Commissioner's Items
   1. Discussion of Gino F. Angella's email dated December 22, 2003 – Commissioner Tobin
J. Meeting Adjournment
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<th>Name &amp; Company</th>
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<th>Phone</th>
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<tbody>
<tr>
<td>Will English</td>
<td><a href="mailto:William.English@TheHastellCo.com">William.English@TheHastellCo.com</a></td>
<td>901-357</td>
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<tr>
<td>Jack Nolan</td>
<td>19 One D Key Largo FL 33037 Home Phone 451-2504</td>
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<tr>
<td>Nels Cepak</td>
<td><a href="mailto:GOODS24R@AOL.COM">GOODS24R@AOL.COM</a></td>
<td>677 00 41</td>
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<td>Prep Keesey</td>
<td><a href="mailto:pinkins@e.thehastellco.com">pinkins@e.thehastellco.com</a></td>
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<td>Very Kip</td>
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<td>451-5517</td>
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<tr>
<td>Burke Cannon</td>
<td>Fax 305-852-600</td>
<td>305-852-6129</td>
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KLWTD Board Meeting
January 7, 2004

Item F - 1

DCA Bonding Proposal
MEMORANDUM

TO: Board of County Commissioners

FROM: James L. Roberts
County Administrator

DATE: December 9, 2003

SUBJECT: Response to Secretary of DCA's Bonding Proposal

In preparation for the meeting on December 10, 2003, I was in contact with the Florida Keys Aqueduct Authority and the Key Largo Wastewater Board Manager in an attempt to ascertain what their debt capacity might be to assist with response to the State. The FKAA has provided the attached letter. It is my understanding that members of the Key Largo Board felt they wished to discuss the issue before responding. There was intended to be no commitment on the part of either agency in reference to this issue, only a guideline as to what might be possible.

In reference to the area of unincorporated Monroe County over which the FKAA has jurisdiction, the FKAA indicates an estimated capital cost of $126 million would be required for that purpose. If the County policy of achieving the $2,700 per EDU hook-up fee is pursued, that would mean that over $100 million would be necessary to reduce the hook-up cost to $2,700.

What might be the source of those funds? First, there are State and local funds that might become available. Of course, there is no guarantee that will happen even though there does seem to be some minor loosening of the purse strings at the federal level. Any funds for this purpose would certainly be appreciated.

Second is the funding that the County has available for its ability to bond as identified by Public Financial Management in August of 2003. The County does have some debt capacity within the infrastructure sales tax. In terms of round numbers, the County could possibly bond approximately $50 million.

In addition, there would be an amount identified for the Key Largo Wastewater Board. That total amount, when added to $126 million, should approach the $200 million figure. If the County applied $50 million to be of assistance with those projects, there could be a significant reduction in the average cost per EDU, although not a reduction that would approach the $2,700 per EDU standard of the County Commission. With the addition of federal and state grants, that number could be reduced even further.
The bottom line for this analysis is that, working as a team, the entities have a significant amount of borrowing capacity to do the necessary projects. The County's $50 million will be a major part of that effort. If this were to be the joint approach presented to the State, projects could be planned and implemented earlier and there could be an advantage taken of the current lower interest rates in the market.

James L. Roberts
County Administrator

JLR:dlf

Att.

Cc: Richard Collins, County Attorney
    Sheila Barker, Director of Management Services
    Hal Canary, PPM
    Jim Reynolds, FKAA
    Robert Sheets, KLWB

2
Mr. James L. Roberts  
Monroe County Administrator  
1100 Simonton Street  
Key West, FL 33040

Re: Unincorporated Monroe County Wastewater Infrastructure

Dear Mr. Roberts:

As you are aware, the Florida Keys Aqueduct has been working with the County on several wastewater projects that have developed as grant funding became available. These projects include Little Venice (under construction), and Bay Point and Conch Key (out for bids), as well as the Key Largo Trailer Village and Key Largo Park projects that are nearing construction. We are also in the process of preparing a Request for Proposals (RFP) for a design/build project on Big Coppitt/Rockland/Geiger Keys although there is no grant funding identified for this project yet.

Clearly, the County and FKAA have made progress in the development of wastewater infrastructure in the Keys, however, this progress, made possible with grant funds, is not at a pace that will likely accomplish the completion of wastewater projects in unincorporated Monroe County by 2010.

We understand the Department of Community Affairs is seeking a commitment from the County to push forward with the construction of sewers in the County, even if it means bonding $200 million dollars, and completing the work by 2010. The FKAA would welcome the opportunity to continue assisting the County both financially and technically with the development of wastewater projects in unincorporated Monroe County excluding such areas as the Key Largo Wastewater Treatment District where the FKAA does not have jurisdiction.

The most efficient manner to sewer the Keys would be to develop design/build request for proposal(s) for the remainder of unincorporated Monroe County. The FKAA would contract with Engineering firms to develop the RFP’s, and to manage the projects once under construction. With a commitment from the County to move forward with the project, the FKAA would also hire permanent staff to assist in this effort. The FKAA presently has limited wastewater staff because of the “piece-meal” approach that has been taken in sewer הרת the Keys thus far. We envision that the remainder of unincorporated Monroe County will be under construction by 2010, but may not necessarily be complete by then given the magnitude of the project with only 6 years remaining for design, construction, and customer connections.
Financing for a large project such as this could come from several sources. First, the FKAA would request that the County activate the Municipal Services Taxing District (MSTU) already created for Big Coppitt and further create another MSTU for the remainder of the unincorporated area. This would provide planning money for the FKAA to move ahead with the project. Financing for the capital project itself would most likely be a combination of infrastructure monies available from the County, State Revolving Fund (SRF) Loan Program and capital market and bank financings. The SRF would allow the FKAA access to the capital markets, which would serve to "bridge" the timing gaps between construction draws and SRF receipts. Such bridge financing may require some form of credit support from the County. We have spoken to officials of the SRF program who have indicated that their program can support a project of this size and that the FKAA is a prime candidate to receive such a loan. The structure of the SRF also would allow the FKAA to "lock in" a long term financing commitment that could be drawn down as needed, thereby minimizing capitalized interest.

Our review of the Wastewater Master Plan for Monroe County indicates an estimated capital cost of approximately $126,000,000.00 to construct wastewater projects in unincorporated Monroe County (excluding Key Largo) servicing approximately 8,000 EDU's. This results in an average cost of $15,750 per EDU. If the County Commission desires to limit hook-up fees to $2,700.00 per EDU, we estimate that approximately $104,400,000.00 would remain to be funded from other County, State, or Federal sources to make sewerage the Keys a viable project.

Sincerely,

FLORIDA KEYS AQUEDUCT AUTHORITY

James C. Reynolds, P.E.
Executive Director

/sr

cc: FKAA Board of Directors
KLWTD Board of Directors
File
KLWTD Board Meeting
January 7, 2004

Item F - 2

Overview of Funding Scenarios
MEMORANDUM TO THE BOARD

TO: Key Largo Board of Directors
FROM: Robert E. Sheets
SUBJECT: Overview of Funding Scenarios
for the Key Largo Wastewater Treatment District
DATE: December 23, 2003

At the request of several Board members I have put together this high-level summary of several funding scenarios for the District regarding the current issue of the $22 million and the discussion regarding the bonding of Capacity Fees within the District. I have provided only two scenarios.

Scenario No. 1 articulates the options available to the District if they were to receive $22 million from the County and other outside sources.

Scenario No. 2 outlines the options available to the District should they decide to sewer the rest of the District under one major contract.

In both scenarios, it is assumed that the District would issue bond equivalents to the amount of the capacity fees generated as a result of either project. In addition, it is also assumed that the District’s current Capacity Fee revenues at the conclusion of Key Largo Park and Key Largo Trailer Village be utilized ($2,295,000).

In order to understand both scenarios, the following assumptions have been utilized in this analysis:

Assumptions

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<table>
<thead>
<tr>
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<tbody>
<tr>
<td>1.</td>
<td>EDUs</td>
<td>13,000</td>
</tr>
<tr>
<td>2.</td>
<td>Actual Connections in K LWTD</td>
<td>9,800</td>
</tr>
<tr>
<td>3.</td>
<td>Average Cost per EDU for Scenario No. 1.</td>
<td>$14,000</td>
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<tr>
<td>4.</td>
<td>Cost per EDU for Scenario No. 2</td>
<td>$9,600</td>
</tr>
<tr>
<td>5.</td>
<td>Capacity Fees</td>
<td>$2,700</td>
</tr>
<tr>
<td>6.</td>
<td>Current Revenue Available to the District for future projects</td>
<td>$2,295,000</td>
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</tbody>
</table>

This number will be used for all future projects done on a piece-meal basis based on the average cost per EDU for KLP and KLT.

This cost will be used if K LWTD does remainder under one unified project.

Current K LWTD capacity fee

EDUs from KLP and KLT equal 850
850
x $2,700
$2,295,000
**Scenario No. 1 - $22,000,000 Contribution**

Under this scenario the District would receive the $22 million from the County and other outside sources. This $22 million alone would serve 1,571 EDUs at the $14,000 per EDU. That 1,571 EDUs would generate $4,241,000 in capacity fees. If this was combined with the existing $2,295,000 in capacity fees that would be available to the District, it would total $28,536,700. This amount would reach 2,038 EDUs. At the conclusion, the District would have an additional $1,260,900 available to spend on future projects. The following summary below shows the dollars and the outcome.

<table>
<thead>
<tr>
<th></th>
<th>KLWTD receives:</th>
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<tbody>
<tr>
<td>A.</td>
<td></td>
<td>$22,000,000</td>
</tr>
<tr>
<td>B.</td>
<td>KLWTD Applies existing 850 x 2,700 capacity fee revenue</td>
<td>2,295,000</td>
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<tr>
<td>C.</td>
<td>KLWTD capacity fee revenue received from customers served:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$22,000,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>+ $14,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1,571 EDUs</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1,571 EDUs</td>
<td></td>
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<tr>
<td></td>
<td>x 2,700</td>
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<tr>
<td></td>
<td></td>
<td>4,241,700</td>
</tr>
<tr>
<td></td>
<td>Total Funds for Construction:</td>
<td>$28,536,700</td>
</tr>
<tr>
<td>D.</td>
<td>Actual EDUs served</td>
<td>2,038</td>
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<tr>
<td></td>
<td>($28,536,700 ÷ 14,000)</td>
<td></td>
</tr>
<tr>
<td>E.</td>
<td>Funds Available for Next Projects</td>
<td>$1,260,900</td>
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<tr>
<td></td>
<td>2,038 EDUS</td>
<td></td>
</tr>
<tr>
<td></td>
<td>x 2,700</td>
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<tr>
<td></td>
<td>$5,502,600</td>
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<tr>
<td></td>
<td>– (1,571 EDUS x 2,700)</td>
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<tr>
<td></td>
<td>4,241,700</td>
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<td>F.</td>
<td>Average Annual Assessment (assuming 5% interest per EDU fee)</td>
<td>$214 per year</td>
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Scenario 2 Sewer – Remainder of District

<table>
<thead>
<tr>
<th>A.</th>
<th>KLWTD Bonds Remaining</th>
<th>$32,805,000</th>
<th>By bonding the remaining capacity fees, the District would generate $32,805,000.</th>
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<tbody>
<tr>
<td></td>
<td>Capacity Fees</td>
<td></td>
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<tr>
<td></td>
<td>$13,000 EDUS</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- 850</td>
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<td></td>
<td>12,150 * $2,700</td>
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| B. | Cost to Sewer Remaining | $116,640,000 | 12,150 x $9,600 |

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<thead>
<tr>
<th>C.</th>
<th>Funds needed from other sources (Feds, State, County).</th>
<th>$83,835,000</th>
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<tr>
<td></td>
<td>$116,640,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- $32,805,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$83,835,000</td>
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<table>
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<tr>
<th>D.</th>
<th>District Match</th>
<th>28%</th>
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<tbody>
<tr>
<td></td>
<td>$32,805,000</td>
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</tr>
<tr>
<td></td>
<td>+$116,674,000</td>
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<tr>
<td></td>
<td>28%</td>
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<th>E.</th>
<th>Saving from the Scenario</th>
<th>53,460,000</th>
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<td></td>
<td>12,150</td>
<td></td>
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<tr>
<td></td>
<td>x 14,000</td>
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</tr>
<tr>
<td></td>
<td>170,100,000</td>
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</tr>
<tr>
<td></td>
<td>- (12,150 x 9,600)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>= 116,640,000</td>
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</tr>
<tr>
<td></td>
<td>170,100,000-116,640,000</td>
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It is estimated based on the District Manager’s experience, discussions with the District Engineer and the contractors, that the remaining EDUs could be sewered for an average cost of $9,600 per EDU. This results in a total cost of $11,640,000.

Based on the funds generated by the District and the cost for completion, the District would need to seek other sources of funds of approximately $83,835,000. These could come from either federal or state grants, or the County’s dedicating a portion of a county-wide bond issue.

The District’s match would equate to a 28 percent match based on the remaining capacity fees.

Most importantly, the District’s cost by undertaking this approach versus the current plan of a neighborhood at a time would save the District over the course of this project approximately $53,000,000. This is the difference between the average cost of $14,000 per EDU and the average cost of $9,600 per EDU for a complete District project.

It would also be recommended that should the District undertake a project of this magnitude, the Design/Build approach be abandoned for a Design/Bid approach which in the Manager’s experience has proven to be more cost effective for entities that have adequate staff to oversee projects of this nature.
**Conclusion**

This financial analysis has been done at a very high level and should be used for general information. It is my recommendation that if the District wants to pursue this further a more in-depth analysis be conducted so that the District Manager and Engineer would have time to add a more detailed analysis that would also show the impact of operating revenue stream as these connections come online.
Item G - 1

Notice of Delay from Haskell
December 22, 2003

VIA FACSIMILE AND U.S. MAIL

Mr. Peter Kinsley
The Haskell Company
111 Riverside Avenue
Haskell Building
Jacksonville, Florida 32202

Dear Mr. Kinsley:

I acknowledge receipt of your letters of October 13, 2003, October 31, 2003, and December 12, 2003, in which you assert that Haskell is being delayed by circumstances beyond its control. Although your letters do not specify the circumstances that Haskell contends are causing the delay, I understand that you contend that the circumstances of which you complain consist of the following:

1. The delay by FEMA in completing its environmental assessment regarding the use of the MM 100.5 site as the location for the District's treatment facility;

2. The failure of the District to select a secondary treatment technology at its special meeting of October 17, 2003; and

3. The District's selection of USBF as the secondary treatment technology on December 3, 2003.

If the bases for your contentions are not fully and completely stated above, please advise me of that fact as soon as practicable, specifying the precise circumstances that you believe to be causing delay. Also, with respect to item 3, above, please provide details as to how the District's selection is delaying the Project, since the District is not aware of any facts that would prevent Haskell from proceeding to complete the secondary treatment engineering and design for the USBF system.

As you know Section 3.3.10 of the Design-Build Agreement requires Haskell to provide monthly progress reports and schedule updates. Since Haskell has never provided any such reports or schedule updates, it is impossible for the District to understand the nature and extent of the delays of which you complain or their effect, if any, on the completion date.

Assuming that the items listed above are circumstances about which Haskell complains, I note that all of them relate to the design of the treatment facility. Based on our telephone conversation of December 5, 2003, I currently understand that issues relating to design of the treatment facility are not now on
the Project critical path, and that any delays to date as a result of the causes listed above will not affect Project completion. Again, if my understanding is incorrect, please let me know as soon as practicable.

Section 6.2.3 of the Design-Build Agreement requires the parties to undertake reasonable steps to mitigate the effects of any delays. Please be advised that the District is willing to undertake such reasonable steps. However, without a present understanding of the nature and extent of the delays asserted by Haskell or their effects, if any, on Project completion, the District must await further communication by Haskell as to the steps that Haskell might consider appropriate to mitigate the effects of delays.

Please understand that notices like those contained in the letters described above are useless to the District in attempting to resolve or mitigate delay issues. In the future, if Haskell believes that it is being delayed by the District, please provide details as to the precise circumstances complained of, their impact on Project completion, and scheduling information supporting your contention. This will allow the District to respond more effectively to a notice.

Sincerely,

Robert E. Sheets  
District Manager  

RES/alm  

CC:  Tom Dillon  
      Gary Bauman  
      Andrew Tobin  
      Chris Beaty  
      Charles Brooks  
      Jerry Wilkinson
December 12, 2003

Re: Wastewater Management System For
The Key Largo Trailer Village Area
Key Largo, Florida
Issue No. 01-003 – Secondary
Treatment Process Selection –
Notice of Delay

Mr. Robert Sheets
Government Services Group, Inc.
1500 Mahan Drive
Suite 250
Tallahassee, Florida 32308

Dear Mr. Sheets:

In response to the Key Largo Wastewater Treatment District's December 3, 2003 selection of USBF for the secondary treatment process for the Key Largo Trailer Village Area project, we offer the following:

- KLTWD's directive to utilize the USBF secondary treatment process after all of the project's wastewater experts (Government Services Group, Weiler Engineering and Brown and Caldwell) agreed that the effluent produced by the USBF process would not satisfy the project's requirements places undue risk on The Haskell Company. The risk associated with the directive impacts the following contract provisions:
  - Performance Guarantees
  - Warranty
  - Permitting
  - Payment and Performance Bonding
  - Professional Liability Insurance

- In accordance with Paragraph 6.2 of the Design-Build Agreement, The Haskell Company is hereby notifying the Key Largo Wastewater Treatment District that our firm considers this directive a continuation of the October 31, 2003 Notice of Delay and that we continue to be delayed by causes beyond our control, and that additional cost and/or schedule compensation may be required. As this is a continuing delay, final determination of the cost and schedule impact associated with this issue will be pending final resolution.

The Haskell Team remains committed to this very important project and is reviewing this issue as it relates to the above listed contract provisions in an attempt to propose a solution that is fair and equitable to all related parties. We have requested information from Randazza Enterprises, Inc. and upon receipt of requested information will provide solutions for consideration by KLTWD.
Mr. Robert Sheets  
December 12, 2003  
Page 2

Should you have any questions or require further information, please do not hesitate to contact me at (904) 357-4868.

Sincerely,

Peter M. Kinsley

cc:  Mr. Thomas Dillon  
Mr. Walt Messer, DN Higgins, Inc.  
Mr. Stuart Oppenheim, Brown and Caldwell  
Mr. Ed Whelan, McGuire Woods  
Mr. John Patton, The Haskell Company  
Issue No. 01-003
KLWTD Board Meeting
January 7, 2004

Item G - 6

Secondary Treatment Issue
Mr. Peter Kinsley  
Division Leader- Water  
111 Riverside Avenue  
Haskell Building  
Jacksonville, Florida 32231-4100

Dear Peter:

I have received and reviewed your letter dated December 24, 2003, sent via fax, in reference to a letter dated December 8, 2003, sent to me by Ted Horstein, Brown & Caldwell.

If you review the copy of my E-mail dated 12-12-03 which was sent to you, in response to Ted Horstein's request, you will find that I informed him that I would be addressing these and other issues with you, in regard to your FED/EX letter sent to me and dated December 3, 2003.

On December 13, 2003, I sent you a detailed response to your FED/EX letter dated December 3, 2003, answering all your questions and in every instance assured you of Randazza/Purestream's ability and willingness to provide you with the information, through Randazza Enterprises Inc., that Brown & Caldwell would be requiring, such as: Calculations, Design and Engineering Services, as required, to obtain all permits associated with the performance of said system, that would include stamped drawings by a Florida licensed Engineer, that will be incorporated into the overall project design documents prepared by Brown & Caldwell for submittal to the Department of Environmental Services (D.E.P) for their review and permitting.

You will also find, among my many answers to your many questions, specifically to your Item # 2 question, the fact that: The Purchase Order must be written to Randazza Enterprises Inc. and as far as the Terms of Payment are concerned, Randazza Enterprises Inc. will only accept its own terms of payment and those terms are as follows:

a. 30% down payment with Purchase Order.
b. 70% balance due upon notification of completion of fabrication of equipment. Randazza's "Payment Terms" are clearly stated in our Proposal/Contract. For your information, there will be no deviation from "Randazza's Terms of Payment."

I believe that I also clearly stated to you during our phone conversation on December 15, 2003, among other subjects we discussed, the fact that the "sample purchase order" you had attached to your FED/Ex letter dated December 3, 2003, after review, was not acceptable to Randazza Enterprises Inc. Further to the "Sample Purchase Order" received, Randazza Enterprises Inc. is certainly not a "Sub Contractor" to the Haskell Company. Randazza Enterprises Inc. is the provider of the Purestream ES, System/Process selected and approved for purchase for the Key Largo Park and Village Project.

In order for Randazza Enterprises Inc. to provide Haskell/Brown & Caldwell requests, please be advised of the following:

1. We are willing and able to provide Haskell/Brown & Caldwell requests, as soon as we receive our Proposal Contract/Agreement Signed and Accepted by an "Authorized Officer" of the Haskell Company, together with a signed Purchase Order with our Terms & Conditions, as stated on our Proposal/Contract. I realize that the K LWTD has not yet made the decision as to whether or not the K LWTD or Haskell will be purchasing the USBF equipment. I believe that this is an important issue that should be addressed by the K LWTD as soon as possible.

2. Contrary to your statement implying that all the documents pertaining to Brown & Caldwell's request, "should be readily available," I believe that I have made it very clear as stated in "Public
Records" the fact that Purestream specifically designs each USBF System to meet the required "Effluent Criteria" for each individual project. Until such time that Randazza Enterprises Inc. receives a signed Contract/Agreement with our "Payment Terms" as stated, Randazza will not direct Purestream to commence the issuance of the "Package of Information" as requested by Brown & Caldwell required for D.E.P Permitting. There is quite an investment of time and money involved in this process.

3. Regardless of system/process, effluent requirements, I believe that you should be aware of the following:

a. Under normal circumstances, it will take about 30 working days for Purestream to prepare the Submittals, Calculations, Design, Stamped Design Engineering Drawings and Product Information required by the D.E.P.

b. You should also be aware of the fact that after the D.E.P receives this information, within 30 days, but not beyond 30 days and it never fails, once again regardless of process and effluent requirements, the D.E.P will come back with multiple questions that the D.E.P will expect to have answers for within 30 days. We are also prepared to answer any questions and provide any information and assistance to the D.E.P, in regard to the permitting of our system. With some luck and good communications between all parties, the issuance of the permit should take approximately 90 to 120 days (3 to 4 months).

I hope that this informative e-mail letter, clearly explains Randazza/Purestream's position, and also clearly states our willingness, ability and desire to work with Haskell/Brown & Caldwell.

I have no doubt that these issues will be resolved in a timely manner, so that we can all work together as a team and make the Key Largo Village and Park Project a success.

If you have any questions or need more information, please give me a call.

Sincerely,

Nos Espat
President

Nos Espat, President, E-mail: booczar@aol.com
8824 VanFleet Road
Riverview, Florida 33569
Tels: 813 677 0041, 813 677 3359, Cell: 813 310 7030
Fax: 813 677 0413
Mr. Nos Espat  
Randazza Enterprises, Inc.  
8824 Van Fleet Road  
Riverview, Florida 33569

Dear Mr. Espat:

In response to the December 3, 2003 vote by the Key Largo Wastewater Treatment District to utilize the USBF secondary treatment process manufactured by Purestream for the Key Largo Trailer Village Area project, I request your review and response of the following:

- Please verify Purestream's ability and willingness to provide payment and performance bonds.
- Please review the attached Purchase Order with Attachment A and verify Purestream's acceptance of The Haskell Company's standard terms and conditions.
- Please review the attached Warranty prepared by the KLLTD and confirm Purestream's acceptance.
- Please review and confirm Purestream's ability and willingness to provide design and engineering services as required to obtain all permits associated with performance of said system. Design services shall include stamped drawings by a Florida licensed engineer that will be incorporated into the overall project design documents prepared by Brown and Caldwell. Under this scenario, Brown and Caldwell would be the engineer of record for the project less the USBF system and Purestream's engineer would be the engineer of record for the USBF system.

If you should require any additional information or have any questions, please contact me at 904/357-4868. Thanks in advance for your timely response.

Sincerely,

Peter M. Kinsley

P.S.  
Mr. Thomas Dillon  
Mr. Stu Oppenheim, Brown and Caldwell  
Mr. Robert Sheets, Government Services Group, Inc.  
Mr. Ed Whelan, McGuire Woods  
Mr. John Patton, The Haskell Company  
Issue File 01-003
# Purchase Order

**Vendor:**
SAMPLE PURCHASE ORDER

**Project Name/Location:**

**Date:**

**Cost Code:**

**F.O.B.:**

**Job Site**

**Federal Tax Identification No.:**

- Corporation
- Sole Proprietor
- Partnership

**Project Phone No.:**

**Project Fax. No.:**

**Terms:**

Net 30

**Attention:**

**Ship To:**

**Delivery Date**

Per Progress Schedule

**Vendor Phone No.:**

**Vendor Fax No.:**

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**Please enter our order as follows subject to the Terms and Conditions hereof:**

Vendor agrees to provide Sample, and as further described below:

**ALL OF THE ABOVE FOR THE LUMP SUM AMOUNT OF:**

$0.00

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**NOTES:**

**A. SCHEDULE OF VALUES:**

<table>
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<tr>
<th>Cost Code</th>
<th>Description</th>
<th>Original Amount</th>
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**B. INCLUSIONS:**

The scope of work shall include but is not limited to the following:

Not Applicable

**C. EXCLUSIONS:**

The following scope of work is specifically excluded:

Not Applicable

**D. CLARIFICATIONS AND GENERAL NOTES:**

Not Applicable

**E. ADDITIONAL CHARGES**

All applicable taxes, freight, fees and other sundry costs are included in the Lump Sum amount.

**F. ATTACHMENTS:**

The following Contract Documents, previously issued to the Subcontractor, and referenced herein are included as part of this Subcontract Agreement:

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**Distribution:**

- Vendor
- Acknowledgement
- Accounting
- P.M. Book
- Job
- Office
- Office P.O.
1. Drawings and Specifications:
Not Applicable

2. Attachments:
Not Applicable

G. SUBMITTALS:
Vendor shall submit to The Haskell Company for approval eight (8) copies of shop drawings, manufacturer's product data, and samples, as referenced in the specifications on or before. Provide three (3) complete sets of installations/erection drawings with the material, when delivered.

H. CHANGES:
Should changes in the work require an adjustment in the Vendor's Purchase Order amount, they will be incorporated by a Purchase Order Modification.

I. ALTERNATES/ALLOWANCES/UNIT PRICES:
The following alternates, allowances, and unit prices have been established for this Purchase Order and remain valid for the duration of the project:
Not Applicable

J. PROGRESS MEETINGS:
If directed by The Haskell Company's Project Manager or Superintendent, your field representative and/or office manager may be required to attend weekly field progress meetings.

K. DELIVERIES:
1. Notification: Provide 48 hour notification to the Project Superintendent at the project telephone number prior to delivering the materials.

2. Acceptance: Materials delivered and offloaded can not be accepted without written verification (signature of receipt) of an authorized Haskell Company employee on the delivery ticket. COD deliveries are unacceptable.

3. Delivery Hours: Do not attempt deliveries made after 2:00 p.m., local time, during normal workdays, Monday through Friday. Weekend deliveries require approval by the project superintendent prior to delivery.

4. Identification: Label all cartons and pieces delivered to the project with the project number, this purchase order number, and The Haskell Company name.
TERMS AND CONDITIONS

1. Acceptance. The acknowledgment copy of this Purchase Order must be signed and returned to The Haskell Company ("Purchaser"), Haskell Building, Jacksonville, Florida 32231-4100, by the seller listed on the reverse side hereof ("Vendor") before undertaking manufacture or delivery.

2. Deliveries. Purchaser's completion schedules are based upon the agreement that materials will be delivered to Purchaser by the date specified on the reverse side hereof. Time is therefore of the essence of this Purchase Order. If Vendor defaults in delivery of goods, Purchaser may cancel this Purchase Order, purchase similar goods and materials from any other person, and hold Vendor accountable for any damages.

3. Price. This Purchase Order must not be filled at a higher price than last quoted without Purchaser's specific authorization. Unless otherwise noted, the price includes delivery of all materials F.O.B. job, freight and cartage prepaid, at the job location indicated on the reverse side hereof. No additional charges of any kind, including charges for boxing, packing, cartage, additional quantity, or other extras will be allowed unless specifically agreed to in writing in advance by Purchaser. Except as may be otherwise provided in this Purchase Order, the price includes all applicable federal state and local taxes occasioned by this Purchase Order.

4. Payment. It is understood that the cash discount period will date from the receipt of the goods or from the date of the invoice, whichever is later. C.O.D. shipments will not be accepted. Drafts will not be honored.

5. Inspection and Warranty.

(a) All goods shall be received subject to Purchaser's right of inspection and rejection. Defective goods or goods not in accordance with this Purchase Order will be held for Vendor's instruction at Vendor's risk, and if Vendor directs, will be returned at Vendor's expense. If inspection discloses that part of the goods received are not in accordance with this Purchase Order, Purchaser shall have the right to cancel any unshipped portion of the order. Payment for goods on this Purchase Order prior to inspection shall not constitute acceptance thereof and is without prejudice to any and all claims that Purchaser may have against Vendor.

(b) Vendor expressly warrants that all materials and articles covered by this Purchase Order or other specification furnished by Purchaser will be in exact accordance with such order, or specification, and free from defects in materials and workmanship. Such warranty shall survive delivery and shall not be deemed waived either by reason of Purchaser's acceptance of such materials or articles or by payment for them. Vendor agrees to repair, replace, or make good any defects or faults resulting from defective material or manufacture that may appear within one year after acceptance of goods.

6. Miscellaneous.

(a) The Purchase Order number must be shown on each package, packing slip, and invoice. Invoices shall be rendered in duplicate.

(b) The specific quantity ordered must be delivered in full and not be changed without Purchaser's consent in writing. Any unauthorized quantity is subject to Purchaser's rejection and return at Vendor's expense.

(c) Vendor agrees that the goods shipped to Purchaser under this Purchase Order will be produced in compliance with the Fair Labor Standards Act.
(d) In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Vendor, or in the event of the appointment with or without Vendor's consent of an assignee for the benefit of creditors or of a receiver, then Purchaser shall be entitled to cancel any unfilled part of this Purchase Order without any liability whatsoever.

(e) Any specifications, drawings, notes, instructions, engineering notices, or technical data referred to in this Purchase Order shall be deemed to be incorporated herein by reference as if fully set forth. In case of any discrepancies or questions, Vendor shall refer to Purchaser for decisions or instructions or for interpretation.

(f) If requested by Purchaser, Vendor shall furnish Purchaser within ten (10) days complete information regarding sources of supply for all purchased materials required for its performance under this Purchase Order, including names and addresses of sources, responsible persons representing sources, and purchase order and shipping data; provided, however, that Vendor shall not be required hereunder to release information concerning prices or costs of such purchased materials.

(g) If delivery hereunder is made by the vehicle or conveyance of Vendor or its carrier, Vendor shall be responsible for any injury or damages to persons or property resulting from the operation of said vehicles while on the premises of Purchaser or the site of delivery.

(h) This Purchase Order contract may not be assigned by Vendor without Purchaser's written consent. The terms and conditions of this Purchase Order may not be amended or modified without the prior written consent of Purchaser and Vendor.

(i) In the event this Purchase Order includes the leasing, renting or use of rental equipment, the lessee or any person providing the rental equipment shall assume the responsibility for providing hazard insurance in the amount of the full value of said equipment and shall hold Purchaser harmless from any damage or loss to said equipment. Any conflict that may exist between the terms hereof and any additional lease, rental agreement or other document pertaining to the use of rental equipment shall be resolved in accordance with the terms hereof and the terms and conditions of this Purchase Order shall prevail.

(i) This Purchase Order contract shall be construed according to the laws of the State of Florida. In the event litigation arises out of this Purchase Order contract, the expenses and the costs of same, including reasonable attorney's fees, incurred by the prevailing party shall be paid or reimbursed by the non-prevailing party, including attorney's fees on appeal.

Vendor:

SAMPLE PURCHASE ORDER

Insurance Certificate Attached □ Yes □ No

By: __________________________ (Please print)

____________________________________ (Please Sign and initial all attachments)

Please return signed original and acknowledgement copy of P.O. to:

THE HASKELL COMPANY

By: __________________________

(Please sign)

The Haskell Company is an Equal Opportunity Employer.
1. GENERAL CONTRACT
   (a) The Contractor has entered into a General Contract with the Owner (hereafter referred to as "the General Contract") for the Project described in the Subcontract Agreement. The Project is to be constructed in accordance with the terms, conditions and covenants of the General Contract and in accordance with the Subcontract. The Subcontractor hereby assumes the same obligations and responsibilities with respect to his performance under this Subcontract Agreement that the Contractor assumes toward the Owner with respect to his performance under the General Contract. If the General Contract, which is hereby incorporated by reference, varies or conflicts with any provision of this Subcontract Agreement, or any modification hereof, the General Contract shall govern, unless this Subcontract Agreement provides otherwise. The pertinent parts of said General Contract will be made available upon the Subcontractor's request.
   (b) Substantial performance of the General Contract by the Contractor is a condition of the Contractor's obligation under this Subcontract. If the Owner becomes bankrupt or otherwise defaults in his payments to the Contractor under the General Contract, then, upon written notice thereof to the Subcontractor, the Contractor may terminate this Subcontract and will thereafter be liable to the Subcontractor only for the cost of work actually performed and justifiable expense incurred by the Subcontractor up to the time of receipt of said notice solely to the extent those costs and expenses are actually recovered by the Contractor from the Owner. The Subcontractor understands and agrees that payment to the Contractor by the Owner is a condition precedent to the Contractor's obligation to pay the Subcontractor.

2. SCOPE OF WORK
   (a) The Subcontractor shall furnish all necessary labor, materials, supervision, services, tools, equipment, transportation, hoisting, shop drawings, samples and all other services necessary to fully perform and complete the Work as described in the Subcontract Agreement. The Work shall be performed in accordance with the construction schedule/milestones and the most current updates to this schedule, which shall be referred to as the Progress Schedule. The Work shall also be performed in cooperation with the other trades, in a good and workmanlike manner, free from defects, and to the satisfaction and acceptance of the Contractor and Owner, all in accordance with the construction documents and the most current Progress Schedule.
   (b) As a condition precedent to Contractor's payment obligation under this Subcontract, all applicable taxes, business or occupational licenses, permits, fees and insurances required for the proper performance of the Work, shall be furnished and paid for by the Subcontractor and the amount thereof is included in the Subcontract amount. Subcontractor agrees to hold Contractor harmless from all claims, actions, penalties, and/or fines resulting from Subcontractor's failure to comply with this section.
   (c) No claim shall be made due to minor variations in the actual conditions of the premises from what is shown on the drawings. The Subcontractor shall examine the premises, note and ascertain the existing conditions at the site and the nature and location of the Work. All work affected or governed thereby or required for the thorough and satisfactory execution and completion of his Work, whether indicated and specified or not, and regardless of quantity estimated, shall constitute part of this Subcontract and shall be performed without extra charge.

The Haskell Company initials here: ________ Subcontractor initials here: ________

(d) Subcontractor represents that it has inspected and is fully familiar with the site and the scope of work to be performed by subcontractor at the site. Subcontractor shall not make any claim based on site conditions, which could have been discovered through a proper site inspection.

(e) The Subcontractor shall be responsible for all layout, engineering and field dimensioning required for his Work.

(f) The Subcontractor shall be responsible for all unloading, hoisting, storage and movement of the materials, tools and equipment required for the performance of his work.

(g) The Subcontractor shall do all cutting, fitting and patching required for his Work and shall properly seal all sleeves and penetrations of walls and floors caused by his Work.

3. PERFORMANCE

(a) The Subcontractor shall employ a competent Supervisor who shall be in attendance at the Project during the performance of the Work. The Supervisor shall be satisfactory to the Contractor and shall not be changed except with the written consent of the Contractor. The Supervisor shall represent the Subcontractor in all matters including, but not limited to all communications, notices, coordination and scheduling, and job meetings.

(b) The Subcontractor shall at all times furnish adequate skilled labor, materials, tools and equipment to prosecute the Work promptly and diligently in accordance with the current Progress Schedule. If the Subcontractor fails to maintain the progress of his Work in accordance with the current Progress Schedule or delays progress of the Project or if in the opinion of the Contractor, the Subcontractor cannot complete his Work within the time period set forth, the Subcontractor shall, at no additional cost to the Contractor, take such steps as necessary to improve his rate of production and bring his progress to the level required. These steps may include, but are not limited to, increasing the Subcontractor's labor force, acceleration of performance, shift work and overtime work.

(c) The Subcontractor covenants and agrees that he shall not employ any person on the Project site who is not acceptable to the Contractor; that there will be no work stoppages or, slowdowns, walkouts, disruptions of work, interferences of work, picketing or any other disruptions similar in nature during the contract of this project. If the Subcontractor breaches this covenant and such breach shall cause a stoppage of work at the job site, the Subcontractor shall be liable for all damages suffered by the Contractor caused by such delay in completing the job, including specifically any penalty in the General Contract imposed upon the Contractor for failing to complete the job on the completion date set forth in the General Contract.

(d) If any part of the Subcontractor's Work depends, for proper execution or results, upon the work of any other subcontractor, separate contractor or the Contractor, the Subcontractor shall inspect and promptly report to the Contractor in writing any defects in such work that render it unsuitable for such proper execution and results. Subcontractor's failure to so inspect and report in writing shall constitute an acceptance of the other subcontractor's, separate contractor's or the Contractor's work as fit and proper for the reception of the Subcontractor's work.

(e) The Subcontractor shall comply with all laws, ordinances and regulations regarding the performance of its work and shall turn the Work over to the Contractor in good condition and free and clear of all claims or liens arising from the performance of this Subcontract, and shall, at his expense, immediately discharge, transfer from the property to an adequate security, and/or defend all suits and pay all claims arising from his performance of this Subcontract.

4. TIME

(a) The parties acknowledge that time is of the essence with respect to the Work required to be performed hereunder. Therefore, Subcontractor shall: (1) submit to Contractor within ten (10) days of the date of transmission of this Subcontract to Subcontractor a detailed, proposed schedule for the Work for Contractor's use in preparing an overall Progress Schedule for the entire work and its several parts under the Contract; (2) begin the Work promptly upon Contractor's order to do so; (3) coordinate and perform the Work, and its several parts, diligently and promptly and in such order and sequence as Contractor may from time to time direct and as will assure its efficient and timely prosecution, and
will not delay completion of the entire work and its several parts under the Contract; and (4) furnish at all times sufficient, qualified and competent forces and supervision, and adequate conforming and usable materials, equipment, plant, tools and other necessary things, to achieve progress according to Contractor's current Progress Schedule.

(b) Without limiting the foregoing, Subcontractor shall: (1) submit, with its proposed schedule, information showing the time required to prepare and approve shop drawings and deliver materials and equipment, and to install the Work; (2) order (for manufacture or purchase and delivery) all materials required for performance of the Work as soon as possible in order to avoid delays caused by strikes, transportation or unavailability; (3) furnish Contractor within thirty (30) days a list of major materials and equipment required for the Work, showing the name, address and telephone number of the supplier and the date on which such material and equipment is expected to be delivered to the Project site; (4) cause a qualified home office supervisory representative (while Subcontractor has forces at the Project site and for two weeks prior thereto) to attend weekly progress meetings; and (5) notify Contractor immediately by telephone and confirm in writing within seventy-two (72) hours, if Subcontractor finds that any item cannot be delivered as required to maintain Contractor's Progress Schedule. Subcontractor also agrees to be bound by such modifications to the Progress Schedule as are discussed at the weekly job progress meetings and are contained in the minutes of those meetings unless written objection is made by Subcontractor within forty-eight (48) hours of the occurrence of such meeting.

5. EXTENSIONS OF TIME AND DELAY
If Subcontractor is delayed at any time in the progress of the Work by any act of neglect of Owner or Contractor, or by any agent or contractor employed by Owner or Contractor, or by changes ordered in the scope of the Work, or by fire, adverse weather conditions not reasonably anticipated, or any other causes beyond the control of Subcontractor, then the required completion date or duration set forth in the Progress Schedule shall be extended by the amount of time that Subcontractor shall have been delayed thereby. However, to the fullest extent permitted by law, Owner, Contractor and their agents and employees shall not be held responsible for any loss or damage sustained by Subcontractor, or additional costs incurred by Subcontractor, resulting from a delay caused by Owner, Contractor, or their subcontractors, agents or employees, or any other contractor, subcontractor or supplier, or by abnormal weather conditions, or by any other cause, and Subcontractor agrees that the sole right and remedy therefore shall be an extension of time. Subcontractor must submit any claim for an extension of time to Contractor in writing within five (5) working days after the occurrence of the delay-causing event. Subcontractor's failure to give such written notice to Contractor shall deprive Subcontractor of its right to claim an extension of time and any damages or additional costs incurred by Subcontractor resulting from such delay. The giving of such notice shall not of itself establish the validity of the cause of delay or of the extension of time to remedy the delay. In the event a court of competent jurisdiction shall determine that this provision is inapplicable or unenforceable for any reason, then Subcontractor's sole right and remedy shall be the amount received by Contractor from the party causing the delay on behalf of the Subcontractor for each day it is actually delayed by any act or neglect of Owner or Contractor, or by any agent or contractor employed by Owner or Contractor, or by changes ordered in the scope of the Work, or by fire, adverse weather conditions not reasonably anticipated, or any other causes beyond the control of Subcontractor. To the extent that this provision conflicts with any other provision of this Subcontract or the General Contract, or any modifications hereof, then this provision shall govern.

6. CHANGES IN THE WORK AND NOTICE OF CLAIMS
(a) The Contractor may order or propose changes in the Work consisting of additions, deletions or other revisions with the Subcontract amount and time being adjusted accordingly. All such changes in the Work shall be by a written Subcontract modification. The Contractor may, by a written directive issued and signed by the Contractor's authorized representative, direct the Subcontractor to proceed with changes in the Work, prior to the issuance of a Subcontract modification. Upon receipt of a written directive from the Contractor, Subcontractor shall proceed with the Work.

(b) The Subcontractor shall submit to the Contractor a written detailed estimate of the cost of performing the ordered or proposed changes to the Work to include quantities, unit prices, labor rates, manufacturer's and supplier's quotations and all other information required by the Contractor for a complete analysis of the estimate. If the proposed change affects the length of time the Subcontractor requires to complete his work, the Subcontractor shall set forth, in writing, the amount of any justifiable time increase in his proposal. The Subcontractor's proposal shall be submitted to the Contractor within 10 working days of his receipt of the request from the Contractor.

(c) Any and all claims for time or money must be presented to the Contractor, in writing, within five (5) working days after the occurrence of the event giving rise to such claim, or within such shorter time as may be required by the General Contract.
Subcontractor shall also comply with all provisions of the General Contract for purposes of submitting a claim, including but not limited to all notice provisions. Failure by the Subcontractor to present such claim in writing within five (5) working days after the occurrence and in accordance with the requirements of the General Contract shall be deemed a waiver of such claim and the Subcontractor shall be barred from pursuing such claim against the Contractor. In claims related to actions or requests by the Owner or the Owner's representative, or other subcontractor, the Subcontractor shall not be entitled to any increase in the Subcontract amount for which the Contractor is not entitled to an equivalent increase to the General Contract from the Owner. The Subcontractor agrees to cooperate with the Contractor in seeking adjustments from the Owner in connection with such changes.

(d) No dispute as to adjustment of the Subcontract amount or time for changed Work, shall excuse the Subcontractor from proceeding with such changed Work that has been duly authorized by the Contractor.

7. DEFAULT, TERMINATION AND REMEDIES

(a) Should the Subcontractor at any time (1) fail to prosecute and complete the Work in accordance with the current Progress Schedule; (2) fail to diligently and continuously perform his Work; (3) fail to correct work determined by the Contractor to be defective; (4) fail to supply the labor, materials, equipment, supervision and other things required of it in sufficient quantities and/or required quality to perform the Work with the skill, conformity, promptness and diligence required hereunder; (5) cause interference, stoppage, or delay to the Project or any activity necessary to complete the Project; (6) become insolvent; (7) fail in the performance or observance of any of the covenants, conditions, or other terms of this Subcontract; (8) fail to pay for any material or labor used on the Project; (9) become involved in a strike or stoppage of work resulting from a dispute involving or affecting the labor employed by the Subcontractor or his subcontractors or (10) if in the opinion of the Contractor the Work of the Subcontractor cannot be completed in the time period set forth; then in any such event, each of which shall constitute a default hereunder by Subcontractor, Contractor shall, after giving Subcontractor notice of default and three (3) calendar days within which to cure, have the right to exercise any one or more of the following remedies:

(i.) The Contractor may immediately take any action Contractor may deem necessary to correct such default, including specifically the right to provide labor, overtime labor, materials, equipment and/or other subcontractors, and may deduct the cost of correcting such default from any payment due, or that may become due, to the Subcontractor;

(ii.) The Contractor may terminate this Subcontract and the employment of the Subcontractor, without thereby waiving or releasing any rights or remedies against Subcontractor or its sureties, and take possession of the Subcontractor's materials, tools and equipment used in performing his Work, and employ another subcontractor or use the employees of the Contractor to finish the remaining Work to be performed hereunder. The Contractor may deduct the costs of completing the remaining work from the unpaid Subcontract price, and if the cost of completing the remaining Work exceeds the Subcontract amount, the Subcontractor shall pay to the Contractor such excess costs, including overhead and attorney's fees;

(iii.) Recover from Subcontractor all losses, damages, penalties and fines, whether actual or liquidated, direct or consequential (including without limitation any increase in Contractor's cost of insurance resulting from Subcontractor's failure to maintain insurance coverages required hereunder), and all reasonable attorneys' fees suffered or incurred by Contractor by reason of or as a result of Subcontractor's default.

(iv.) Require the Subcontractor utilize, at its own expense, overtime labor (including Saturday and Sunday work) and additional shifts as necessary to overcome the consequences of any delay attributable to Subcontractor's default.

(b) The Contractor, in any such event, may also refrain from making any further payments under this Subcontract to the Subcontractor until the entire project shall be fully finished and accepted by the Owner. After completion of the Work by the exercise of any one or more of the above remedies and acceptance of the Work by the Architect and Owner and full payment therefor by the Owner, Contractor shall promptly pay Subcontractor any undisbursed balance of the Subcontract, if any. If the cost of completion of the Work, together with any other damages or losses sustained or incurred by Contractor, shall exceed the undisbursed balance of the Subcontract, Subcontractor and its guarantors, surety, or sureties shall pay the difference within fifteen (15) days of written demand from Contractor.

(c) If the Owner is damaged by reason of any breach by the Subcontractor of this Subcontract, then the Subcontractor shall, subject to any defenses and offsets to which the Subcontractor may be entitled under this Subcontract, pay the Owner such damages.
(d) Should any default or termination under this paragraph be deemed invalid, wrongful or improper, such default or termination shall be deemed an early termination under Article 9 and Subcontractors rights and remedies against the Contractor shall be limited to the actual direct costs of the Work performed up to the date of termination.

8. CONTRACTOR'S RIGHT TO CARRY OUT THE WORK
If the Subcontractor neglects to perform the work in accordance with the most current Progress Schedule or otherwise fails to carry out the Work in accordance with the Subcontract Agreement and fails within (3) three calendar days from the date of written notice from the Contractor to correct such deficiency, the Contractor may, without declaring the Subcontractor in default and without prejudice to any other remedies the Contractor may have, correct such deficiencies. In such case, an appropriate deductive change order shall be issued for all costs incurred by Contractor in carrying out such work, including but not limited to attorneys' fees. If the remaining subcontract balance is not sufficient to cover such costs, the Subcontractor shall pay the difference to the Contractor.

9. EARLY TERMINATION
(a) If Owner terminates the General Contract or stops the Work for a reason other than the sole default of Contractor, Contractor may terminate this Subcontract or stop the Work for the same reason, and Subcontractor's rights and remedies, including the basis for payment of any unpaid portion of the subcontract balance, shall be limited to the corresponding rights and remedies available to Contractor under the General Contract with the Owner.

(b) Contractor shall have the right to terminate this Subcontract by giving written notice to Subcontractor. Upon receipt of written notice from Contractor of such termination, Subcontractor shall cease operations, take actions necessary for the protection and preservation of the Work, terminate all existing subcontracts and purchase orders and enter into no further subcontracts or purchase orders. If Contractor terminates this Subcontract, Subcontractor shall be entitled to receive payment for the actual direct costs of the Work incurred up to the date of termination along with a reasonable profit on the completed work, not to exceed 10%. In no event shall Subcontractor be entitled to any indirect costs, delay damages, consequential damages, lost profits, acceleration damages or any other compensation other than direct costs of the Work plus a reasonable profit, not to exceed 10%.

10. INSURANCE, LIABILITY & BONDS
(a) Prior to commencing work, the Subcontractor shall procure and maintain in force at the Subcontractor's expense until the completion and final acceptance of the Work, the following insurance in the indicated amounts from companies satisfactory to the Contractor and shall furnish to the Contractor duplicate original copies of insurance certificates evidencing compliance with the listed insurance requirements.

(i.) Workman's Compensation Insurance (Statutory maximum at Project site location).

(ii.) Employer's Liability Insurance with limits of at least $500,000 each accident, $500,000 disease each employee and $500,000 disease aggregate.

(iii.) Comprehensive General Liability Insurance with limits of at least $1,000,000 each occurrence and $1,000,000 general aggregate. Coverage to include premises/operations, products, completed operations, broad form property damage, independent contractors, contractual liability, personal injury and explosion, collapse & underground coverage. The Haskell Company is to be included as an Additional Insured and shall be so evidenced on Subcontractor's Certificate of Insurance.

(iv.) Automobile Liability with limits of at least $1,000,000. Coverage is to be included all owned, hired or non-owned vehicles.

(v.) The Contractor shall be included as an Additional Insured under the Subcontractor's Certificate of Insurance. This policy shall apply as primary insurance with respect to any other insurance available to or maintained by the Contractor. Subcontractor shall provide a copy of the additional insured endorsement to contractor within ten (10) days of executing this agreement or before starting work under this agreement, whichever is sooner.
(b) All policies shall provide for thirty (30) calendar day prior cancellation or change notices to the Contractor in the event of any change in or cancellation of said policies and shall recite the full name, city and state of the Project site. Subcontractor's indemnification obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under Workman's Compensation Acts, disability benefits acts or other employee benefit acts.

(c) The Contractor and Subcontractor waive all rights against each other for damages caused by fire or perils covered by any property insurance that may be set forth in the General Contract except for proceeds of insurance held by the Owner as trustee.

(d) The Contractor shall have the right to require the Subcontractor to furnish performance and payment bonds for the full amount of the Subcontract price. The Subcontractor shall furnish, by a surety and in a form satisfactory to the Contractor, such bonds to the Contractor, prior to the start of Subcontractor's work, covering the performance of the Subcontract and the payment of all obligations arising hereunder. The Contractor, upon receipt of the bonds and invoice from the surety, shall pay for the cost of said bonds. Additional bond premium costs due to modifications to the Subcontract, shall be included in the modification amount submitted by Subcontractor, and paid by Subcontractor.

11. INDEMNITY
To the full extent permitted by law, Subcontractor agrees to defend, indemnify and save harmless Contractor and Owner, as well as any other parties which Contractor is required under the Contract Documents to defend, indemnify and hold harmless, and their agents, servants and employees, from and against any claim, cost, attorneys' fees (including attorneys' fees on appeal), expense, or liability, attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of property (including loss of use thereof), caused by, arising out of, resulting from, or occurring in connection with the performance of the Work by Subcontractor, its subcontractors and suppliers, or their agents servants, or employees. Subcontractor's obligation hereunder shall be limited by the provisions of any worker's compensation or similar act. Subcontractor hereby agrees that One Hundred Dollars and No Cents ($100.00) of the Price constitutes the separate consideration for Subcontractor's indemnity hereunder. Such amount shall be deemed paid out of the first application for payment paid hereunder.

12. SAFETY
(a) The Subcontractor shall comply with safety measures initiated by the Contractor and all applicable laws, ordinances, rules, regulations and orders of any local, state and federal public authority relating to the safety of persons and property. The Subcontractor agrees to hold Contractor harmless from all claims, actions, penalties, and/or fines resulting from Subcontractor's failure to comply with this Article.

(b) The Subcontractor warrants that he is familiar with all aspects of the Williams-Steiger Occupational Safety and Health Act of 1970 (OSHA) and assumes responsibility for compliance with 29CFR 1926 and will hold the Contractor harmless for any accidents and damages, or fines and citations resulting from the administration or enforcement of OSHA, with respect to the performance of the Subcontractors Work.

(c) Pursuant to the Hazard Communications Standard of 1986, the Subcontractor shall provide the Contractor with the Material Safety Data Sheets for all hazardous materials used by the Subcontractor on the job site as required by OSHA or the state in which the Work is being performed; where conflict occurs between the two, the more stringent requirements will be followed.

(d) The Subcontractor shall immediately report to the Contractor any injury to any of the Subcontractor's employees at the Job site.

(e) The Subcontractor shall ensure to the fullest extent possible, that all his sub-subcontractors and suppliers making deliveries to the job site comply with this Paragraph.

(f) If the Subcontractor causes unsafe conditions affecting life and safety to exist, and these conditions are not immediately corrected upon receipt of notice from the Contractor, the Contractor may have the unsafe conditions corrected by others and deduct the cost thereof from amounts due or to become due the Subcontractor
(g) The Subcontractor shall designate a "competent" person as defined by OSHA to supervise, perform inspections and initiate corrective action as required by OSHA construction standards, including but not limited to, excavation, trenching, steel erection and scaffolding.

(h) The project site is a Drug Free Workplace. As such, the consumption or, being under the influence of alcohol or controlled substances, is strictly prohibited. If there is reasonable cause to suspect that an employee of the Subcontractor is in violation of this policy, that employee will be removed from the project site.

13. PAYMENT

(a) The payment terms and conditions set forth below and contained elsewhere in this Subcontract Agreement shall supersede and take precedence over any conflicting terms which may be contained in the General Contract.

(b) Within ten (10) business days after the execution of this Subcontract, the Subcontractor shall submit to the Contractor a schedule of values allocated to the various portions of the Work, prepared in such form and supported by such data as the Contractor may require. This schedule of values, once approved by the Contractor, shall be incorporated into and made part of this Subcontract, and shall be used in the evaluation of the Subcontractor's requisitions for payment.

(c) Requisitions for payment shall be submitted by the 25th day of the month, projecting work completed to the end of the month. Unless items of the Subcontractor's requisition for payment are in dispute, the Contractor shall pay the Subcontractor within 10 business days of Contractor's receipt of payment from the Owner, which is an express condition precedent to the Contractor's payment obligations to the Subcontractor. The Contractor may require evidence that the unpaid balance, exclusive of retainage, is at all times sufficient to complete the Subcontractor's remaining Work and pay any unpaid claims for which the Subcontractor may be liable. All such monthly payments shall be subject to a ten (10) percent retainage.

(d) As a condition precedent to the Contractor's payment obligations to the Subcontractor, the Subcontractor's requisitions for monthly progress and final payments shall be in a form as is acceptable to the Contractor and shall be accompanied by valid lien waivers covering the amount of all materials, equipment rentals, services and sub subcontractors reflected in the previous month's requisition unless otherwise provided for in the General Contract. The Subcontractor shall immediately discharge, transfer from the property to an adequate security, and defend any liens or claims arising from his performance of this Subcontract.

(e) Subcontractor hereby agrees that, by the requisition of monthly progress payments, Subcontractor shall be deemed, as of the date of each such requisition and in consideration of payment of each such requisition:

(i.) to certify to Contractor that all charges for labor, material and services of every nature in connection with this Subcontract in the amount of such requisition have been paid in full or will be paid in full with the proceeds of such requisition, and that there will remain no charge by any subcontractor, vendor, or individual furnishing labor or material in connection with this Subcontract to the date of such requisition for which a lien could be filed, arising out of or in any way relating to this Subcontract;

(ii.) to release and forever discharge the Contractor from any and all obligations and liabilities, and release and waive any and all claims and demands, or rights therefor, of every kind and character whatsoever against the Contractor, the Owner, the Project and the subject premises, arising out of or in any way relating to this Subcontract (including modifications thereto, whether oral or written, and extras, if any) through the date of such requisition; and

(iii.) to agree to cause any lien against the Project or the subject premises to be discharged or satisfied, and to indemnify and hold harmless the Contractor and the Owner against any claim, loss or damage, arising out of or in any way relating to this Subcontract through the date of such requisition.

(f) Progress and final payments may, in the discretion of the Contractor, be made in the form of checks payable jointly to the Subcontractor and any sub-subcontractor, supplier or person performing labor or services for the Subcontractor. The Subcontractor agrees to accept the issuance of joint checks and agrees with the Contractor that neither the right to issue nor the issuance of any joint check is intended to create any contractual relationship with a third party, or any third party beneficiary rights to payment by the Contractor.
(g) The final payment, consisting of the unpaid balance of the Subcontract amount, shall not become due the Subcontractor until the following conditions are satisfied:

(i.) Completion of the Work by the Subcontractor and acceptance thereof by the Contractor and Owner.

(ii.) Final payment by the Owner to the Contractor under the General Contract.

(iii.) Furnishing of evidence satisfactory to the Contractor and Owner that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes or other items performed, furnished or incurred in connection with the Work.

(iv.) Consent of surety, if any, to final payment.

(v.) Furnishing of a general lien release, in a form satisfactory to the Contractor and Owner, executed in favor of the Contractor and Owner.

(vi.) Delivery of all guarantees, warranties, bonds, instruction manuals, as-built drawings, attic stock materials and other items as required by the Subcontract Documents.

(h) The Subcontractor understands and agrees that the Owner’s payment to the Contractor of all progress payments and final payment for any work performed by the Subcontractor, other subcontractors and the Contractor, shall be an express condition precedent to any obligation of the Contractor to make any progress payments or final payment to the Subcontractor.

14. ASSIGNMENT
Subcontractor shall not assign this Subcontract, or any monies due or to become due hereunder, or subcontract any substantial part of the Work, without the prior written consent of Contractor. No assignment by Subcontractor of any right hereunder shall be effective and any such attempt shall be null and void. No third party shall have any right to enforce any right of Subcontractor under this Subcontract. If Contractor gives written consent to an assignment of this Subcontract, in whole or in part, Subcontractor shall not be relieved of its duties and obligations hereunder and shall be and remain fully responsible and liable for the acts and omissions of its assignees. Nothing herein shall prevent Subcontractor from engaging subcontractors to perform a portion of the Work hereunder. However, Subcontractor shall be and remain as fully responsible for all persons directly or indirectly employed by such contractors, as Subcontractor is for its own acts and omissions and those of its agents, servants and employees.

15. SETOFF
If Subcontractor is, or hereafter begins, performing any other work, wherever located, for Contractor and the unpaid balance of the other work becomes insufficient to complete the other work or compensate Contractor for any damages or deficiencies by the Subcontractor in the performance of the other work, Subcontractor hereby consents and agrees to allow Contractor, in its sole discretion and judgment, to setoff any of Contractor’s claims against any funds due, or which may become due, Subcontractor under any other agreement with Contractor, or any subcontract on any other project. No refusal or failure of Contractor to exercise its rights hereunder shall constitute the basis of any right or claim against Contractor.

16. DISPUTES
(a) In the event of a dispute between the Contractor and Subcontractor arising out of or relating to this Subcontract, or the breach thereof, which involves the rights or duties of the Owner, the dispute(s) shall be decided in accordance with the General Contract, and Subcontractor, its suppliers, subcontractors, guarantors and sureties shall be bound to the Contractor to the same extent the Contractor is bound to the Owner by the terms of the General Contract and by any decisions or determinations made under the General Contract by an authorized person, board, court, arbitration, or other tribunal. Such disputes include, but are not limited to, any claim the Subcontractor may have related in whole or in part on the conduct of the Owner, its employees or agents. Subcontractor shall be afforded a reasonable opportunity to present information and testimony involving its rights and shall be solely responsible for the presentation of any information or testimony concerning its claims. Subcontractor shall cooperate with Contractor and Contractors attorneys, employees and agents in the presentation of Subcontractor’s information and testimony.
(b) Any dispute between Contractor and Subcontractor, not involving the Owner or the Owner's conduct shall be governed and decided pursuant to Article 17.

(c) Subcontractor agrees to continue performance of its work despite the existence of disputes with the Contractor. The existence of a dispute with the Contractor shall not be sufficient cause or justification for any failure by Subcontractor to perform its work.

17. CHOICE OF LAW AND VENUE

(a) This Subcontract shall be construed according to the laws of the State of Florida. Any disputes arising from or concerning this Subcontract, which does not involve the rights or conduct of the Owner and is not, therefore, controlled by Article 16 above, shall be litigated in Jacksonville Florida, Duval County Circuit Court. Both parties acknowledge that Duval County Circuit Court shall have exclusive jurisdiction and venue over any dispute arising under this Subcontract. The prevailing party in any such action shall be entitled to an award of all attorneys' fees and costs.

(b) Should either party file any action or arbitration against the other party arising out of a dispute under this subcontract requiring the matter to be litigated in any place other than Duval County, that party shall pay all costs incurred by the other party, including attorneys' fees, incurred in dismissing and/or transferring the venue of such matter to Duval County.

(c) Contractor and Subcontractor may mutually agree in writing to arbitrate any dispute arising from or concerning this Subcontract.

18. NOTICES

All written notices provided for in this Subcontract or in the Contract Documents shall be deemed given if delivered personally to a responsible representative of the party, sent by facsimile or by regular mail to the party at its address specified herein. Either party may from time to time, by notice to the other as herein provided, designate a different address to which notices to it should be sent.

19. SUBMITTALS, SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

Subcontractor shall immediately prepare or obtain and promptly submit to Contractor shop and erection drawings, samples, product data, catalogue cuts, laboratory and inspection reports and engineering calculations, all as may be required by the Contract Documents or as may be necessary or appropriate to describe the details of the Work. Any required field measurements shall be verified by the Subcontractor at the Project site prior to ordering or fabricating materials or performing work dependent on such field measurements. Approval of drawings or other submittals by Contractor or Architect shall not relieve Subcontractor of its obligation to perform the Work in strict accordance with the Contract Documents or its responsibility for the proper matching of the Work to contiguous work.

20. CLEANING UP

Subcontractor shall, at its own expense: (a) keep the premises at all times free from waste materials, packaging and other debris accumulated in connection with the Work by collecting and removing such debris from the job site on a daily or other basis requested by Contractor, (b) at the completion of the Work in each area, sweep and otherwise make the Work and its immediate vicinity "broom-clean," (c) remove all of its tools, equipment, scaffolds, temporary structures and surplus materials as directed by Contractor at the completion of the Work; and (d) at final inspection clean and prepare the Work for acceptance by Owner. Subcontractor agrees to provide all cleaning and cleanup required under the Contract Documents pertaining to the Work to the extent such requirements are in excess of those contained in this paragraph.

21. WARRANTY

Subcontractor warrants its work to the Contractor on the same terms and for the same period as the Contractor warrants the Work to the owner under the General Contract, and, with respect to Subcontractor's work, Subcontractor shall perform all warranty obligations and responsibilities assumed by the Contractor under the General Contract. Without limiting the foregoing or any other liability or obligation with respect to the Work, Subcontractor shall, at its expense and by reason of its express warranty, make good any faulty, defective, or improper parts of the Work discovered within one year from the date of
acceptance of the Project by the Architect and Owner or within such longer period as may be provided in the General Contract, project specifications or other Contract Documents. Subcontractor warrants that all materials furnished hereunder meet the requirements of the Contract Documents and implicitly warrants that they are both merchantable and fit for the purposes for which they are to be used under the Contract Documents.

22. MISCELLANEOUS

(a) The Subcontractor shall protect his finished Work against damage by other trades and shall be liable for damage caused by him to the Work of others. The Subcontractor shall pay as directed by the Contractor, the cost of replacement or repair to the Work of other trades damaged by him or occasioned by the correction of his defective Work and should the Subcontractor fail to do so, the Contractor may, at his option, backcharge the Subcontractor for same. Damage to the completed work, when done by an unknown party, shall be paid for equally by all parties working in or storing materials in the area where the damage occurred. The Contractor will initiate this procedure if liability and acknowledgement cannot be obtained from a responsible third party.

(b) The Subcontractor shall be responsible for the location of and/or damage caused by him to any underground objects, including but not limited to sewer, water, gas, electric or telephone lines, cables, pipes and tunnels.

(c) No inspection, approval or acceptance of work, or approval of a requisition for payment by the Contractor or Owner, nor any progress payment nor partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any work not in accordance with the Subcontract Documents.

(d) No action or failure to act by the Contractor shall constitute a waiver of a right or duty afforded to the Contractor under this Subcontract Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed to in writing by the Contractor.

(e) This instrument and the documents specifically incorporated herein by reference represent the entire agreement between the Contractor and Subcontractor and supersede prior negotiations, representations, agreements either written or oral. Terms and conditions of proposals, quotations, delivery tickets, invoices, work orders and other similar items, unless specifically made a part of this Subcontract Agreement, shall not be applicable. This Subcontract may be amended only by a written modification signed by both parties.

Rev. 6/2000
Addendum to Attachment A

Standard Equal Employment Opportunity Construction Contract Specifications

As a government contractor, The Haskell Company is subject to the requirements of Executive Order 11246 - as amended and the implementing regulations at 41 CFR Parts 60-1 through 60-30, Section 503 of the Rehabilitation Act of 1973 - as amended and the implementing regulations at 41 CFR Part 60-741, The Affirmative Action Provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 - as amended, 38 U.S.C. 4212 (VEVRAA) and the implementing regulations at 41 CFR Part 60-250, Immigration Reform and Control Act of 1986 (IRCA), Title I of the Americans with Disabilities Act of 1990 (ADA), Title VI and Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963 and the Age Discrimination in Employment Act of 1967 (ADEA) as well as the related rules and regulations of the Department of Labor and Office of Federal Contract Compliance Programs. All subcontractors, vendors and suppliers while under any type of contract to The Haskell Company for the furnishing of supplies or services or for the use of real or personal property certify that they will abide by these requirements.

ZERO HARASSMENT TOLERANCE POLICY

The Haskell Company prohibits any type of harassment that creates an intimidating, hostile, or offensive work environment, including but not limited to, verbal, visual or physical conduct that discriminates on the basis of sex, race, national origin, color, religion, age, disability or veteran’s status. Employees of The Haskell Company and vendors and contractors working with The Haskell Company are prohibited from engaging in unwelcome sexual advances, requests for sexual favors and any other forms of harassment based on an individual’s race.

Unwelcome harassing conduct, requests for favors or other threatening verbal, visual or physical conduct based on an individual’s sex, race, national origin, color, religion, age, disability or veteran’s status is in violation of this Policy when submission to unwelcome harassing conduct is a condition of continued employment, or unwelcome harassing conduct affects the work performance and creates a hostile work environment.

If you are involved in or have observed a harassment situation, you must immediately report the incident to the Haskell Company’s onsite Project Superintendent or the Project Manager who may be contacted at the following number: 1-800-733-4273, and, in addition, to Haskell’s Director of Human Resources, who may be contacted at the following number: 1-800-733-4274.

All claims of harassment will be investigated in a confidential and an objective manner, in an attempt to identify and remedy the problem. No employee, or employee of a vendor or contractor, will be retaliated against by Haskell for lodging a complaint of discrimination or harassment or for participating in an investigation. Any Haskell employee, who is found to have harassed another Haskell employee, or the employees of a vendor or contractor, will be subject to appropriate disciplinary action, up to and including discharge.

The Subcontractor/Vendor will seek to ensure and maintain a “Zero Tolerance Policy” in regards to a work environment free of racial harassment, sexual harassment, intimidation and coercion at all its work sites and in facilities at which the Subcontractor/Vendor’s employees are assigned to work. The Subcontractor/Vendor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Subcontractor/Vendor’s “Zero Tolerance Policy” to maintain such a hostile-free work environment with specific attention to minority or female individuals working at such sites or in such facilities. The Subcontractor/Vendor will protect all individuals or any member of a protected class working at sites or facilities, whether as employees of Subcontract/Vendor or as employees of any contractor or subcontractor working at such sites or facilities. Subcontractor/Vendor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract, the Civil Rights Act of 1964 (Title VI and Title VII) and 41 CFR 60-4.3 (a) 7a).

1. CERTIFICATION 1 - EQUAL OPPORTUNITY CLAUSE

(a) The Subcontractor/Vendor will not discriminate against any employee or applicant for employment because of race, religion, sex, color, national origin, age, disability, veteran status or any other legally protected status imposed by applicable law. The Subcontractor/Vendor will take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their membership in any status protected by applicable law. Employment practices shall include the following: hiring, promotion, demotion, discipline, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Subcontractor/Vendor agrees to post
in conspicuous places, available to employees and applicants for employment, notices, which are provided by the contracting government agency setting forth the provisions of this nondiscrimination clause.

(b) The Subcontractor/Vendor will, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor/Vendor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age, disability or veteran status or any other legally protected status imposed by applicable law.

(c) The Subcontractor/Vendor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the contracting government agency, advising the labor union or workers' representative of the Subcontractor's/Vendor's commitments under Executive Order 11246, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Subcontractor/Vendor will comply with all provisions of Executive Order 11246, as amended, and of the rules, regulations, and orders of the Secretary of Labor.

(e) The Subcontractor/Vendor will furnish all information and reports required by Executive Order 11246, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the contracting government agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(f) In the event of the Subcontractor's/Vendor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the Subcontractor/Vendor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246, as amended, or by rule, regulations, or order of the Secretary of Labor, or as otherwise provided by law or may be ineligible for further contracts with The Haskell Company.

(g) The Subcontractor/Vendor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order less exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Executive Order 11246, as amended, 1 CFR Section 60-1.4, so that such provisions will be binding upon each subcontractor or vendor. The Subcontractor/Vendor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provision including sanctions for noncompliance; provided, however, that in the event the Subcontractor/Vendor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Subcontractor/Vendor may request the United States to enter into such litigation to protect the interest of the United States.

2. CERTIFICATION 2 – CERTIFICATION OF NONSEGREGATED FACILITIES (FAR 52.222-21)

In conformity with 41 CFR Section 60-1.8, the Subcontractor/Vendor certifies that it does not and will not maintain or provide for its employees any segregated facilities on the basis of race, color, religion, sex or national origin at any of its establishments, and that it does not and will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. Subcontractor/Vendor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin, because of habit, local custom, or otherwise. Subcontractor/Vendor further agrees that (except where it has obtained identical certifications from proposed subcontractors/vendors for specific time periods or when separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes) it will obtain identical certifications from proposed subcontractors/vendors prior to the award of any nonexempt subcontracts.

3. CERTIFICATION 3 – EMPLOYMENT OF THE DISABLED (FAR 52.222-36)

Pursuant to Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 793 and regulations issued at 41 CFR Part 60-741, as amended, the affirmative action clause set forth in Section 741.5(a) of the regulations is to be included in every federal contract or subcontract exceeding $10,000. Therefore, unless otherwise exempt, Subcontractor certifies that it will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant is qualified. Subcontractor further agrees that it will take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities, without discrimination based on their physical or mental disability in all employment practices. Subcontractor certifies that it will obtain identical certifications from proposed
subcontractors prior to the award of any subcontract exceeding $10,000 covering the procurement of personal property and non-
personal services (including construction).

4. CERTIFICATION 4 - EMPLOYMENT OF SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA
AND OTHER ELIGIBLE VETERANS

Pursuant to 41 CFR Part 60-250, Subcontractor/Vendor agrees that it will not discriminate against the individuals because the
individual is a disabled veteran or veteran of the Vietnam era, or other eligible veteran, in regards to any position for which the
employee or applicant for employment is qualified. Subcontractor/Vendor further agrees that it will take affirmative action to
employ, advance in employment and otherwise treat qualified disabled veterans, veterans of the Vietnam era, and other eligible
veterans without discrimination based upon their disability or veteran's status in all employment practices. Subcontractor/Vendor
certifies that it will undertake to list immediately with the appropriate local public employment service office of the State wherein
the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the
requirement to list jobs with the local employment service office. Subcontractor/Vendor further agrees to comply with all rules,
regulations, and relevant orders issued with respect to 41 CFR Part 60-250.

5. CERTIFICATION 5 - AFFIRMATIVE ACTION IN CONSTRUCTION - (FEDERAL CONTRACTS ONLY)

Pursuant to 41 CFR Section 60-4.1, Subcontractor/Vendor shall include the notice set forth in Paragraph (d) of Section 60-4.2 and
the Standard Federal Equal Employment Opportunity Construction Contract specifications set forth in Section 60-4.3, in all
solicitations for offers and bids on all federal and federally assisted contracts or subcontracts to be performed in geographical areas
designated by the Director of the Office of Federal Contract Compliance Programs. All non-construction subcontractors covered by
Executive Order 11246 and the implementing regulations also agree to include the notice in Paragraph (d) of Section 60-4.2 in all
construction agreements which are necessary in whole or in part to the performance of the non-construction contract.

Specific to 60-4.3:

The Subcontractor/Vendor will establish and maintain a current list of minority and female recruitment sources, provide written
notification to minority and female recruitment sources and to community organizations when the Subcontractor/Vendor or its
employees have employment opportunities available, and maintain a record of the organizations' responses. The Subcontractor/Vendor
will establish and maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and
minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect
to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the
Subcontractor/Vendor by the union, if referred, not employed by the Contractor, this shall be documented in the file with the reason
therefore, along with whatever additional actions the Subcontractor/Vendor may have taken. The Subcontractor/Vendor will direct
its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female
students and to minority and female recruitment and training organizations serving the Subcontractor/Vendor's recruitment area and
employment needs.

The Subcontractor certifies that if it has 50 or more employees and if it anticipates sales to Haskell in connection with government
contracts of $50,000 or more, it will develop a written affirmative action compliance program for each of its establishments
consistent with the rules and regulations published by the Department of Labor in 41 CFR Section 60-2 (Revised Order 4).

The Subcontractor certifies that if it has 50 or more employees and if it anticipates sales to Haskell in connection with government
contracts of $50,000 or more, it will file annually Standard Form 100, entitled "Equal Employment Opportunity Employer
Information Report EEO-1", as required by 41 CFR Section 60-1.7(e).

As set forth in 48 CFR Chapter I, Part 19 of Subchapter D, it is the policy of the federal government to place a fair portion of its
acquisitions, including contracts and subcontracts, with small business concerns, veteran-owned small business concerns, service-
disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and
women-owned small business concerns so that they shall have the maximum practicable opportunity to participate. Subcontractor/
Vendor agrees to use its best efforts to carry out this policy in the award of its subcontracts to the fullest extent consistent with the
efficient performance of the contract. Subcontractor agrees to comply with the provisions of Part 19 in achieving this goal and as
prime contractors, establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with
these small businesses.

Rev. 4/2003
WHEREAS, effective June 25, 2003, The Haskell Company ("Haskell") and the Key Largo Wastewater Treatment District ("District") entered into a written Design-Build Agreement for construction of certain wastewater treatment facilities ("Project") located at Key Largo, Florida, and

WHEREAS, PURESTREAM ES, L.L.C. ("PES") is a potential supplier of secondary treatment equipment, referred to herein as the USBF plant, and

WHEREAS Randazza Enterprises, Inc ("Randazza") is an authorized representative of PES, and

WHEREAS, PES and Randazza, for the purpose of inducing the District to select the USBF plant for the Project, desire to make additional warranty and service commitments for the benefit of the District, and

WHEREAS, the parties intend by this writing to memorialize the additional warranty and service commitments,

NOW, THEREFORE, in consideration of the premises and in further consideration of the promises below, PES and Randazza agree as follows:

1. PES and Randazza warrant that all materials and equipment provided by PES as part of the USBF plant to Haskell and the District in connection with the Design-Build Agreement will be new unless otherwise specified, of good quality, in conformance with the Design-Build Agreement, and free from defective workmanship and materials.

2. PES and Randazza warrant that they will repair or replace, without delay and at their expense, any and all USBF plant components that fail due to faulty materials or manufacture.

3. PES and Randazza warrant further that if the Project fails to perform in accordance with the requirements of the Design-Build Agreement as a result of defective PES materials or equipment or because of the design of the USBF plant, PES and Randazza will, without delay and at their expense, undertake all actions necessary, including redesign and reconstruction of the USBF plant, and modification of operating procedures, to cause the Project to perform in accordance with the requirements of the Design-Build Agreement as outlined in Exhibit D of the Design-Build Agreement, a copy of which is attached hereto and incorporated herein by this reference.

4. If the District is reasonably required to undertake repair or replacement of the warranted materials or equipment due to exigent conditions, or to prevent harm to the Project or the public, PES and Randazza will reimburse the District for the reasonable costs of such efforts within 30 days of the District providing notice to PES or Randazza.

5. This warranty shall extend from and after the "Acceptance Date" as that term is defined in the Design-Build Agreement for a period of two years.

6. For purposes of this warranty, "failure" of the materials or equipment means that, due to a defect in the PES materials or equipment or due to a defect in their design or
specified operating procedures, the Project is, or becomes, incapable of meeting the Performance Standards set forth in Exhibit D to the Design-Build Agreement, which is incorporated herein by this reference.

7. The following are express conditions of this warranty:

   a. That the actual sewage influent is substantially as characterized for the purpose of design of the USBF plant under the Design-Build Agreement; and

   b. That the District has substantially complied with all of the operating instructions and maintenance requirements communicated to the District by PES or Randazza or Haskell under the Design-Build Agreement.

8. If the materials or equipment fail as a result of noncompliance with any of the express conditions of this warranty, as set out in the preceding paragraph, PES and Randazza will, if the District so requests, promptly cause the failed materials or equipment to be repaired or replaced, but shall be entitled to compensation for the reasonable cost of repair or replacement.

9. Except for damage to the Project caused by a condition described in Paragraphs 1 through 4, above, PES and Randazza expressly disclaim responsibility for any damages caused by failure of the USBF plant, including lost income to the District.

10. Randazza will provide Haskell with all the assistance needed during the construction phase of the USBF plant at no cost to Haskell.

11. Randazza will assume the full responsibility, at no cost to Haskell or the District, for the startup and training of District operators once the USBF plants #1, #2 and #3 have been completely installed and electrical power has been provided to the equipment.

12. Randazza will continue to provide on the job supervision and technical training/assistance to the District operators at no cost to the District for a period of five years after the startup of USBF plants #1, #2 and #3 during which period, the USBF Plants will have been demonstrated to perform in accordance with the requirements of the Design-Build Agreement. It is understood that plants #1, #2 and #3 will be tested to meet the Design Build Agreement by simply alternating the Influent flows to either of the plants at any time after startup of all three plants in order to demonstrate their performance.

13. If the District or PES or Randazza is required to retain an attorney to enforce any terms, conditions, or covenants of this warranty, or to remedy any breach, the prevailing party shall be entitled to recover the verifiable costs and fees of any enforcement proceedings, including, but not limited to, reasonable attorneys’ fees (including charges for paralegals and others working under the direction or supervision of the party’s attorney.)

14. The failure of the District or PES or Randazza to enforce, at any time, any of the provisions of this warranty shall not be construed to be a waiver of any such provisions or of the right of either party thereafter to enforce them. No waiver shall be valid unless in writing and signed by the party against whom enforcement of a waiver is sought.
15. It is the intention of the parties that any and all actions or proceedings at law or in equity related to this warranty or to the Project or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State or Federal courts located in Monroe County, Florida. All other dispute resolution activities shall be held in Monroe County Florida.

16. In addition to the foregoing warranty obligations, PES and Randazza represent and warrant that the PES materials and equipment shall meet all of the applicable requirements of all federal, state, and local agencies having jurisdiction over the Project, including without limitation, the Florida Department of Environmental Protection redundancy requirements for 183,000 gallons per day.

17. PES and Randazza will provide to Haskell bonding or other reasonable security to secure performance of their obligations under this warranty and payment for labor and materials to be supplied under this warranty.

18. In addition to the foregoing, Randazza agrees that Haskell shall deduct from the first amounts due Randazza for the PES materials and equipment the sum of $75,000, which shall be transmitted to the District and deposited in an interest-bearing account to secure performance by Randazza of all of the Randazza and Purestream obligations hereunder. If Randazza and Purestream satisfactorily perform all of their obligations under this warranty agreement, the District shall transmit the principal and all accrued interest to Randazza upon the passing of five years from and after the Acceptance Date of the Purestream materials and equipment under the Haskell contract. If at any time the District reasonably believes that Randazza and/or Purestream are in default under this warranty agreement, then the District shall so notify Randazza of that fact and shall thereafter be entitled to withdraw immediately all or any part of the principal and accrued interest for the purpose of remedying such default. The District may place the principal in a demand deposit account at any federally insured bank, and the District shall have no obligation to Randazza to manage the deposit for the purpose of increasing or maximizing the return on the deposit.

[ADD SIGNATURE BLOCKS FOR PES AND RANDAZZA.]
KLWTD Board Meeting
January 7, 2004

Item G - 2

Draft Policy for Handling Unsolicited Requests for District Positions
Draft
Policy re Unsolicited Requests for District Positions

When the general manager or other representative of the District receives an unsolicited request for the District position on an issue, the District will follow the procedure outlined below:

1. The general manager will advise the commissioners by simultaneous transmission that the request has been received;
2. The request will be included in the agenda of the next public meeting as a part of the manager's report, so that the Board can take such action as it deems appropriate;
3. The notice to the commissioners should expressly advise them that the general manager is not seeking Board action and the general manager is not attempting to poll the commissioners to determine what the District's position, if any, will be with respect to the request;
4. Unless the general manager is absolutely certain that he can respond to the request with confidence that he is expressing the District's position (a rare case), the general manager should advise the requesting person that the District will be advised of the request and may provide a response after consideration at a public meeting.
5. At the public meeting, the Board may elect to discuss the request, take or defer action on the request, or decide that no action will be taken on the request.
Item G - 3

Term Consulting Contract Revision
Faith Doyle

From: Thomas M. Dillon [thomasdillon@terranova.net]
Sent: Friday, December 26, 2003 11:01 AM
To: Faith Doyle
Subject: Term Consulting Contract - Boyle

Faith,

Please place this item on the next Board agenda under the counsel report.

Attached is a change to Paragraph 25.1 of the term agreement, proposed by Boyle Engineering. The proposed change would substitute a standard of care provision for a duty of loyalty provision as stated in the form.

Boyle contends that inclusion of Paragraph 25.1 would impose upon it standards different from those provided by law, although Boyle also states that the provision "does not really add anything to the contract."

When a consultant or contractor seeks to modify or delete standard contract provisions intended to confer a benefit on the owner, one of the considerations is whether other qualified consultants or contractors are willing to accept the disputed provision. Modifying standard terms for the benefit of one consultant is not prohibited by law, but tends to violate the spirit of competitive procurement.

In this case, at least two other consultants have executed the term contract without requesting modification. I recommend that the District reject Boyle's proposed modification.

Tom
Faith Doyle

From: Doug Eckmann [DEckmann@BoyleEngineering.com]
Sent: Wednesday, December 31, 2003 9:07 AM
To: Thomas M. Dillon
Subject: RE: K LWTD - Boyle contract

OK thanks for getting back to me on this. We can probably sign the contract with 25.1, I’ll just need to get my CEO’s approval.

Doug Eckmann

----- Original Message ----- 
From: Thomas M. Dillon [mailto:thomasdillon@terranova.net]
Sent: Wednesday, December 31, 2003 9:02 AM
To: Doug Eckmann
Subject: Re: K LWTD - Boyle contract

Doug,

I have forwarded your request to the District Board for review. I am recommending disapproval, primarily due to the following:

1. I view the obligations in 25.1 to be consistent with a professional engineer’s obligations when providing services to a public agency. Both the engineer and the agency are charged with promoting the public interest.

2. Other engineering firms are willing to accept 25.1.

We have found a number of typographical errors in the form, and the District will be forwarding to you and other firms a revised form with the typos corrected. The District will also forward to you an Amendment One, which addresses federal approval and federal funding under 218.77 Fla. Stat.

The revised contract form will not reflect any change in Section 25.1.

Tom

----- Original Message ----- 
From: Doug Eckmann 
To: thomasdillon@terranova.net
Sent: Friday, December 19, 2003 9:29 AM
Subject: FW: K LWTD - Boyle contract

Here it is

----- Original Message ----- 
From: Doug Eckmann 
Sent: Friday, December 19, 2003 9:25 AM
To: ‘thomasdillon@terranova.net’
Cc: Sarah Sabunas
Subject: KLWTD - Boyle contract

Tom, we thought the proposed contract looked pretty fair but we do have one problem statement. It is Article 25.1

25.1 states:
Consultant in representing District shall promote the best interest of the District and assume towards the District the highest trust, confidence and fair dealing.

Taken literally, this statement holds Boyle to a standard of care beyond that established by Florida for professional engineers and implies a fiduciary responsibility, as well as create a potential conflict with obligations of the professional under Florida (and every other state) licensing of professional engineers. What we are obligated to do under Florida law is to perform our services to the standard of care of a similarly situated engineer performing similar services. Any additions to that simple statement makes our services subject to higher scrutiny.

Ideally, we could just strike Article 25.1 as it does not really add anything to the contract in our opinion. You probably know that regardless of our contract language we are already obligated by profession standards and ethics, at the risk of losing our individual professional licenses so we don’t take it lightly. However, as licensed profession engineers, our highest duty is protection of the health and safety of the public, above ourselves or our clients.

If you have to have something for Article 25.1 we could probably live with something like this:

Article 25.1

Consultant shall endeavor to fairly represent the District's interests and to exercise the standard of care for Professional Engineering and ethical standards established by the Florida Board of Professional Engineers.

Thanks for considering this change,

Douglas H. Eckmann, P.E., DEE
Principal Engineer / Ft Myers Office Manager
Boyle Engineering Corporation
4415 Metro Parkway, Suite 404
Fort Myers, FL 33916

239 / 278-7996
KLWTD Board Meeting
January 7, 2004

Item G - 4

Term Consulting Contract
Prompt Pay Act Amendment
Faith Doyle

From: Thomas M. Dillon [thomasdillon@terranova.net]
Sent: Friday, December 26, 2003 10:38 AM
To: Faith Doyle
Subject: Term Consulting Agreements - Prompt Pay Act amendment

Faith,

Please place this item on the next Board agenda under the counsel report.

I am attaching a form of amendment to be executed by all consultants entering into term consulting agreements with the District. The purpose of the form is to comply with Section 218.77, Florida Statutes, which requires that contractors be notified where payment or the time of payment is contingent on receipt of federal funds or federal approval.

Tom
AMENDMENT NUMBER ONE

To

Contract for Consulting/Professional Service

By and between

Key Largo Wastewater Treatment District

And

______________________________________________

THIS AMENDMENT Number One to the Contract for Consulting/Professional Service (“Contract”) by and between the Key Largo Wastewater Treatment District (“District”) and ______________________________________________________ is entered into and effective this ___ day of ________________, 2004.

WHEREAS, some or all of the services to be provided by Consultant under the Contract will consist of design of, and other services related to, capital improvements; and

WHEREAS, payment or the time of payment for such services may be contingent upon receipt of federal funds or federal approval;

NOW, THEREFORE, the parties agree to, and do hereby amend the Contract by adding a new Paragraph 4.6, as follows:

4.6. A Work Authorization issued by the District will include advice whether payment or the time of payment for services described therein will be contingent upon receipt of federal funds or federal approval. The District will exercise due diligence to apply promptly for any needed federal funds or federal approval. Notwithstanding any other provision of this Contract, and any attachment, appendix, or exhibit thereto, the time within which a payment is due for services described in the Work Authorization shall be extended by a duration equal to the time taken to obtain the receipt of federal funds or federal approval.

IN WITNESS WHEREOF, the parties have set their hands and official seals the day and year first written above.

District
Key Largo Wastewater Treatment District

______________________________________________

Consultant

______________________________________________

By: ________________________________

By: ________________________________

Its: Chairman

Name: ________________________________

Its: Chief Executive Officer

Attest:

Amendment No. 1 to Contract for Consulting/Professional Service
By: ___________________________    By: ___________________________
Its: Clerk                        Its: Secretary

Approved as to Form:

By: ___________________________
KLWTD Attorney
KLWTD Board Meeting
January 7, 2004

Item G - 5

Use of County Funds for KLWTD Administrative Expenses
December 29, 2003

Mr. Richard Collins
County Attorney
Monroe County
P.O. Box 1026
Key West, Florida 33041-1026

Re: Use of County funds for Key Largo Wastewater Treatment District ("District") administrative expenses.

Dear Richard:

The purpose of this letter is to request that your office reconsider an opinion memorandum issued by the Chief Assistant County Attorney, Rob Wolfe, dated June 18, 2002, and specifically that your office advise Mr. Kolhage that funds collected by Monroe County ("County") may be used to cover administrative expenses of the District. In particular, this request applies to the funds loaned to the District by the County and the funds collected by the County on behalf of the District as a Municipal Services Taxing Unit ("MSTU") for District administrative expenses.

Background

On December 17, 2003, you and I discussed with Mr. Kolhage the propriety of using certain funds to pay District administrative expenses. Mr. Kolhage advised us that he was relying on a County Attorney’s opinion for the proposition that funds collected by Monroe County ("County") could not be used for those expenses. You were unaware of the opinion, but you said that the opinion likely would have been written by Mr. Wolfe. On December 18, I contacted Mr. Wolfe by telephone, and he did not recall the opinion. Finally, on December 22, I wrote to Mr. Kolhage, who provided me a copy of the opinion memorandum on the same day. A copy is attached hereto for your reference.

The opinion memorandum was written before the District was organized and therefore without District input. The memorandum reaches two main conclusions. First, the memorandum concludes that County funds cannot be spent to construct sewer improvements in Key Largo because the funds include revenue raised through a County-wide ad valorem levy and the expenditure of those funds allegedly would not benefit Key West or, presumably, any other incorporated area. Second, the memorandum concludes that County funds cannot be used to pay District administrative expenses because the District is an independent special district.

As more fully set out below, I believe that the opinion memorandum incorrectly states the law regarding a county’s right to use funds levied on property within an incorporated municipality to construct improvements in unincorporated areas of the county. Further, Mr. Kolhage’s position that MSTU funds cannot be used to pay District administrative expenses is not supported by the law or the opinion letter.

1. The County is not prohibited from spending general fund revenues on a sewer project in Key Largo.

Article VIII, section 1(h), Florida Constitution ("Section 1(h)"), provides:

Property situate within municipalities shall not be subject to taxation for services rendered by the county exclusively for the benefit of the property or residents in unincorporated areas.

Our Supreme Court has described Section 1(h) as a provision that prohibits double taxation. Generally speaking, a county may not expend funds collected as ad valorem taxes on property within municipalities unless the municipalities...

Board of Commissioners: Chairman Gary Bauman, Andrew Tobin, Cris Beaty, Charles Brooks, Jerry Wilkinson
their residents receive a benefit. The benefit must be of a magnitude described by the court as "real and substantial." City of St. Petersburg v. Briley, Wild & Associates, 239 So.2d 817, 823 (Fla. 1970); Town of Palm Beach v. Palm Beach County, 460 So.2d 879, 881 (Fla. 1985). As the court stated in Palm Beach,

substantial is not necessarily a quantifiable term and a benefit may achieve substantiality without being direct or primary. All that is required is a minimum level of benefit which is not illusory, ephemeral or inconsequential.

Id.

Notably, the Palm Beach court held that a person challenging the expenditure of funds must carry the burden to prove that a service provided by a county and funded by county-wide revenues does not provide a real and substantial benefit to the particular municipality. Id. This is a heavy burden. Id. In the Briley, Wild decision, the court held specifically that the construction and operation of a sewage treatment plant in the unincorporated area of a county can provide a real and substantial benefit to the municipalities by reducing pollution from open sewage discharge, saying:

Water pollution and the attendant diseases and ills to human habitation that flow therefrom know no city or county lines. The evidence before the trial court indicates that the contamination of the waters of Pinellas County which occurs in the unincorporated areas contaminates waters located in the incorporated areas through the natural process of flow. Disease originating in the unincorporated areas resulting from improperly-treated sewage can and will readily spread throughout the county. Protection against such contamination and disease is not merely an incidental or collateral benefit which would result to the incorporated areas of the county by the correction of the problem in the unincorporated areas. This Court takes judicial knowledge of the fact that Pinellas County, with its numerous bays and streams, some of which are within the County and others contiguous thereto, is one of the finest recreation areas devoted to boating, fishing and swimming, in the entire southeastern portion of the nation. The population of this area has increased by leaps and bounds during the last decade as evidenced by the unofficial 1970 Census recently published by the U.S. Census Bureau. The population of Pinellas County during this decade increased from 374,000 plus to 515,000 plus, or a percentage increase of approximately thirty-six per cent. And the record indicates that this increase in population has brought with it attendant increase in pollution and contamination of the waters, soils and streams of the County, and that the present sewage disposal systems are not adequate to cope with the same. We are now living in a time when our citizenry is pollution conscious. As Judge John Rawls of the District Court of Appeal, First District of Florida, recently remarked in St. Regis Paper Company v. State of Florida, by and through Fla. Air and Water Pollution Control Commission, 237 So.2d 797, opinion filed July 14, 1970, "ecology is the 'in' subject of today's citizenry, as it well should be." Some of the beaches of Florida have become almost uninhabitable with a great deal of the condition caused by inadequate sewage treatment and disposal. Again quoting Judge Rawls, "Man of all animals pollutes his habitat the greatest."

It is impossible to separate as between the various areas of the county the deleterious effect upon the public health of contamination and pollution occurring in a particular area. It is unrealistic to say that the elimination of pollution and contamination of the soils, waters and streams of the unincorporated areas of Pinellas County will not be of substantial benefit, health-wise and recreation-wise, to the incorporated areas.

Id. at 824.

The Chief Assistant County Attorney's memorandum of June 18, 2002, seems to overlook the Briley, Wild decision, and to assume that there can be no benefit to the incorporated municipalities from construction of a sewer system in Largo. The memorandum fails to cite any evidence in support of that proposition and fails to consider that a "real
I substantial” benefit to the residents of the incorporated areas does not require that they receive a “direct and primary” benefit. An argument can be made that residents of incorporated portions of Monroe County will not receive a direct and primary benefit from sewerage the District, since the sewer system will not be built within those incorporated portions. But, in light of *Briley, Wilde*, there cannot be any serious argument that sewerage of the District will provide a direct and substantial benefit to the water quality of all of Monroe County, including the incorporated areas.

I believe that if this issue were seriously considered, any impartial trier of fact would be hard pressed to find that the District’s sewer projects do not confer upon the municipalities a real and substantial benefit. In fact, all of Monroe County will suffer if the District’s project is not funded. The recent correspondence between the Department of Community Affairs and Mayor Nelson shows that both the State of Florida and Monroe County consider sewage treatment issues to be matters of county-wide concern. Therefore, the incorporated portions of the County will clearly receive a direct and substantial benefit from sewerage the District, and the County may spend general fund moneys on that work.

2. There is no authority for the proposition that the ability to use county funds to cover administrative expenses of a special district turns on whether the district is dependent or independent.

The memorandum cites the decision in *State v. Sarasota County*, 372 So.2d 1115 (Fla. 1979) for the proposition that a county’s ability to fund administrative expenses turns on whether a district is dependent or independent. Although it appears from the *Sarasota* decision that the special utility district at issue was formed by the county as a dependent district, the decision simply does not make the distinction attributed to it by the opinion. Nor does the decision imply a test based on whether the administrative functions of the district may be similar to, or duplicate, those of the county. In fact, nothing in the *Sarasota* decision alters conclusion in *Briley, Wilde* and its progeny. If the expenditure of county funds confers a real and substantial benefit to the incorporated portions of the county, the county may expend the funds regardless of whether the District is independent or dependent.

Further, there is no basis for the assumption in the memorandum that spending general fund moneys on District general expenses would duplicate County functions. There is no portion of County government with direct responsibility to provide wastewater treatment for the area encompassed by the District. No one in County Government has been elected, appointed, or otherwise designated to ensure that a sewer system will be built in District or to perform any of the administrative tasks necessary to accomplish the planning and construction of a sewage treatment system in the District.

As established by the Legislature, the District has “exclusive jurisdiction over the acquisition, development, operation, and management of a wastewater management system in and for the district boundaries.” Only the Board of the District has the authority and responsibility to plan and construct the system, including holding hearings and public meetings, preparing procurement documents, approving and administering contracts and all the myriad tasks incidental to that responsibility. The District’s exclusive role clearly shows that its functions do not duplicate those of the County.

3. District administrative expenses are an integral part of the cost of sewerage the District.

The District is the agency created by the Legislature with the exclusive authority to provide a sewer system for Key Largo. The District’s purpose, as established by the Legislature, includes:

To perform such acts as shall be necessary for the sound planning, acquisition, development, operation, and maintenance of a wastewater management system within the district, including all business facilities necessary and incidental thereto. The district shall have exclusive jurisdiction over the acquisition, development, operation, and management of a wastewater management system in and for the district boundaries.
Richard Collins, Monroe County Attorney

Funding of Key Largo Wastewater Treatment District

...there can be no doubt that the wastewater management system will not plan, acquire, develop, operate, or maintain itself. These tasks can be accomplished only if a Board is in place to accomplish them. The costs of the Board are therefore incidental to, and a part of, the costs of planning, acquisition, development, operation, and maintenance. Because the cost of sewer projects the District is a proper object of expenditure of County funds, it is clear that the cost of administering the District is also a proper object of such expenditures. There is, therefore, no basis for the Chief Assistant County Attorney’s conclusion that these costs cannot be paid from County funds.

4. Use of MSTU funds for District expenses, including administration, does not violate the “double taxation” principal.

The Board of County Commissioners adopted Monroe County Ordinance 018-2003 on May 20, 2003. The express purpose of the ordinance was to set up a Municipal Services Taxing Unit (“MSTU”) to “fund the provision of municipal services associated with the administration, planning and development of wastewater and reclaimed water projects within the municipal service taxing unit.” Ordinance 018-2003, Section 2(C). Further, the ordinance is to “be liberally construed to effect the purposes thereof.” Id.

Assuming for the sake of discussion that the double taxation principal in Florida Constitution Section 1(h) prohibited the expenditure of county general funds within the District, that principal does not apply to MSTU funds, which have been collected by ad valorem taxation of property located within the District, and not from incorporated portions of the County. Moreover, the ordinance expresses the County’s intent to use the MSTU mechanism as a method of providing funds to achieve a purpose that benefits the County.

Chief Assistant County Attorney’s memorandum was prepared before the adoption of Ordinance 018-2003, and before the BOCC expressed its desire to provide funding for the administration of the District. The BOCC’s expression of purpose should be sufficient to allow the County Attorney to render an opinion that the MSTU funds can be used for administrative purposes.

The County’s interpretation of the law regarding the use of County funds for special districts appears to be unprecedented.

After Mr. Kolhage explained to you and me his position regarding County funds, I wrote to Charles Profilite, the Executive Director of the Florida Association of Special Districts to ask whether Mr. Kolhage’s position was a generally accepted one? He wrote back advising that he did not have an answer. Copies of the correspondence are attached. I am not aware of any other county that takes a position similar to that of Mr. Kolhage, and I believe that it does not represent the state of the law.

Conclusion.

Based on the foregoing, I respectfully request that you reconsider the Chief Assistant County Attorney’s advice to Mr. Kolhage as expressed in the attached memorandum. I believe that the advice is not supported by the facts or the law, and that the County Attorney should advise Mr. Kolhage that the use of County funds, including MSTU funds and county general funds may properly be expended to support the administration, planning and development of a wastewater treatment system within the District, including the costs of honoraria for Commissioners attending meetings of the District.

Yours truly,

Thomas Dillon
Counsel for Key Largo
Wastewater Treatment District
MEMORANDUM

DATE: June 18, 2002

TO: Jim Hendrick
   COUNTY ATTORNEY

FROM: Rob Wolfe
   CHIEF ASSISTANT COUNTY ATTORNEY

RE: Commissioner Nelson's item regarding transfer of funds ($100,000)
   Key Largo Wastewater Treatment District

I believe the BOCC may, pursuant to Sec. 163.01, FS, enter into an interlocal agreement
with the District for part of the payment of the District's costs in planning and
construction of wastewater treatment facilities, providing the Board determines that such
a payment serves a County purpose. Alternatively the County could lend the District the
funds, see AGO 2000-56.

There are two caveats to the above:

1. The funds could not be paid out of the County general fund. That fund contains
   revenue raised through a County-wide (including the cities) ad valorem levy. The reason is
   that the District is serving a specific municipal purpose in Key Largo without a benefit to,
   say, Key West. See Town of Palm Beach v. Palm Beach County, 460 So.2d 879 (Fla. 1984).
   Infrastructure sales tax funds may be available, although I assume Mr. Roberts has more
   insight on this issue than I do.

2. The County funds should also not be used for general administrative purposes of
   the District (as opposed to the planning and construction). The reason for this is that the
   District is an independent special district, i.e., it is not a part of County government.
   Under Art 7, Sec. 9, Fla. Cons't. (1968), the BOCC may levy taxes (including the
infrastructure sales tax) for its "respective purposes." While the Board may determine that the planning and the construction of Key Largo wastewater treatment facilities constitutes a County purpose and enter into an agreement with the District to carry out that purpose, it is questionable that general District administrative expenses constitute a respective purpose of the County anymore than paying the expenses of the Key West City Manager or the City Attorney. The result would be different if the District were dependent, i.e., the BOCC was also the governing body. In that situation, the District would be just another County financing mechanism that could have its administrative expenses at least partially funded out of non-District funds. See State v. Sarasota County, 372 So.2d 1115 (Fla. 1979).

I have consulted with Mr. Kolhage regarding the foregoing and he concurs.

I would finally point out a certain practical problem with entering into an interlocal agreement with the District, to-wit: nobody is presently home at the District, the elections for the District board not yet having taken place. At the moment, who can agree to an interlocal agreement on the District's behalf?

RNW/jeh

cc: Danny Kolhage
From: Mr. Danny L. Kolhage

Company:

Fax Number: 295-3663

Voice Number:

To: Thomas Dillon

Company:

Fax Number: 305-853-2693

Voice Number: 305-304-6735

Date: 12/22/2003

Number of Pages: 2

Subject: MSTU usage

Comments:

Please see attached letter.

Letter from County Attorney attached.
From:  "Thomas M. Dillon" <thomasdillon@terrenova.net>
To:  "Charles Profiet" <profiel@comcast.net>
Sent:  Monday, December 22, 2003 12:21 PM
Subject:  Use of county funds for independent district activities

Dear Mr. Profiet,

I am the new attorney for the Key Largo Wastewater Treatment District (KLWTD). Andy Tobin has referred me to you. I am hoping that there is a relatively easy solution to this concern.

Monroe County has established a Municipal Services Taxing Unit (MSTU) for the benefit of KLWTD. The Clerk of the Circuit Court, Danny Kolhage, takes the position that the MSTU funds are County funds and that they cannot be spent for general & administrative expenses of KLWTD, such as honoraria for Board members' attendance at meetings, because it is an independent special district. Mr. Kolhage has taken a similar position with regard to other County funds, including a loan to KLWTD from the County.

Mr. Kolhage says that he bases his position on an opinion letter from the County Attorney's office. I have not yet obtained a copy of the letter.

According to Mr. Kolhage, there would be no problem spending County funds on KLWTD G&A expenses if the legislation establishing the KLWTD expressly authorized it. Assuming this is true, I would expect that there are many independent special districts whose authorizing legislation expressly authorizes the use of county funds for district G&A expenses.

Can you advise whether Mr. Kolhage's position is a generally accepted one? Are you aware of examples of such authorizing legislation? If so, can you provide them?

Thank you,

Thomas M. Dillon
You are asking a very specific local issue question. I do not have an answer.

I suggest that you go to the original enabling legislation for the District. KLWWTD is an independent special district with taxing powers. The county may collect the taxes for you for a fee, which is the most common practice, but should not be able to dictate how you spend the money.

I recall that the County did not want this district in the first place. It seems to me that this is continued fall out from that attitude.
Item H - 1

Status of Haskell Invoices
December 29, 2003

Peter Kinsley
The Haskell Company
111 Riverside Avenue
Haskell Building
Jacksonville, Florida 32202

RE: Payment Applications #1 and #2

Peter:

In order to process Applications #1 and #2, Weiler Engineering requires additional supporting documentation. Specifically, please provide the following:

- Work product in the form of drawings, calculations, etc to demonstrate 38.64% completion of the KLTV 30% Design Development plans. See Exhibit G of the Design-Build Agreement for details of the required contents of the 30% submittal
- A summary of dates, times, activities and personnel involved in Item No. 4, Supervision
- A summary of dates, times, activities and personnel involved in Item No. 5, Travel & Subsistence
- Work product beyond the first draft to support 97.85% completion of the Concept Review Submittal
- Monthly Progress Reports for the pay periods as required by Exhibit G. An updated progress schedule reflecting changes in the design and construction schedule should be included

Also, please note that Article 11.2 of the Design-Build Agreement specifies retainage in the amount of 10% until the Project reaches 50% completion. The retainage amounts will be adjusted accordingly.

We would like to have a payment recommendation placed on the agenda at the earliest achievable date. Information must be submitted to GSG no later than the Wednesday prior to the next scheduled meeting. The next two meetings are scheduled for January 7 and January 14. Please forward the requested information to me so I can get it on the agenda at one of these two meetings. Word, Excel and Autocad 2000 documents can be emailed to me at edrcastle@aol.com or hard copies can be sent to 6630 Front Street, Key West, FL 33040.
Finally, please note that Exhibit G requires that the Contractor conduct a monthly meeting and briefing of the KLWTD staff and representatives. Design progress meetings are to be held at a convenient site in the Key Largo area. Please provide a proposed schedule of these meetings with date, time and location. An agenda should be provided a week in advance, if applicable.

Please call me if you have questions.

Sincerely,

Ed Castle, P.E.
Project Manager
KLWTD Board Meeting
January 7, 2004

Item H - 2

Engineer's Status Report as of December 30, 2003
Key Largo Wastewater Treatment District
Engineering Status Report
Period Ending 12/30/03

Client Issues

Calusa Camp Resort
The Board approved the work authorization WEC 04-01 to begin work on a preliminary investigation of the Calusa Camp Resort wastewater system needs at the December 3rd meeting. Work was resumed on that project. To date, a second site visit has been conducted, including a meeting with maintenance personnel, and testing of salinity at all lift stations within the park. Five different possible connection methods are being investigated. Conceptual layouts of these options are being produced along with the estimated costs in both the public Right-of-Way and on private property.

WEC had planned to submit the Calusa Camp Resort report, accompanied by a brief PowerPoint presentation at the January 21st Board meeting. At the December 19th Board meeting, it was decided to schedule a workshop meeting for January 14th and to combine the January 21st meeting with the workshop. In order to allow for time for the workshop, it was decided that only crucial action items from the January 21st agenda would be heard at the meeting on the 14th. WEC stated that they would attempt to have the Calusa Camp Resort report and presentation ready for the January 7th Agenda. However, due to the Holidays and vacations scheduled by employees, WEC was unable to perform all the work necessary prior to the December 31st deadline for items to be placed on the January 7th Agenda.

Treatment Plant
According to Peter Kinsley, The Haskell Company has requested in writing that Randazza Enterprises and Purestream provide engineering process calculations to be used in the design and permitting of the wastewater treatment plant. Mr. Espat responded to the request by assuring that calculations, drawings and all requested information would be provided, but due to the considerable investment of labor required to produce the design and calculations, Randazza Enterprises is requiring a signed purchase order prior to instructing Purestream to proceed with the design.

Key Largo Park and Key Largo Trailer Village
The Key Largo Trailer Village collection system design is reaching completion of the 30% Design Development phase. It is anticipated by The Haskell Company that the 30%
design plans will be formally submitted for review on January 7th. A preliminary set in reduced size was presented to WEC as backup documentation for Payment Application No. 2.

A substantial amount of work has been done by The Haskell Company and their Engineer on the 30% design of the Key Largo Park collection system

**Regulatory Compliance Issues**

No further compliance issues at this time.

**Project Team Meetings and Actions**

WEC participated in the normally scheduled weekly Working Group conference calls each Monday during the period. WEC also attended the December 17th Board meeting.

WEC, Tom Dillon and GSG discussed the requirements for processing pay applications from The Haskell Company. Tom forwarded comments regarding the compensation terms in the Design-Build Agreement to Ed Castle via email. Through a series of emails, some ambiguities in the terms were resolved. Tom also provided Ed with a copy of the Prompt Payment Act and comments regarding that document.

WEC has requested that The Haskell Company provide a Design Submittal Protocol that will define the procedures for submittal, include such items as distribution of copies of documents, comment period, schedules of meetings for review of designs, etc. WEC also requested that The Haskell Company provide a proposed schedule of monthly design meetings to be held at the Miami office of Brown & Caldwell. At the Kick-Off meeting, it was suggested that these monthly meetings be attended by K LWTD staff and by Jerry Wilkinson, representing the Board.
Item I - 1

Discussion of Gino F. Angella’s email dated December 22, 2003
fyi

----- Original Message ----- 
From: Andrew Tobin [mailto:Tobinlaw@Terranova.net] 
Sent: Monday, December 22, 2003 5:07 PM 
To: edcastle@aol.com; Jeff Weiler (E-mail) 
Cc: Dillon, Thomas; Fishburn, Chuck; Charles Sweat; Robert Sheets 
Subject: Fw: Vacuum Pits and Vacuum Systems 

Let's talk about this at the next meeting.

----- Original Message ----- 
From: "Gino F. Angella" <angella@kingskamp.com> 
To: "Jerry Wilkinson" <wilkinson@klww.org>; "Andrew Tobin, Chairman" <tobin@klww.org>; "Charles Brooks" <brooks@klww.org>; "Cris Beaty" <beaty@klww.org>; "Gary Bauman" <baumann@klww.org> 
Cc: <angella@kingskamp.com> 
Sent: Monday, December 22, 2003 4:57 PM 
Subject: Vacuum Pits and Vacuum Systems 

> Gino F. Angella, President, Jupiter Global Inc. 
> General Partner, Kings Kamp and Captain Jax 
> P.O. Box 1805 
> Dania Beach, Florida 33004-1805 
> Phone: 954-921-6094 
> Fax: 954-923-2851 
> Email: angella@kingskamp.com 
> 
> December 22, 2003 
> 
> Andrew Tobin, Chairman 
> Jerry Wilkinson 
> Cris Beaty 
> Charles Brooks 
> Gary Bauman 
> 
> RE: Key Largo Wastewater Collection System 
> 
> Gentlemen, 
> 
> By way of introduction, we operate Kings Kamp and Captain Jax, RV parks 
> at MM 103.5 Bayside in Key Largo Florida. We are in the process of 
> designing and installing a completely new wastewater gravity fed 
> collection and treatment system. Obviously, we are considering the 
> future installation of the Key Largo Sewage System and the fact that we 
> will have to hook up to it in the future at the time it is completed. 
> 
> As a point of comment I have read in the newspapers that the Key West 
> Wastewater Collection System for Stock Island was undersized and now 
> cannot handle the flow of some commercial establishments because the 
> commercial establishments have a gravity flow system and the new Vacuum 
> system installed does not have enough 
> Capacity. Apparently the error was created in the fact that not enough
"vacuum pits" or capacity for vacuum pits were designed into the system.

Here is informational excerpt in a letter on your current project for Key Largo Park:

"A vacuum collection system serving the Key Largo Park subdivision will be constructed using the design/bid/build approach. The collection system consists of vacuum mains, vacuum pits, buffer tanks, vacuum valves and gravity collection lines extending from the vacuum pits and tanks to the property line for each building to be served. While Appropriation 175A funding is not being provided for the decommissioning of on-site treatment and disposal systems or the installation of building laterals on private property, such work must be undertaken to achieve a functional system. The Grantee must ensure that the work on private property is accomplished in a timely manner. The Key Largo Park vacuum collection system is dependent upon the construction of a vacuum station, treatment plant, and injection well disposal system described as the Key Largo Trailer Village subdivision system. Therefore, the Grantee must ensure that all construction necessary for a complete and operable wastewater management system is undertaken in a timely manner."

I understand from my Engineer that when a vacuum system is used, in order for private collection systems to hook into them, there must be enough capacity in the form of Vacuum Pits to allow this to happen. Also, the vacuum system cannot allow for more than 25% of capacity to be in the form of vacuum pits, otherwise the vacuum system could be overloaded and not function. Therefore it is obvious that any new design for a vacuum system, if that is what is chosen for Key Largo, should survey the entire area of service and be sure that all of the existing commercial establishments such as hotels, restaurant, RV Park, Trailer parks and etc., will be accommodated. Enough Vacuum Pits must be installed in order to accommodate the flow from perfectly good gravity systems already in place.

In Key West the Sewer Authority is now asking property owners that just spent hundreds of thousands of dollars on new systems, to destroy those systems and reinstall a vacuum system on their property. This is a terrible dilemma to face after just installing a new system. Of course, if a vacuum system is not used, I understand this problem will not even exist. This may be a serious consideration for your Board to be aware of. Thank you for taking the time to read this comment and best of luck in the task ahead.

Respectfully yours,

Gino F. Angella, President
Sent via email
December 31, 2003

Charles Sweat, Operations Manager
Government Services Group
614 N. Wymore Road
Winter Park, Florida 32789

Re: Email from Gino F. Angella

Charles:

WEC received a copy of an email that Mr. Angella had sent. It was forwarded to us by Andy Tobin with a request to discuss the contents at the next meeting of the Board. We would like to briefly respond to several of the statements made and look forward to discussing these issues with the Board at the January 7th meeting.

Mr. Angella states that he has read that the collection system on Stock Island cannot handle the flow from some commercial establishments because the vacuum system does not have sufficient capacity. WEC would like to assure the Board that the vacuum system on Stock Island was designed to accept not only flow from all properties in the designed service areas but was also designed to accept flow from future developments.

Mr. Angella’s point that the District should make sure that the properties with existing gravity collection systems in good shape are properly considered is valid. In our opinion, if an existing gravity collection system is in good condition and can be demonstrated to be water-tight, then it will generally be good practice to make use of that system. Contrary to what may have been reported, on Stock Island, three properties are intended to use their existing gravity collection systems. Two will be connected to the WWTP via force mains and one will be connected through the vacuum sewer system using a dual buffer tank. There are only two other properties on Stock Island that have existing gravity collection systems. These systems are leaky and in need of repair. Cost estimates by WEC and CH2M Hill have shown that it would be cheaper to replace the leaky systems with new vacuum collection systems than it would be to repair the existing systems. None of the other trailer parks and campgrounds on Stock Island have existing gravity collection systems.

An issue that is a valid concern, and is at the heart of the controversy on Stock Island, is the use of buffer tanks to accept larger concentrated flows. Both Roediger and AirVac
recommend that the flow contribution through buffer tanks does not exceed 25% of the total flow. This places a limit on the number of buffer tanks that can be installed in any vacuum collection system. If the flow from commercial properties exceeds this 25% limit, the buffer tanks must be allocated first to the properties that have a single point of discharge, such as restaurants, apartment buildings, office buildings, etc. Mobile home parks and other similar properties have the option of installing multiple vacuum pits to collect the wastewater from the individual structures. The flow from commercial properties on Stock Island exceeds 25% of the total flow, so not every commercial property can be given a buffer tank. The tanks were allocated according to the logic cited above.

The KLWTD may not encounter a similar problem in its service area since it does not appear that commercial properties are as concentrated. In addition, there will be multiple collection basins with vacuum pumping stations located remotely from the treatment plant site. These vacuum pumping stations will have force mains that will convey the wastewater to the treatment plant site. If proper consideration is given to the needs of commercial properties as the KLWTD wastewater collection and transmission systems are developed, the option of connecting the commercial properties by either vacuum or force main exists. This should help accommodate the properties Mr. Angella was concerned about.

The KLWTD Board would be well advised to give adequate consideration to the need for a comprehensive plan that will ensure that the best and most economical solutions for collection and transmission of wastewater is developed. It is particularly important to consider future flows while laying pipe in areas close to the treatment plant site. Pipes installed close to the treatment plant may be used to convey wastewater from future projects and should be sized accordingly now.

In summary, Mr. Angella’s concerns are valid and need to be considered carefully. Comprehensive planning for future connections is needed. Existing commercial properties and future developments need to be accounted for as the KLWTD wastewater projects continue.

Sincerely

Ed Castle, P.E.
Project Manager
Key Largo Wastewater Treatment District
Board of Commissioner's Meeting Agenda
5:00 PM Wednesday, January 7, 2004
Key Largo Civic Club, 209 Ocean Bay Drive
Key Largo, Monroe County, Florida

A. Call to Order
B. Pledge of Allegiance
C. Additions, Deletions or Corrections to the Agenda
D. Public Comment
E. Action Items
F. General Manager's Report
   1. DCA Bonding Proposal
   2. Overview of Funding Scenarios

G. Legal Counsel's Report
   1. Secondary Treatment Process Issue
   2. Notice of Delay from Haskell CHECK WITH LEGAL
   3. Draft Policy for Handling Unsolicited Requests for District Positions
   4. Term Consulting Contract Revision to Paragraph 25.1
   5. Term Consulting Contract – Prompt Pay Act Amendment

H. Engineer's Report
   1. Status of Haskell Invoices  
   2. Engineer's report as of

I. Commissioner's Items
   1. Discussion of Gino F. Angella's email dated December 22, 2003 –
      Commissioner Tobin

J. Meeting Adjournment
Key Largo Wastewater Treatment District
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5:00 PM Wednesday, January 7, 2004
Key Largo Civic Club, 209 Ocean Bay Drive
Key Largo, Monroe County, Florida

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   5. Term Consulting Contract – Prompt Pay Act Amendment
   6. Use of County Funds for KLWTD Administrative Expenses

H. Engineer's Report
   1. Status of Haskell Invoices
   2. Engineer's report as of December 30, 2003

I. Commissioner's Items
   1. Discussion of Gino F. Angella’s email dated December 22, 2003 –
      Commissioner Tobin
   2. Discussion of Growth Management and possible pot-of-money for KLWTD
      – Chairman Bauman

J. Meeting Adjournment
Faith Doyle

From: Thomas M. Dillon [thomasdillon@terranova.net]
Sent: Tuesday, December 30, 2003 11:12 AM
To: EdRCastle@aol.com
Cc: Ed Castle; Charles Sweat; David Miles; Jeff Weller; Robert Sheets; Andrew M. Tobin; Charles Brooks; Cris Beaty; Gary Bauman; Faith Doyle; Jerry Wilkinson

Subject: Re: Payment of engineering/design costs

Ed,

This is yet another instance in which the Haskell contract suffers from inartful drafting.

Section 7.3.1 states that the costs of "engineering phase" services will be submitted within invoices for construction phase services, implying that there can be no payment for engineering services until construction begins. Section 7.3.3 states that "design phase" services will be compensated according to Exhibit C. Nothing in the contract makes clear the distinction, if any, between design phase and engineering phase.

I am construing the ambiguity in light of my experience and understanding as to the likely reasonable expectations of the parties. Since Exhibit C is a schedule of values, it allows the District to estimate the percent completion of various components of design services. Therefore, I think that the parties reasonably would have expected payment to be made for these services prior to the construction phase. If you can reasonably conclude on the basis of information submitted to you that the concept review submittal work is 75% complete, you can approve payment of 75% of the value of that item. Since the value of the item in Schedule C is $105,107, you could approve payment of $78,830.25.

I agree with your statement that the payment would be subject to retainage of 10%. Note that under Section 11.2, the District would continue to hold the retainage until completion of acceptance testing, when total retainage would be reduced to 2%. After the project reaches 50% completion, the District would not withhold further retainage unless the District determines that there is a specific reason to continue to withhold.

I agree that 50% completion will be reached when the total of work completed has a value of 1/2 of the total contract price. However, the total contract price is subject to change through changes and adjustments, and the dollar figure may or may not work out to $3,985,000.

Tom

----- Original Message -----
From: EdRCastle@aol.com
To: thomasdillon@terranova.net
Sent: Monday, December 29, 2003 2:01 PM
Subject: Re: Payment of engineering/design costs

As I see it, Exhibit C value items 15 through 19 are pre-construction, and each one of the items is a deliverable. As we discussed, I believe that monthly progress payments reflecting the percentage completion of each of these deliverables can be requested. I am requesting additional supporting documentation from Haskell on the 30% design submittal. I am prepared to approve 75% on the Concept Review Submittal based on the Draft that has been submitted to date. I am also asking for details of the time, personnel and activities related to the Supervision and Travel & Subsistence line items.

Also, although I don't see anything specifying retainage for the design development phase, it is my belief that the intent was to retain 10% until the project is 50% complete. 50% will occur when the value of approved pay applications reaches 50% of $7,970,000.00 or $3,985,000. Do you agree?
Faith Doyle

From: EdRCastle@aol.com
Sent: Tuesday, December 30, 2003 3:53 PM
To: FDoyle@govmserv.com
Cc: csweat@govserv.com; rsheets@govserv.com
Subject: Re: 1-7-4 1st draft agenda

Faith,

Pending receipt of some drawings from Brown and Caldwell (promised for delivery tomorrow AM), I will be ready to recommend payment for Applications 1 & 2 for Haskell. If GSG is ready to recommend (with the changes made by WEC), perhaps this should be an action item?? If not, leave it under Engineering and we can discuss it at the meeting.

Also, I am working on the Status Report for period ending December 30th. I will get it to you later today or fairly early tomorrow.
Faith Doyle

From: Thomas M. Dillon [thomasdillon@terranova.net]
Sent: Tuesday, December 30, 2003 11:12 AM
To: EdRCastle@aol.com
Cc: Ed Castle; Charles Sweat; David Miles; Jeff Weiler; Robert Sheets; Andrew M. Tobin; Charles Brooks; Cris Beaty; Gary Bauman; Faith Doyle; Jerry Wilkinson

Subject: Re: Pay Applications

I agree. Tom

--- Original Message ---
From: EdRCastle@aol.com
To: thomasdillon@terranova.net
Sent: Tuesday, December 30, 2003 7:41 AM
Subject: Pay Applications

Tom,

FYI, I sent the attached request to Peter Kinsley yesterday. He called me late in the afternoon and will provide everything I asked for. I will make arrangements with GSG to have future applications forwarded to me immediately on receipt and will request any additional information necessary from Haskell in writing within 5 working days.
Faith Doyle

From: EdRCastle@aol.com
Sent: Tuesday, December 30, 2003 4:16 PM
To: peter.kinsley@thekaskellco.com
Cc: FDoyle@govmserv.com
Subject: 30% submittal

Peter,

You stated that you intended to submit the 30% design plans on January 7th. Do you want this placed on the agenda? If so, do you intend to provide a presentation to the Board?

Also, please note that Exhibit G requires the Contractor to provide a Design Submittal Protocol. To my knowledge, this has not been done. It sounds fairly straightforward and allows you to suggest comment periods, meeting schedules, number of copies to be supplied, etc. I suggest you may want to submit a draft Protocol to be placed in the Agenda for the January 7th meeting. If so, Faith will need to have it by tomorrow afternoon.
Faith Doyle

From: Thomas M. Dillon [thomasdillon@terranova.net]
Sent: Monday, December 29, 2003 10:32 AM
To: Ed Castle; Charles Sweat; David Miles; Jeff Weiler; Robert Sheets
Cc: Andrew M. Tobin; Charles Brooks; Cris Beaty; Gary Bauman; Faith Doyle; Jerry Wilkinson
Subject: Prompt pay act requirements

The purpose of the Prompt Pay Act is to ensure that local governments and agencies promptly pay their contract obligations. § 218.71 Florida Statutes ("FS").

An invoice is supposed to be marked as received on the date on which it is delivered to an agent or employee of the agency. § 218.74(1) FS.

Payment for construction services is due 25 business days after the date that the invoice is stamped as received. § 218.735(1)(a) FS. This period is extended where payment must be approved by, or funds must be received from, a federal agency. § 218.77 FS.

The agency may reject an invoice by a written notice within 20 business days after the date the invoice is stamped as received. The notice must specify the deficiency in the invoice and the action necessary to make the invoice proper. § 218.735(2) FS. However, if the agency disputes only part of the invoice, it must pay the undisputed portion. § 218.735(5) FS.

I recommend that the District prepare and send as promptly as possible a notice to Haskell identifying any deficiencies in the invoices received to date and specifying the actions, if any, necessary to make the invoices proper.

The District should consider whether it is appropriate under the federal grants to submit the undisputed portions of the invoices to the granting agency(ies) for funding. To the extent the invoices are payable from state grants, I recommend that partial invoices be submitted to the state agencies for funding.

Tom

12/30/03
§ 218.70. Short title

This part may be cited as the "Florida Prompt Payment Act."

HISTORY: s. 4, ch. 89-297.
§ 218.71. Purpose and policy

(1) The purpose of this part is:

(a) To provide for prompt payments by local governmental entities and their institutions and agencies.

(b) To provide for interest payments on late payments made by local governmental entities and their institutions and agencies.

(c) To provide for a dispute resolution process for payment of obligations.

(2) It is the policy of this state that payment for all purchases by local governmental entities be made in a timely manner.

HISTORY: s. 4, ch. 89-297.
§ 218.72. Definitions

As used in this part:

(1) "Proper invoice" means an invoice which conforms with all statutory requirements and with all requirements that have been specified by the local governmental entity to which the invoice is submitted.

(2) "Local governmental entity" means a county or municipal government, school board, school district, authority, special taxing district, other political subdivision, or any office, board, bureau, commission, department, branch, division, or institution thereof or any project supported by county or municipal funds.

(3) "County" means a political subdivision of the state established pursuant to s. 1, Art. VIII of the State Constitution.

(4) "Municipality" means a municipality created pursuant to general or special law and metropolitan and consolidated governments as provided in s. 6(e) and (f), Art. VIII of the State Constitution.

(5) "Purchase" means the purchase of goods, services, or construction services; the purchase or lease of personal property; or the lease of real property by a local governmental entity.

(6) "Vendor" means any person who sells goods or services, sells or leases personal property, or leases real property to a local governmental entity.

(7) "Construction services" means all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or any other improvements to real property that require a license under parts I and II of chapter 489.

(8) "Payment request" means a request for payment for construction services which conforms with all statutory requirements and with all requirements specified by the local governmental entity to which the payment request is submitted.

(9) "Agent" means project architect, project engineer, or any other agency or person acting on behalf of the local governmental entity.

HISTORY: s. 4, ch. 89-297; s. 1, ch. 95-331; s. 1, ch. 2001-169.
§ 218.73. Timely payment for nonconstruction services

The time at which payment is due for a purchase other than construction services by a local governmental entity must be calculated from:

(1) The date on which a proper invoice is received by the chief disbursement officer of the local governmental entity after approval by the governing body, if required; or

(2) If a proper invoice is not received by the local governmental entity, the date:

(a) On which delivery of personal property is accepted by the local governmental entity;

(b) On which services are completed;

(c) On which the rental period begins; or

(d) On which the local governmental entity and vendor agree in a contract that provides dates relative to payment periods;

whichever date is latest.

HISTORY: s. 4, ch. 89-297; s. 2, ch. 95-331; s. 2, ch. 2001-169.
§ 218.735. Timely payment for purchases of construction services

(1) The due date for payment for the purchase of construction services by a local governmental entity is determined as follows:

(a) If an agent must approve the payment request or invoice prior to the payment request or invoice being submitted to the local governmental entity, payment is due 25 business days after the date on which the payment request or invoice is stamped as received as provided in s. 218.74(1).

(b) If an agent need not approve the payment request or invoice which is submitted by the contractor, payment is due 20 business days after the date on which the payment request or invoice is stamped as received as provided in s. 218.74(1).

(2) The local governmental entity may reject the payment request or invoice within 20 business days after the date on which the payment request or invoice is stamped as received as provided in s. 218.74(1). The rejection must be written and must specify the deficiency in the payment request or invoice and the action necessary to make the payment request or invoice proper.

(3) If a payment request or an invoice is rejected under subsection (2) and the contractor submits a corrected payment request or invoice which corrects the deficiency specified in writing by the local governmental entity, the corrected payment request or invoice must be paid or rejected on the later of:

(a) Ten business days after the date the corrected payment request or invoice is stamped as received as provided in s. 218.74(1); or

(b) If the governing body is required by ordinance, charter, or other law to approve or reject the corrected payment request or invoice, the first business day after the next regularly scheduled meeting of the governing body held after the corrected payment request or invoice is stamped as received as provided in s. 218.74(1).

(4) If a dispute between the local governmental entity and the contractor cannot be resolved by the procedure in subsection (3), the dispute must be resolved in accordance with the dispute resolution procedure prescribed in the construction contract or in any applicable ordinance. In the absence of a prescribed procedure, the dispute must be resolved by the procedure specified in s. 218.76(2).

(5) If a local governmental entity disputes a portion of a payment request or an invoice, the undisputed portion shall be paid timely, in accordance with subsection (1).
(6) When a contractor receives payment from a local governmental entity for labor, services, or materials furnished by subcontractors and suppliers hired by the contractor, the contractor shall remit payment due to those subcontractors and suppliers within 15 days after the contractor's receipt of payment. When a subcontractor receives payment from a contractor for labor, services, or materials furnished by subcontractors and suppliers hired by the subcontractor, the subcontractor shall remit payment due to those subcontractors and suppliers within 15 days after the subcontractor's receipt of payment. Nothing herein shall prohibit a contractor or subcontractor from disputing, pursuant to the terms of the relevant contract, all or any portion of a payment alleged to be due to another party. In the event of such a dispute, the contractor or subcontractor may withhold the disputed portion of any such payment if the contractor or subcontractor notifies the party whose payment is disputed, in writing, of the amount in dispute and the actions required to cure the dispute. The contractor or subcontractor must pay all undisputed amounts due within the time limits imposed by this section.

(7) All payments due under this section and not made within the time periods specified by this section shall bear interest at the rate of 1 percent per month, or the rate specified by contract, whichever is greater.

HISTORY: s. 3, ch. 95-331; s. 3, ch. 2001-169.
§ 218.74. Procedures for calculation of payment due dates

(1) Each local governmental entity shall establish procedures whereby each payment request or invoice received by the local governmental entity is marked as received on the date on which it is delivered to an agent or employee of the local governmental entity or of a facility or office of the local governmental entity.

(2) The payment due date for a local governmental entity for the purchase of goods or services other than construction services is 45 days after the date specified in s. 218.73. The payment due date for the purchase of construction services is specified in s. 218.735.

(3) If the terms under which a purchase is made allow for partial deliveries and a payment request or proper invoice is submitted for a partial delivery, the time for payment for the partial delivery must be calculated from the time of the partial delivery and the submission of the payment request or invoice in the same manner as provided in s. 218.73 or s. 218.735.

(4) All payments, other than payments for construction services, due from a local governmental entity and not made within the time specified by this section bear interest from 30 days after the due date at the rate of 1 percent per month on the unpaid balance. The vendor must invoice the local governmental entity for any interest accrued in order to receive the interest payment. Any overdue period of less than 1 month is considered as 1 month in computing interest. Unpaid interest is compounded monthly. For the purposes of this section, the term "1 month" means a period beginning on any day of one month and ending on the same day of the following month.

HISTORY: s. 4, ch. 89-297; s. 4, ch. 95-331; s. 4, ch. 2001-169.
§ 218.75. Mandatory interest

No contract between a local governmental entity and a vendor or a provider of construction services shall prohibit the collection of late payment interest charges allowable under this part.

HISTORY: s. 4, ch. 89-297; s. 5, ch. 2001-169.
§ 218.76. Improper payment request or invoice; resolution of disputes

(1) In any case in which an improper payment request or invoice is submitted by a vendor, the local governmental entity shall, within 10 days after the improper payment request or invoice is received by it, notify the vendor that the payment request or invoice is improper and indicate what corrective action on the part of the vendor is needed to make the payment request or invoice proper.

(2) In the event a dispute occurs between a vendor and a local governmental entity concerning payment of a payment request or an invoice, such disagreement shall be finally determined by the local governmental entity as provided in this section. Each local governmental entity shall establish a dispute resolution procedure to be followed by the local governmental entity in cases of such disputes. Such procedure shall provide that proceedings to resolve the dispute shall be commenced not later than 45 days after the date on which the payment request or proper invoice was received by the local governmental entity and shall be concluded by final decision of the local governmental entity not later than 60 days after the date on which the payment request or proper invoice was received by the local governmental entity. Such procedures shall not be subject to chapter 120, and such procedures shall not constitute an administrative proceeding which prohibits a court from deciding de novo any action arising out of the dispute. If the dispute is resolved in favor of the local governmental entity, then interest charges shall begin to accrue 15 days after the local governmental entity’s final decision. If the dispute is resolved in favor of the vendor, then interest shall begin to accrue as of the original date the payment became due.

(3) In an action to recover amounts due under ss. 218.70-218.80, the court shall award court costs and reasonable attorney’s fees, including fees incurred through any appeal, to the prevailing party, if the court finds that the nonprevailing party withheld any portion of the payment that is the subject of the action without any reasonable basis in law or fact to dispute the prevailing party’s claim to those amounts.

HISTORY: s. 4, ch. 89-297; s. 6, ch. 2001-169; s. 34, ch. 2002-1.
§ 218.77. Payment by federal funds

A local governmental entity which intends to pay for a purchase with federal funds shall not make such purchase without reasonable assurance that federal funds to cover the cost thereof will be received. Where payment or the time of payment is contingent on receipt of federal funds or federal approval, any contract and any solicitation to bid shall clearly state such contingency.

HISTORY: s. 4, ch. 89-297.
§ 218.78. Report of interest

If the total amount of interest paid during the preceding fiscal year exceeds $250, each local governmental entity shall, during December of each year, report to the board of county commissioners or the municipal governing body the number of interest payments made by it during the preceding fiscal year and the total amount of such payments made under this part.

HISTORY: s. 4, ch. 89-297; s. 5, ch. 95-331.
§ 218.79. Repeal of conflicting laws

All laws and parts of laws in conflict with this part are repealed.

HISTORY: s. 4, ch. 89-297.
§ 218.80. Public Bid Disclosure Act

(1) This section may be cited as the "Public Bid Disclosure Act."

(2) It is the intent of the Legislature that a local governmental entity shall disclose all of the local governmental entity's permits or fees, including, but not limited to, all license fees, permit fees, impact fees, or inspection fees, payable by the contractor to the unit of government that issued the bidding documents or other request for proposal, unless such permits or fees are disclosed in the bidding documents or other request for proposal for the project at the time the project was let for bid. It is further the intent of the Legislature to prohibit local governments from halting construction to collect any undisclosed permits or fees which were not disclosed or included in the bidding documents or other request for proposal for the project at the time the project was let for bid.

(3) Bidding documents or other request for proposal issued for bids by a local governmental entity, or any public contract entered into between a local governmental entity and a contractor shall disclose each permit or fee which the contractor will have to pay before or during construction and shall include the dollar amount or the percentage method or the unit method of all permits or fees which may be required by the local government as a part of the contract. If the request for proposal does not require the response to include a final fixed price, the local governmental entity is not required to disclose any fees or assessments in the request for proposal. However, at least 10 days prior to requiring the contractor to submit a final fixed price for the project, the local governmental entity shall make the disclosures required in this section. Any of the local governmental entity's permits or fees which are not disclosed in the bidding documents, other request for proposal, or a contract between a local government and a contractor shall not be assessed or collected after the contract is let. No local government shall halt construction under any public contract or delay completion of the contract in order to collect any permits or fees which were not provided for or specified in the bidding documents, other request for proposal, or the contract.

(4) This section does not require disclosure in the bidding documents of any permits or fees imposed as a result of a change order or a modification to the contract. The local government shall disclose all permits or fees imposed as a result of a change order or a modification to the contract prior to the date they contractor is required to submit a price for the change order or modification.

HISTORY: s. 1, ch. 93-76.
Faith Doyle

From: Thomas M. Dillon [thomasdillon@terranova.net]
Sent: Monday, December 29, 2003 1:31 PM
To: Andrew Tobin
Cc: Andrew M. Tobin; Charles Brooks; Cris Beaty; Gary Bauman; Faith Doyle; Jerry Wilkinson
Subject: Re: Prompt pay act requirements

Andy,

The contract is an integrated contract, which expressly disclaims all prior negotiations, etc. § 15.12.

The contract, itself, does not include the clear statement required under 218.77 FS that payment is contingent on receipt of federal funds. The contract says that payments are subject to applicable state and federal rules and regulations "defining which phase of the project reimbursable costs and expenses are paid." § 11.5.

Nevertheless, I am of the opinion that the Prompt Payment Act, and specifically 218.77 FS applies, and that the payment period is extended until receipt of federal funds. I have discussed this with Mr. Kinsley, who said that he understood the District's position. At the same time, I am urging staff to provide prompt responses to invoices (such as specifications of invoice deficiencies) so that there is no undue delay in payment.

I don't think that further discussion is necessary at this time.

However, the contract will need a number of amendments, and I will propose them soon. One will be a provision based on 218.77.

Tom

----- Original Message -----
From: Andrew Tobin
To: Thomas M. Dillon
Sent: Monday, December 29, 2003 11:07 AM
Subject: Re: Prompt pay act requirements

Tom;

Do you believe that it is appropriate to put Haskell on notice that during the negotiations it was agreed that Haskell would be paid from funds reimbursed by state, federal, and local agencies, and therefore waived its rights under the prompt payment act.

I specifically remember this discussion, but you might want to check with Robert Sheets.

Andy

comply with the agreed to wait for funding
Andrew M. Tobin
P.O. Box 620
Tavernier, FL 33070
305-852-3388
Tobinlaw@Terranova.net

----- Original Message ----- 
From: Thomas M. Dillon
To: Ed Castle; Charles Sweat; David Miles; Jeff Weiler; Robert Sheets
Cc: Andrew M. Tobin; Charles Brooks; Cris Beaty; Gary Bauman; Faith Doyle; Jerry Wilkinson
Sent: Monday, December 29, 2003 10:31 AM
Subject: Prompt pay act requirements
The purpose of the Prompt Pay Act is to ensure that local governments and agencies promptly pay their contract obligations. § 218.71 Florida Statutes ("FS").

An invoice is supposed to be marked as received on the date on which it is delivered to an agent or employee of the agency. § 218.74(1) FS.

Payment for construction services is due 25 business days after the date that the invoice is stamped as received. § 218.735(1)(a) FS. This period is extended where payment must be approved by, or funds must be received from, a federal agency. § 218.77 FS.

The agency may reject an invoice by a written notice within 20 business days after the date the invoice is stamped as received. The notice must specify the deficiency in the invoice and the action necessary to make the invoice proper. § 218.735(2) FS. However, if the agency disputes only part of the invoice, it must pay the undisputed portion. § 218.735(5) FS.

I recommend that the District prepare and send as promptly as possible a notice to Haskell identifying any deficiencies in the invoices received to date and specifying the actions, if any, necessary to make the invoices proper.

The District should consider whether it is appropriate under the federal grants to submit the undisputed portions of the invoices to the granting agency(ies) for funding. To the extent the invoices are payable from state grants, I recommend that partial invoices be submitted to the state agencies for funding.

Tom

12/30/03
Faith Doyle

From:  Thomas M. Dillon [thomasdillon@terranova.net]
Sent:  Monday, December 29, 2003 1:18 PM
To:    Jerry Wilkinson
Cc:    Andrew M. Tobin; Charles Brooks; Cris Beaty; Gary Bauman; Faith Doyle; Jerry Wilkinson
Subject: Re: Prompt pay act requirements

Jerry,

The Prompt Payment Act does not explicitly provide that the time to make payments is extended because of the federal approval or federal funds contingency. On the other hand, there would be little purpose to 218.77 FS if the time were not extended. There is no case law or AG opinion on the issue. Therefore, I believe that the time for payment is extended by 218.77 FS.

Note that the statute requires that where payment or the time of payment is contingent, the solicitation and the contract must clearly state the contingency. I have not reviewed the RFP, but the contract does not appear to incorporate the required provision. There may be an argument about the applicability of 218.77 FS, but I am of the opinion that it applies.

It is not clear to me that merely "federalizing" a project necessarily implies that the Prompt Payment Act time periods are extended. The Prompt Payment Act is a remedial statute intended to grant relief to contractors from historic and potential abuses caused by delays in payments. On that basis, a court may read any exceptions narrowly. If so, a court would likely read the words "federal approval" to mean "federal approval of payment" since that is the only type of federal approval that would seem to make payment contingent.

I think that 218.77 would not extend the Prompt Pay Act requirements where the type of federal approval required was a permit or other instrument not directed toward payment.

In the case of the Haskell contract, I think that the period within which payment must be made to Haskell for Phase I work is extended only by the time necessary to receive the federal funds, and not by any federal approval contingency. Therefore, when funds are received to cover an invoice approved by the District, the District must promptly pay the invoice.

Tom

---- Original Message ----
From: Jerry Wilkinson
To: Thomas M. Dillon
Sent: Monday, December 29, 2003 11:48 AM
Subject: RE: Prompt pay act requirements

Tom:

Tricky question - Since the entire project has been "federalized" according to Science Kilner, does § 218.77 FS extend the time? I have been, am and will be uncomfortable paying invoices that the ultimate authority has not approved.

Jerry

-----Original Message-----
From: Thomas M. Dillon [mailto:thomasdillon@terranova.net]
Sent: Monday, December 29, 2003 9:32 AM
To: Ed Castle; Charles Sweat; David Miles; Jeff Weller; Robert Sheets
Cc: Andrew M. Tobin; Charles Brooks; Cris Beaty; Gary Bauman; Faith Doyle; Jerry Wilkinson
Subject: Prompt pay act requirements

The purpose of the Prompt Pay Act is to ensure that local governments and agencies promptly pay their contract obligations. § 218.71 Florida Statutes ("FS").
An invoice is supposed to be marked as received on the date on which it is delivered to an agent or employee of the agency. § 218.74(1) FS.

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Tom

12/30/03
January 5, 2004

Charles Sweat, Operations Manager  
Government Services Group  
614 N. Wymore Road  
Winter Park, Florida 32789

RE: Haskell Pay Applications

Charles:

I have reviewed Applications No. 1 and No. 2 from The Haskell Company. As discussed in our recent telephone conversations, I was in need of further information in order to process the Applications. I have received most of the requested information and based on those documents, I am prepared to recommend payment of these applications with the following changes:

Application No. 1

- Approve Item No. 2, Payment and Performance Bonds, in the amount of $12,500.00 (17.86% complete through this application) but increase retainage through this period to $1,250.00 (10%)
- Approve Item No. 3, Insurance, in the amount of $23,000.00 (15.21% complete through this application) but increase retainage through this period to $2,300.00 (10%)
- Approve Item No. 4, Supervision, in the amount of $28,000.00 (6.98% complete through this application) but increase retainage through this period to $2,800.00 (10%)
- Approve Item No. 5, Travel and Subsistence, in the amount of $9,557.00 (15% complete through this application) but increase retainage through this period to $955.70 (10%)
- Approve Item No. 14, Concept Review Submittal at the reduced amount of $78,830.25 (75% complete through this application) with a retainage of $7,883.03 (10%)

Application No. 2

- Approve Item No. 4, Supervision, in the amount of $5,000.00 (10.59% complete through this application) but increase retainage through this period to $3,300.00 total (10%)
- Approve Item No. 5, Travel and Subsistence, in the amount of $2,000.00 (16.8% complete through this application) but increase retainage through this period to $1,155.70 total (10%)
- Disallow any further payment on Item No. 14, Concept Review Submittal, since no document beyond the Draft Concept Review Submittal provided in October has been received.
- Approve Item No. 15, 30% Design Development, in the amount of $47,000 (38.64% complete through this application), but increase retainage through this period to $4,700 total (10%)

The Haskell Company has provided dates and personnel for Supervision and Travel and Subsistence. WEC notes that the selection processes for the vacuum system and the treatment
January 7, 2004

Charles Sweat, Operations Manager
Government Services Group
614 N. Wymore Road
Winter Park, Florida 32789

RE: Haskell Pay Applications

Charles:

I have received revised payment Applications No. 1 and No. 2 from The Haskell Company. All the requested changes have been made and the documentation provided. I have signed as the District’s Engineer and am recommending payment. The signed applications are attached.

Please call me if you wish to discuss this.

Sincerely,

Ed Castle, P.E.
Project Manager

CC: Robert Sheets
   Tom Dillon
   Peter Kinsley
process took longer than anticipated and involved additional meetings. The Haskell Company and their Engineers participated in these selection processes and attended the relevant meetings. In WEC’s opinion, The Haskell Company has sufficiently documented time, effort and travel involved in the selections to justify the compensation requested at this time. It is noted that the total of the lump sum amount for each of these pay items will not be increased as a result of these pay requests. No change order has been requested or approved.

In summary, WEC recommends the following payments and retainages:

**Application No. 1**

<table>
<thead>
<tr>
<th>Item</th>
<th>Gross Approved Billing</th>
<th>Retainage This Period</th>
<th>Net to Pay as Approved</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Payment &amp; Performance Bonds</td>
<td>$12,500.00</td>
<td>$1,250.00</td>
<td>$11,250.00</td>
</tr>
<tr>
<td>2. Insurance</td>
<td>$23,000.00</td>
<td>$2,300.00</td>
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<td>3. Supervision</td>
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<td>4. Travel &amp; Subsistence</td>
<td>$9,557.00</td>
<td>$955.70</td>
<td>$8,601.30</td>
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<tr>
<td>14. Concept Review Submittal</td>
<td>$78,830.25</td>
<td>$7,883.03</td>
<td>$70,947.52</td>
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<td><strong>TOTAL</strong></td>
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<td><strong>$15,188.73</strong></td>
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**Application No. 2**

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</thead>
<tbody>
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<td>4. Supervision</td>
<td>$5,000.00</td>
<td>$500.00</td>
<td>$4,500.00</td>
</tr>
<tr>
<td>5. Travel &amp; Subsistence</td>
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<td>$1,800.00</td>
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<tr>
<td>14. Concept Review Submittal</td>
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<td>$0.00</td>
<td>$0.00</td>
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<tr>
<td>15. 30% Design Development</td>
<td>$47,000.00</td>
<td>$4,700.00</td>
<td>$42,300.00</td>
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<td><strong>TOTAL</strong></td>
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<td><strong>$5,400.00</strong></td>
<td><strong>$48,600.00</strong></td>
</tr>
</tbody>
</table>

Please email or call me if you have any questions or comments.

Sincerely,

Ed Castle, P.E.
Project Manager

CC: Robert Sheets
    Tom Dillon
    Peter Kinsley