November 17th
2004
KEY LARGO WASTEWATER TREATMENT DISTRICT BOARD OF COMMISSIONERS MEETING

AGENDA

Wednesday, November 17, 2004 at 5:00 PM
Key Largo Civic Club, 209 Ocean Bay Drive
Key Largo, FL

Gary Bauman ~ Chairman
Cris Beaty ~ Secretary-Treasure
Charles Brooks ~ Commissioner
Andrew Tobin ~ Commissioner
Glenn Patton ~ Commissioner-Elect
Claude Bullock ~ Commissioner-Elect

Charles F. Fishburn ~ General Manager
Thomas Dillon ~ District Counsel
Carol Simpkins ~ Board Clerk

PLEASE TAKE NOTICE AND BE ADVISED, that if any interested person desires to appeal any decision of the KLWTD Board, with respect to any matter considered at this meeting, such interested person will need a record of the proceedings, and for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Persons with disabilities requiring accommodations in order to participate in the meeting should contact the Board Clerk at 305-451-5105 at least 48 hours in advance to request accommodations.

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

IV. APPROVAL OF AGENDA WITH ANY ADDITIONS OR DELETIONS

V. COMMISSIONERS ELECT OATH OF OFFICE
VI. ANNUAL ELECTION OF OFFICERS
   1. Chairman, Vice-Chairman, & Secretary-Treasure

VII. APPROVAL OF MINUTES
   2. November 3, 2004 (Action)

VIII. PUBLIC COMMENT

IX. FINANCIAL OFFICER’S REPORT
   3. Approval of Pending Payments list for November 17, 2004 (Action)

X. LEGAL COUNSEL REPORT
   District Counsel Thomas Dillon will be attending via phone.
   4. Agency Marketing Services, Inc. public officials liability policy mailing

   5. Key Largo Trailer Village Mediation (Action)

   6. Key Largo Trailer Village Haskell Delay Claim (Action)

XI. ENGINEERS REPORT
   7. Key Largo Trailer Village Construction Update (Oral Report)

XII. GENERAL MANAGER’S REPORT
   8. Key Largp Park Update

   9. Roevac Purchase Order

   10. Rate Study Update, Contract Letter (Action)

XIII. COMMISSIONER’S COMMENTS

XIV. ADJOURNMENT

ITEMS OF ONGOING CONCERN
   a. Water Quality Testing
   b. Project request for FEMA deadline extension
   c. CDBG Grants and/or funds for private connection
   d. Procedures
   e. Website Development
   f. Elections at Large versus Seats
   g. Agency Coordination
   h. Inter-local Government Task Force
TAB 1
KEY LARGO WASTEWATER TREATMENT DISTRICT

Agenda Request Form

Meeting Date: November 17, 2004  Agenda Item No.

[ ] PUBLIC HEARING  [ ] RESOLUTION

[ ] DISCUSSION  [ ] BID/RFP AWARD

[X] GENERAL APPROVAL OF ITEM  [ ] CONSENT AGENDA

[ ] Other:

SUBJECT: Minutes of November 3, 2004 Board Meeting

RECOMMENDED MOTION/ACTION: Approval of minutes with any needed additions, deletions or corrections.

Approved by General Manager __________________________
Date: ________________

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Costs: Approximately $0</th>
<th>Attachments: Minutes of 11.03.04</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board Clerk</td>
<td>Funding Source:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Acct. #</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Department Review:</th>
<th>[ ] Engineering</th>
<th>Advertised:</th>
</tr>
</thead>
<tbody>
<tr>
<td>[ ] District Counsel</td>
<td>[ ] Clerk</td>
<td>Date: ____________________</td>
</tr>
<tr>
<td>[ ] General Manager</td>
<td></td>
<td>Paper: ____________________</td>
</tr>
<tr>
<td>[ ] Finance</td>
<td></td>
<td>[X] Not Required</td>
</tr>
</tbody>
</table>

All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.

Yes I have notified everyone______________
or
Not applicable in this case______________:
Please initial one.

Summary Explanation/Background:

Resulting Board Action:
☐ Approved  ☐ Tabled  ☐ Disapproved  ☐ Recommendation Revised
MINUTES
Key Largo Wastewater Treatment District (KLWTD) Board of Commissioner’s Meeting
November 3, 2004 5:00 PM,
Key Largo Civic Club, 209 Ocean Bay Drive

The KLWTD Board of Commissioners met for a regular meeting on November 3, 2004 at 5:00 PM. Present were Chairman Gary Bauman, Commissioners Charles Brooks, and Andrew Tobin. Commissioner Cris Beaty arrived at 5:09 PM. Also present were General Manager Charles Fishburn, Board Clerk Carol Simpkins, District Counsel Thomas Dillon, Financial Officer Martin Waits, and all appropriate District staff.

Chairman Gary Bauman led the Pledge of Allegiance.

ADDITIONS/DELETIONS TO THE AGENDA.
General Manager Charles Fishburn requested that the lease with Chris Sante for the new office building be put on the agenda under Legal.

Chairman Gary Bauman requested that an update on the swearing in ceremony be given under the Managers business.

Motion: Commissioner Charles Brooks made a motion to approve the agenda as amended. The motion was seconded by Chairman Gary Bauman.

Vote on motion:

<table>
<thead>
<tr>
<th>Board Member</th>
<th>Yes</th>
<th>No</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commissioner</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Andrew Tobin</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Commissioner</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Charles Brooks</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Commissioner</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cris Beaty</td>
<td></td>
<td></td>
<td>Absent</td>
</tr>
<tr>
<td>Chairman</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gary Bauman</td>
<td></td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

Motion passed 4 to 0

MINUTES
Motion: Commissioner Charles Brooks made a motion to approve the minutes of October 20, 2004. The motion was seconded by Chairman Gary Bauman.
Vote on motion:

<table>
<thead>
<tr>
<th>Board Member</th>
<th>Yes</th>
<th>No</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commissioner Andrew Tobin</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Commissioner Charles Brooks</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commissioner Cris Beaty</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chairman Gary Bauman</td>
<td></td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

Motion passed 4 to 0

PUBLIC COMMENT: The following persons addressed the Commission: Steve Gibbs of Key Largo stated that he thoroughly enjoyed covering the elections and congratulated the winners.

CHIEF FINANCIAL OFFICERS REPORT

Pending Payments


Commissioner Charles Brooks asked if the District has a multiple use license for WinEXPro. General Manager Charles Fishburn stated that we do not have multiple use licenses.

Commissioner Charles Brooks pointed out that the District is not a revenue producing entity in relationship to plaques.

Motion: Commissioner Charles Brooks made a motion to approve the pending payments list subject to the availability of the funds for November 3, 2004. Commissioner Cris Beaty made the second.

Vote on motion:

<table>
<thead>
<tr>
<th>Board Member</th>
<th>Yes</th>
<th>No</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commissioner Andrew Tobin</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Commissioner Charles Brooks</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commissioner Cris Beaty</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chairman Gary Bauman</td>
<td></td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

Motion passed 4 to 0
Financial Officer Martin Waits explained the Project status reports.

Mr. Waits stated that the District has not yet accessed the County match for the FEMA Funds yet. He is working on it currently.

District Counsel Thomas Dillon stated that there has been no agreement that limits the escalation claim to $300,000 for the KLTV contract.

Commissioner Cris Beaty asked about the $450,000 from the FEMA 1 grant. The DCA has stated that they will not address the payment of the funds to the District until a large part of the project is done, Mr. Waits explained. Commissioner Charles Brooks said that he is very uncomfortable with that situation since all of the conditions have been met. General Manager Charles Fishburn said that Miles Anderson is the person that said that the District will not get any further advancement. Mr. Anderson said that the money is the District’s but the District does not need it today.

LEGAL COUNSEL REPORT
District Counsel Thomas Dillon reminded the Board that the current Board Members, except for Mr. Wilkinson and Mr. Beaty, can not speak to the new Commissioners-elect about anything that might come before the Board. And the two new Commissioners Elect can not speak to each other about matters that may come before them at the Board because they are now subject to the Sunshine Law.

Mr. Dillon advised the Board that he will make himself available to the new Board members after the election to discuss any legal matter relating to Board Business. There will be no charge for the initial meetings with new Board members for Mr. Dillon’s time.

Mediator
Mr. Dillon suggested that Mr. Hunston be chosen as the District’s mediator at the next meeting. Commissioner Tobin asked that Mr. Hunston be questioned about his experience.

Commissioner Andrew Tobin stated that he does not think that the District needs any experts for the mediation.

District Counsel Thomas Dillon stated that he believes that the way to be successful in mediation is to demonstrate they you have analyzed the claim that you understand the factual issues and their implications and that you are willing to go to the mat if mediation does not work. One of the ways to do this is to have some expert assistance, to have evaluated the claim especially in scheduling. Mr. Dillon would recommend that before the District goes to mediation that they retain expert assistance. Another reason to retain expert assistance is to fulfill the District’s obligation of “Reasonableness”. We do not have a scheduling expert on staff.
**Sante Lease**

District Counsel Thomas Dillon explained the contract for the office building lease for the District offices. Discussion ensued.

Commissioner Andrew Tobin would like to see a provision in the lease that talks about the Landlord’s obligation to repair and maintain the structural portions of the property, in paragraph six he would like to see something that the Landlord can not terminate without giving the District notice at least 15 days, he would like to see paragraph 8 prevailing party attorney fees rather than one-sided, in paragraph 19 be an affirmative obligation that we do have a right to signage rather than if we decide to get signage we have to submit it to the lessor. Mr. Tobin also has a problem with the insurance. Since the District is a public entity and concerned about insurance cost he is not ready to sign off on a million dollars of insurance until he finds out how much it is going to cost and seeing if there is a way out of agreeing to insurance.

District Counsel Thomas Dillon explained that he has already spoken the District’s insurance company and there will be no additional cost for the coverage Mr. Sante is requiring since the District already has a 5 million dollar policy that covers the Districts owned and occupied property. Mr. Dillon did try to negotiate the points Mr. Tobin brought up but was unsuccessful. Mr, Dillon explained that paragraph 10 covers the landlord’s obligation to maintain the structure and grounds.

**Motion:** Commissioner Charles Brooks made a motion to approve the Sante Lease. Commissioner Cris Beaty made the second.

**Vote on motion:**

<table>
<thead>
<tr>
<th>Board Member</th>
<th>Yes</th>
<th>No</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commissioner</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Andrew Tobin</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commissioner</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Charles Brooks</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commissioner</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Cris Beaty</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chairman</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Gary Bauman</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Motion passed 4 to 0**

**ENGINEERS REPORT**

**KLTV Construction Update**

As of October 29, 2004 2,597 feet of pipe have been laid in the Key Largo Trailer Village. The construction is going well. The pipes were checked with a camera and a small amount of rock was found in one pipe. The pipes are now being tilted to clear them out before they are laid in the ground.
The Treatment Plant site is ¾ cleared. The permit for the Vacuum Pump Station has been issued but there is a 90 day delay on the Treatment Plant site permit.

Commissioner Charles Brooks asked if any residential street has been trenched yet. Mr. Castle stated that trenching will begin on Buttonwood the next day. General Manager Charles Fishburn said that the trenching is ahead of schedule as of now.

**GENERAL MANAGER’S REPORT**

*Key Largo Trailer Village Escalation*

General Manager Charles Fishburn met with Pete Kinsley, Jeff Weiler, Joe Paterniti, and Walt Messer last Wednesday. The result of the meeting is that Haskell is going to come back with a proposal which will be more specific as to dollar amounts.

Commissioner Charles Brooks expressed concern over documentation of the steps that the District is taking concerning mediation. District Counsel Thomas Dillon stated that everything that needs to be documented is being documented.

*Key Largo Park*

A meeting was held with Walt Messer on October 14, 2004 to discuss the matter. A month has passed since the Notice to Proceed was issued with no response. Brown and Caldwell have agreed to be the Engineer of Record for the Key Largo Park Project. Mr. Fishburn has requested a response from Higgins by November 12, 2004.

*Roevac Purchase Order*

General Manager Charles Fishburn

A letter was sent to Haskell informing them of the problems that Roevac Germany and Roevac Pittsburgh were having.

District Counsel Thomas Dillon stated that by the District giving Haskell notice of the problem they are now obligated to give the District some reasonable assurances that either Roevac can perform or that Haskell is going to procure substitute goods or they are going to do a design and get something that will work.

*Rate Study*

*Contract with Public Resources Management Group, Inc.*

*Letter of First Assignment to evaluate fixed monthly fees & system development charges.*

Commissioner Charles Brooks suggested that the Contract be tabled.

**Motion:** Commissioner Andrew Tobin made a motion to approve the PRMG Contract. Motion seconded by Commissioner Cris Beaty.
Vote on motion:

<table>
<thead>
<tr>
<th>Board Member</th>
<th>Yes</th>
<th>No</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commissioner</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Andrew Tobin</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Commissioner</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Charles Brooks</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Commissioner</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cris Beaty</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Chairman</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gary Bauman</td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

Motion passed 3 to 1

The K LWTD Board by consensus directed that the letter to PRMG on rates be brought back to the next meeting.

Future Projects Meeting
General Manager Charles Fishburn, Commissioner Charles Brooks, and Financial Officer Martin Waits attended a meeting in Key West on November 2, 2004 concerning the 40 million dollar bond money for wastewater projects in unincorporated Monroe County. The purpose of the meeting was to determine the ability to use Bond money. Mr. Fishburn had sent Mr. Roberts the 5 year plan for KLWTD and he passed it out to the attendees at the meeting. Mr. Fishburn and Mr. Waits will be meeting with the County to work out the details of the plan.

CDBG Grants
Mark Bell from Monroe County will be sending out letters to the property owners informing them of the requirements to obtain assistance with the cost of hook up to the sewer system. The enrollment period for assistance is supposed to end on January 14, 2005. Mr. Fishburn feels that he will be able to have that extended by two months.

General Manager Charles Fishburn told the Board that he has written a letter to the Health Department stating that the District will be handling the decommissioning of the septic tanks.

COMMISSIONER COMMENTS
Commissioner Cris Beaty stated that he has enjoyed the last 2 years and he wished the two new Board Members well in the future.

ADJOURNMENT
After a motion by Commissioner Cris Beaty and seconded by Commissioner Charles Brooks to adjourn the meeting adjourned at 7:45 PM.
The K LWTD minutes of November 3, 2004 were approved on ____________.

__________________________________
Chairman

__________________________________
Carol Simpkins, CMC
Board Clerk
TAB 2
**Meeting Date:** Nov. 17, 2004  
**Agenda Item No.:**

- [ ] PUBLIC HEARING  
- [ ] RESOLUTION  
- [ ] DISCUSSION  
- [ ] BID/RFP AWARD  
- [X] GENERAL APPROVAL OF ITEM  
- [ ] CONSENT AGENDA  
- [ ] Other:

**SUBJECT:** Pending Payments List

**RECOMMENDED MOTION/ACTION:** Motion to approve pending payments list for payment contingent upon available funds.

**Approved by General Manager**  
**Date:** 

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Costs: $</th>
<th>Attachments: List of pending payments.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finance</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Funding Source:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Acct. #</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Department Review:</th>
<th>Engineering</th>
<th>Advertised:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>[ ] District Counsel</td>
<td></td>
<td>Date:</td>
<td></td>
</tr>
<tr>
<td>[ ] General Manager</td>
<td></td>
<td>Paper:</td>
<td></td>
</tr>
<tr>
<td>[ ] Finance</td>
<td></td>
<td>[X] Not Required</td>
<td></td>
</tr>
</tbody>
</table>

- All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.

- Yes I have notified everyone or Not applicable in this case:
  - Please initial one.

**Summary Explanation/Background:**

**Resulting Board Action:**  
- [ ] Approved  
- [ ] Tabled  
- [ ] Disapproved  
- [ ] Recommendation Revised
**Key Largo Wastewater Treatment District**

**Payments Pending 11/17/04**

*Prepared 11/11/04*

---

**CONSOLIDATED CASH BALANCE FORWARD**

$1,171,511.37

**Administration & Operations**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash Balance A&amp;O Account Forward</td>
<td>$98,405.09</td>
</tr>
<tr>
<td><strong>Plus:</strong> None</td>
<td>0.00</td>
</tr>
<tr>
<td><strong>Sub-total Receipts</strong></td>
<td>0.00</td>
</tr>
<tr>
<td><strong>Less:</strong> GSG - Administrative Services (October)</td>
<td>397.50</td>
</tr>
<tr>
<td>FedEx - Deliveries</td>
<td>35.02</td>
</tr>
<tr>
<td>Data Systems - Computer Support</td>
<td>262.50</td>
</tr>
<tr>
<td>Charles Fishburn - Mileage</td>
<td>55.10</td>
</tr>
<tr>
<td>Paychex - Payroll Processing (November &amp; December)</td>
<td>219.83</td>
</tr>
<tr>
<td>Carol Simpkins - Tape Recorder</td>
<td>24.99</td>
</tr>
<tr>
<td>FKEC - Office Electric</td>
<td>352.30</td>
</tr>
<tr>
<td>BellSouth - Telephone</td>
<td>176.93</td>
</tr>
<tr>
<td>Sprint - Cellphones</td>
<td>195.00</td>
</tr>
<tr>
<td>American Stamp - Check Endorsement, Etc.</td>
<td>48.95</td>
</tr>
<tr>
<td>George Scott - Rent Suite 201/202 (December)</td>
<td>825.00</td>
</tr>
<tr>
<td>Weiler Engineering - RFQ Preparation</td>
<td>6,528.75</td>
</tr>
<tr>
<td>Tom Dillon - Legal Counsel</td>
<td>960.58</td>
</tr>
<tr>
<td><strong>Sub-total Invoices</strong></td>
<td>12,082.45</td>
</tr>
<tr>
<td><strong>Cash Balance A&amp;O Account If All Paid</strong></td>
<td>$86,322.64</td>
</tr>
<tr>
<td>Memos: MSTU Draw #5 Submitted 09/17/04 $72,302.56</td>
<td></td>
</tr>
<tr>
<td>MSTU Draw #6 Submitted 10/26/04 $53,549.82</td>
<td></td>
</tr>
</tbody>
</table>

**Key Largo Park**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash Balance KLP Account Forward</td>
<td>$(23,960.31)</td>
</tr>
<tr>
<td><strong>Less:</strong> Weiler Engineering - October</td>
<td>3008.56</td>
</tr>
<tr>
<td>Tom Dillon - Legal Counsel</td>
<td>354.17</td>
</tr>
<tr>
<td>GSG - October</td>
<td>42.50</td>
</tr>
<tr>
<td><strong>Sub-total Invoices</strong></td>
<td>3405.23</td>
</tr>
<tr>
<td><strong>Cash Balance KLP Account If All Paid</strong></td>
<td>$(27,365.54)</td>
</tr>
</tbody>
</table>

**Key Largo Trailer Village**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash Balance KLTV Account Forward</td>
<td>$1,097,066.59</td>
</tr>
<tr>
<td><strong>Less:</strong> Weiler Engineering - October</td>
<td>5,660.82</td>
</tr>
<tr>
<td>Haskell Company - October</td>
<td>328,522.04</td>
</tr>
<tr>
<td>Tom Dillon - Legal Counsel</td>
<td>2,190.32</td>
</tr>
<tr>
<td>GSG - October</td>
<td>42.50</td>
</tr>
<tr>
<td>Keys Environmental - Internal Pipe Video</td>
<td>435.00</td>
</tr>
<tr>
<td><strong>Sub-total Invoices</strong></td>
<td>336,850.68</td>
</tr>
<tr>
<td><strong>Cash Balance KLTV Account If All Paid</strong></td>
<td>$760,215.91</td>
</tr>
<tr>
<td>Memos: FEMA/DCA Draw #2 Submitted 10/25/04 $390,287</td>
<td></td>
</tr>
</tbody>
</table>

**CONSOLIDATED CASH BALANCE IF ALL PAID**

$819,173.01

Approved for payment:

__________________________  ____________________________
Chairman                    Secretary
TAB 3
# KEY LARGO WASTEWATER TREATMENT DISTRICT
## Agenda Request Form

<table>
<thead>
<tr>
<th>Meeting Date:</th>
<th>November 17, 2004</th>
<th>Agenda Item No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>[ ] PUBLIC HEARING</td>
<td>[ ] RESOLUTION</td>
<td></td>
</tr>
<tr>
<td>[X] DISCUSSION</td>
<td>[ ] BID/RFP AWARD</td>
<td></td>
</tr>
<tr>
<td>[ ] GENERAL APPROVAL OF ITEM</td>
<td>[ ] CONSENT AGENDA</td>
<td></td>
</tr>
<tr>
<td>[ ] Other:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**SUBJECT:** Agency Marketing Services, Inc. public officials liability policy mailing

**RECOMMENDED MOTION/ACTION:**

**Approved by General Manager**

**Date:** 11-17-04

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Costs: $</th>
<th>Attachments:</th>
</tr>
</thead>
<tbody>
<tr>
<td>District Counsel</td>
<td></td>
<td>Memorandum of 11/2/04</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Department Review:</th>
<th>[X] District Counsel</th>
<th>[ ] Engineering</th>
<th>[ ] Clerk</th>
<th>[ ] Finance</th>
</tr>
</thead>
</table>

**Advertised:**

- Date: ________________
- Paper: ________________
- [X] Not Required

**Summary Explanation/Background:**

Summary of existing general liability policy, discussion of Agency Marketing Services mailing,

**Resulting Board Action:**

- [ ] Approved
- [ ] Tabled
- [ ] Disapproved
- [ ] Recommendation Revised
Memo

To: Key Largo Wastewater Treatment District
From: Thomas M. Dillon
CC: N/A
Date: November 2, 2004
Re: Agency Marketing Services, Inc. public officials liability policy

I recently received a mailing addressed to the District advertising a new insurance product intended to cover public officials for professional liability claims. Based on my review of the mailing, I believe that the coverage afforded by such insurance is largely duplicative of the insurance already carried by the District. Nevertheless, I am preparing this memorandum so that the Board can determine whether it is interested in pursuing this coverage, as an alternative to the existing insurance.

Unless the Board directs further efforts, I intend to take no further action with regard to this issue.

Summary of Existing Insurance

By letter dated December 4, 2003, the Florida League of Cities, Inc., forwarded to the District a copy of the District's general liability insurance policy as it existed at that time. See Attachment A, Page 1. I am not aware of any change to the policy since that date. Although the term of the policy has expired, I understand that it has been renewed recently.

A. Limits of Liability

The existing insurance is entitled a “General/Professional Liability Coverage Agreement.” In return for a premium of $7,500, the insurer provides general/professional liability coverage with limits of $5,000,000 per occurrence. See Attachment A, Page 2.

B. Coverage

Subject to District compliance with the “Responsibilities of Member” set out in the policy (See Attachment A, Pages 4 – 7), the insurance trust agrees to defend and pay claims for

1 The policy provides lower limits for "Extra Contractual Legal Expense ($25,000) and "Fire Legal Liability" ($250,000). These terms are explained below.
money damages covered by the policy, up to the limits of liability. See Attachment A, Page 8.

By various endorsements, the policy expressly covers the following:

- **Broad Form Property Damage** – covers damage to property owned, occupied, used by, rented to, or controlled by the District. This would include rented office facilities. See Attachment A, Page 18.

- **Extra Contractual Legal Expense** – covers a portion of the defense costs for a claim based on an occurrence that is not covered by the insurance policy. See Attachment A, Pages 19 – 20. These types of occurrences include criminal and intentional activities, and other events described in the exclusions set out in Attachment A, Pages 12 – 17. See Footnote 1, above, regarding the reduced limit for this coverage.

- **Fire Legal Liability** – covers liability to rented or leased property due to fire. See Attachment A, Page 21. See Footnote 1, above, regarding the reduced limit for this coverage.

- **Medical Attendants’/Medical Directors’ Malpractice Liability** – covers medical malpractice by District medical personnel, if any. See Attachment A, Page 22.

- **Errors and Omissions Liability** – covers claims for errors, misstatements, neglect of duty, breach of duty, misconduct, official misconduct by the District and individual officials acting in their official capacity. See Attachment A, Pages 23-24.

- **Supplemental Employment Practices Liability** – covers claims for wrongful dismissal, discharge, or termination of employees, negligent hiring, placement, training, and supervision, and other wrongful treatment of employees. See Attachment A, Page 25. Sexual harassment and certain other types of claims are excluded. See Attachment A, Pages 10 – 11.

- **Employee Benefits Program Administration Liability** – covers negligence in the administration of employee benefits. See Attachment A, Pages 26 – 27.

- **Specific Excess Endorsement – General Liability** – covers claims up to $5,000,000 when Florida’s statutory sovereign immunity and other limitations on liability are not applicable. See Attachment A, Page 28.

Some of these endorsements override the policy exclusions.

C. Exclusions

There are numerous coverage exclusions set out set out in Attachment A, Pages 12 – 17. Many of them are based on intentional or criminal activity. Many of the exclusions that relate to claims arising out of negligence are eliminated by endorsements described above. I believe that the remaining exclusions are commonly applicable to liability policies, and I would expect them to be found in most policies that are commercially available.
**Agency Marketing Services, Inc. (AMSI) mailing**

In order to compare the existing coverage to that offered by AMSI, it would be necessary to compare the actual policy offered by AMSI. The mailing does not include a specimen policy. A copy of the mailing is attached as Attachment B.

The AMSI mailing claims to provide certain advantages not normally found in commercial liability policies. These include:

- Defense of claims outside the limit of liability. The existing policy provides some defense outside the limits of liability in the endorsements for "Extra Contractual Legal Expense," "Specific Excess Endorsement – General Liability," and other terms.

- Option to purchase a separate and additional limit for employment practices liability. The existing policy includes coverage for employment practices liability.

- Unlimited extended reporting period for former officials. The existing coverage does not expressly provide for extended reporting.

- Punitive damages. The existing policy excludes coverage for punitive damages, fines, and other non-compensatory damages. See Attachment A, Page 15, Exclusion V.

- Optional fiduciary liability extension. The terms and coverages of this extension are not known.

- Spousal extension. The terms and coverages of this extension are not known.

In order to understand whether the benefits claimed by AMSI are of value to the District, it would be necessary to conduct further investigation. I will be pleased to do so if directed by the District.
December 4, 2003

MR. GARY BAUMAN
CHAIRMAN, KEY LARGO WASTEWATER TREATMENT DISTRICT
P. O. BOX 491
KEY LARGO, FL. 33037

RE: FMIT 1045
COVERAGE / FLORIDA MUNICIPAL INSURANCE TRUST

DEAR CHAIRMAN BAUMAN,

AS A FOLLOWUP TO OUR PRESENTATION WITH YOUR BOARD ON 12-3-2003, I HAVE ENCLOSED A COMPLETE COPY OF THE GENERAL LIABILITY AGREEMENT PROVIDED TO THE DISTRICT BY THE FLORIDA MUNICIPAL INSURANCE TRUST (FMIT). THIS INCLUDES ALL ENDORSEMENTS THAT FORM PART OF THE POLICY.

AFTER YOUR REVIEW OF SAME, PLEASE FEEL FREE TO CALL ME AT 1-800-756-3042, EXTN: 312 SHOULD YOU HAVE QUESTIONS REGARDING ANY PART OF THE AGREEMENT.

PLEASE NOTE, THE AGREEMENT DOES NOT PROVIDE COVERAGE FOR AUTO LIABILITY AS IT APPEARS THE DISTRICT DOES NOT OWN VEHICLES THAT WOULD REQUIRE AUTO COVERAGE. I BELIEVE A QUESTION WAS ASKED REGARDING POTENTIAL COVERAGE FOR A DISTRICT BOARD MEMBER BEING INVOLVED IN AN AUTO ACCIDENT WHILE ON DISTRICT BUSINESS.

MR. WILKINSON ASKED A QUESTION REGARDING A POLICY LIMITATION OF $25,000 ON CERTAIN COVERAGE. BY REVIEW, I BELIEVE THIS MAY BE FOUND IN THE "EXTRA CONTRACTUAL LEGAL ENDORSEMENT" WHICH FORMS PART OF THE POLICY AND IS INCLUDED IN THIS PACKAGE. THERE IS A LIMITATION OF $25,000 ON THE AMOUNT OF COVERAGE PROVIDED FOR THE PARTICULAR TYPE OF CLAIM THAT MAY INVOLVE THIS
I. DESIGNATED MEMBER  
Key Largo Wastewater Treatment

II. Government Description  
District

III. COVERAGE PERIOD  
From October 1, 2003 to October 1, 2004 12:01 A.M. Standard Time at the address of the Designated Member.

<table>
<thead>
<tr>
<th>Premium Basis</th>
<th>Deductible/Type</th>
<th>Limit</th>
<th>Net Premium</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of Contract: 133,500</td>
<td>$0</td>
<td>$5,000,000</td>
<td>$7,500</td>
</tr>
</tbody>
</table>

1. General Liability  
a. Broad Form Property Damage  
b. Extra Contractual Legal Expense  
c. Fire Legal Liability  
d. Medical Attendants'/Medical Directors' Malpractice Liability

2. Errors and Omissions Liability  
a. Supplemental Employment Practices Liability  
b. Employee Benefits Program Administration Liability

V. This Agreement includes these endorsements and schedules: See Schedule A

VI. ESTIMATED ANNUAL PREMIUM

Normal Premium
Florida Municipal Insurance Trust (FMIT) $7,500

Florida League of Cities Sponsored Insurance Programs Since 1977

THIS DECLARATIONS AND THE SUPPLEMENTAL DECLARATIONS, TOGETHER WITH THE COMMON CONDITIONS, COVERAGE FORM(S) AND ENDORSEMENTS COMPLETE THE ABOVE NUMBERED AGREEMENT.
<table>
<thead>
<tr>
<th>Form #</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>FMIT IND (10-02)</td>
<td>Indemnity Agreement</td>
</tr>
<tr>
<td>FMIT GC (10-02)</td>
<td>Coverage Agreement</td>
</tr>
<tr>
<td>FMIT BFPD (10-02)</td>
<td>Broad Form Property Damage</td>
</tr>
<tr>
<td>FMIT ECLE (10-02)</td>
<td>Extra Contractual Legal Expense</td>
</tr>
<tr>
<td>FMIT FLL (10-02)</td>
<td>Fire Legal Liability</td>
</tr>
<tr>
<td>FMIT MA (10-02)</td>
<td>Medical Attendant’s/Medical Directors’ Malpractice Liability</td>
</tr>
<tr>
<td>FMIT EO (10-02)</td>
<td>Errors and Omissions Liability Endorsement</td>
</tr>
<tr>
<td>FMIT SE GL (10-02)</td>
<td>Specific Excess Endorsement - General Liability</td>
</tr>
</tbody>
</table>
FLORIDA MUNICIPAL INSURANCE TRUST

INDEMNITY AGREEMENT

THIS AGREEMENT, made and entered into this 1st day of October, 1992, by and between the Florida Municipal Insurance Trust (Trust) and all parties who are now or may hereafter become members of the Florida Municipal Insurance Trust (member), acting by and through a Board of Trustees of their own selection. These members of the Florida Municipal Insurance Trust, all local government entities, have organized and formed a trust, and have agreed to pool their liabilities pursuant to Florida law. NOW, THEREFORE, for and in consideration of the mutual covenants, promises and obligations herein contained, which are given to and accepted by each member hereof to the other, the parties to this instrument covenant, stipulate and agree as follows:

RESPONSIBILITIES OF MEMBER

Each member of the Trust agrees to abide by the following rules and regulations:

I. GENERAL CONDITIONS

A. The member agrees the Board of Trustees, the governing body of the Trust, comprised entirely of local elected officials, will set up, operate and enforce its own administrative rules, regulations and by-laws as between the individual members of the Trust and shall otherwise direct the affairs of the Trust;

B. The member and the Trust agree all members of the Trust hereby agree that the Board may admit as members of this Trust only acceptable employers in the state of Florida who have common governmental interest. The Board or its designee shall be sole judge of whether or not an applicant shall be admitted to membership;

C. The member agrees to maintain a reasonable loss prevention program in order to provide the maximum in safety and lawful practices as such may relate to the potential liability assumed by the Trust under this Agreement or any other agreement, certificate, document, or other instrument executed by the Trust and the member pursuant to this Agreement;

D. The member agrees to provide immediate notification of such occurrence to the Trust in the event of an occurrence likely to give rise to a claim within the scope of this Agreement, or any other agreement, certificate, document or other instrument executed by the Trust and the member pursuant to this Agreement;

E. The member agrees to promptly make all contributions for coverages arising under this Agreement, or any other agreement, certificate, document, or other instrument executed by the Trust and the member pursuant to this Agreement at the time and in the manner directed by the Board of Trustees. Said contributions may be reduced by any discount, participation credit, or other contribution reduction program established by the Board of Trustees;

F. The member agrees in the event of payment of any loss by the Trust on behalf of the member, the Trust shall be subrogated to the extent of such payment to all the rights of the member against any party or other entity legally responsible for damages resulting from said loss, and in such event, the member hereby agrees, on behalf of itself, its officers, employees, and agents to execute and deliver such instruments and papers as is required, and do whatever else is reasonably necessary, to secure such right to the Trust, and to cooperate with and otherwise assist the Trust as may be necessary to effect any recovery sought by the Trust pursuant to such subrogated rights:

FMIT IND 1002

Attachment "A", Page 4
G. The member agrees the Board of Trustees, its Administrator, and any of their other agents, servants, employees or attorneys, shall be permitted at all reasonable times and upon reasonable notice to inspect the property, work places, plants, works, machinery and appliances covered pursuant to this Agreement or any other agreement, certificate, document, or other instrument executed by the member and the Trust pursuant to this Agreement, and shall be permitted at all reasonable times while the member participates in the Trust, and up to and including two (2) years following the termination of its membership in the Trust, to examine the members' books, vouchers, contracts, documents and records of any and every kind which show or tend to show or verify any loss that may be paid or may have been paid by the Trust on behalf of the member pursuant to this Agreement, or any other agreement, certificate, document, or other instrument executed by the member and the Trust pursuant to this Agreement, or which show or verify the accuracy of any contribution which is paid or payable by the member pursuant to the terms of this Agreement, or any other agreement, certification, document or any other instrument executed by the Trust and the member pursuant to this Agreement;

H. The members hereby delegate to the Board of Trustees the responsibility to contract for handling the administrative and servicing functions of the Trust. The Board may pay a reasonable fee for such, which shall be negotiated from time to time by the Board of Trustees. These fees shall be in consideration of all services and expenses contracted for with the Trust, which services or expenses may include the collecting, disbursing, and accounting for monies collected, counseling with members as to the safety hazards, claims handling and investigations, and legal services, actuarial services and accounting services and for the purpose of providing for excess insurance coverage. Books and records of all contractors employed by the Trust are to be open to inspection by the Board of Trustees or their agents at all reasonable times and as otherwise required by law;

I. The member and the Trust agree the administrator, to be appointed by the Board, shall deposit to the account of the Trust, at any bank or banks designated by the Board, all contributions or other monies, as and when collected and said monies shall be disbursed only as provided by (1) the Trust's Agreement and Declaration of Trust, (2) the rules, regulations and by-laws of the Board, and (2) the Agreement between the Board and the administrator;

J. The member and the Trust agree that the Trust is to defend in the name of and on behalf of the member any claims, suits or other legal proceedings which may at any time be instituted against the member on account of bodily injury liability, property damage liability, errors and omissions liability, civil rights liability, personal injury liability or any other such liability, monetary or otherwise, to the extent such defense and liability has been assumed by the Trust pursuant to this Agreement or any other agreement, certificate, documents, or other instrument executed by the Trust and the member pursuant to this Agreement, subject to any and all of the definitions, terms, conditions and exclusions contained in said agreements, certificates, documents or other instruments, although such claims, suits, allegations or demands are wholly groundless, false, fraudulent, and to pay all costs taxed against the member in any such legal proceedings defended by the Trust or the members, all interest accruing after entry of judgment in such proceedings, and all expenses incurred in the investigation, negotiation or defense of such claims, suits, allegations or demands. Such defense shall be subject to the control of the Trust and its Administrator, which may make such investigation and settlement of any such claim, suit, or other legal proceeding, monetary or otherwise, as they deem expedient;

K. The member agrees the liability of the Trust is specifically limited to the discharge of the liability of its members assumed pursuant to this Agreement or any other agreement, certificate, document, or any other instrument executed by the member and the Trust pursuant to this Agreement;

L. The member agrees the coverage of the Trust does not apply to punitive or exemplary
M. The Trust shall operate on a fiscal year from 12:01 a.m. October 1\textsuperscript{st} to 12:01 October 1\textsuperscript{st} of the succeeding year. Application for continuing membership, when approved in writing by the Board or their designee, shall constitute a continuing contract for each succeeding fiscal period unless cancelled by the Board or unless the member shall have resigned or withdrawn from said Trust by written notice;

N. Unless the Trust and the member otherwise expressly agree in writing, the member agrees coverage by the Trust for a member under the terms of this Agreement or any other agreement, certificate, document, or other instrument executed by the member and the Trust pursuant to this Agreement, shall expire automatically at midnight on the last day of September of each calendar year;

O. Except as otherwise provided herein, the member and the Trust agree such member’s coverage may be canceled by the Trust or the member at any time upon no less than forty-five (45) days prior written notice by the Board of Trustees or the Administrator to the member and to the Division of Workers' Compensation, if applicable, or by the member to the Trust, stating the date such cancellation shall be effective; however, cancellation by the member after the initial effective date of coverage (October 1), shall be conditioned upon Member’s payment of an amount equal to ten (10) percent of the premium that is unearned by the Trust, or the Trust may cancel for non-payment of premium by issuing written notice of cancellation to the member 10 days before the effective date of cancellation;

P. The member agrees excess monies remaining after the payment of claims and claim expenses, and after provision has been made for the payment of open claims and outstanding reserves, may be distributed by the Board of Trustees to the members participating in the Trust in such manner as the Trustees shall deem to be equitable;

Q. The member agrees there will be no disbursements out of the reserve fund established by the Trust by way of dividends or distributions of accumulated reserves to members until provision has been made for all obligations against the Trust and except at the discretion of the Board of Trustees;

R. The member agrees to permit qualified service providers, including attorneys selected by the Trust, to defend, investigate, settle, and otherwise process and dispose of all claims, suits, allegations or demands that may result in liability assumed by the Trust on behalf of the member pursuant to this Agreement, or any other agreement, certificate, document, or other instrument executed by the Trust or the member pursuant to this Agreement;

S. The member shall make prompt payment of all contributions as required by the Board of Trustees, said contributions to be determined by said Board. The member shall fully cooperate with auditors of the Trust to promptly determine final audited contributions. Any disputes concerning contributions shall be resolved after payment. Any objections concerning the final audited contribution shall be filed within 60 days of billing of the final audited contributions. After that time, the audit shall be considered to be final;

T. The member agrees to pay reasonable penalties as determined by the Board of Trustees for late payment of contributions required under this Agreement, or any other agreement, certificate, document, or other instrument executed by the member and the Trust pursuant to this Agreement;

U. The member, through the Board of Trustees, does hereby appoint the Administrator of the Trust as its agent and attorney-in-fact, to act in its behalf and to execute all necessary contracts, reports, waivers, agreements, excess insurance contracts, service contracts, and other documents reasonably necessary to accomplish the purposes and to fulfill the responsibilities of the Trust; to make or arrange for the payment of claims, claim expenses,
medical expenses, and all other matters required or necessary insofar as they affect the member’s liability under federal or Florida law and insofar as such matters are covered pursuant to the terms of this Agreement or any other agreement, certificate, document, or other instrument executed by the member and the Trust pursuant to this Agreement, and by the rules and regulations now or hereafter promulgated by the Board of Trustees;

V. The Trust shall determine all questions of the scope of liability coverage, eligibility methods of providing or arranging for benefits, and all other related matters. It shall have full power to construe the provisions of this agreement and the other program documents in the terms used here and therein. Any such determination and any such construction adopted by the Trust in good faith shall be binding upon all parties hereto and the members, provided such determination or such construction is consistent with the laws of the State.

The member agrees to abide by all the terms and conditions of this Agreement, the Participation Agreement, the Trust’s By-laws, the rules and regulations, and any other agreement, certificate, document, or other instrument executed by the Trust and the member pursuant to the Agreement;

W. The member and the Trust agree the Trust will maintain an excess coverage program and reserve evaluation to protect the financial stability of the Trust in an amount and manner determined by a qualified and independent actuary;

X. The member and the Trust agree the Trust will submit to the appropriate governmental agency annually an audited fiscal year-end financial statement prepared by an independent certified public accountant;

Y. The member and the Trust agree that any member who formally applies for membership in this Trust and is accepted by the Board of Trustees shall thereupon become a party to the Trust’s Agreement and Declaration of Trust and be bound by all of the terms and conditions contained therein, and said application shall constitute a counterpart of said Agreement and Declaration of Trust; and

Z. Members duties after loss:

1. give the Trust prompt written notice of any accident, occurrence or potential claim along with all relevant information concerning the claim. The member shall have a continuing duty to provide to the Trust all relevant information promptly as the member becomes aware of such information; and

2. cooperate fully with the Trust in defense or settlement of claims or opposition to claims bills, and in the enforcement of any right of contribution or indemnity; and

3. forward to the Trust every notice, demand, summons or other process served upon the member relating to any occurrence, and take no further action concerning the occurrence without the approval of the Trust or the servicing agent; and

4. take reasonable steps to prevent additional or cumulative bodily injury, personal injury or property damage from or arising out of the same or similar conditions or circumstances; and

5. not engage in settlement negotiations as to any claim or suit, and the Trust shall have no obligation to pay the amount of any settlement negotiated or agreed upon by a member without prior written approval by the Trust or the servicing agent; and

6. agree to take all reasonable actions, where appropriate, which shall facilitate settlement of claims; and

7. agree to responsible counsel selected by the Trust to defend the claim and agree not to use the designated member’s counsel in defense of said action.
FLORIDA MUNICIPAL INSURANCE TRUST

COVERAGE AGREEMENT

In consideration of the payment of the contributions and the covenants and agreements set forth in the INDEMNITY AND COVERAGE AGREEMENTS, in reliance upon the statements of the APPLICATION, the DECLARATIONS, and all terms, conditions, limits and other provisions of the COVERAGE AGREEMENT, the Trust agrees with the member as to the following:

LIMITS OF LIABILITY

Regardless of the number of (1) members under this Agreement, (2) persons or organizations who sustain injury or damage, or (3) claims made or suits brought on account of bodily injury, property damage or personal injury, the liability of the Trust is limited as follows:

The total liability of the Trust applicable to "each person" under all coverages and endorsements for all damages, including but not limited to damage awards for derivative claims, taxable costs, attorneys fees, and prejudgment or post-judgment interest, sustained by one person or organization as the result of any one occurrence shall not exceed the limit of liability stated in the Declarations and endorsements thereto.

The total liability of the Trust applicable to "each occurrence" under all coverages and endorsements for all damages, including but not limited to damage awards for derivative claims, taxable costs, attorneys fees, and prejudgment or post-judgment interest, sustained by more than one person or organization as the result of any one occurrence shall not exceed the limit of liability stated in the Declarations and endorsements thereto.

For the purpose of determining the limit of the Trust's liability, all damages arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

DEFENSE AND SETTLEMENT

In addition to the limits of liability the Trust will settle or defend at its own expense, as it considers appropriate, any claim or suit demanding money damages covered by this Agreement. The Trust will defend any suit against a member which alleges a claim for money damages covered by this Agreement even if such suit is groundless, false or fraudulent. However, the Trust has no duty to defend a member in any action which on its face alleges facts excluded or not covered by this Agreement.

In the event a suit or other action contains allegations which allege damages which the Trust has a duty to defend and other allegations which allege damages or other relief that the Trust does not have a duty to defend, the Trust will defend all allegations subject to the terms, conditions, limits of liability and exclusions of the Agreement; however, undertaking such defense shall not obligate the Trust to pay any judgments, settlements or awards which a member becomes legally obligated to pay for allegations to which coverage does not apply. The Trust's duty to defend ends when applicable Limits of Insurance have been exhausted.
DEFINITIONS

The following definitions apply throughout this Agreement unless modified or excluded:

A. Advertising Injury, means injury arising out of an offense committed during the Agreement period occurring in the course of the designated member's advertising activities; if such injury arises out of libel, slander, defamation, violation or right of privacy, piracy, unfair competition, or infringement of copyright, title, or slogan.

B. Agreement Territory, means anywhere in the world.

C. Automobile, means a land motor vehicle, trailer or semi-trailer designed for travel on public roads (including any machinery or apparatus attached thereto), but does not include mobile equipment.

D. Bodily Injury, means bodily injury, disability, disfigurement, sickness or disease or death resulting from an occurrence and sustained by any person, and any loss, injury or damages sustained by any person because of bodily injury, which occurs during the period of this Agreement.

E. Completed Operations Hazard, includes bodily injury and property damage arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the bodily injury or property damage occurs after such operations have been completed or abandoned and occurs away from the premises owned by or rented to the designated member. "Operations" includes materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following items:

1. When all operations to be performed by or on behalf of the designated member under the contract have been completed,

2. When all operations to be performed by or on behalf of the designated member at the site of the operations have been completed, or

3. When the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing an operation for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete shall be deemed complete.

The completed operations hazard does not include bodily injury or property damage arising out of operations in connection with the transportation of property, unless the bodily injury or property damage arises out of a condition in or on a vehicle created by the loading or unloading thereof.

F. Contractual Liability, means liability expressly assumed under a written contract or agreement; provided, however, that contractual liability shall not be construed as including liability under a warranty of the fitness or quality of the designated member's products or a warranty that work performed by or on behalf of the designated member will be done in a workmanlike manner; and provided, however, that contractual liability shall not be construed as including liability under any hold harmless agreement or agreement to indemnify any non-public or private person, corporation, or entity under any contract or agreement.
G. **Designated Member**, means the entity, organization or constitutional officer named in Item I. or V. of the Declarations of this Agreement; designated member does not include employees or agents of that entity or organization.

H. **Designated Member's Products**, means goods or products manufactured, sold, handled, or distributed by the designated member or by others trading under his name, including any container thereof (other than a vehicle), but "designated member's products" shall not include a vending machine or any other property, rented to or located for use of others but not sold.

I. **Elevator**, means any hoisting or lowering device to connect floors or landings, whether or not in service, and all appliances thereof; but does not include an automobile servicing hoist, a material hoist used in alteration, construction or demolition operations, or an inclined conveyor used exclusively for carrying property or a dumbwaiter.

J. **Employee Benefits Program**, means any pension and profit sharing plan; individual retirement account (IRA) plan; salary reduction plan under Internal Revenue Code 401 (k) or Amendments; employee stock subscription plan, savings plan; group plan for life, health, dental, disability, automobile, home owners, or legal services insurance; social security system benefits; workers' compensation and unemployment insurance; travel and vacation plans; or educational tuition reimbursement plans created, administered or endorsed by a member.

K. **Errors and Omissions**, means an actual or alleged error or misstatement or act of omission or neglect or breach of duty including misconduct or official misconduct by the members in their official capacity, individually or collectively, or any matter of claims against them solely because of their having served or acted in an official capacity.

L. **Incidental Contract**, means a written (a) lease of premises, (b) easement agreement, except in connection with construction or demolition operations on or adjacent to a railroad, (c) undertaking to indemnify a municipality required by municipal ordinance, except in connection with work for the municipality, (d) sidetrack agreement, or (e) elevator maintenance agreement; but does not include any hold harmless agreement or agreement to indemnify any non-public or private person, corporation, or entity under any contract or agreement.

M. **Incidental Medical Malpractice Injury**, means bodily injury arising out of the rendering of or failure to render medical services or treatment by a non-professional during the period of this Agreement, including the following services:

1. medical, surgical, dental, x-ray or nursing service or treatment or the furnishing of food or beverages in connection therewith;

2. the furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances.

N. **Inverse Condemnation**, means a cause of action by a property owner to recover the monetary value of property that has been taken by the designated member having the power of eminent domain where no formal exercise of that power has been undertaken and includes any claim alleging lost profits both future and past.

O. **Member**, as used herein means:

a. the designated member;

b. while acting within the scope of his employment, any officer (except constitutional officers), volunteer, servant, or employee of the designated member, including elected and appointed officials, and members of Boards or Commissions. However, the coverage so provided any officer, servant, or employee does not apply to bodily injury to another officer, servant or employee of the designated member injured in the course of and arising out of his employment.
The coverage afforded applies separately to each member against whom claim is made or suit is brought, except with respect to the limits of liability of the Trust; and does not apply to bodily injury or property damage or personal injury liability arising out of the conduct of any partnership or joint venture of which a member is a partner or participant and which is not specified in this Agreement as a designated member.

P. **Mobile Equipment**, means a land vehicle (including any machinery or apparatus attached thereto), whether or not self propelled, (a) not subject to motor vehicle registration, or (b) maintained for use exclusively on premises owned by or rented to the designated member, including the ways immediately adjoining, or (c) designed for use principally off public roads, or (d) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle: power cranes, shovels, loaders, diggers and drills; concrete mixers, graders, scrapers, rollers and other road construction or repair equipment; air compressors, pumps and generators, including spreading, welding and building cleaning equipment; and geophysical exploration and well servicing equipment.

Q. **Mold, Spores and/or Fungus** means any mold, spores and/or fungus of any type of nature whatsoever that can cause or threaten harm to any living organism (including human health or human welfare, or the health or welfare of any animal or plant) or can cause or threaten physical damage, deterioration, loss of use, and/or loss of value or marketability, to any tangible property whatsoever. This includes, but is not limited to, any type(s) of mold, spores and/or fungus that are harmful or potentially harmful to health or welfare (such as Stachybotrys and others), or that are damaging or potentially damaging to tangible property (such as wet or dry rot, mildew and others) or that can otherwise cause or threaten to cause bodily injury, property damage, personal injury or advertising injury or any kind whatsoever.

R. **Occurrence**, means an event or accident, including continuous or repeated exposure to conditions which result in bodily injury, property damage or personal injury and not arising from any form of intentional misconduct.

S. **Personal Injury**, means injury sustained by any person or organization arising out of one or more of the following offenses committed during the term of this Agreement. However, this coverage does not apply to law enforcement operations.

1. False arrest, detention, imprisonment;
2. Wrongful entry or eviction, or other invasion of the right of private occupancy;
3. Publication or utterance:
   a) of a libel or slander or other defamatory or disparaging material;
   b) in violation of an individual's right or privacy; or

   except that publications or utterances in the course of or related to broadcasting, publishing, or telecasting activities conducted by or on behalf of the designated member shall not be deemed personal injury;
4. Assault and battery, not committed by or at the direction of the designated member unless committed for the purpose of protection of persons or property.

T. **Products Hazard**, includes bodily injury and property damage arising out of a designated member's products or reliance upon a presentation or warranty made at any time with respect thereto, but only if the bodily injury or property damage occurs away from premises owned by or rented to the designated member and after physical possession of such products has been relinquished to others.
U. **Property Damage**, means (a) physical injury to or destruction of tangible property which occurs during the policy period, including the loss of use thereof at any time resulting therefrom, or (b) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an occurrence during the period of this Agreement.

V. **Terrorism** means activities against persons, organizations or property of any nature:

1. That involve the following or preparation for the following:
   a. Use or threat of force or violence;
   b. Commission or threat of a dangerous act; or
   c. Commission or threat of an act that interferes with or disrupts an electronic, communication, information or mechanical system; and

2. When one or both of the following applies:
   a. The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
   b. It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

**EXCLUSIONS**

This Coverage Agreement does not apply:

A. to liability assumed by a designated member under an expressed or implied contract or agreement except an incidental contract or inter-local agreements with other governmental entities; but this exclusion does not apply to an implied warranty of fitness or quality of the designated member's products or an implied warranty that work performed by or on behalf of the designated member will be done in a workmanlike manner;

B. to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of:
   1. any automobile operated by or rented or loaned to any member;
   2. any other automobile operated by any person in the course of his employment by any member; but this exclusion does not apply to the parking of an automobile on premises owned by, rented to or controlled by the designated member or the ways immediately adjoining, if such automobile is not owned by or rented or loaned to any member;
   3. any vehicle while being used in any pre-arranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any contest or activity;

C. to bodily injury or property damage arising out of:
   1. the ownership, maintenance, operation, use, loading or unloading of any mobile equipment while being used in any pre-arranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity;
   2. the operation or use of any trailer designed for use therewith; or
   3. the ownership, maintenance, operation, or use of a skateboard/skate park facility, in-line skating facility or water theme park;

D. to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of:
   1. any watercraft over twenty six (26) feet in length;
   2. any passenger being carried for a consideration while in or upon, entering or alighting from any watercraft; or
3. barge or lighter rented by the designated member to others with respect to which the designated member does not furnish employees to operate and does not have any operating control;
4. any watercraft while being used in any pre-arranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any contest or activity;
5. any watercraft or structure being used as an artificial reef or similar purpose;

E. to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of:
   1. any aircraft owned or operated by or rented or loaned to any member;
   2. any other aircraft operated by any person in the course of his employment by any member, but this exclusion does not apply to aircraft while parked on premises owned by, rented to or controlled by the designated member;

F. to any liability arising out of or caused or contributed to by any maintenance, operation, use or control of or responsibility for any airfield, airport, runway, hangar, building or other property or facility designed for, used, connected, associated or affiliated with or in any way related to aviation or aviation activities or operations; provided that liability for services performed or premises located at or on any airfield, airport or aviation facility not directly related to aviation activities or operations, and not covered by any other liability insurance, shall not be excluded from coverage by this exclusion;

G. any claim for bodily injury, property damage (including the loss of use thereof), personal injury or advertising injury caused by, contributed to or arising out of the actual or threatened discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, electromagnetic radiation, liquids or gases, waste materials or other irritants, pollutants or contaminants into or upon the land, the atmosphere or any course or body of water, whether above or below ground.

Also, excluded from coverage under this agreement is the process of continued surface and/or subsurface degradation and deterioration of lead based paint that has been applied to any surface of any building whether considered commercial or residential.

It is understood and agreed that the intent and effect of this exclusion is to delete from all coverages afforded by this policy any claim, suit, action, judgment, liability, settlement, defense or expenses (including any loss, cost, or expense arising out of any governmental direction, order or request that the member test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants) in any way arising out of such actual or threatened discharge, dispersal, release or escape, whether such results from the member’s activities or the activities of others, whether or not such a sudden or gradual, and whether or not such is accidental, intended, foreseeable, fortuitous or inevitable and wherever such happens;

H. to bodily injury or property damage due to war, whether or not declared, civil war, insurrection, rebellion and revolution, or to any act or condition incident to any of the foregoing;

I. to any obligation for which any member or any carrier as his insurer may be held liable under any workers compensation, employers liability, unemployment compensation or disability benefits law, or under any similar law and including any claims under the Americans with Disabilities Act;

J. to bodily injury to any employee of the designated member arising out of and in the course of this employment by the designated member or to any obligation of a member to indemnify another because of damages arising out of such injury; but this exclusion does not apply to liability assumed by the designated member under an incidental contract. This exclusion shall include any liability incurred by a designated member as a result of an alleged wrongful discharge; failure to promote; demotion or transfer of any employee of the designated member;

K. to property damage to property owned or occupied by, leased, or rented to a designated member;
L. to property damage to premises alienated by the designated member arising out of such premises or any part thereof;

M. to loss of use of tangible property which has not been physically injured or destroyed resulting from a delay in lack of performance by or on behalf of the designated member of any contract or agreement;

N. to property damage to the designated member's products arising out of such products or any part of such products; to property damage to work performed by or on behalf of the designated member arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith; and to damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the designated member's products or work completed by or for the designated member or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;

O. to any liability from the designated member's completed operations arising out of:
   1. loss of sales, customers or profits suffered by a person or entity affected by the actions of the designated member or its agents including any damages sustained by such person or entities by virtue of a business interruption; or
   2. loss resulting from theft of any property which at the time of loss is not an integral part of a building or structure including direct loss by pillage and looting occurring during and at the immediate place of a riot or civil commotion;

P. to any liability arising in whole, or in part out of
   1. any act or omission of a member committed while acting outside the course and scope of his employment, or committed in bad faith with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety or property;
   2. any member obtaining remuneration or financial gain to which the member was not legally entitled;
   3. the willful violation of any federal, state or local law, ordinance or regulation committed by or with the knowledge or consent of any member; or
   4. official misconduct by any member;

Q. to any liability arising out of or in any way connected with the operation of the principals of eminent domain, condemnation proceedings, inverse condemnation or takings law, by whatever name called, whether permanent or temporary, including but not limited to, claims arising out of federal, state or local land use, environmental, air, ground or water pollution, or health, safety and welfare laws, ordinances or regulations, claims arising from Ch. 95-181, Laws of Florida, as may be amended from time to time, or claims arising from activities by or on behalf of a member which result in permanent or temporary loss of use or value of property, whether such liability accrues directly against the member, or by virtue of any agreement entered into by or on behalf of the member;

however, this exclusion does not apply to bodily injury, property damage or personal injury resulting from a claim against the designated member for inverse condemnation;

the limit of inverse condemnation claims is the amount of liability described in the General/Professional Liability section of the Declarations Page or $1,000,000 aggregate per fund year, whichever is the lesser amount, subject to a deductible of $5,000.00 per occurrence.

R. to any liability for injury, sickness, disease, death or destruction due to the rendering of or failure to render any professional service by any doctor, surgeon, dentist, nurse, physician's assistant, paramedic, emergency medical technician or other medical professional of a designated member;

S. to any liability arising out of or in connection with or caused or contributed to by any failure or inability to supply, in whole or in part, any adequate quantity or quality of power, steam, pressure or fuel;
T. to any liability arising out of or caused or contributed to by or connected with any actual or alleged violation of the Employee Retirement Income Security Act of 1974 (Public Law 93-406) or any amendment thereto or any similar provision of any local, state or federal law, statutory or common;

U. to any liability arising out of or caused or contributed to by any breakage and/or water overflow of any dam or reservoir;

V. to any liability for fines, punitive or exemplary damages; or any non compensatory damages or penalties imposed pursuant to any federal or state anti-trust, civil rights, anti-discrimination, or racketeer influence and corrupt organization (RICO) laws;

W. to any damages imposed by special act of the Legislature;

X. to loss caused directly or indirectly by nuclear hazard. Nuclear hazard means any nuclear reaction, radiation, a radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these;

Y. to personal injury arising out of any publication or utterance described in sub-paragraph Q.3 of the definition of Personal Injury contained in the Definition section of this Agreement (a) if the first injurious publication or utterance of the same or similar material by or on behalf of the designated member was made prior to the effective date of this coverage; (b) concerning any organization or business enterprise, or its products or services, made by or at the direction of any member with knowledge of the falsity thereof;

Z. to any liability arising out of errors and omissions as defined herein;

AA. to bodily injury or property damage for which the designated member or his indemnitee may be held liable;
   1. as an entity or organization engaged in manufacturing, distributing, selling or serving alcoholic beverages; or
   2. if not so engaged, as an owner or lessor of premises used for such purposes,
      if such liability is imposed
      a) by, or because of the violation of, any statute, ordinance or regulation pertaining to
         the sale, gift, distribution or use of any alcoholic beverages; or
      b) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to
         a person under the influence of alcohol or which causes or contributes to the
         intoxication of any person.

This exclusion does not apply and coverage is afforded under the Agreement for bodily injury or property damage claims or liability resulting from the providing or serving of alcoholic beverages without charge to the public at functions incidental to a designated member's business or activity otherwise covered under the Agreement or any endorsement to the Agreement;

BB. to any claim, demand or action seeking injunctive, declaratory, writ of mandamus, or any other non-monetary relief against a designated member or any of its agents;

CC. to any liability arising out of any actual or alleged sexual action, abuse, communicable disease or employment related claim, defined for purposes of this exclusion as:
   1. sexual action includes, but is not limited to, any verbal or non-verbal communication,
      behavior or conduct with sexual connotations or purposes, whether for sexual gratification,
      intimidation, coercion or other purpose, and regardless of whether such action is alleged to
      be intentional or negligent.
   2. abuse shall include, but is not limited to, the negligent or intentional infliction of physical,
      emotional or psychological injury or harm on any person or persons in the care, custody or
      control of any member.
   3. communicable disease includes but is not limited to Acquired Immune Deficiency
      Syndrome (AIDS), and any venereal disease.
4. Employment related claim includes but is not limited to claims, accusations or charges of negligent or intentional hiring, placement, training or supervision arising from or related to actual or alleged sexual action, or any other type of actual or alleged abuse, or a communicable disease.

5. However, this exclusion does not apply and coverage is afforded under this Agreement to bodily injury or personal injury liability which may accrue against the "Designated Member" as defined within the "Definition" section;

DD. To any liability for injury, loss or damage sustained by any person or entities arising from or in anyway involving asbestos or other products containing asbestos or to asbestosis or any other disease including mesothelioma and cancer related to asbestos exposure nor any liability for costs or expenses incurred in removing, cleaning up or nullifying such asbestos product;

EE. To any liability arising out of errors and omissions as defined herein or other negligent or wrongful act committed in the administration of any employee benefits program as defined herein, for present or former employees of the designated member;

FF. To any liability arising out of or caused by or contributed to or connected with alleged violation of the following:
   1. Florida Whistle Blowers Act, Sec. 112.3187, Florida Statutes.
   2. Federal "Fair Labor Standards Act".
   3. Chapter 447, Florida Statutes;

GG. Any claim requesting return or reimbursement of a special assessment, tax, service charge or fee or any other overpayment to the designated member or member;

HH. To any claim for attorneys' fees or costs for any action not covered by this Agreement;

II. To any damages which accrued or occurred prior to the effective date of this Agreement notwithstanding the date of the occurrence;

JJ. Advertising injury arising out of:
   1. Failure of performance of contract, but this exclusion does not apply to the unauthorized appropriation of ideas upon alleged breach of implied contract, or
   2. Infringement of trademark, service mark, or trade name, other than titles or slogans, by use thereof or in connection with goods, products or services sold, offered for sale, or advertised, or
   3. Incorrect description or mistake in advertising price of goods, products or services sold, offered for sale or advertised.

Also, with respect to advertising injury:
   1. To any member in the business of advertising, broadcasting, or telecasting, or
   2. To any injury arising out of any act committed by the member with actual malice.

KK. To any Bodily Injury Liability, Property Damage Liability, Personal Injury Liability, Advertising Injury Liability, Products Liability and Completed Operations Hazard arising directly or indirectly out of
   1. Any actual or alleged failure, malfunction or inadequacy due to the inability to correctly recognize, process, distinguish, interpret or accept the year 2000 and beyond by:
      a. Any of the following, whether belonging to any insured or to others: (a) Computer application software; (b) Computer networks; (c) Microprocessors (computer chips) not part of any computer system; (d) Computer operating systems and related software; (e) Computer hardware, including microprocessors; or (f) Any other computerized or electronic equipment or components; or
      b. Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in the preceding paragraph.
   2. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in paragraph a. above.
LL. to any Bodily Injury Liability, Property Damage Liability, Personal Injury Liability, Advertising Injury Liability, for which any designated member or member under this agreement may be held liability arising out of the actual or threatened occurrence, growth, release, transmission, migration, dispersal or exposure to mold, spores and/or fungus;

1. Resulting from any actual or threatened exposure to, inhalation, absorption or ingestion of, or physical contact with mold, spores and/or fungus;

2. Resulting from any actual or threatened mold, spores, and/or fungus upon any real property or personal property, product or work, premises, site or location, or any other tangible property, or any designated member or member or any other person(s) or organization(s), located anywhere in the world;

3. Resulting from any loss, cost or expense for any testing, monitoring, clean-up, treatment or removal, or neutralization of mold, spores and/or fungus;

MM. to any Bodily Injury Liability Property Damage Liability, Personal Injury Liability and Advertising Injury Liability arising directly or indirectly out of any loss, damage, claims, injury, cost or legal obligations, or any other sum, or relating to:

1. Any act of terrorism, or

2. Any action authorized by a governmental authority or agency for the purpose of preventing, terminating, countering or responding to any act of terrorism or for the purpose of preventing or minimizing the consequences of any act or threat of terrorism.

OTHER INSURANCE

The coverage afforded by this Agreement is primary, except when stated to apply in excess of or contingent upon the absence of other insurance. When this coverage is primary and the member has other insurance which is stated to be applicable to the loss on an excess or contingent basis, the amount of the Trust's liability under this Agreement shall not be reduced by the existence of such other insurance.

If all other valid and collectible insurance provides for contribution by equal shares, the Trust shall not be liable for a greater proportion of such loss than would be payable if each party contributes an equal share until the share of each party equals the lowest applicable limit of liability under any one policy or coverage agreement or the full amount of the loss is paid, and with respect to any amount of loss not so paid the remaining parties then continue to contribute equal shares of the remaining amount of the loss until each such party has paid its limit in full or the full amount of the loss is paid.

If any such other insurance does not provide for contribution by equal shares, the Trust shall not be liable for a greater proportion of such loss than the applicable limit of liability under this policy for such loss bears to the total applicable limit of all valid and collectible insurance against such loss.
BROAD FORM PROPERTY DAMAGE

I. The Coverage section is amended to include the following additional coverage:

As it relates to property damage to property owned, occupied or used by or rented to the member or in the care, custody or control of the member or as to which the member is for any purpose exercising physical control and work performed by or on behalf of the designated member arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith.
EXTRA CONTRACTUAL LEGAL EXPENSE

I. The Coverage Section is amended to include the following additional coverages:

The Trust will reimburse the member seventy five percent (75%) of the legal fees and seventy five percent (75%) of the legal assistant fees incurred by the public officer or officers and reimbursed by the member as a result of an occurrence, up to a maximum of twenty five thousand dollars ($25,000) per occurrence, or one hundred thousand dollars ($100,000) in the aggregate for the Trust year provided:

a. the occurrence is not otherwise covered by the Trust;

b. the member and the public officer provide the Trust such documentation as is necessary for the Trust to determine the total amount incurred and reimbursed, and the eligibility and legitimacy of the reimbursements;

c. in an action, the court finds the member is obliged to reimburse the legal fees and legal assistant fees incurred by the public officer because the conduct that gave rise to the action arose out of or in connection with the performance of the officer's official duties and the action served public purpose; and

d. in an ethics proceeding, it is determined the conduct that gave rise to the proceeding arose out of or in connection with the performance of the officer's official duties and the public officer is not found to have committed a breach of the public trust;

e. coverage is specifically excluded for any occurrence outside the effective dates of this endorsement.

II. The Definition Section is amended to include the following additional definitions which shall apply exclusively to this endorsement.

"Action" means a criminal or civil judicial proceeding in a court of law, before a judicial officer, in which a public officer or a group of public officers of a member are named party in their personal capacities and in which original subject matter jurisdiction is vested in a county court or circuit court. "Action" includes any appellate proceedings that arise from such judicial proceedings and any administrative proceeding before the Florida Public Employees Relation Commission and Federal Equal Employment Opportunity Commission, but excludes any other state or local administrative proceedings.

"Attorney" means a person admitted by the Supreme Court of Florida to practice law in Florida and who is a member in good standing of The Florida Bar. If the member is named a party in the action or the ethics proceedings, "attorney" excludes the person, such as the city attorney, appointed by the member to act as the legal advisor to, and attorney and counselor for, the member and its public officers, such person's deputies or assistants and other employees, and the partners, associates, and other employees of the law firm in which such person is a member.

"Ethics Proceeding" means any proceeding, including appellate proceedings, designed to dispose of an ethics complaint filed with the Florida Commission on Ethics alleging a public officer or group of public officers of a member has committed a breach of public trust, except any portion of such proceeding prior to the issuance of a "Determination of Investigative Jurisdiction and Order to Investigate."

"Legal Assistant" means a person who contributes non-clerical, meaningful legal support to an attorney; who, under the direct supervision and direction of an attorney, engages in legal research, case development or planning, prepares or interprets legal documents, or selects, compiles and uses technical information from references such as digests,
encyclopedias, or practice manuals; and who is certified by the National Association of Legal Assistants as a "Certified Legal Assistant."

"Legal Assistant Fees" means the fees charged a public officer for the services of a legal assistant.

"Legal Fees" means fees charged a public officer by an attorney engaged in the practice of law.

"Occurrence" means conduct or a course of conduct by a public officer or group of public officers that culminates in an action or ethics proceeding.

"Practice of Law" means legal work performed primarily for the purpose of rendering legal advice or representation to the member's public officers.

"Public Officer" means any officer or employee of the member who is required to file financial disclosure pursuant to Sec. 112.3145, Fla. Stat.
FIRE LEGAL LIABILITY

FIRE LEGAL LIABILITY – REAL PROPERTY

With respect to property damage to structures or portions thereof rented to or leased to the designated member, including fixtures permanently fixed thereto, if such property damage arises out of fire:

I. The Coverage section is amended to include the following additional coverage:

   A. all of the exclusions of the Agreement, other than the Nuclear Energy Liability Exclusion (Broad Form), are deleted and replaced by the following:

       this coverage does not apply to liability assumed by the member under any contract or agreement.

   B. the limit of property damage liability as respects this Fire Legal Liability Coverage – Real Property is $250,000 each occurrence unless otherwise stated in the schedule of this endorsement.

   C. The Fire Legal Liability Coverage – Real Property shall be excess over any valid and collectible property insurance (including any deductible portion thereof), available to the member, such as, but not limit to, Fire, Extended Coverage, Builders’ Risk Coverage or Installation Risk Coverage, and the “Other Insurance” Condition of the Agreement is amended accordingly.
MEDICAL ATTENDANTS'/MEDICAL DIRECTORS' MALPRACTICE LIABILITY

I. The Coverage section is amended to include the following additional coverage:

A. It is agreed that the Trust will pay on behalf of the member all sums which the member becomes legally obligated to pay as damages because of injury to any person arising out of the rendering or failure to render, during the period of this Agreement, professional services by one of the designated member's Medical Attendants and Medical Director designated pursuant to Section 401.265, Florida Statutes. The Trust shall have the right and duty to defend any suit against the member seeking such damages, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and such settlement of any claim or suit as it deems expedient, but the Trust shall not be obligated to pay any claim or any judgment or to defend any suit after the applicable limit of the Trust's liability has been exhausted by payment of judgments or settlements.

II. EXCLUSIONS

This coverage does not apply to:

A. Any dishonest, fraudulent, criminal or malicious act or omissions of the member, any partner or employee, any intentional misconduct or intentional act;

B. Liability of the designated member as an employer of others or as the proprietor, superintendent or executive officer of any hospital, sanitarium, clinic with bed and board facilities, or other business enterprise;

C. To professional services rendered by physicians and/or nurses; however, this exclusion does not apply to a Medical Director designated pursuant to Section 401.265, Florida Statutes, when said Director is acting within the scope and in furtherance of the duties of the Medical Director as outlined in Section 401.265, Florida Statutes.

D. To any Bodily Injury Liability, Property Damage Liability, Personal Injury Liability, Advertising Injury Liability, Products Liability and Completed Operations Hazard arising directly or indirectly out of

a. Any actual or alleged failure, malfunction or inadequacy due to the inability to correctly recognize, process, distinguish, interpret or accept the year 2000 and beyond by:

(1) Any of the following, whether belonging to any insured or to others: (a) Computer application software; (b) Computer networks; (c) Microprocessors (computer chips) not part of any computer system; (d) Computer operating systems and related software; (e) Computer hardware, including microprocessors; or (f) Any other computerized or electronic equipment or components; or

(2) Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in the preceding paragraph.

b. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in paragraph a. above.
ERRORS AND OMISSIONS LIABILITY ENDORSEMENT

This endorsement issued by the Trust extends and modifies the provisions of the Agreement relating to liability for Public Officials Errors and Omissions as set forth below:

It is agreed that as of the effective date hereof, the Agreement is amended in the following particulars:

I. The Coverage Section is amended to include the following additional coverage:

COVERAGE D - ERRORS AND OMISSIONS LIABILITY

II. The Trust will pay all sums a member becomes legally obligated to pay to any person other than the member by reason of "Errors and Omissions" as defined in the agreement committed by a member acting in his official capacity which takes place during the period of this Agreement, subject to all terms, conditions, exclusions and limits of liability of the Agreement and this endorsement.

III. The Definition Section is amended to include the following additional definitions which shall apply exclusively to this endorsement.

A. Member for purposes of coverage under this endorsement shall not include any of the following individuals, boards, commissions, authorities, units or administrative departments or agencies of:

1. Schools
2. Airports
3. Hospitals

B. Official Capacity means the capacity of a member while lawfully acting for or on behalf of the designated member, or while lawfully acting in aid of the duties or functions which come within the scope of the member's employment by the designated member.

IV. The Exclusion Section of the Agreement is amended as follows for this endorsement:

A. Exclusion J of the Agreement is amended to read:

J. to bodily injury to any employee of the designated member arising out of and in the course of employment by the designated member or to any obligation of a member to indemnify another because of damages arising out of such injury; but this exclusion does not apply to liability assumed by the designated member under an incidental contract.

B. Exclusion Z of the Agreement is deleted.

C. The following additional exclusions are included for purposes of this endorsement only; and this endorsement does not apply to claims for liability as to any member arising out of the following:

1. based upon or attributable to any member gaining in fact any profit or advantage to which such member was not legally entitled, including remuneration paid in violation of law as determined by the courts;
2. brought about or contributed to by fraud, dishonesty, or bad faith of a
member; however, notwithstanding the foregoing, the member shall be
protected under the terms of this Agreement as to any claims upon which
suit may be brought against them by reason of any alleged fraud or
dishonesty on the part of any member, unless a judgment or other final
adjudication thereof adverse to such member shall establish that acts of
active or deliberate dishonesty or fraud committed by such member was
material to the cause of action so adjudicated;

3. to any (a) liability arising out of estimates of probable costs or cost
estimates being exceeded or faulty preparation of bid specifications, or
plans, or (b) injury to, destruction or disappearance of any tangible
property (including money) or the loss of use thereof;

4. any claim demand or action seeking relief, or redress, in any form other
than money damages, and any costs, fees, expenses or attorneys' fees
relating to such claims;

5. to any obligation for which a member becomes obligated to pay future
wages as a result of any alleged wrongful employment practice.

6. To any Bodily Injury Liability, Property Damage Liability, Personal Injury
Liability, Advertising Injury Liability, Products Liability and Completed
Operations Hazard arising directly or indirectly out of

a. Any actual or alleged failure, malfunction or inadequacy due to the
inability to correctly recognize, process, distinguish, interpret or
accept the year 2000 and beyond by:

   (1) Any of the following, whether belonging to any insured or
to others: (a) Computer application software; (b)
Computer networks; (c) Microprocessors (computer chips)
not part of any computer system; (d) Computer operating
systems and related software; (e) Computer hardware,
including microprocessors; or (f) Any other computerized
or electronic equipment or components; or

   (2) Any other products, and any services, data or functions
that directly or indirectly use or rely upon, in any manner,
any of the items listed in the preceding paragraph.

b. Any advice, consultation, design, evaluation, inspection,
installation, maintenance, repair, replacement or supervision
provided or done by you or for you to determine, rectify or test for,
any potential or actual problems described in paragraph a. above.

D. Any violation of Constitutional Rights of any person which creates a cause of action
for damages by or on behalf of any such person under any one or more of the
following Civil Rights Statutes:

United States Code, Title 42, Section 1982
United States Code, Title 42, Section 1983
United States Code, Title 42, Section 1985
United States Code, Title 42, Section 1986
United States Code, Title 42, Section 12101 (ADA)
United States Code, Title 29, Section 2601, et. seq. (FMLA)
Civil Rights Act of 1991
SUPPLEMENTAL EMPLOYMENT PRACTICES LIABILITY

In consideration of the additional premium charged, it is hereby noted and agreed that coverage afforded by this agreement is extended to include Supplemental Employment Practices claims filed against a Designated Member or Member subject to the terms, conditions and exclusions of this endorsement and the terms, conditions and exclusions of the agreement.

It is further noted and agreed that for the purposes of this endorsement only, the following definition shall apply:

"Employment Practice Claims" shall mean a claim relating to a past, present or prospective employee of the Designated member arising out of an actual or alleged wrongful dismissal, discharge or termination, either actual or constructive, or employment, employment-related misrepresentation, wrongful failure to employ or promote, wrongful deprivation of career opportunity, wrongful discipline; failure to grant tenure or negligent employee evaluation; or sexual, gender, or workplace harassment (including the alleged creation of a hostile workplace environment); or unlawful discrimination, whether direct, indirect, intentional or unintentional; or failure to provide adequate employee policies and procedures.

Exclusion CC4 is amended to read:

employment related claim includes but is not limited to claims, accusations or charges of negligent hiring, placement, training or supervision arising from or related to actual or alleged sexual action, or any other type of actual or alleged abuse, or a communicable disease.

Exclusion CC5 is amended to read:

However, this exclusion does not apply and coverage is afforded under this Agreement to bodily injury or personal injury liability which may accrue against the "Designated Member" or "Member" as defined within the "Definition" section;
EMPLOYEE BENEFITS PROGRAM ADMINISTRATION LIABILITY

The endorsement issued by the Trust extends and modifies the provision of the Agreement relating to liability for the administration of employee benefits programs as set forth below.

I. The Coverage Section is amended to include the following additional coverage:

The Trust will pay all sums a member becomes legally obligated to pay by reason of "Errors and Omissions" as defined in the Agreement, or other negligent act, committed in the administration of the designated members' employee benefits for present or former employees, which take place during the period of this Agreement, subject to the terms, conditions, exclusions and limits of liability of the Agreement and this endorsement.

II. The Definition Section is amended to include the following additional definitions which shall apply exclusively to this endorsement:

A. "Member" in this endorsement means only the designated member and individuals serving on boards or commissions for the purpose of administering employee benefits programs, acting within the scope of their authority by or on behalf of the designated member except as excluded herein.

III. The Exclusions Section of the Agreement is amended as follows for this endorsement:

A. Exclusion EE is deleted.

B. The following additional exclusions are included for purposes of this endorsement only; and this endorsement does not apply to claims for liability as to any member arising out of the following:

1. As a result of dishonest, intentionally fraudulent, criminal or malicious acts or omissions of any member, however, this exclusion shall not apply to any member who did not:
   a) Personally participate in committing any such act or omission; or
   b) Remain passive after having personal knowledge of any such act or omission.

2. As a result of an intentional violation of any Workers' Compensation, Unemployment Insurance, Social Security or Disability Benefits law or administrative interpretation of such laws.

3. As a result of the failure to provide benefits because said benefits are not properly funded or an insurers failure to comply with the terms of its contract.

4. As a result of advice given to any employee to participate or not to participate in any Stock Subscription, Individual Retirement Account, or Salary Reduction Plan.

5. As a result of the investment or non-investment of employee benefit funds.

6. As a result of the failure of any investment to perform as predicted or expected by a member.

7. As a result of the termination or failure of any employee benefit plan.

8. As a result of fines, taxes or penalties imposed by law or other matters for which coverage may not be available under law.
9. To any Bodily Injury Liability, Property Damage Liability, Personal Injury Liability, Advertising Injury Liability, Products Liability and Completed Operations Hazard arising directly or indirectly out of:
   a. Any actual or alleged failure, malfunction or inadequacy due to the inability to correctly recognize, process, distinguish, interpret or accept the year 2000 and beyond by:
      (1) Any of the following, whether belonging to any insured or to others: (a) Computer application software; (b) Computer networks; (c) Microprocessors (computer chips) not part of any computer system; (d) Computer operating systems and related software; (e) Computer hardware, including microprocessors; or (f) Any other computerized or electronic equipment or components; or
      (2) Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in the preceding paragraph.
   b. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in paragraph a. above.
SPECIFIC EXCESS ENDORSEMENT - GENERAL LIABILITY

This endorsement, when issued by the Florida Municipal Insurance Trust, does not in any way modify the provisions of the Coverage Agreement. It does extend the monetary limits of liability, as stated in the Limits of Liability in the Declarations, as set forth below:

It is agreed that the specific limits of liability are $5,000,000 (combined single limit) per occurrence, solely for any liability resulting from entry of a claims bill pursuant to Section 768.28(5) Florida Statutes or liability imposed pursuant to Federal Law, or to any liability resulting from actions taken outside of the State of Florida where it is determined by a court of competent jurisdiction that the liability limitations contained in Section 768.28(5), Florida Statutes, are inapplicable, if such liability is covered by the Agreement. The limits provided herein are inclusive of the $100,000 each person and $200,000 each occurrence as set forth in the Declarations of the Agreement and within the Coverage Agreement itself, but in no way exceed $5,000,000 (combined single limit) per occurrence.

Exclusion W is amended as follows:

To any damages imposed by an act of the legislature, except for claims bills passed by the legislature pursuant to Section 768.28(5), Florida Statutes, against a member, for damages covered under the terms of this Agreement.
PARTICULAR COVERAGE. BY COPY OF THIS LETTER TO MR. WILKINSON, I AM COPYING HIM AS WELL WITH THE AGREEMENT FOR HIS REFERENCE AND PERHAPS THE ANSWER TO HIS QUESTION. I WOULD REQUEST HE CALL ME AS WELL SHOULD HE HAVE ANY FURTHER QUESTIONS.

I AGAIN APOLOGIZE FOR NOT HAVING A COPY OF YOUR PARTICULAR AGREEMENT IN HAND OF OUR MEETING. I DO HOPE WE WERE ABLE TO ANSWER MOST QUESTIONS POSED.

SHOULD YOU REQUIRE A FURTHER VISIT WITH YOUR BOARD, PLEASE FEEL FREE TO GIVE ME A CALL.

SINCERELY,

[Signature]

JON MORRISON
DIRECTOR OF ADMINISTRATION

CC: MR. DAVID R. MILES
CHIEF FINANCIAL OFFICER

MR. JERRY WILKINSON
KEY LARGO WASTEWATER TREATMENT DISTRICT

MR. CHUCK WILDE
STATE LEAGUE REPRESENTATIVE

MR. MIKE MADDEN
DIRECTOR-PUBLIC RISK SERVICES DIVISION
FLORIDA LEAGUE OF CITIES
SPONSORED INSURANCE PROGRAMS
DECLARATIONS

I. DESIGNATED MEMBER:  Key Largo Wastewater Treatment District
                           Address:  C/O Govt. Services Group, 1500 Mahan Drive, Ste. 250
                         Tallahassee, FL 32308

II. COVERAGE PERIOD
    From October 1, 2003 to October 1, 2004
    12:01 A.M. Standard Time at the address of the Designated Member.

III. AGREEMENT NUMBER
     Florida Municipal Insurance Trust (FMIT)  FMIT #1045

IV. COVERAGES INCLUDED
     General Liability

V. ESTIMATED ANNUAL PREMIUM

              Net Premium
              $ 7,500.00

Signature of Authorized Re

September 03, 2003

Attachment "A", Page 30
September 3, 2004

Key Largo Wastewater Treatment District
Mr. Andrew M. Tobin
C/O G.S.G
1500 Mahan Drive, Suite 250
Tallahassee, Fl 32308

Dear Mr. Andrew M. Tobin:

We are very excited to announce a new Public Officials Liability product. Twenty two years ago we made a commitment to be a major provider of nonprofit insurance and have been involved with some very innovative and transforming changes.

Almost any day-to-day decision or action by anyone in your organization can trigger a lawsuit. Surveys have shown the average cost to defend a nonprofit lawsuit runs between $35,000 and $100,000. *Immunity Protection Laws are designed to protect volunteers and do not apply to paid employees, officers or the entity.* In addition, the laws do not prevent lawsuits from being filed which still must be defended at great cost, even when frivolous.

*We are now offering a policy that we feel is far superior to any other in the marketplace today.* Please read the brochure to understand why Professional Liability coverage is necessary and for product information. Our unparalleled coverage for special service districts includes; defense outside the limit of liability, low minimum premiums and deductibles, unlimited Extended Reporting Period for former officials and spousal Extension. Please refer to the enclosed product brochure for additional details.

If you are interested in this product please contact your local agent and have him or her give us a call. You can also contact us directly and we will be happy to locate an agent for you. Please visit our website at [www.agencymarketing.com/nonprofit](http://www.agencymarketing.com/nonprofit) for additional coverage information. If you would like to speak to a representative please contact Stephanie Hays (shays@agencymarketing.com) at (800) 542-2805 X 130.

Very truly,

[Signature]

Stephanie Hays, Professional Liability
Agency Marketing Services, Inc.

Encl.
Providing coverage for a variety of For-Profit and Non-Profit Special Service Districts including: Water Districts, Sewer Districts, Drainage Districts, Sanitation Districts, Economic Development Districts, Irrigation Districts, Private Industry Councils, Economic Development Authorities, Local Planning Commissions, Conservancy/Conservation Districts, Country Club/Golf Clubs, Housing Authorities, Library Districts, Regional Planning Districts, Local Transit Authorities, Museums, Zoos, Fairs/Parks, Cemetery Districts and Recreation Districts.

Agency Marketing Services would like to offer you the security of an A++ rated carrier. Please give Stephanie Hays a call at 800-542-2805 or send her an email at shays@agencymarketing.com (www.agencymarketing.com/nonprofit) for a quick quote on Public Officials Liability insurance coverage.
Dear Mr. Watson,

I am an attorney in Tavernier, Florida. I represent the Key Largo Wastewater Treatment District, a special district organized and existing under the laws of the State of Florida.

Your name has been suggested as a potential mediator in a construction dispute, briefly summarized as follows:

The District is a party to a design-build agreement with The Haskell Company as the design-builder, for construction of a sewage treatment plant and collection system.

The contract includes a disputes provision that requires non-binding mediation.

A dispute has arisen between the District and Haskell regarding delays. The principal matters at issue from my perspective are (1) whether the Haskell schedule could have been achieved even in the absence of delaying events, (2) whether the causes for delays to the project were outside the control of Haskell or concurrent with delays caused by factors within Haskell's control, and (3) direct damages. Note that the parties have already resolved the question of indirect damages (e.g. extended overhead).

In order to complete my due diligence efforts with regard to potential mediators, I would appreciate your brief responses to the following questions:

1. Based on the information provided, are you aware of any conflicts of interest that would affect your ability to act as an impartial mediator?

2. Have you ever mediated a dispute to which Haskell was a party?

3. Do you have experience in mediating disputes similar to the above?

4. Can you provide the names of two or three persons whom I might contact regarding their experiences with you as a mediator?

5. Can you provide a general idea of the types of documents and other information that you might require from the parties in order to mediate these issues?

6. Can you provide an estimate of the amount of time that you would require to review documents and conduct the mediation?

7. Would you be able to make room in your schedule in the first quarter of 2005 for this mediation?

Thank you for your attention.

Thomas M. Dillon
94220 Overseas Highway, #2B
Tavernier, FL 33070
Phone 305-240-1767
Fax 305-853-2693

11/10/2004
KEY LARGO WASTEWATER TREATMENT DISTRICT

Agenda Request Form

Meeting Date: November 17, 2004  Agenda Item No.

[ ] PUBLIC HEARING  [ ] RESOLUTION

[ ] DISCUSSION  [ ] BID/RFP AWARD

[X] GENERAL APPROVAL OF ITEM  [ ] CONSENT AGENDA

[ ] Other:

SUBJECT: Mediator Selection

RECOMMENDED MOTION/ACTION: Approve Lawrence Watson as suggested mediator for issues arising under the Haskell Design-Build Agreement.

Approved by General Manager ______________________
Date:__________________

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Costs: $</th>
<th>Attachments:</th>
</tr>
</thead>
<tbody>
<tr>
<td>District Counsel</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Department Review</th>
<th>Engineering [ ]</th>
<th>Advertised:</th>
</tr>
</thead>
<tbody>
<tr>
<td>[X] District Counsel</td>
<td>Clerk [ ]</td>
<td>Date: ____________</td>
</tr>
<tr>
<td>[ ] General Manager</td>
<td></td>
<td>Paper: ____________</td>
</tr>
<tr>
<td>[ ] Finance</td>
<td></td>
<td>[ ] Not Required</td>
</tr>
</tbody>
</table>

All parties that have an interest in the agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.

Yes I have notified everyone ____________
or
Not applicable in this case ____________
Please initial one.

Summary Explanation/Background:

Attached are the results of my investigation of Mr. Watson and Mr. Hunston as potential mediators.

Resulting Board Action:
Memo

To: Key Largo Wastewater Treatment District
From: Thomas M. Dillon
CC: N/A
Date: 11/10/2004
Re: Mediators

On this date, I called the following persons, whose names were provided as references by the prospective mediators:

- Alan Greer, Richmond, Greer, Weil, 305-373-4000;
- Bruce Alexander, Booth Casey, 561-832-5900
- Mark Bideau, Greenberg Traurig, 561-650-7918
- Amy Rubin, Ruden McClosky, 561-838-4500
- Michael Simon, Simon Sigalos & Spyredes, 561- 447-0017

Some of the attorneys have had experience with both Watson and Hunston. All of the interviewees were very positive about the intelligence and abilities of the prospective mediators. One was surprised that he had been listed as a reference, since his latest experience with one of the mediators had not been positive.

Based on my discussions, I believe that both prospective mediators are well-qualified to conduct the mediation, both are thorough in their preparation, both are experienced in the practice of construction law, as well as mediation of construction cases.

The consensus of the parties seems to be that they would tend to choose Mr. Watson for bigger cases and cases where a very strong personality was required to achieve settlement; Mr. Hunston has a somewhat less forceful manner, but seems to be very effective in achieving settlements, as well. Both mediators are good at evaluating the merits of the cases they mediate and realistically advising the parties as to their chances of success.

Of the two mediators, I would expect Mr. Hunston to consume less time in preparing for the mediation and in conducting the mediation sessions. He generally holds one-day sessions, whereas, Mr. Watson tends to hold two-day sessions. On the other hand, Mr. Watson's
office is in Maitland, Florida, which is closer to our experts in Orlando, so some travel expenses would be saved if Mr. Watson were chosen.

All things considered, I recommend Mr. Watson as the mediator for the following reasons:

1. He is well-respected and appears to be capable of conducting the mediation.

2. His more forceful personality may be needed to effect a settlement, given the posture of Haskell to date.

3. His higher rate, which would be shared with Haskell, are somewhat mitigated by his proximity to our experts in Orlando.

4. His higher rate may cause Haskell to be more serious about negotiating to avoid mediation.

5. He was recommended by Haskell, so there would be no need to negotiate the identity of the mediator.
Dear Mr. Dillon:

I have sent an Email to the members of the Firm with which I am of counsel, to determine if there is any conflict with the two parties identified in your Email. I am not aware of any prior mediations conducted by me in which these parties participated. I have mediated many construction disputes and, prior to limiting my practice to only ADR work in 2001, represented the Loxahatchee River Environmental Control District in Jupiter, Florida, in construction litigation involving their wastewater treatment and disposal systems during the 1980's and early 1990's. I have handled many complex construction litigation matters during my 25 years of trial experience, on behalf of owners, developers, contractors, design professionals, subcontractors, materialmen and suppliers. I am not aware of any conflicts that would affect my impartiality in this dispute.

I have mediated many disputes with Greenberg Traurig (Mark Bideau), Ruden McClosky (Amy Rubin), Gunster Yoakley (Paul Turk), and Simon, Sigalos & Spyredes (Michael Simon), to name just a few.

I would not anticipate more than an hour or so in document review. I only schedule one mediation per day, with a 2.5 hour minimum, as I will not prematurely terminate an otherwise productive mediation session merely to meet my personal time schedule. I would anticipate this type dispute to take at least ½ day to resolve and possible 1 day, depending upon the factual issues in dispute.

My calendar is posted on my website at www.hunstonadr.com, but the first quarter of 2005 is just starting to book up, so there should be plenty of dates to choose from.

Let me know if I may provide any further information. If I receive conflict information from my Firm, I will let you know.

W. Jay Hunston, Jr.
Mediator/Attorney at Law
wjh@hunstonadr.com
http://www.hunstonadr.com

-----Original Message-----
From: Thomas Dillon [mailto:thomasdillon@terranova.net]
Sent: Tuesday, November 09, 2004 9:24 AM
To: W. Jay Hunston
Subject: Mediation

Dear Mr. Hunston,

I am an attorney in Tavernier, Florida. I represent the Key Largo Wastewater Treatment District, a special district organized and existing under the laws of the State of Florida.

Your name has been suggested as a potential mediator in a construction dispute, briefly summarized as follows:

The District is a party to a design-build agreement with The Haskell Company as the design-builder, for construction of a sewage treatment plant and collection system.
The contract includes a disputes provision that requires non-binding mediation.

A dispute has arisen between the District and Haskell regarding delays. The principal matters at issue from my perspective are (1) whether the Haskell schedule could have been achieved even in the absence of delaying events, (2) whether the causes for delays to the project were outside the control of Haskell or concurrent with delays caused by factors within Haskell's control, and (3) direct damages. Note that the parties have already resolved the question of indirect damages (e.g. extended overhead).

In order to complete my due diligence efforts with regard to potential mediators, I would appreciate your brief responses to the following questions:

1. Based on the information provided, are you aware of any conflicts of interest that would affect your ability to act as an impartial mediator?

2. Have you ever mediated a dispute to which Haskell was a party?

3. Do you have experience in mediating disputes similar to the above?

4. Can you provide the names of two or three persons whom I might contact regarding their experiences with you as a mediator?

5. Can you provide a general idea of the types of documents and other information that you might require from the parties in order to mediate these issues?

6. Can you provide an estimate of the amount of time that you would require to review documents and conduct the mediation?

7. Would you be able to make room in your schedule in the first quarter of 2005 for this mediation?

Thank you for your attention.

Thomas M. Dillon
Attorney at Law
94220 Overseas Highway, #2B
Tavernier, FL 33070
Phone 305-240-1767
Fax 305-853-2693
Dear Mr. Hunston,

I am an attorney in Tavernier, Florida. I represent the Key Largo Wastewater Treatment District, a special district organized and existing under the laws of the State of Florida.

Your name has been suggested as a potential mediator in a construction dispute, briefly summarized as follows:

The District is a party to a design-build agreement with The Haskell Company as the design-builder, for construction of a sewage treatment plant and collection system.

The contract includes a disputes provision that requires non-binding mediation.

A dispute has arisen between the District and Haskell regarding delays. The principal matters at issue from my perspective are (1) whether the Haskell schedule could have been achieved even in the absence of delaying events, (2) whether the causes for delays to the project were outside the control of Haskell or concurrent with delays caused by factors within Haskell’s control, and (3) direct damages. Note that the parties have already resolved the question of indirect damages (e.g., extended overhead).

In order to complete my due diligence efforts with regard to potential mediators, I would appreciate your brief responses to the following questions:

1. Based on the information provided, are you aware of any conflicts of interest that would affect your ability to act as an impartial mediator?

2. Have you ever mediated a dispute to which Haskell was a party?

3. Do you have experience in mediating disputes similar to the above?

4. Can you provide the names of two or three persons whom I might contact regarding their experiences with you as a mediator?

5. Can you provide a general idea of the types of documents and other information that you might require from the parties in order to mediate these issues?

6. Can you provide an estimate of the amount of time that you would require to review documents and conduct the mediation?

7. Would you be able to make room in your schedule in the first quarter of 2005 for this mediation?

Thank you for your attention.

Thomas M. Dillon
Attorney at Law
94220 Overseas Highway, #2B
Tavernier, FL 33070
Phone 305-240-1767
Fax 305-853-2693

11/10/2004
From: "Lawrence Watson" <lwats@Uww-adr.com>
To: "Thomas Dillon" <thomasdillon@terranova.net>
Sent: Tuesday, November 09, 2004 11:20 AM
Subject: RE: Mediation

Tom,

Thanks for the inquiry. In response to your specific questions:

1) No conflicts.
2) Possibly – 80% of my work is construction with a significant amount of industrial or “heavy” construction projects. With over 3000 mediations under my belt, it is quite possible I have run into the Haskell firm in the past. There has been, however, no significant level of frequency in dealing with them.
3) In addition to devoting a major portion of my mediation work to construction cases, I litigated waste water treatment plant cases in Dade, Bay, and Manatee counties in my former life as a construction trial lawyer. I am not at all uncomfortable dealing with construction issues involving treatment plants.
4) In your neck of the woods, try Alan Greer of Richmond, Greer Weil et al, 305-373-4000 or Bruce Alexander, Booth Casey et al, 561-832-5900. Let me know if you need more.
5) I usually request each party to submit a brief (10-15 page) mediation statement 15 days out with any significant attachments (expert reports, key correspondence etc.) they feel appropriate. If the parties wish, I then suggest rebuttal statements 5 days out. While I will read everything I am sent, I try to discourage parties from simply sending voluminous pleadings or notebooks filled with peripherally related project documents.
6) The time it takes for me to get ready depends on the volume of materials I am sent in advance. On average, I would suspect I spend 2-3 hours reading materials sent to me, but again, it depends on the size of the case, the number of parties and what I am sent. On a significant construction case involving an Owner, Prime Contractor and Designer – with experts in attendance – I generally like to plan on two days to mediate. The opening presentations usually consume one half of the first day, with caucusing and negotiations beginning in the early afternoon and going into the evening hours; we then reconvene early on the second day, finish the caucusing and move into closure. The goal is to get everyone on the way home by late afternoon of the second day. This “normal” schedule, however, varies considerably if there are more parties involved, i.e., subcontractors, vendors, or design consultants.
7) We are currently booking engagements in January and February. The first quarter of 2005 is available.

Tom, I would suggest you seriously consider holding a pre-mediation organizational conference immediately after you decide on a mediator. Over the years I have discovered that using the mediator to call and chair such a meeting, which can be held in person or by telephone conference, answers a lot of uncertainties concerning the mediation agenda, timing, location, duration, authority requirements, closure requirements etc. At the end of that meeting you should be able to give your client a pretty clear picture of what to expect at the mediation session and how much it will cost. If you go to my website at www.uww-adr.com you will find an article I have written entitled, “Effective Advocacy In Mediation – A Planning Guide” that may prove helpful.

Thanks again for considering me for your case. If you have any questions please do not hesitate to call.

Larry Watson
Upchurch Watson White & Max
407-661-1123

-----Original Message-----
From: Thomas Dillon [mailto:thomasdillon@terranova.net]
Sent: Tuesday, November 09, 2004 9:24 AM
To: Lawrence Watson
Subject: Mediation

Dear Mr. Watson,

I am an attorney in Tavernier, Florida. I represent the Key Largo Wastewater Treatment District, a special
district organized and existing under the laws of the State of Florida.

Your name has been suggested as a potential mediator in a construction dispute, briefly summarized as follows:

The District is a party to a design-build agreement with The Haskell Company as the design-builder, for construction of a sewage treatment plant and collection system.

The contract includes a disputes provision that requires non-binding mediation.

A dispute has arisen between the District and Haskell regarding delays. The principal matters at issue from my perspective are (1) whether the Haskell schedule could have been achieved even in the absence of delaying events, (2) whether the causes for delays to the project were outside the control of Haskell or concurrent with delays caused by factors within Haskell’s control, and (3) direct damages. Note that the parties have already resolved the question of indirect damages (e.g. extended overhead).

In order to complete my due diligence efforts with regard to potential mediators, I would appreciate your brief responses to the following questions:

1. Based on the information provided, are you aware of any conflicts of interest that would affect your ability to act as an impartial mediator?

2. Have you ever mediated a dispute to which Haskell was a party?

3. Do you have experience in mediating disputes similar to the above?

4. Can you provide the names of two or three persons whom I might contact regarding their experiences with you as a mediator?

5. Can you provide a general idea of the types of documents and other information that you might require from the parties in order to mediate these issues?

6. Can you provide an estimate of the amount of time that you would require to review documents and conduct the mediation?

7. Would you be able to make room in your schedule in the first quarter of 2005 for this mediation?

Thank you for your attention.

Thomas M. Dillon
94220 Overseas Highway, #2B
Tavernier, FL 33070
Phone 305-240-1767
Fax 305-853-2693
KEY LARGO WASTEWATER TREATMENT DISTRICT

Agenda Request Form

Meeting Date: November 17, 2004  Agenda Item No.

[ ] PUBLIC HEARING  [ ] RESOLUTION

[ ] DISCUSSION  [X] BID/RFP AWARD

[ ] GENERAL APPROVAL OF ITEM  [ ] CONSENT AGENDA

[ ] Other:

SUBJECT: Haskell Delay Claim

RECOMMENDED MOTION/ACTION: AWARD OF CONTRACT TO TRAUNER CONSULTING SERVICES.

Approved by General Manager __________________________
Date: ________________

<table>
<thead>
<tr>
<th>Originating Department: District Counsel</th>
</tr>
</thead>
<tbody>
<tr>
<td>Costs: $</td>
</tr>
<tr>
<td>Funding Source:</td>
</tr>
<tr>
<td>Acct. #</td>
</tr>
</tbody>
</table>

| Department Review:                       |
| [ ] District Counsel  [X]                 |
| [ ] General Manager                     |
| [ ] Finance                             |

| [ ] Engineering                         |
| [ ] Clerk                               |

| Advertised:                              |
| Date: ______________________________    |
| Paper: ________________________________ |
| [ ] Not Required                        |

Attachments:

All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.

Yes I have notified everyone______________
Or
Not applicable in this case______________:
Please initial one.

Summary Explanation/Background:
Award of contract to Trauner Consulting Services, Inc., to provide expert consulting services to District Counsel in connection with Haskell delay claim. Trauner will not be directed to proceed with the work unless negotiations with Haskell fail to produce a settlement of delay issues.

Resulting Board Action:

☐ Approved  ☐ Tabled  ☐ Disapproved  ☐ Recommendation Revised
October 26, 2004

Mr. Thomas Dillon
94220 Overseas Highway, #2B
Tavernier, FL 33070-3005

Re: Proposal for Services
   Key Largo Wastewater Treatment Plant
   Key Largo Wastewater Treatment District
   Board of Commissioners

Dear Mr. Dillon:

As requested, Trauner Consulting Services, Inc. (Trauner), is pleased to provide you with the following proposal for services regarding the above-referenced Project.

Proposed Scope of Services

The proposed scope of services is comprised of eight initial tasks, including: (1) perform a document survey; (2) review, index, and prepare document and issue files; (3) prepare an as-built schedule; (4) perform a bar chart schedule analysis; (5) present schedule analysis findings; (6) perform a liability analysis; (7) calculate damages; and, (8) present liability analysis findings.

Task 1 - Perform Document Survey

It is assumed that Trauner will travel to Key Largo, Florida to perform a document survey, during which it will be allowed to look over the Project documentation. During the document survey, Trauner will prepare an index of the documents made available, tag the documents that it will need to perform its analyses, and arrange for reproduction and delivery of the required documents to Trauner's office in Orlando, Florida.

Task 2 - Review, Index, and Prepare Document and Issue Files

Upon receipt of the Project documentation at Trauner's office in Orlando, Florida, Trauner will review the Project documents and prepare document and issue files as needed to perform its analyses.
Task 3 - Prepare an As-Built Schedule

Based on the information contained in the contemporaneous Project documentation provided (i.e. daily reports, correspondence, meeting minutes, monthly reports, etc.), Trauner will prepare a plot using the as-built Project information to identify the actual progress that was made on the Project on a day-by-day basis. The as-built plot will be used to aid Trauner in performing Task 4, Perform a Bar Chart Schedule Analysis. This proposal assumes that the as-built plot will encompass approximately 12 months of Project work.

Task 4 - Perform a Bar Chart Schedule Analysis

Trauner will analyze the initial Project schedule provided by the contractor (Bar Chart Schedule) to determine the contractor's plan for constructing the Project and to determine the initial critical path of the Project. The initial critical path will then be compared to the as-built Project schedule to determine how the Project was actually built relative to the contractor's initial plan, and to determine the critical delays and improvements to the Project as the Project progressed.

Task 5 - Presentation of Schedule Analysis Findings

Trauner will prepare a preliminary draft report for discussion purposes regarding its findings relative to Tasks 1 through 4 identified above. This draft report will include a graphic summary of the schedule analysis results identifying the Project activities that were delayed and improved, as well as the duration of the delays and improvements. It is assumed that Trauner will present this information orally upon completion of Tasks 1 through 4 at a meeting to be held at your office. During this meeting, Project representatives will have the opportunity to comment on and provide further information for consideration by Trauner regarding the schedule analysis that has been performed and the critical path of the Project that has been identified.

Task 6 - Perform Liability Analysis

Once the schedule analysis has been finalized, using the contemporaneous project documentation, Trauner will perform a liability analysis to determine what caused the delays and improvements to the Project's critical path and who is responsible for the delays and improvements that were incurred.

Task 7 - Presentation of Liability Analysis Findings

Trauner will prepare a preliminary draft report for discussion purposes regarding its findings relative to Task 6 identified above. This draft report will include a graphic summary of the liability analysis results identifying the parties liable for the critical delays and improvements to the Project, as well as a compilation of the exhibits used to determine liability. It is assumed that Trauner will
present this information orally upon completion of Task 6 at a meeting to be held at your office. During this meeting, Project representatives will have the opportunity to comment on and provide further information for consideration by Trauner regarding the liability analysis.

**Task 8 - Calculation of Damages**

Upon completion of Tasks 1 through 7 above, Trauner will identify the damages allowed by the Project contract and any modifications made to the Project contract by subsequent change orders or agreements. Trauner will then identify the amount of the damages that are chargeable and the party to whom the damages should be assessed.

To perform Tasks 1 through 8 identified above, the following man-hours have been estimated:

<table>
<thead>
<tr>
<th>Tasks</th>
<th>Principal</th>
<th>V. P.</th>
<th>Prof. Staff</th>
<th>Tech. Staff</th>
</tr>
</thead>
<tbody>
<tr>
<td>Task 1 - Perform Document Survey</td>
<td>0</td>
<td>10-12</td>
<td>10-12</td>
<td>0</td>
</tr>
<tr>
<td>Task 2 - Review, Index, and Prepare Document and Issue Files</td>
<td>0</td>
<td>2-4</td>
<td>36-40</td>
<td>16-20</td>
</tr>
<tr>
<td>Task 3 - Prepare As-Built Schedule</td>
<td>0</td>
<td>4-6</td>
<td>44-48</td>
<td>16-20</td>
</tr>
<tr>
<td>Task 4 - Perform Schedule Analysis</td>
<td>2-4</td>
<td>16-20</td>
<td>60-80</td>
<td>16-20</td>
</tr>
<tr>
<td>Task 5 - Presentation of Schedule Analysis Findings</td>
<td>0</td>
<td>10-12</td>
<td>10-12</td>
<td>0</td>
</tr>
<tr>
<td>Task 6 - Perform Liability Analysis</td>
<td>6-8</td>
<td>20-24</td>
<td>80-100</td>
<td>16-20</td>
</tr>
<tr>
<td>Task 7 - Calculation of Damages</td>
<td>0</td>
<td>1-2</td>
<td>6-8</td>
<td>0</td>
</tr>
<tr>
<td>Task 8 - Presentation of Liability Analysis Findings</td>
<td>0</td>
<td>10-12</td>
<td>10-12</td>
<td>0</td>
</tr>
</tbody>
</table>

**Total man-hours** 8-12 73-92 256-312 64-80

Based on the estimated man-hours identified above, and the attached fee schedule, the estimated cost of labor associated with the work scope identified is in the range of $51,625 - $64,320. Trauner believes that the services required by this assignment can best be provided by me, with assistance from professional staff in the Orlando, Florida, office. Thus, I have enclosed my CV for your review. Travel time and travel-related expenses accrued from Trauner's Orlando, Florida, office will be billed to the Project. Although not anticipated, travel time and travel-related expenses
for Trauner staff traveling from one of Trauner’s other office locations to the Orlando, Florida, office will not be billed to the Project. As requested, any expenses that are chargeable to the Project will be billed in accordance with Florida Statues 112.061.

The work scope and estimate provided herein is based on Trauner’s experience performing this type of work. All services will be billed hourly in accordance with the attached fee schedule, except for the modifications previously identified in this proposal. Trauner will not exceed its estimate without providing notification of added scope and budget. Please note that this estimate does not include litigation support. If required, Trauner will provide litigation support on an hourly basis in accordance with the attached fee schedule.

We look forward to working with you on this Project and are ready to begin upon your acceptance of this proposal. Please do not hesitate to call if you have any questions.

Sincerely,
TRAUNER CONSULTING SERVICES, INC.

[Signature]

Robert H. Robinson Jr., P.E.
Vice President

cc: Lizanne Cotton

Attachment

Acceptance Signature: __________________________ Title: __________________________ Date: __________________________
**FEE SCHEDULE**

<table>
<thead>
<tr>
<th>Staff Type</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive Staff</td>
<td>$185 - $325/ Hour</td>
</tr>
<tr>
<td>Professional Staff</td>
<td>$95 - $150/ Hour</td>
</tr>
<tr>
<td>Technical Staff</td>
<td>$55 - $75/ Hour</td>
</tr>
<tr>
<td>Support Staff</td>
<td>$55/ Hour</td>
</tr>
</tbody>
</table>

A. **LABOR EXPENSES**

Labor Expenses will be billed for actual services rendered on an hourly basis, in accordance with the above rates. This fee schedule reflects the rates that are in effect at the time of agreement. These rates are subject to change one year after services commence. Hourly billings will be to the nearest quarter of an hour. Certain technical experts will be billed at rates that may be higher or lower than the fee schedule rates. These technical experts will be named and rates will be provided and agreed to prior to proceeding with the work.

B. **DIRECT EXPENSES**

Direct Expenses are those costs incurred in connection with the project, including, but not limited to, transportation costs, meals and lodging, computer services, telephone, printing, binding and reproduction charges, all costs associated with outside services and facilities, and other similar costs. Reimbursement for Direct Expenses are in addition to Labor Expenses and will be invoiced at actual cost.

C. **INVOICING**

Invoices will be forwarded monthly and are payable upon receipt. Labor Expenses, legal fees, and other costs related to the collection of past due amounts will be paid by the client owing such past due amounts. In addition, invoices not paid within 30 days of the invoice date will incur a service charge of 1½% per month for as long as the invoice remains unpaid.
Key Largo Wastewater Treatment District
Letter Agreement with
Trauner Consulting Services, Inc.

Addendum #1

This Addendum #1 is made a part of that certain letter agreement dated October 26, 2004, reflecting consulting services to be performed by Trauner Consulting Services, Inc. (Trauner), for the Key Largo Wastewater Treatment District (District).

1. The purpose of this Agreement is to secure a disinterested expert opinion by Trauner as to the issues described in the Agreement.

2. Trauner is being retained by the District as an expert consultant. All communications between the District and Trauner will be through or as directed by Thomas M. Dillon, District Counsel. The opinions, calculations, findings, reports, and other results of Trauner's work are to be considered attorney work product and confidential until such time as District Counsel may determine to use Trauner as a testifying expert.

3. Although District Counsel may direct Trauner's attention to particular facts and/or request Trauner's opinion regarding the implications of certain facts, Trauner should not interpret those actions as efforts to pre-determine or influence the results of Trauner's efforts. Trauner shall have access to all documents and percipient persons as Trauner believes necessary to render complete and unbiased opinions.

4. Trauner is advised that the underlying dispute is being negotiated between the District and its Design-Builder, and that there is a possibility of settlement of this dispute. Therefore, Trauner is directed to refrain from doing any work or incurring any charges on behalf of the District until advised by District Counsel to proceed.

5. The District is a special district organized and existing under the laws of the State of Florida, and is exempt from state and local sales and use taxes. The District will provide a certificate of tax exemption on request.

Agreed and Accepted:

Trauner Consulting Services, Inc. 

By: ____________________________ 
Robert H. Robinson, Jr., P.E. 
Its: Vice President

Key Largo Wastewater Treatment District 

By: ____________________________ 
Charles F. Fishburn 
Its: General Manager

Dated: ____________________________ 
Dated: ____________________________
TAB 6
KEY LARGO WASTEWATER TREATMENT DISTRICT
Agenda Request Form

Meeting Date: Nov. 17, 2004  Agenda Item No.

[ ] PUBLIC HEARING  [ ] RESOLUTION
[X] DISCUSSION  [ ] BID/RFP AWARD
[] GENERAL APPROVAL OF ITEM  [ ] CONSENT AGENDA
[] Other:

SUBJECT: Key Largo Park Status

RECOMMENDED MOTION/ACTION: Discussion

Approved by General Manager __________________________
Date: __________________

<table>
<thead>
<tr>
<th>Originating Department: General Manager</th>
<th>Costs: $</th>
<th>Attachments: N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department Review:</td>
<td>Funding Source: Acct. #</td>
<td></td>
</tr>
<tr>
<td>[ ] District Counsel _______</td>
<td>[ ] Engineering____</td>
<td></td>
</tr>
<tr>
<td>[ ] General Manager ____</td>
<td>[ ] Clerk____</td>
<td></td>
</tr>
<tr>
<td>[ ] Finance _____</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Advertised:                           |                     |                  |
| Date: __________________             |                     |                  |
| Paper: __________________           |                     |                  |
| [X] Not Required                    |                     |                  |

All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.

Yes I have notified everyone________________
or
Not applicable in this case______________:
Please initial one.

Summary Explanation/Background: D.N. Higgins again seen to be backing away from starting the Key Largo Park Project. Staff will discuss options with the Board.

Resulting Board Action:
☐ Approved  ☐ Tabled  ☐ Disapproved  ☐ Recommendation Revised
KEY LARGO WASTEWATER TREATMENT DISTRICT
Agenda Request Form

Meeting Date: Nov. 17, 2004

[ ] PUBLIC HEARING [ ] RESOLUTION
[X] DISCUSSION [ ] BID/RFP AWARD
[ ] GENERAL APPROVAL OF ITEM [ ] CONSENT AGENDA
[ ] Other:

SUBJECT: Roevac Purchase Order

RECOMMENDED MOTION/ACTION:

Approved by General Manager ______________________
Date: __________________

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Costs: $</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Manager</td>
<td></td>
</tr>
</tbody>
</table>

| Funding Source:         |         |
| Acct. #                  |         |

<table>
<thead>
<tr>
<th>Department Review:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>[ ] District Counsel</td>
<td>[ ] Engineering</td>
</tr>
<tr>
<td>[ ] General Manager</td>
<td>[ ] Clerk</td>
</tr>
<tr>
<td>[ ] Finance</td>
<td></td>
</tr>
</tbody>
</table>

| Advertised:             |        |
| Date:                   |         |
| Paper:                  |         |
| [X] Not Required        |         |

All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.

| Yes I have notified everyone |        |
| or Not applicable in this case |         |

Summary Explanation/Background: Roevac Germany will meet in Key Largo with Staff on November 16, 2004. Staff will update the Board on Key Largo Trailer Village & Key Largo Park on Nov. 17, 2004.

Resulting Board Action:
☐ Approved   ☐ Tabled   ☐ Disapproved   ☐ Recommendation Revised
TAB 8
KEY LARGO WASTEWATER TREATMENT DISTRICT

Agenda Request Form

Meeting Date: November 17, 2004

Agenda Item No.

[ ] PUBLIC HEARING
[ ] RESOLUTION
[ ] DISCUSSION
[ ] BID/RFP AWARD
[ ] GENERAL APPROVAL OF ITEM
[ ] CONSENT AGENDA

[ ] Other:

SUBJECT: A letter of First Assignment to evaluate fixed monthly fees & system development charges

RECOMMENDED MOTION/ACTION: Approval of Letter.

Approved by General Manager __________________________
Date: ____________________

Originating Department: General Manager

Costs: Approximately $ __________
Funding Source:
Acct. # __________

Department Review:
[ ] District Counsel ________
[ ] General Manager _______
[ ] Finance ______

[ ] Engineering______
[ ] Clerk______

Advertised:
Date: ________________
Paper: ________________
[ ] Not Required

All parties that have an interest in this agenda item must be notified of meeting date and time. The following box must be filled out to be on agenda.

Yes I have notified everyone______________
or
Not applicable in this case______________

Please initial one.

Summary Explanation/Background: The contract with PRMG was approved at the Nov. 3, 2004 Board Meeting. Along with the contract was the first assignment letter for PRMG to evaluate fixed monthly fees and system development charges for homes and commercial properties. The Board requested that the letter be brought back for discussion before it is sent out.

Resulting Board Action:
☐ Approved    ☐ Tabled    ☐ Disapproved    ☐ Recommendation Revised
October 26, 2004

Robert J. Ori, President
Public Resources Management Group, Inc.
341 North Maitland Avenue Suite 300
Maitland, FL 32751

RE: Consulting Service Agreement

Dear Mr. Ori:

In anticipation of the formulation of wastewater rates and the development of a detailed utility ordinance and rate resolution for adoption by the Key Largo Wastewater Treatment District Board, the District requests Public Resources Management Group (PRMG), under our consulting services agreement with PRMG, to provide the following:

1. The District desires an opinion regarding charging of a fixed monthly rate for each house, RV site, hotel room, etc., regardless of whether it is occupied, and a fixed monthly rate for a lot for which the owner has requested a connection but which has not yet been improved with a structure. Expand this discussion to include how to charge businesses that do not fit the dwelling unit concept while still avoiding water flow based rates, (e.g. restaurants, laundromats etc.)

2. The District desires the same opinion relative to system development charges for homes RV sites, hotel rooms, etc.

In rendering these opinions, we are particularly interested in your understanding of the common or standard practices of sewer utilities in addressing these issues, and your opinion of the fairest way to approach them. If you are aware of any approaches that have been rejected or approved by Florida regulatory agencies or courts, we would appreciate your thoughts about those instances, as well.

Once we complete this study we can move forward on rates and system development change for our current projects and future projects.

Please provide an estimate of the cost of the above services based on no travel required and only teleconferences.

Sincerely,

Charles F. Fishburn
General Manager, KLWTD
This is additional information for:

Agenda Item No. 8 Key Largo Park update under General Manager’s report, TAB 6
November 12, 2004

Mr. Charles F. Fishburn  
General Manager, KLWTD  
Key Largo Wastewater Treatment District  
P.O. Box 491  
Key Largo, FL 33037  
Phone: 305-451-5105  
Fax: 305-852-2477

RE: Notice to Proceed  
Key Largo Park

Dear Mr. Fishburn:

We are responding to your letter dated November 5, 2004. We are now in receipt of marked up revised plans for the Key Largo Park project. We can now prepare a change order request to detail changes in compensation, and project timing. We have a target date to submit a change order request of November 24, 2004. Once a change order is agreed to by both parties we will accept a Notice to Proceed date.

Please feel free to contact me at 734-996-9500 with any questions or concerns.

Sincerely,

DOUGLAS N. HIGGINS, INC.

[Signature]

Daniel N. Higgins  
Vice President

cc: Walter Messer, D.N.Higgins, Inc. Project Manager
November 5, 2004

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

RE: Notice to Proceed
VIA: Facsimile: 734-995-5480 and first class mail

Dear Mr. Higgins:

A month has passed since we sent you a notice to proceed. In that Letter we asked that you “examine the revised plans and specifications and prepare a change order for District consideration, covering changes in compensation and project timing that may be required as a result of these project changes.” We asked that you respond within ten working days from the date of the letter, and if that were not possible, to let us know when you would be in a position to proceed.

Although Walt Messer of your company has been intimately involved in the planning and design for Key Largo Park, and has met with me twice to review aspects of this project, we have had no written response from you regarding timing, cost, or other issues to be addressed in response to our recent letter.

Please be advised that we need a substantial written response from you on this project by November 12, 2004.

Sincerely,

Charles F. Fishburn, General Manager, K.L.W.T.D.

CC: Mr. Walt Messer, Hand Delivered
Key Largo Wastewater Treatment District Board
District Counsel Thomas Dillon

Board of Commissioners: Chairman Gary Bauman, Cris Beaty, Charles Brooks, Andrew Tobin
October 5, 2004

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

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

Dear Mr. Higgins:

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

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

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

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

Yours,

Charles F. Fishburn
General Manager

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

Board of Commissioners: Chairman Gary Bauman, Andrew Tobin, Cris Beaty, Charles Brooks, Jerry Wilkins
July 16, 2004

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

Re: Contract between D. N. Higgins, Inc., and Key Largo Wastewater Treatment District

Dear Mr. Higgins,

I acknowledge receipt of your letter of July 14, 2004 regarding the captioned contract ("Contract"). Please direct all future communications to me.

The Key Largo Wastewater Treatment District ("District") cannot agree to your demand to be compensated for increased costs of performing the contract, for the following reasons:

Paragraph 2.3 of the Contract provides that "A Notice to Proceed may be given at any time within thirty (30) days after written confirmation of receipt by KLWTD of the Florida Department of Environmental Protection grant." As D. N. Higgins, Inc. ("Higgins") was aware at the time of contracting, the Florida Department of Environmental Protection grant would not be issued until the District had received federal funding for the wastewater treatment plant that will receive the sewage to be transported through the collection system to be constructed by Higgins. Obviously, there would be little point in building a collection system that was not associated with a treatment plant. It is the position of the District that, although the Florida Department of Environmental Protection grant has been approved, the District cannot yet receive the funds, and therefore the grant has not been received as contemplated by Paragraph 2.3 of the Contract.

The District has signed all of the paper work to receive the grant that will fund construction of the wastewater treatment plant, and expects to receive the signed grant agreement in the near future. At that time, the District intends to issue a notice to proceed to Higgins.

Your letter implies that you believe that Higgins is entitled under the Contract to demand damages for delay or, in the alternative, to terminate the Contract. We believe that such an act on the part of Higgins would constitute bad faith and a breach of contract. Chief among our reasons for this belief, as explained above, is the obvious fact that the time for issuance of the notice to proceed has not yet occurred.

Further, note that Contract Paragraph 5.19 lists the reasons for which Higgins may terminate the contract. Failure to issue a timely notice to proceed is not among them. Contract Paragraph 7.7 provides that "It is expressly agreed that the Contractor's right to seek an extension of time as provided in this Article is the Contractor's sole and exclusive remedy in the event of a delay and that in no event shall the Contractor be entitled to recover damages for any delay, regardless of the cause.
or causes for such delay." Thus, even if the District had improperly delayed issuance of the notice to proceed, Higgins's sole remedy is a time extension.

Clauses providing for "no damages for delay," except in the case of fraud, bad faith, or active interference by the owner, are legal and enforceable. See Triple R Paving, Inc., v. Broward County, 774 So.2d 50 (Fla. 4th DCA 2000); Newberry Square Dev. Corp. v. Southern Landmark, Inc., 578 So. 2d 750 (Fla. 1st DCA 1991); Southern Gulf Util., Inc. v. Boca Ciega Sanitary Dist., 238 So. 2d 458 (Fla. 2d DCA 1970); see also McIntire v. Green-Tree Communities, Inc., 318 So. 2d 197 (Fla. 2d DCA 1975); Peter Kiewit Sons' Co. v. Iowa S. Util. Co., 355 F. Supp. 376 (S.D. Iowa 1973); Williams Elec. Co. v. Metric Constructors, Inc., 325 S.C. 129, 480 S.E.2d 447 (S.C. 1997). Clearly, the District is not guilty of fraud, bad faith, or active interference in the contract; the delay is entirely due to unanticipated delays in obtaining approval of federal funds for construction of the wastewater treatment plant.

Please be advised that if Higgins attempts to cancel the Contract unilaterally, the District will treat that attempt as a breach of contract and will seek contract damages against Higgins and its sureties.

Yours truly,

Charles F. Fishburn
General Manager

CC:

Dobson-McOmber Agency, Inc.
P.O. Box 1348
Ann Arbor, Michigan 48106-1348

Hartford Accident and Indemnity Co.
P.O. Box 3001
Troy, Michigan 48007
July 14, 2004

Ms. Faith Doyle  
K.L.W.T.D. Board Clerk  
Key Largo Wastewater Treatment District  
P.O. Box 491  
Key Largo, FL 33037  
Phone: 305-451-5105  
Fax: 407-629-6963

RE: Contract by and between Douglas N. Higgins, Inc. and Key Largo Wastewater Treatment District

Dear Ms. Doyle:

We are writing regarding the above referenced contract executed on June 25, 2003. The Key Largo Wastewater Treatment District has failed to issue a Notice to Proceed for more than one year. Every year construction costs go up and in the past year construction costs have gone up extraordinarily. The extreme delay of the Notice to Proceed is due to no fault of Douglas N. Higgins, Inc. and therefore we will need compensation for our increased costs.

Once the Notice to Proceed is ready to be issued please notify us prior to issuance. We will document all of our increased costs and submit them to the Key Largo Wastewater Treatment District for review and approval. If the Key Largo Wastewater Treatment District is not willing to compensate Douglas N. Higgins, Inc. for documented increased costs please consider this letter as notification that we are terminating our contract.

Please feel free to contact me at 734-996-9500 with any questions or concerns.

Sincerely

DOUGLAS N. HIGGINS, INC.

Daniel N. Higgins  
Vice President

cc: Walter Messer, D.N. Higgins, Inc. Project Manager
<table>
<thead>
<tr>
<th>Income</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>511000</td>
<td>3,000.00</td>
<td>3,400.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>511200</td>
<td>1,892.88</td>
<td>1,535.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>511200 - Payroll Taxes</td>
<td>1,452.84</td>
<td>1,150.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>511200 - Board Meeting Compensation</td>
<td>319.56</td>
<td>385.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>511200 - Employee Payroll</td>
<td>1,193.88</td>
<td>1,150.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Income</td>
<td>7,867.80</td>
<td>7,540.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Expense</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>511000</td>
<td>825.00</td>
<td>1,990.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>511011</td>
<td>625.00</td>
<td>1,090.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>511012</td>
<td>347.62</td>
<td>680.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>511013</td>
<td>371.93</td>
<td>780.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>511014</td>
<td>175.00</td>
<td>350.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>511015</td>
<td>175.00</td>
<td>350.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>511020</td>
<td>3,625.00</td>
<td>8,825.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>511020 - Payroll Taxes</td>
<td>1,452.84</td>
<td>1,150.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>511020 - Board Meeting Compensation</td>
<td>319.56</td>
<td>385.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>511020 - Employee Payroll</td>
<td>1,193.88</td>
<td>1,150.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Expense</td>
<td>11,638.00</td>
<td>27,050.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Surplus / Deficit</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Expense</td>
<td>4,778.00</td>
<td>1,515.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Surplus / Deficit</td>
<td>-35,445.77</td>
<td>-2,665.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: The table is a financial report showing income, expenses, and surpluses/deficits for a specific period.
This is additional information for:

Agenda Item No. 8 Key Largo Park update under General Manger’s report, TAB 6
November 5, 2004

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

RE: Notice to Proceed VIA: Facsimile: 734-995-5480 and first class mail

Dear Mr. Higgins:

A month has passed since we sent you a notice to proceed. In that Letter we asked that you “examine the revised plans and specifications and prepare a change order for District consideration, covering changes in compensation and project timing that may be required as a result of these project changes.” We asked that you respond within ten working days from the date of the letter, and if that were not possible, to let us know when you would be in a position to proceed.

Although Walt Messer of your company has been intimately involved in the planning and design for Key Largo Park, and has met with me twice to review aspects of this project, we have had no written response from you regarding timing, cost, or other issues to be addressed in response to our recent letter.

Please be advised that we need a substantial written response from you on this project by November 12, 2004.

Sincerely,

Charles F. Fishburn, General Manger, KLTWD

CC: Mr. Walt Messer, Hand Delivered
Key Largo Wastewater Treatment District Board
District Counsel Thomas Dillon

Board of Commissioners: Chairman Gary Bauman, Cris Beaty, Charles Brooks, Andrew Tobin
October 5, 2004

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

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

Dear Mr. Higgins:

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

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

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

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

Yours,

Charles F. Fishburn
General Manager

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

Board of Commissioners: Chairman Gary Bauman, Andrew Tobin, Cris Beaty, Charles Brooks, Jerry Wilkins
July 16, 2004

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

Re: Contract between D. N. Higgins, Inc., and Key Largo Wastewater Treatment District

Dear Mr. Higgins,

I acknowledge receipt of your letter of July 14, 2004 regarding the captioned contract ("Contract"). Please direct all future communications to me.

The Key Largo Wastewater Treatment District ("District") cannot agree to your demand to be compensated for increased costs of performing the contract, for the following reasons:

Paragraph 2.3 of the Contract provides that "A Notice to Proceed may be given at any time within thirty (30) days after written confirmation of receipt by KLWTD of the Florida Department of Environmental Protection grant." As D. N. Higgins, Inc. ("Higgins") was aware at the time of contracting, the Florida Department of Environmental Protection grant would not be issued until the District had received federal funding for the wastewater treatment plant that will receive the sewage to be transported through the collection system to be constructed by Higgins. Obviously, there would be little point in building a collection system that was not associated with a treatment plant. It is the position of the District that, although the Florida Department of Environmental Protection grant has been approved, the District cannot yet receive the funds, and therefore the grant has not been received as contemplated by Paragraph 2.3 of the Contract.

The District has signed all of the paper work to receive the grant that will fund construction of the wastewater treatment plant, and expects to receive the signed grant agreement in the near future. At that time, the District intends to issue a notice to proceed to Higgins.

Your letter implies that you believe that Higgins is entitled under the Contract to demand damages for delay or, in the alternative, to terminate the Contract. We believe that such an act on the part of Higgins would constitute bad faith and a breach of contract. Chief among our reasons for this belief, as explained above, is the obvious fact that the time for issuance of the notice to proceed has not yet occurred.

Further, note that Contract Paragraph 5.19 lists the reasons for which Higgins may terminate the contract. Failure to issue a timely notice to proceed is not among them. Contract Paragraph 7.7 provides that "It is expressly agreed that the Contractor's right to seek an extension of time as provided in this Article is the Contractor's sole and exclusive remedy in the event of a delay and that no event shall the Contractor be entitled to recover damages for any delay, regardless of the cause."

Board of Commissioners: Chairman Gary Bauman, Andrew Tobin, Cris Beaty, Charles Brooks, Jerry Wilkins
or causes for such delay." Thus, even if the District had improperly delayed issuance of the notice to proceed, Higgins's sole remedy is a time extension.

Cases providing for "no damages for delay," except in the case of fraud, bad faith, or active interference by the owner, are legal and enforceable. See *Triple R Paving, Inc., v. Broward County*, 774 So.2d 50 (Fla. 4th DCA 2000); *Newberry Square Dev. Corp. v. Southern Landmark, Inc.*, 578 So.2d 750 (Fla. 1st DCA 1991); *Southern Gulf Util., Inc. v. Boca Ciega Sanitary Dist.*, 238 So. 2d 458 (Fla. 2d DCA 1970); see also *McIntire v. Green-Tree Communities, Inc.*, 318 So. 2d 197 (Fla. 2d DCA 1975); *Peter Kiewit Sons' Co. v. Iowa S. Util. Co.*, 355 F. Supp. 376 (S.D. Iowa 1973); *Williams Elec. Co. v. Metric Constructors, Inc.*, 325 S.C. 129, 480 S.E.2d 447 (S.C. 1997). Clearly, the District is not guilty of fraud, bad faith, or active interference in the contract; the delay is entirely due to unanticipated delays in obtaining approval of federal funds for construction of the wastewater treatment plant.

Please be advised that if Higgins attempts to cancel the Contract unilaterally, the District will treat that attempt as a breach of contract and will seek contract damages against Higgins and its sureties.

Yours truly,

Charles F. Fishburn
General Manager

(CC:

Dobson-McOmber Agency, Inc.
P.O. Box 1348
Ann Arbor, Michigan 48106-1348

Hartford Accident and Indemnity Co.
P.O. Box 3001
Troy, Michigan 48007
July 14, 2004

Ms. Faith Doyle
KLWTD Board Clerk
Key Largo Wastewater Treatment District
P.O. Box 491
Key Largo, FL 33037
Phone: 305-451-5105
Fax: 407-629-6963

RE: Contract by and between Douglas N. Higgins, Inc. and Key Largo Wastewater Treatment District

Dear Ms. Doyle:

We are writing regarding the above referenced contract executed on June 25, 2003. The Key Largo Wastewater Treatment District has failed to issue a Notice to Proceed for more than one year. Every year construction costs go up and in the past year construction costs have gone up extraordinarily. The extreme delay of the Notice to Proceed is due to no fault of Douglas N. Higgins, Inc. and therefore we will need compensation for our increased costs.

Once the Notice to Proceed is ready to be issued please notify us prior to issuance. We will document all of our increased costs and submit them to the Key Largo Wastewater Treatment District for review and approval. If the Key Largo Wastewater Treatment District is not willing to compensate Douglas N. Higgins, Inc. for documented increased costs please consider this letter as notification that we are terminating our contract.

Please feel free to contact me at 734-996-9500 with any questions or concerns.

Sincerely,

DOUGLAS N. HIGGINS, INC.

Daniel N. Higgins
Vice President

cc: Walter Messer, D.N.Higgins, Inc. Project Manager
This is additional information for:

Agenda Item No. 10 Rate Study under General Manager's report, TAB 8
Key Largo Wastewater Treatment District
Memorandum

To: Board Members and Staff

Date Nov. 15, 2004

From Glenn Patton

Subject: Rates & Rate Study

KLWTD rate issue considerations

In my opinion, a flat rate ($35) for KLWTD is not appropriate. A rate study should consider the present progressive rate presently established in Monroe Co.

I believe a progressive rate based on water consumption would be more acceptable to the community. The rate could be similar to the FKAA water rate and the Little Venice rate. (L. Vince $24.80 flat fee & $5.11 ptg to 12k gallons)

One of the most important issues involving User rates is when will the Income Revenues reach the breakeven point vs Operating Expenses. (see the attached spread sheet and chart). Obviously, the breakeven point will be achieved soon at a $50 rate as opposed to a $35 rate. Where will the revenue come from to pay for the operating deficit until the breakeven point is reached?

Once the KLWTD board reaches a tentative rate structure two comment public hears should held. The public hearings will serve to educate the public and provide feedback to the KLWTD board to adjust the rate if the feedback warrants changes.

Also, the KLWTD creating its own in house billing system is very expensive and in my opinion would not be cost effective. The most ideal situation would be for the FKAA to provide billing service for the KLWTD using their billing system for a per bill fee. I understand the Chuck Fishburn has inquired into the possibilities for FKAA doing the billing and at least has a verbal commitment from FKAA to do the billing. The KLWTD charges could be one line item and relatively easy to accomplish.

Most of these issues should be defined within the KLWTD rules and regulations. Please advise me as to the time table for the production of a rules and regulations manual for the KLWTD.
The chart is just a model in fact. The data in this chart has no actual basis.

For a study that may help the KAWC board.

The chart shows:
- Average Rate $550
- Difference
- $% Ops $50
- OP $Expense $300
- Revenue $300
- OP $Expenses $50

Note: The data in this chart is actual real data.

Model Chart: Revenue - Operating Expenses - Difference
October 6, 2004

Mr. Charles F. Fishburn
General Manager
Key Largo Wastewater Treatment District
PO Box 491
Key Largo, Florida 33037

Dear Mr. Fishburn:

In response to your letter of August 9th, our staff has met to discuss the possibilities of assisting the Key Largo Wastewater Treatment District (the District) in billing its customers. You asked that we evaluate four scenarios.

The first scenario was to provide monthly water flows to the District's customers on an electronic basis. This scenario is very easy and is a service that we currently provide to the City of Key West, Key Haven Utilities Corporation and North Key Largo Utilities for a monthly fee of $150.

Scenario 2 was to prepare and mail billing statements to the District's customers with receipts sent to the District. We can easily incorporate the District's customers into our billing system and generate either separate bills or combine the billing into a single bill as we do for our own customers with water and wastewater service. A combined bill clearly delineates the charges by type of service. We could also include a return envelope with any address the District wants for remittances.

The third scenario was to prepare, mail and collect monthly billing statements. We can prepare the bills as described above and receive payments either through the mail or at any of our customer service locations, which includes an office in Tavernier. The receipts would be deposited into our regular deposit account at the end of each business day and transferred electronically to the District's bank account the next day. In cases when the customer does not pay their entire combined bill, our system applies the payment to the charges based on a hierarchy defined in the system. The hierarchy as it stands today applies payments first to water
charges and then to wastewater charges. Therefore, any shortfall in payments would fall to the District.

Scenario 4 was to prepare, mail, collect and enforce (shut off water) monthly billing statements. Our legal staff advises us that, since we have an agreement for service to provide water service, we would not be able to discontinue water service to our customers for failure to pay for wastewater service provided by another entity.

From a purely procedural standpoint, we can easily incorporate the District’s billing into our utility billing system. Realistically, however, there may be other issues. If a customer receives a combined bill from the Authority, they will most likely assume that all customer service issues should be directed to the Authority. In many cases, such as interruption of service, billing disputes, abatement requests, rate questions, etc., we may not be the appropriate entity to address the problem. A system would need to be put into place to make customer service as seamless as possible for the customer.

We do not currently perform the services described in scenarios 2, 3 and 4 for any other entities and therefore we do not have a stated fee for such services nor have we yet attempted to establish what our fees would need to be to recover our costs. If the District remains interested in pursuing this effort, we will work on estimating a cost. Please let us know how you would like to proceed.

Very Truly Yours,

Kerry G. Shelby
Deputy Executive Director

Cc: Jim Reynolds, Executive Director, FKAA
    Harry Bethel, Director of Customer Service
October 6, 2004

Mr. Charles F. Fishburn
General Manager
Key Largo Wastewater Treatment District
PO Box 491
Key Largo, Florida 33037

Dear Mr. Fishburn:

In response to your letter of August 9th, our staff has met to discuss the possibilities of assisting the Key Largo Wastewater Treatment District (the District) in billing its customers. You asked that we evaluate four scenarios.

The first scenario was to provide monthly water flows to the District’s customers on an electronic basis. This scenario is very easy and is a service that we currently provide to the City of Key West, Key Haven Utilities Corporation and North Key Largo Utilities for a monthly fee of $150.

Scenario 2 was to prepare and mail billing statements to the District’s customers with receipts sent to the District. We can easily incorporate the District’s customers into our billing system and generate either separate bills or combine the billing into a single bill as we do for our own customers with water and wastewater service. A combined bill clearly delineates the charges by type of service. We could also include a return envelope with any address the District wants for remittances.

The third scenario was to prepare, mail and collect monthly billing statements. We can prepare the bills as described above and receive payments either through the mail or at any of our customer service locations, which includes an office in Tavernier. The receipts would be deposited into our regular deposit account at the end of each business day and transferred electronically to the District’s bank account the next day. In cases when the customer does not pay their entire combined bill, our system applies the payment to the charges based on a hierarchy defined in the system. The hierarchy as it stands today applies payments first to water...
charges and then to wastewater charges. Therefore, any shortfall in payments would fall to the
District.

Scenario 4 was to prepare, mail, collect and enforce (shut off water) monthly billing statements.
Our legal staff advises us that, since we have an agreement for service to provide water service,
we would not be able to discontinue water service to our customers for failure to pay for
wastewater service provided by another entity.

From a purely procedural standpoint, we can easily incorporate the District’s billing into our
utility billing system. Realistically, however, there may be other issues. If a customer receives a
combined bill from the Authority, they will most likely assume that all customer service issues
should be directed to the Authority. In many cases, such as interruption of service, billing
disputes, abatement requests, rate questions, etc., we may not be the appropriate entity to address
the problem. A system would need to be put into place to make customer service as seamless as
possible for the customer.

We do not currently perform the services described in scenarios 2, 3 and 4 for any other entities
and therefore we do not have a stated fee for such services nor have we yet attempted to establish
what our fees would need to be to recover our costs. If the District remains interested in
pursuing this effort, we will work on estimating a cost. Please let us know how you would like
to proceed.

Very Truly Yours,

Kerry A. Shelby
Deputy Executive Director

Cc: Jim Reynolds, Executive Director, FKAA
    Harry Bethel, Director of Customer Service