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 District Clerk at 305-451-4019 at least 48 hours in advance to request accommodations.

A. CALL TO ORDER - PLEASE MUTE CELL PHONES

B. PLEDGE OF ALLEGIANCE

C. ROLL CALL

D. APPROVAL OF AGENDA WITH ANY ADDITIONS, DELETIONS, OR CONTINUANCES

E. ELECTIONS OF CHAIRMAN, VICE-CHAIRMAN, SECRETARY-TREASURE
F. PUBLIC COMMENT
   Individual comments have a 3 minute limit; Organizations have a 5 minute limit. General comment (non-agenda items) will be heard at this time; Specific agenda items will be heard right before the item. Speaker cards must be turned in before the meeting starts.

G. ACTION ITEMS
   1. Minutes of Nov. 5, 2013

H. REPORTS
   2. Update on RFP for Refinancing

I. DISCUSSION ITEMS
   3. Extension of General Manager’s Contract
   4. Termination/Hiring Policy
   5. Commercial Grinder Pump Policy

J. COMMISSIONER’S ROUNDTABLE

K. ADJOURNMENT

MISSION STATEMENT:
"The Mission of the Key Largo Wastewater Treatment District is to preserve and protect the delicate ecosystem of the Florida Keys while providing exceptional customer service."
KEY LARGO WASTEWATER TREATMENT DISTRICT
Agenda Request Form

Meeting Date: Nov. 12, 2013

[ ] PUBLIC HEARING
[ ] DISCUSSION
[X] ACTION ITEM
[ ] Other:

SUBJECT: Minutes of Nov. 5, 2013

RECOMMENDED MOTION/ACTION: The approval of minutes with any deletion, additions or corrections.

Approved by General Manager
Date: 11/7/2013

Originating Department: Clerk

Costs: $  
Funding Source:

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

Engineering  
[X] Clerk
[Operations] 

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

Summary Explanation/Background:

Resulting Board Action:

[] Approved  [] Tabled  [] Disapproved  [] Recommendation Revised
The Key Largo Wastewater Treatment District Board of Commissioners met for a Commission Meeting at 4:02 PM. Present were Chairman Majeska, Commissioners, Norman Higgins, Andy Tobin, and Steve Gibbs. Also present were the General Manager, Margaret Blank, Chief Information Officer, Paul Christian, General Counsel, Ray Giglio, District Clerk Carol Walker, and other appropriate District Staff.

Commissioner Higgins led the Pledge of Allegiance.

APPROVAL OF AGENDA
Commissioner Tobin requested that the Elections be put off until the Nov. 12th. Commissioner Gibbs requested that Legal give a report on his Letter to Metro and a discussion on moving the November 19th meeting.

Motion: Commissioner Tobin made a motion to approve the agenda as amended. Commissioner Gibbs seconded the motion.

Vote on Motion

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Motion passed 4 to 0

PUBLIC COMMENT
Name & Address
D.A. Aldridge, Tavernier, FL
Subject
Grievance Policy

ENGINEER'S REPORT
N/A
BULK ITEMS  
Minutes of Oct. 15, 2013

Motion: Commissioner Higgins made a motion to approve the Bulk Items. Commissioner Tobin seconded the motion.

Vote on Motion

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Motion passed 4 to 0

EDU Adjustment of AK#1590070
Moved to December 10, 2013 meeting.

FINANCIAL REPORT
Pending Payments
Connie Fazio reviewed the Pending Payments and answered Commissioners' questions. She explained that the revenue report will be done once a month to better explain what has happened in the month.

Motion: Commissioner Higgins made a motion to approve the pending payments of Nov. 5, 2013 contingent on the availability of funds. Commissioner Gibbs seconded the motion.

Vote on Motion

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Motion passed 4 to 0

Health Insurance

Motion: Commissioner Tobin made a motion to approve the contract for Health Insurance for 2014 with the Florida League of Cities for a monthly rate of $758.58 per employee. Commissioner Gibbs seconded the motion.

Vote on Motion

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Commissioner Gibbs
Commissioner Tobin
Commissioner Asdourian

Absence

Motion passed 4 to 0

COMMISSIONER'S ITEMS
Moving November 19th meeting

Motion: Commissioner Tobin made a motion to start the November 19, 2013 at whatever time County Commissioner Caruthers would be able to attend. Commissioner Higgins seconded the motion.

Vote on Motion

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Motion passed 4 to 0

OPERATIONS REPORT
WWTP Headworks Barscreen Rehabilitation

Motion: Commissioner Higgins made a motion to approve the WWTP Headworks Barscreen Rehabilitation in the amount of $22,514.00. Commissioner Gibbs seconded the motion.

Vote on Motion

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Motion passed 4 to 0

Collections Vactron Rehabilitation

Motion: Commissioner Higgins made a motion to approve the Collections Vactron Rehabilitation in the amount of $11,723.65. Commissioner Gibbs seconded the motion.

Vote on Motion

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KLWTD Board of Commissioners
Board Meeting
Nov. 5, 2013
Time Extension

Motion: Commissioner Higgins made a motion to extend the meeting 30 minutes. Commissioner Tobin seconded the motion.

Vote on Motion

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Motion passed 3 to 1

LEGAL COUNSEL REPORT

Grievance Policy

The Board reviewed the policy.

Motion: Commissioner Higgins made a motion to extend the meeting 30 minutes. Commissioner Gibbs seconded the motion.

Vote on Motion

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Motion passed 4 to 0

The Board directed staff to remove the Board from the Grievance Policy.

Letter to Metro

Commissioner Gibbs requested an update on the letter when it is sent out.

ADJOURNMENT

The KLWTD Board adjourned the Board Meeting at 6:43 PM.
The KLWTD meeting minutes of Nov. 5, 2013 were approved on Nov. 12, 2013.

________________________________________

Chairman

________________________________________

Carol Walker, CMC District Clerk
TAB 2
SUBJECT: Update on Refinancing RFP

RECOMMENDED MOTION/ACTION:

Approved by General Manager

Date: 11/12/13

Summary Explanation/Background: Paul Christian will give an update on the current status of the Refinancing RFP.

Resulting Board Action:

☐ Approved  ☐ Tabled  ☐ Disapproved  ☐ Recommendation Revised
KEY LARGO WASTEWATER TREATMENT DISTRICT
Agenda Request Form

Meeting Date: Nov. 12, 2013
Agenda Item No. 3

[ ] PUBLIC HEARING
[X] DISCUSSION
[ ] ACTION ITEM
[ ] Other:

SUBJECT: General Manager's Contract Extension

RECOMMENDED MOTION/ACTION:

Approved by General Manager ______________________
Date: __11/7/2013__

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<th>Originating Department: General Manager</th>
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<td>[ ] District Counsel</td>
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<td>[ ] Finance</td>
<td>[Operations]</td>
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Advertised:
Date: ______________________
Paper: ______________________
[X] Not Required

Summary Explanation/Background: The General Manager is requesting a 6 month extension.

Resulting Board Action:

☐ Approved  ☐ Tabled  ☐ Disapproved  ☐ Recommendation Revised
KEY LARGO WASTEWATER TREATMENT DISTRICT
EMPLOYMENT CONTRACT

THIS Employment Contract is entered into as of the date first set forth below, by and between the Key Largo Wastewater Treatment District, an independent special district created by Chapter 2002-337, Laws of Florida (the "District"), and the Employee named below.

1. Employee Name and Address: Margaret Blank
   124 South Bay Harbor Drive
   Key Largo, FL 33037

2. Employee Title: General Manager

3. Employee Compensation Rate: $118,000/year;

4. Effective Date of this Employment Contract: December 1, 2012

5. Term of Employment Contract: Twelve Months

6. Date of first District Employment: May 1, 2005

7. General Provisions of Employment: See Attachment A

8. Employee Duties: See Attachment B.

9. Employee Performance Criteria: See Attachment C.

10. Special Terms of Employment:
    a. The Employee will consult with the Board of Commissioners before regarding any appointments or terminations of Senior Management personnel as defined in the District’s Staffing Plan as approved by the Board of Commissioners as may be amended with Board approval.
    b. Paragraph 6 of the Employment General Provisions is amended to provide that the District will pay the medical premiums for Employee under the District’s group medical plan, as approved by the District Board of Commissioners.

IN WITNESS WHEREOF, the parties hereto have executed this Employment Contract as of the date first written above.

Key Largo Wastewater Treatment District

By
Robert Majeska
Its Chairman

Employee

Margaret Blank, PE

Employment Contract – December 1, 2012
ATTACHMENT A
KEY LARGO WASTEWATER TREATMENT DISTRICT
EMPLOYMENT CONTRACT
GENERAL PROVISIONS FOR GENERAL MANAGER

THESE EMPLOYMENT CONTRACT GENERAL PROVISIONS FOR EXEMPT
EMPLOYEES ("General Provisions") specify the general terms of employment between the Key
Largo Wastewater Treatment District ("District") and the employee ("Employee") named in the
District Employment Contract ("Employment Contract") to which these terms are attached.
These General Provisions shall apply except to the extent they are modified or amended by the
express provisions of the Employment Contract.

1. Employment.
   a. The District hereby employs Employee, and Employee hereby accepts employment with
      the District, on the terms set forth in the Employment Contract.
   b. The Employment Contract is an "at will" agreement.
   c. Either party may terminate the Employment Contract without cause upon 60 days’
      written notice to the other party.
   d. In addition, the District may terminate the Employment Contract for disability or cause
      pursuant to Section 8 hereof.
   e. Employee is a public official as that term is used in the Florida Statutes, and is subject to
      all ethical and other legal constraints applicable to public officials.
   f. During the term of the Employment Contract, Employee shall devote Employee’s best
      efforts, knowledge, skill, and attention to the performance of Employee’s duties as
      aforesaid, except during such periods as Employee shall be ill, disabled, or on vacation as
      provided by the Employment Contract.
   g. Employee shall not accept any other employment for compensation without the prior
      written consent of the District Board, which consent may be withheld if the District
      Board reasonably believes that such employment would negatively affect the quality of
      the Employee’s services to the District.
   h. This is a full-time, salaried position, and the position is exempt from the overtime
      compensation requirements of the Fair Labor Standards Act.
   i. Employee shall keep all records that may be required to support any charge by the
      District against any grant or other funding for work performed by Employee.
2. **Place of Employment.** Employee shall be afforded an office and support services at the District offices located at 98880 Overseas Highway, Key Largo, Florida, and/or such other locations as may be specified in the Employment Contract.

3. **Compensation.**
   a. The compensation rate is stated in the Employment Contract.
   b. Employee’s wages shall be payable twice each month on the last business day before the sixteenth (16th) of the month and on the last business day of the month, commencing on the last day of the first month in which Employee performs services to the District under the Employment Contract.
   c. Employee shall pay the employee’s share of any payroll taxes required under applicable law, by payroll deduction, and District shall bear and be responsible for the employer’s share of any taxes on wages paid as required under applicable law.

4. **Vacation.** Employee shall be entitled to one and a half day of paid vacation for each month worked, and may begin to use such vacation after six months of paid employment. Employee shall schedule such vacation to minimize the inconvenience and other impacts to the District.

5. **Holidays.** Employee is entitled to paid holidays. The following days are District holidays: New Year’s Day, Birthday of Martin Luther King, Jr. (third Monday in January), Memorial Day, Independence Day, Labor Day, Veterans’ Day (November 11), Thanksgiving Day, Friday after Thanksgiving, Christmas Day, and one floating holiday. If any holiday falls on a Saturday, the holiday shall be observed on the preceding Friday; if any holiday falls on a Sunday, the holiday shall be observed on the following Monday.

6. **Benefits.**
   a. The Employee understands and agrees that the District has adopted a group medical plan and a 457(b) plan.
   b. The District shall afford Employee health insurance by way of the adopted group medical insurance plan under the provisions of the contributions set forth by the Board of Commissioners as may be from time to time amended. Additional coverage for Employee’s family may be available at a cost to Employee. Additional health and life related benefits may be available to Employee and Employee’s family at the expense of the Employee.
   c. The Employee, at the Employee’s discretion, may choose to contribute any portion or no portion of Employee’s pay to the District’s 457(b) plan. Should Employee choose to contribute; Employee may be entitled to a partial District match as provided by the decision of the Board of Commissioners which may be amended from time to time. The contributions may be limited by the plan’s maximum contribution guidelines. Employee should consult those guidelines for additional guidance.
   d. Employee’s participation in these plans is solely at Employee’s option.
   e. **IT IS THE RESPONSIBILITY OF EMPLOYEE TO BECOME FAMILIAR WITH THE TERMS OF THESE PLANS AND TO DETERMINE WHETHER OR NOT TO**
PARTICIPATE IN THE, OR ANY OF THEM AS EMPLOYEE DEEMS APPROPRIATE. EMPLOYEE SHOULD NOTE THAT THESE PLANS MAY INCLUDE PROVISIONS THAT LIMIT THE TIMES AND CONDITIONS UNDER WHICH EMPLOYEE MAY ELECT TO PARTICIPATE IN THEM.

7. Travel Expenses. The District shall pay for or reimburse Employee in accordance with the District's standard policies for travel for the purpose of carrying on District business.
   a. The District's standard policies for reimbursement of travel expenses are those set forth in Florida Statutes Section 112.061;
   b. However, the District reimbursements rate for the use of a private vehicle on District business is the millage rate published by the United States Internal Revenue Service, as amended from time to time.

8. Termination for Disability or Cause. The Employment Contract may be terminated by the District Board upon any of the following events:
   a. The expiration of 30 days following written notice given by the District Board to Employee of the District's election to terminate this Agreement following Employee's Disability. "Disability" means the inability of Employee to perform substantially all of the duties required of Employee by the Employment Contract by reason of physical or mental incapacity for a period of one month, or a period of more than 30 days in the aggregate in any 18 month period. "Disability" includes the death of Employee.
   b. A determination by the District Board that Cause exists to terminate the Employment Contract, and written notice of termination for Cause is given by the District Board to Employee. "Cause" means any of the following events or conditions:
      i. A material breach by Employee of any material provision of the Employment Contract.
      ii. Any act by Employee in violation of the obligations imposed upon public officials under applicable law.
      iii. Fraud or other dishonest act by Employee involving the District.
      iv. Employee's conviction of a felony.
   Such termination shall be effective upon the date specified in the written notice of termination, and may be effective immediately.

9. Notices. Any notice or other communication required or permitted to be given in connection with the Employment Contract shall be in writing and shall be deemed to have been duly given (a) when personally delivered, (b) on the business day following deposit of such notice with a reputable overnight courier service, or (c) sent by certified mail, return receipt requested, postage prepaid, as follows:
   If to the District:
   
   Chairman, District Board
   Key Largo Wastewater Treatment District
   P.O. Box 491
   Key Largo, Florida 33037
10. **Severability.** If any provision of the Employment Contract shall be held to be invalid or unenforceable, such provision shall be construed and enforced to the extent possible as if it had been more narrowly drawn so as not to be invalid or unenforceable, and such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision of the Employment Contract. However, if either party determines in good faith that, as a result of a provision of the Employment Contract being held invalid or unenforceable, the Employment Contract no longer serves the purposes for which it was written, that party may terminate the Employment Contract.

11. **Entire Agreement.** The Employment Contract, including the documents incorporated therein by reference sets forth the parties' final and entire agreement, and supersedes any and all prior understandings, with respect to the employment of Employee by the District.

12. **Assignment; Ratification of Agreement.** The Employment Contract is an agreement for personal services, and the District has determined to hire Employee on the basis of Employee’s personal qualifications. The Employee may not assign or delegate its rights or obligations under the Employment Contract, and any purported assignment or delegation of any such right or obligation without such consent shall be null and void.

13. **No Waiver.** No failure or delay by either party in exercising any right, option, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof, or the exercise of any other right, option, power, or privilege.

14. **Amendment.** The Employment Contract can only be amended, waived or terminated by a writing signed by both the District and Employee.

15. **Applicable Law.** The Employment Contract shall be governed by and construed and interpreted in accordance with the internal law of the State of Florida, without reference to its rules as to conflicts of law.

16. **Headings.** The section headings in the Employment Contract are for reference purposes only and shall not affect in any way the meaning or interpretation of the Employment Contract.
ATTACHMENT B
KEY LARGO WASTEWATER TREATMENT DISTRICT
EMPLOYMENT CONTRACT
DISTRICT GENERAL MANAGER DUTIES

ESSENTIAL FUNCTIONS The following duties are normal for this position. The omission of specific statements of the duties does not exclude them from the classification if the work is similar, related, or a logical assignment for this classification. Other duties may be required and assigned.

A. Executing Board's direction in identifying, selecting and contracting with rate consultants, auditors, insurance consultants, lab service contractors, consulting engineers, hydro geologists, and other consultants and professionals required by the District.

B. Providing management oversight over District employees, including employment, termination, compensation, discipline, and all other aspects of District employment.

C. Acting as custodian of the District's books and records in accordance with Florida Statutes Section 189.9.

D. As directed by the District Board, serving as intergovernmental liaison between the District and local governments within which the District provides wastewater service, including, without limitation, coordination of service extensions with applicable comprehensive plans, communicating with public officials on all matters that pertain to the District, attending governing board and staff meetings to discuss District issues.

E. Providing the Board, or individual members thereof, upon request, with data or information concerning District construction and operations, and providing advice and recommendations to the Board.

F. Coordinating with District's Chief Financial Officer, Engineer, and Counsel, and supervising other District staff.

G. Negotiating leases, contracts, and other agreements, including consultant services, for the District, subject to Board approval.

H. Overseeing all governmental filings.

I. Monitoring the performance of all terms and conditions in all leases, contracts, and agreements, and notifying the Board of known violations thereof.

J. Monitoring the operations and billing functions of the District and ensuring compliance with the Board's policy and direction.

K. Preparing annual reports.

L. Consulting with, and supervision of, contractors as reasonably required and necessary with regard to construction of capital projects.

M. In consultation with the District Engineer and District Counsel, as appropriated, issuing interpretations and clarifications of contract documents.
   a. Evaluating requests for substitutions or deviations therefrom.
   b. Providing recommendations concerning requests for substitutions or deviations therefrom.
   c. Preparing work orders.
   d. Monitoring all required project records.
   e. Reviewing applications for payment.
   f. Conducting comprehensive inspections of construction projects.
   g. Developing list of items needing completion or correction.

District Manager Duties
November 14, 2011
N. Negotiating contracts with engineers and other consultants regarding scope and cost of proposed contract change orders.

O. Monitoring to ensure that advances and reimbursements are consistent with funding and grant requirements

P. Monitoring to ensure that advances and reimbursements are consistent with funding and grant requirements

Q. Exercising due diligence with respect to construction management efforts consistent with governmental standards.
ATTACHMENT C
KEY LARGO WASTEWATER TREATMENT DISTRICT
EMPLOYMENT CONTRACT
DISTRICT GENERAL MANAGER PERFORMANCE CRITERIA

The purpose of this attachment to establish a PERFORMANCE CRITERIA for periodic evaluation particularly during the six-month probationary period. Criteria have been developed by Margaret Blank and the district board. The purpose being to establish a series of goals which can be reviewed periodically to determine the overall district progress and performance of the general manager.

Introduction TRANSITION PLAN

The purpose of this memorandum is to continue with the Transition Plan for the District.

Construction

There are also some major projects still in progress. These include the shallow back-up wells, the sludge handling system, the Intellipro upgrade, SCADA upgrades at the vacuum pump stations, serving unique properties, and serving the cold spot area on C-905.

All of these activities will require continued planning and oversight. They will still be generating questions and concerns from the public.

Operations

Operations id functioning well. The wastewater treatment plant is meeting AWT and because of that will be issued a new permit allowing the district to operate at lower staffing levels. I & I is+ no longer an issue in the collections system. However, staff will continue to monitor it.

The challenge for this year is to deal with the odor issue.

Transition

The District has been very successful at financing, designing and building its sanitary sewer system. However, we’re now entering the operations phase and we need to put the infrastructure in place to support our mission. Following is a list of areas that need attention.

1. Purchasing: The District has a solid purchasing policy. We’ve been very successful at using in-house resources to procure equipment and services related to construction. Now we need to translate that into a permanent, on-going function suitable for an operating utility. Some of the necessary tasks are listed below:

   A. Asset Management The District has purchased asset management software. This software is used by several municipalities and utilities in Florida. The major advantage is that this software interacts with ESRI to simplify tracking of maintenance on field assets such as pits and valves. Kick-off for the Asset Management is expected in December 2011.

   B. Inventory Control: The District has a series of spreadsheets for inventory control. This system must be integrated into our asset management software.

   C. Tracking: Provide a way for staff to follow up on requisitions and purchase orders.
2. **Finance/Accounting**: Note that the Chief Financial Officer reports to the Board and *not* to the General Manager. For the District to run smoothly as a utility, internal management reporting is required. At a minimum, regular reporting on the following is needed.

   A. Information on assessments and billings.
   B. Information on payroll, including pay rates, overtime, vacation and sick time taken.
   C. Internal reports as needed for operations and trending.
   D. Track contracts and work authorizations. Are we exceeding contract limits?

3. **Engineering/GIS**: When construction and design are complete, we will still need additional work to support utility operations.

   A. Utility maps. Utility maps are up-to-date and I use by Operations personnel.
   B. Vacuum system model. The District has a series of spreadsheets that were used to perform vacuum system loss calculations. Although they were adequate for design, it is very difficult and time-consuming to make changes. Staff intends to model the vacuum system using ESRI software. This will allow us to make changes and see their impact quickly and easily. This task has not been completed as it is not as urgent as other tasks.
   C. Force main model. The District has purchased SewerCad, which is the software that CPH used to design the force main. The model will allow us to help property owners' engineer identify the most efficient pump when tying into the force main. If we monitor pressures along the force main, the model will help us evaluate whether the force main is working as it should.

4. **Customer Tie-in Assistance**: Several businesses have expressed concern that their tie-in costs are extremely high. Although nearly all the package plant owners have tied in, there are about as many small businesses that need to tied in. These small businesses have never had any exposure to working with an engineer or working with the FDEP. They will need help from staff to guide them through the tie-in process. The District needs to make sure that at least one staff member is available to assist.

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**ADDITIONAL PERFORMANCE PROGRESS CRITERIA**

Board Specified
3. Fine-Tune Customer Service-
4. Records Availability (Electronically Web Access)
5. Adequate Backup/Background for Agenda Items
6. Staff Restructuring
7. Digitize reports Coordination between Departments Interrelated Reports Access
8. Staff Interrelated Cooperation and Coordination

Attachment C General Manager Performance Criteria
KEY LARGO WASTEWATER TREATMENT DISTRICT
Agenda Request Form

Meeting Date: Nov. 12, 2013

[ ] PUBLIC HEARING

[ ] RESOLUTION

[X] DISCUSSION

[ ] BID/RFP AWARD

[ ] ACTION ITEM

[ ] CONSENT AGENDA

[ ] Other:

SUBJECT: Termination/Hiring Policy

RECOMMENDED MOTION/ACTION:

Approved by General Manager

Date: 11/7/2013

Originating Department:
Commissioner Tobin

Costs: $  
Funding Source:  

Department Review:
[ ] District Counsel
general Manager
[ ] Finance

Engineering
Clerk
Operations

Advertised:
Date:  
Paper:  
[X] Not Required

Summary Explanation/Background: Commissioner Tobin will be requesting that Dale Morgado Esq. prepare the termination/hiring policy.

Resulting Board Action:

☐ Approved ☐ Tabled ☐ Disapproved ☐ Recommendation Revised
KEY LARGO WASTEWATER TREATMENT DISTRICT
Agenda Request Form

Meeting Date: Nov. 12, 2013

[ ] PUBLIC HEARING
[X] DISCUSSION
[ ] ACTION ITEM
[ ] Other:

SUBJECT: Commercial Properties Grinder Pump Policy

RECOMMENDED MOTION/ACTION:

Approved by General Manager
Date: 11/7/2013

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Summary Explanation/Background:

Resulting Board Action:

☐ Approved  ☐ Tabled  ☐ Disapproved  ☐ Recommendation Revised
Memo

To: KLWTD Board
From: Margaret Blank, PE
Date: October 30, 2013
Re: “Commercial” Tie-ins Update

Introduction

For the past couple of years, the District has struggled with the issue of whether to help non-residential properties tie into the force main. It became clear that a few very small properties appeared to be disproportionately affected by being given a force main tie-in rather than a gravity tie-in.

The issue for the District has never been a technical one. We can simply treat these very small businesses as we would a “unique” single family property. However, we have learned from our experience with the “unique” single family properties that the District will be obligated to expend an inordinate amount of resources on such properties. And those resources come primarily from the other rate-payers who do not receive a similar benefit.

Staff has been researching alternatives to help not only these few businesses, but also any business or non-residential parcel that might be struggling with their tie-in. Single family homes have access to the Community Development Block Grant (CDBG). While there are no grants available to small businesses, local banks do offer Small Business Administration (SBA) loans.

Another point to consider is that many small non-residential properties have already tied in. If we help only those who have not tied in, we run the risk of a legal or political backlash.

Financial Issues

While the District appears to look very solid financially, it is important to keep a few things in mind. One, our annual collection of assessments will decline faster than our debt payments. Unless the District receives additional funding, we will be paying our debts out of rates for years to come. Islamorada’s capital contribution narrows but does not close the gap. Two, our customers pay an average of $5,700 per EDU for the sewer project. That is approximately $1,400 more per EDU than customers elsewhere in the unincorporated area. In short, all of our customers are paying more than they should. Any assistance that the District itself provides to one customer comes out of the pockets of our other customers, who are already over-burdened by the project.

District staff is working hard to secure additional funding from state and federal sources. Until that happens, we are only transferring resources from one customer to another.
Legal Issues

Attached is a memorandum prepared by District Counsel. Essentially the District is grappling with the issue of “fairness”. The issue of providing single family homes with grinder pumps was very clear cut. A single family home with a force main connection is eligible to participate in the “unique” property program.

It is not so simple when it comes to non-residential properties. There are many complicating factors. Where is the flow cut-off? What is the rational basis for that? What if it's a situation where it's actually cheaper for them to tie-in with a grinder pump? This happens to be the case with many single family homes on the vacuum system. What if there's a change of use? Most non-residential properties with force main connections have already tied in. What about them? Non-residential and multi-family residential properties already receive a break because of the District's split assessment. How is that factored in?

It is easy to see how any program we come up with could face a successful legal challenge by a property owner who's been left out or who feels as though they shouldn't be asked to subsidize these customers.

Political Issues

The under-funded sewer mandate is burdensome on everyone throughout the Keys, but especially in the District's service area. We simply have not received enough funding to lower our assessments to the same level as those paid by customers elsewhere in the unincorporated area. This is primarily due to the inequitable distribution of the sales tax, which is collected County-wide. Currently, our best hope for fixing this problem is to seek state and federal funding. A recent analysis prepared by PRMG shows that if we receive $17M from the state this year, we can lower our rates by $9 per month, and we can lower assessments by 10.5%. In short, we can help all of our customers, not just a select few at the expense of the rest.

It should be noted that some of the customers who complain most vociferously about “unfair” treatment are those that actually have gotten the best end of the deal. In other words, we are never going to please everybody. We must recognize that we have a responsibility to all our customers. We need to be cautious about using their money to help a very few. And we need to be cautious about helping one class of customers in a way that causes us to take on unnecessary liability or legal risk. Again all of our customers pay the legal fees.

Conclusions and Recommendations

While the financial, legal and political issues are daunting, there is still help out there. Aside from continuing to pursue outside funding, one of the most promising avenues is to steer affected customers to SBA loans. I contacted the SBA’s Miami office, and explained the situation. I was told that there are SBA loans that can be used to finance pollution control measures. There are local banks that do SBA loans. I have contacted one so far, the largest SBA lender in the Florida Keys. I am still in the process of gathering information. Staff will simultaneously continue to pursue outside funding.

In the meantime, we need to remind all of our customers of their responsibility and legal obligation to tie into the sewer system.
Date: October 9, 2013

From: Ray Giglio, General Counsel

To: Commissioners, KLWTD

Re: Commercial Unique Properties

QUESTION PRESENTED:

Would it be legal for the District to mitigate the financial impact of connecting to the force main for one group or class of Commercial Unique Properties?

SHORT ANSWER:

It would be legal for the District to treat one group or class of customers differently as long as:

1) There are valid articulable reasons for doing so.
2) Those reasons are logically and rationally related to the facts and circumstances.
3) The policies adopted are fair and are uniformly applied.

BACKGROUND:

The District’s main responsibility is to provide a technically feasible system while keeping costs as low as possible for all customers. Therefore, the District was obligated to provide force main connections for many properties located along US1, regardless of size.

This policy kept the District’s construction costs—and system development charges—as low as possible. However, for some commercial property owners, connecting to the force main has turned out to be significantly more costly than connecting to a gravity cleanout. The owners of some of these properties along US 1 have complained to the District that being required to connect to the force main imposes an unfair burden on them.

The Board now wishes to determine if certain properties—particularly those with low flows—are being unduly burdened, and if so, if there is a way for the District to provide relief
that is consistent with the law and that is fair to our other customers who will be subsidizing this relief. This memo discusses whether, under what circumstances, and according to what standards, it would legal for the District to mitigate the financial impact of connecting to the force main for one group or class of the commercial properties affected.

DISCUSSION:

The essential question is whether the Key Largo Wastewater Treatment District can legally make a rule which affects a small group or class of the so-called Commercial Unique Properties. Specifically, whether it is permissible for the District to make a rule mitigating the financial impact that connecting to the force main will have on some of the these Commercial Unique Properties without granting that same relief to all of the Commercial Unique Properties.

In Florida, the courts use the *Arbitrary and Capricious* standard when reviewing the rule-making authority of an administrative agency. That means that when an agency like the KLWTD makes a decision, rule, or ruling without reasonable grounds or adequate consideration of the circumstances, that decision, rule, or ruling is said to be *Arbitrary and Capricious* and it can be invalidated by the courts on that ground.

There is no set standard for what constitutes an *Arbitrary and Capricious* decision, rule, or act. Nonetheless, generally speaking an act or ruling is considered to be *Arbitrary and Capricious* if there is an absence of a rational connection between the facts found and the choice made.

One section of Florida's **Administrative Procedure Act** addresses the issue of when a rule is arbitrary or capricious. That section states that, "A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational;"

Stated another way, a rule is *Arbitrary and Capricious* if there is no rational connection between the facts found and the choice made. The U.S. Supreme Court has explained that the *Arbitrary and Capricious* standard "require[s] the reviewing court to determine whether the agency has "examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a rational connection between the facts found and the choice made. [The reviewing court] must

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1 Presumably the smaller users with low flows.
2 As well as in every other state and in the Federal system
3 *Gen. Tele. Co. of Florida v. Florida Pub. Serv. Comm.*, 446 So. 2d 1063 (Fla. 1984); see generally Florida Appellate Practice §9.6 at 156.
4 *Natural Resources. v. U.S.*, 966 F.2d 1292, 97, (9th Cir.'92). See *Dravo Basic Materials Co., Inc. v. State, Dep't of Transp.*, 602 So. 2d 632, 634 (Fla. 1st DCA 1992).
5 Chapter 120, F.S. Note: the District is not subject to the Administrative Procedure Act.
6 Section 120.57 (1) (e) 2. d. F.S. [which discusses when an agency’s action may be based upon unadopted rules]
7 *Natural Resources. v. U.S.*, 966 F.2d 1292, 97, (9th Cir.'92)
consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment."\(^8\)

The U.S. District Court for the D.C. Circuit applies above-referenced test for whether a rule is *Arbitrary and Capricious* in myriad cases every year. For example, in a 1993 case\(^9\), the D.C. Circuit reviewed an action by the Nuclear Regulatory Commission ("NRC") to apportion costs among various regulated parties.\(^10\) NRC's governing statute directed it "to recover 100% of its costs from those who receive[d] its regulatory services and to allocate the costs fairly and equitably among those recipients."\(^11\)

In that case, NRC's proposed regulation would have recovered costs from each regulated class in proportion to the level of waste produced by the class's overall membership.\(^12\) But NRC still placed a uniform charge on each waste producer, without regard to that individual producer's waste output.\(^13\)

Because the NRC justified its action based on a "conclusory statement" that the charges "should be the same for all large fuel facility licensees," the D.C. Circuit invalidated NCR's determination as arbitrary and capricious.\(^14\) The court further explained that "no rationale [was] readily apparent" for the agency's decision, and the court "g[a]ve little weight to the possibility that the [agency] could pull a reasonable explanation out of the hat" based on the administrative record.\(^15\)

This D.C. Circuit case is interesting because like the NRC, the KLWTD is also dealing with the issue of how to apportion costs among users of its services. Unlike the NRC, the District must be careful not to make conclusory statements or assumptions. And, in order for any action taken by the District to be valid, the rationale for that action should be readily apparent.

For example, with respect to the so-called "commercial unique" properties, it could be argued that not supplying low-volume users with vacuum connections saved the District money. Therefore (it could be further argued) it is not "fair" to make those users pay for the cost of grinder pumps, and it would be more "fair" for the District as a whole to subsidize the grinder pumps these properties are now required to utilize.

However, based upon the decisions cited above, we must be aware that there are potential problems with the use of a conclusory term like "fair." Such a conclusory term is, in essence, a gratuitous assertion—and a gratuitous assertion may be denied gratuitously. The problem is that

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\(^9\) *Allied-Signal, Inc. v. United States Nuclear Regulatory Commission*, 988 F.2d 146 (D.C. Cir. 1993). This case is reference because its facts are not unlike the matter at hand.

\(^10\) Id. at 148

\(^11\) Id. (internal quotation marks omitted).

\(^12\) Id. at 152.

\(^13\) Id.

\(^14\) Id. at 152-53

\(^15\) Id. at 152

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it would be just as valid to make the argument that different properties have different characteristics and connection costs. Under that analysis, it would not be “fair” to subsidize a select group of property owners unless the connection costs of all property owners were equalized and everybody paid the same connection costs.

Therefore, the touchstone inquiries for determining whether a decision, rule, or ruling by an agency like the KLWTD is *Arbitrary and Capricious* are: whether it is supported by logic or the necessary facts, whether it is reasonable and rational, and whether the rule or ruling is fair and uniformly applied.

It is also worth noting that the Key Largo Wastewater Treatment Act\(^\text{16}\), the District’s Charter, specifically authorizes and empowers the District “To fix and collect rates, rentals, fees, and charges for the use of any wastewater management system facilities.\(^\text{17}\)

In addition, the Charter specifically states that “the rates, fees, or other charges to be fixed and collected with respect to the facilities and services of the District shall not be subject to supervision, regulation, or the rate-setting power of any bureau, board, commission, or other agency of the state or any political subdivision thereof.\(^\text{18}\)"

These sections of the Charter, especially when read in light of the provision that it “shall be liberally construed,”\(^\text{19}\) make it clear that the District has the exclusive authority to set fees, charges, and rates; and it has wide latitude and discretion in the exercise of that authority. The only real limitation or restriction on the District is that it not act in an *Arbitrary and Capricious* manner.

**CONCLUSION:**

With respect to any decision, rule, or ruling made by the KLWTD:

1) There must be articulable valid reasons for the policy (especially with respect to granting subsidies to a group or class of property owners).

2) Those reasons must be logically and rationally related to the facts and circumstances.

3) The policies adopted must be fair and must be uniformly applied.

\(^{16}\) 2002-337, L.O.F., as amended
\(^{17}\) Section 4.(2)(j)
\(^{18}\) Section 3. (6)
\(^{19}\) Section 12