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. 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.
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: Feb 4, 2014
Agenda Item No.

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

SUBJECT: Minutes of Jan. 21 2014

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

Approved by General Manager
Date: 1/30/2014

Originating Department: Clerk

Costs: $

Funding Source:

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

Engineering_____
Clerk_____
Operations________
Customer Service]

Attachments: Minutes

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 4:00 PM. Present were Chairman Steve Gibbs, Commissioners, Norman Higgins, Andy Tobin, David Asdourian, and Robby Majeska. Also present were Chief Information Officer, Paul Christian, General Counsel, Ray Giglio, District Clerk Carol Walker, and other appropriate District Staff.

Ed Castle led the Pledge of Allegiance.

APPROVAL OF AGENDA
Margaret Blank added an item on the Jan. 31, 2014 BOCC Meeting Change Order for Cudjo Key. Ray Giglio added an item on the Resolution to change the District's enabling legislation.

Motion: Commissioner Asdourian made a motion to approve the agenda as amended. Commissioner Higgins seconded the motion.

Vote on Motion

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<tr>
<th>Member</th>
<th>Yes</th>
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Motion passed 5 to 0

PUBLIC COMMENT
Name & Address  Subject
N/A

BULK ITEMS
Minutes of Jan 14, 2014

Motion: Commissioner Majeska made a motion to approve the Bulk Items of Jan. 21, 2014. Commissioner Asdourian seconded the motion.
CUSTOMER SERVICE

Tier 1 Exemption of AK 1691054

Motion: Commissioner Asdourian made a motion to approve the Tier 1 Exemption of AK 1691054 Resolution No. 01-01-14. Commissioner Majeska seconded the motion.

Vote on Motion

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Motion passed 5 to 0

Waiver of AK# 1666751 & AK# 1666742

Motion: Commissioner Tobin made a motion to table request for waiver. Commissioner Higgins seconded the motion.

Vote on Motion

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Motion passed 5/0

Item is tabled until staff rings back the interpretation of the resolution governing the right to waiver.

OPERATION'S REPORT

Keys Contracting Installation Agenda

Chris Gratton from Keys Contracting addressed the Board and answered questions.
FINANCE
*KLWTD Revenue & Expenditure Report*

Connie Fazio presented the new report. The Board asked that the assessment accounts be included in the report.

LEGAL COUNSEL REPORT
*Low Income Refund Resolution*

Ray Giglio asked the Board for direction on what to do with the Resolution concerning the financial impact. It was determined the financial impact would be $130,000.

Commissioner Tobin would like a monthly report of the Legal Department’s projects.

GENERAL MANAGER’S REPORT
*Jan 31 BOCC Meeting*

Ms. Blank told the Board that the BOCC will be considering another change order for Cudjo Key. She would like the Board to lobby the BOCC Commissioners to not approve the change order. The Board directed that if the Manager gets a written request she is directed to go the Jan. 31, 2014 BOCC meeting and tell them the KLWTD Board is against the change order.

COMMISSIONER’S ROUNDTABLE
Chairman Gibbs thanked Ms. Blank for paying the donation to the Governor’s political fund raiser out of her own funds.

ADJOURNMENT
The KLWTD Board adjourned the Board Meeting at 5:55 PM.

The KLWTD meeting minutes of Jan. 21, 2014 were approved on February 4, 2014.

__________________________________________
Chairman Gibbs

__________________________________________
Carol Walker, CMC District Clerk
KEY LARGO WASTEWATER TREATMENT DISTRICT
Agenda Request Form

Meeting Date: February 4, 2014  Agenda Item No. 2

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

Other:

SUBJECT: ESRI (Environmental Systems Research Institute) License Renewal Annual Payment

RECOMMENDED MOTION/ACTION: Approval of Annual Renewal Payment

Approved by General Manager ____________________ Date: 1/30/2014

<table>
<thead>
<tr>
<th>Originating Department: Finance</th>
<th>Costs: $10,000 for FY2014</th>
<th>Attachments: ESRI Quotation, Minutes &amp; Agenda from original approval of 3 year, $30,000 total amount in Feb. 2013</th>
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<tbody>
<tr>
<td></td>
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<td>Advertised: Date: Paper: Paper:</td>
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<td>[X] Finance</td>
<td>[X] Engineering[ ] Clerk</td>
<td>[X] Not Required</td>
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</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:

The ESRI software requires license renewal every three years. The current license expires in April 2015. The entire amount of renewal was approved by the board in February 2013. A purchase order is required each year for the annual payment amount of $10,000.

ESRI software supports critical District functions including but not limited to: Assessments, Asset Management, Billing, Collection System Maintenance, Construction Project Planning and Tie-Ins & Inspections.

Resulting Board Action:

☐ Approved  ☐ Tabled  ☐ Disapproved  ☐ Recommendation Revised
Key Largo Wastewater Treatment Dist  
P.O. Box 491  
Key Largo FL 33037-0491  
Attn: Ashley Wandler

Phone: 305-451-4019  
Customer Number: 365910  
For questions regarding this document, please contact Customer Service at 888-377-4575.

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<table>
<thead>
<tr>
<th>Item</th>
<th>Qty</th>
<th>Material#</th>
<th>Unit Price</th>
<th>Extended Price</th>
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<td></td>
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<td>114749</td>
<td>10,000.00</td>
<td>10,000.00</td>
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</table>
| Meter Counts of 0 to 10,000 Small Utility Term Enterprise License Agreement  
Start Date: 04/13/2014  
End Date: 04/12/2015 |

Subtotal 10,000.00  Estimated Tax 0.00  Total $ 10,000.00

DUNS/CEC: 06-313-4175 CAGE: 0AMS3
```

Per the terms and conditions in your Esri Enterprise License Agreement, your organization is required to provide an annual usage report. This report should detail all deployments made under this agreement for your previous term, and should be provided to Esri as an Excel spreadsheet.

The annual usage report must include actual license counts by product, licensee, and location.

Please return your report via email to ela_usage_reports@esri.com.

Thank you in advance for your prompt attention to this matter.

Issued By: Trina Isaacs  
Ext: 2258  
To expedite your order, please reference your customer number and this quotation number on your purchase order.
SUBJECT: MAINTENANCE QUOTE

DATE: 01/06/2014
TO: Ashley Wandler
ORGANIZATION: Key Largo Wastewater Treatment District
FAX #: 305-453-5807 PHONE #: 305-451-4019
FROM: Trina Isaacs
FAX #: 909-307-3083 PHONE #: 888-377-4575 Ext. 2258
EMAIL: tisaacs@esri.com

Number of pages transmitted (including this cover sheet): 3

QUOTATION #25615203
DOCUMENT DATE: 01/06/2014

Please find the attached quotation for your forthcoming software maintenance term. Keeping your maintenance current entitles you to exclusive benefits, and if you choose to discontinue your coverage, you will become ineligible for these valuable benefits and services. All maintenance fees from the date of discontinuation will be due and payable if you decide to reactivate your coverage at a later date. For details regarding the maintenance program benefits for your licensing, please visit http://www.esri.com/maintenancebenefits.

Customers who have multiple copies of some Esri products may have the option of supporting some of their licenses with secondary maintenance. Please contact Customer Service to find out more about the availability of secondary maintenance.

For information about Esri Desktop, Developer software, or Web services terms of use, as well as purchase order terms and conditions, please visit http://www.esri.com/legal/licensing/software-license.html.

Do you need training? You can get affordable Esri software training for your entire organization with a subscription to Esri Virtual Campus. To find out how, visit the campus: http://training.esri.com/gateway/index.cfm

For details about ECP discounts and waivers for non-profit users please visit http://www.conservationgis.org/grant

If you have any questions or need additional information, please contact Customer Service at 888-377-4575 Option 5.
IF YOU WOULD LIKE TO RECEIVE AN INVOICE FOR THIS MAINTENANCE QUOTE YOU MAY DO ONE OF THE FOLLOWING:

- RESPOND TO THIS EMAIL WITH YOUR AUTHORIZATION TO INVOICE
- SIGN BELOW AND FAX TO 909-307-3083
- FAX YOUR PURCHASE ORDER TO 909-307-3083

REQUESTS VIA EMAIL OR SIGNED QUOTE INDICATE THAT YOU ARE AUTHORIZED TO OBLIGATE FUNDS FOR YOUR ORGANIZATION AND THAT YOUR ORGANIZATION DOES NOT REQUIRE A PURCHASE ORDER.

If there are any changes required to your quotation, please respond to this email and indicate any changes in your invoice authorization.

If you choose to discontinue your support, you will become ineligible for support benefits and services. All maintenance fees from the date of discontinuation will be due and payable if you decide to reactivate your support coverage at a later date.

This transaction is governed exclusively by the terms of the above-referenced contract, if any, or Esri's standard terms and conditions at www.esri.com/legal.

In order to expedite processing, please reference the quotation number and any/all applicable Esri contract number(s) (e.g. MPA, ELA, SmartBuy, GSA, BPA) on your ordering document.

By signing below, you are authorizing Esri to issue a software support invoice in the amount of $____________ plus sales tax, if applicable.

Please check one of the following:

- [ ] I agree to pay any applicable sales tax.
- [ ] I am tax exempt. Please contact me if Esri does not have my current exempt information on file.

Please indicate on your purchase order if this purchase is funded through the American Recovery and Reinvestment Act, and whether Esri is a Prime Recipient, Sub-recipient, or Vendor for reporting purposes.

Signature of Authorized Representative

Name (Please Print)
PO Description: Annual Amount for ESRI Software Renewal

<table>
<thead>
<tr>
<th>Quantity</th>
<th>Units</th>
<th>Description</th>
<th>Unit Price</th>
<th>Amount</th>
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<tr>
<td>1</td>
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<td>Software Renewal for 2014</td>
<td>10,000.00</td>
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<td></td>
<td></td>
<td>Total</td>
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<td>$10,000.00</td>
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Approved By __________________________ Date ________________
The Key Largo Wastewater Treatment District Board of Commissioners met for a Commission Meeting at 4:02 PM. Present were Acting Chairman Tobin, Commissioners, Norman Higgins, David Asdourian, and Steve Gibbs. Also present were the General Manager Margaret Blank, General Counsel, Ray Giglio, District Clerk Carol Walker, and other appropriate District Staff.

Acting Chairman Tobin led the Pledge of Allegiance.

APPROVAL OF AGENDA
District Counsel Ray Giglio added an update on the Public Hearing on the District Charter Amendment and a Court Case. Operations Manager Dan Saus added an update on the deep wells. Commissioner Asdourian clarified that the Transition Meetings will be starting at 5 PM. Item #4 EDU Change for AK 1643564 has been moved to the Feb. 19, 2013 meeting.

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

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Motion passed 4 to 0

PUBLIC COMMENT
Name & Address
Sue Heim, Key Largo
Monte Green, Islamorada
Sue Hammaker, Key Largo

Subject
Forms sent to Tax Collector to remove property from Assessment Role
Concern over paying tenants water bill
Inter-Local, Lobbyist Exhibit “A”
ROMAN GASTESI  
*Inter-Local Agreement*  
Mr. Gastesi explained that the District is in line for $20 million of the Mayfield Grant monies this year.

Commissioner Higgins would like to have the District get its $20 million this year and take time to do an agreement next year.

Commissioner Gibbs asked how the storm water will affect the split. Mr. Gastesi explained that storm water will not be included.

Chairman Tobin explained that the District was developed to get things moving with the County support. The District has moved forward on blind faith.

Mr. Gastesi stated if the District wants to carve out the lobbyist from the agreement then they should do that and then come back to discuss the lobbyist. Also the lobbyist is a month to month contract and the District will pay on a monthly base and if the lobbyist does not get any money then the County will end the contract. The District will not be penalized if they decide to stop paying because there was no money obtained.

**BULK ITEMS**  
*Minutes of Jan. 15, 2013*  
*Minutes of Jan. 22, 2013*  

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

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Motion passed 4 to 0

**FINANCIAL REPORT**  
*Pending Payments*  

Motion: Commissioner Gibbs made a motion to approve the Pending Payments contingent upon the availability of funds. Commissioner Asdourian seconded the motion.

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Chairman Majeska
Commissioner Gibbs X
Commissioner Tobin X
Commissioner Asdourian X

Motion passed 4 to 0

COMMISSIONER'S ITEMS
Full Disclosure and Cost on ARF
Commissioner Gibbs would like all the information filled out on the ARF.

Vote of Confidence for General Manager
Commissioner Gibbs thinks it is time to give the Manager a vote of confidence once a year.

Motion: Commissioner Gibbs made a motion to give the Manager A Vote of Confidence. Commissioner Higgins seconded the motion.

Vote on Motion

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Motion passed 4 to 0

ENGINEER'S REPORT
Ed Castle, Weiler Engineering, gave a report on the negotiations on contractors for the shallow wells.

LEGAL COUNSEL
RESOLUTION NO. 06-02-13
A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE KEY LARGO WASTEWATER TREATMENT DISTRICT ESTABLISHING PROCEDURES FOR APPROVING ASSESSMENT WAIVERS FOR TAX PARCELS PURCHASED BY THE MONROE COUNTY LAND AUTHORITY, MONROE COUNTY OR OTHER MONROE COUNTY ENTITIES FOR CONSERVATION PURPOSES; AND PROVIDING AN EFFECTIVE DATE.

After discussion the Board asked that this resolution be brought back to the next regular meeting.

GENERAL MANAGER REPORT
Washington D.C. Trip
The Board directed that Commissioner Gibbs will accompany the General Manager to Washington D.C.

Sales Tax Report
Ms. Blank reported that she sent Kevin Wilson a report on the District construction.

KLWTD Board of Commissioners
Board Meeting
Feb. 5, 2013
ESRI Software Renewal
Staff explained the uses of ESRI.

Motion: Commissioner Higgins made a motion to approve the ESRI Software. Commissioner Asdourian seconded the motion.

Vote on Motion

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Motion passed 4 to 0

Deep Well
The Deep Injection Well has been permitted. There is a requirement of everyday samples.

COMMISSIONER’S ROUNDTABLE
Panic Button
Commissioner Gibbs stated that there should be some type of protection at the front desk.

The Board would like a report back on providing security on all District property.

Letter to FreePress

Motion: Commissioner Gibbs made a motion to approve the letter that Ray Giglio wrote to the Editor and have it sent to the FreePress. Commissioner Asdourian seconded the motion.

Vote on Motion

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Motion passed 4 to 0

District Legislative Statue
Motion: Commissioner Gibbs made a motion to leave the District Legislation as is. Commissioner Asdourian seconded the motion.
Vote on Motion

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Motion failed 2 to 2

ADJOURNMENT

The KLWTD Board adjourned the Board Meeting 6:52 PM.

The KLWTD meeting minutes of Feb. 5, 2013 were approved on Feb. 19, 2013.

[Signatures]

Chairman Majeska

Carol Walker, CMC District Clerk
KEY LARGO WASTEWATER TREATMENT DISTRICT

Agenda Request Form

Meeting Date: February 5, 2013
Agenda Item No. 12

[ ] PUBLIC HEARING
[ ] DISCUSSION
[X] GENERAL APPROVAL OF ITEM
[ ] Other:

SUBJECT:
Environmental Systems Research Institute (ESRI) License Renewal

RECOMMENDED MOTION/ACTION:
Approval of Staff Recommendation

Approved by General Manager __________________________ Date: 1/3/2013

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Costs: $30,000 for three years</th>
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<tbody>
<tr>
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<td></td>
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<tr>
<td>Department Review:</td>
<td>[ ] Engineering</td>
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<td>[ ] District Counsel</td>
<td>[ ] Clerk</td>
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</table>

Summary Explanation/Background:
The ESRI software requires renewal every three years. The current license expires on April 12, 2013. The attached quotation includes the cost of the renewal for the next three years.

ESRI software supports critical District functions including but not limited to:
1. Assessments
2. Asset Management
3. Billing
4. Collection System Maintenance
5. Construction Project Planning
6. Tie-Ins & Inspections
7. Special Items – such as the CBRS area issue

This software is needed so that these tasks can continue to be accomplished as efficiently as possible.
To expedite your order, please attach a copy of this quotation to your purchase order.
Quote is valid from: 01/03/2013 To: 04/03/2013

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Item Total: 30,000.00
Subtotal: 30,000.00
Sales Tax: 0.00
Estimated Shipping & Handling (2 Day Delivery): 0.00
Contract Pricing Adjust: 0.00
Total: $30,000.00

The following items are optional items listed for your convenience.
These items are not included in the totals of this quotation.

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<td>Small Enterprise License Agreement Training Package at ESRI Site 21 Days Prepaid ILT / ILV, Over 3 Year Term, Per Student Seat, 7 Days per Annum Instructor Led Training</td>
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<td>9,555.00</td>
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For questions contact: Robyn Garrett
Email: rgarrett@esri.com
Phone: (704) 541-9810 x8640

Acceptance of this quotation is limited to the Esri License Agreement and the Quotation Terms and Conditions.
This Quotation is made in confidence for your review. It may not be disclosed to third parties, except as required by law.

If sending remittance, please address to: Esri, File No. 54630, Los Angeles, Ca 90074-4630

This offer is limited to the terms and conditions incorporated and attached herein.
January 3, 2013

Mr. Paul Christian
KEY LARGO WASTEWATER TREATMENT DISTRICT
98880 OVERSEAS HWY
KEY LARGO, FL 33037

Dear Paul,

The Esri Small Utility Enterprise License Agreement (ELA) is a three-year agreement that will grant your organization access to Esri® term license software on an unlimited basis including maintenance on all software offered through the ELA for the term of the agreement. The ELA will be effective on the date executed and will require a firm, three-year commitment.

Based on Esri’s work with several organizations similar to yours, we know there is significant potential to apply geographic information system (GIS) technology in many operational and technical areas within your organization. For this reason, we believe that your organization will greatly benefit from an enterprise license agreement.

An ELA will provide your organization with numerous benefits including:

- A lower cost per unit for licensed software
- Substantially reduced administrative and procurement expenses
- Maintenance on all Esri software deployed under this agreement
- Complete flexibility to deploy software products when and where needed

The following business terms and conditions will apply:

- All current departments, employees, and in-house contractors of the organization will be eligible to use the software and services included in the ELA.
- If your organization wishes to acquire and/or maintain any Esri software during the term of the agreement that is not included in the ELA, it may do so separately at the Esri pricing that is generally available for your organization for software and maintenance.
- The organization will establish a single point of contact for orders and deliveries and will be responsible for redistribution to eligible users.
- The organization will establish a Tier 1 support center to field calls from internal users of Esri software. The organization may designate individuals as specified in the ELA who may directly contact Esri for Tier 2 technical support.
- The organization will provide an annual report of installed Esri software to Esri.
- Esri software and updates that the organization is licensed to use will be automatically available for downloading.
• The organization will act as an Esri reference site and will permit Esri to publicize its use of Esri software and services.

• The fee and benefits offered in this ELA proposal are contingent upon your acceptance of Esri’s Small Utility ELA terms and conditions.

• Licenses are valid for the term of the ELA.

The terms and conditions in this Small Utility ELA offer are for utilities with a total meter/subscriber count which falls under the applicable tier in the Esri ELA Small Utility Program. By accepting this offer, you confirm that your organization’s meter count falls within this range on the date of signature and that you are therefore eligible for this pricing. If your organization's meter/subscriber count does not fall within this range, please confirm your current meter/subscriber count, and Esri will provide a revised quotation.

This program offer is valid for 90 days. To complete the agreement within this time frame, please contact me within the next seven days to work through any questions or concerns you may have. To expedite your acceptance of this ELA offer:

1. Sign and return the signature page of the ELA with a Purchase Order or issue a Purchase Order that references this ELA Quotation and includes the following statement on the face of the Purchase Order: "THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL UTILITY ELA, AND ADDITIONAL TERMS AND CONDITIONS IN THIS PURCHASE ORDER WILL NOT APPLY." Have it signed by an authorized representative of the organization.

2. On the first page of the ELA, identify the central point of contact/agreement administrator. The agreement administrator is the party that will be the contact for management of the software, administration issues, and general operations. Information should include name, title (if applicable), address, phone number, and e-mail address.

3. In the purchase order, identify the "Ship to" and "Bill to" information for your organization.

4. Send the purchase order and agreement to the address, email or fax noted below:

   Esri  
   Attn: Customer Service SU-ELA  
   380 New York Street  
   Redlands, CA 92373-8100  
   e-mail: service@esri.com  
   fax documents to: 909-307-3083

I appreciate the opportunity to present you with this proposal, and I believe it will bring great benefits to your organization.

Thank you very much for your consideration.

Best Regards,

Robyn Garrett  
704-541-9810 *8640  
rgarrett@esri.com

Small Utility ELA
KEY LARGO WASTEWATER TREATMENT DISTRICT
Agenda Request Form

Meeting Date: Feb. 4, 2014  
Agenda Item No. 3

[ X] DISCUSSION  
[ ] RESOLUTION  
[ ] BID/RFP AWARD  
[ ] CONSENT AGENDA  

SUBJECT: Tobin Valve

RECOMMENDED MOTION/ACTION:

Approved by General Manager
Date: 1/30/2014

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<th>Costs: $</th>
<th>Attachments: Memo</th>
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<td>[ ] Operations</td>
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<tr>
<td>[ ] Finance</td>
<td>[ ] Customer Service</td>
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Advertised:
Date: ________________
Paper: ________________
[X] Not Required

Summary Explanation/Background: An update will be given.

Resulting Board Action:

☐ Approved  ☐ Tabled  ☐ Disapproved  ☐ Recommendation Revised
Re: Tobin Valve

Margaret Blank <margaret.blank@klwtd.com>
To: Ed Castle <edrcastle@me.com>
Cc: Carol Walker <carol.walker@klwtd.com>, Ray Giglio <ray.giglio@klwtd.com>

Wow. Good work.

Yes. Add it to the agenda for discussion.

We may be too late to get it in as a local bill. I don't think we'll have enough time to meet the notification requirement. Ray will be able to address that. Even if that's the case we can certainly get it in next year. In the mean time Dan is making great progress on the monitoring system which I think is an even better tool than the Tobin valve.

Sent from my iPhone

On Jan 28, 2014, at 7:59 AM, Ed Castle <edrcastle@me.com> wrote:

> Margaret,
> > Andy asked me to speak with Jerry Smith at the Monroe County Building Department again. He said Jerry had some ideas that may help.
> > First was that the District does not have to pull permits, so he does not inspect our work, meaning that if we wanted to put them in, he could not stop us. However, I believe we have to meet FBC requirements, that just the requirement to obtain a permit is waived.
> > Second was to get a declaratory interpretation from Tallahassee, saying that the release valve was OK. I tried that and they declined, saying a code revision was the way to go. As you know, I have submitted a proposed revision, but the revision cycle timing pushes all revision to over two years away.
> > The third advice was that as a special district, we may be able to get a legislative exemption from meeting specific code requirements. He says FKEC has that and does not have to meet FBC or NEC requirements for specific applications. Jerry thinks that Holly might be able to help with this.
> > In order for the exemption to apply, if we get it, it is my understanding that the District would need to own piping in the ROW or an easement on private property.
> > I intend to include this information in my status report unless you want me to hold off on it for awhile. If we want to move forward on the legislative exemption, maybe Ray could draft some language and then we can pass it on into the political arena.
KEY LARGO WASTEWATER TREATMENT DISTRICT

Agenda Request Form

Meeting Date: Feb. 4, 2014

Agenda Item No. 4

[ ] PUBLIC HEARING

[ ] RESOLUTION

[X] DISCUSSION

[ ] BID/RFP AWARD

[ ] ACTION ITEM

[ ] CONSENT AGENDA

[ ] Other:

SUBJECT: Report on Vacuum Main Break

RECOMMENDED MOTION/ACTION:

Approved by General Manager

Date: 11/30/2014

Originating Department: Dan Saus

Costs: $

Funding Source:

Department Review:

[ ] District Counsel

[ ] Engineering

[ ] General Manager

[ ] Clerk

[ ] Operations

[ ] Finance

[ ] Customer Service

Attachments:

Advertised:

Date: ____________

Paper: ____________

[X] Not Required

Summary Explanation/Background: Mr. Saus will give a verbal report on the break.

Resulting Board Action:

☐ Approved

☐ Tabled

☐ Disapproved

☐ Recommendation Revised
KEY LARGO WASTEWATER TREATMENT DISTRICT
Agenda Request Form

Meeting Date: February 4, 2014

Agenda Item No. 5

[ ] PUBLIC HEARING

[ ] DISCUSSION

[X] ACTION ITEM

[ ] Other:

SUBJECT: Biosolids Digester Bid Award Recommendation

RECOMMENDED MOTION/ACTION: Staff recommends the award of the lowest bid from a responsive and responsible bidder and therefore approval of the contract award to Wharton-Smith, Inc. in the amount of $4,077,000.00.

Approved by General Manager

Date: 1/31/2014

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<td>Paper:</td>
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<td>[X] Not Required</td>
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Summary Explanation/Background:

Staff recommends award of the contract to Wharton-Smith, Inc. in the amount of $4,077,000.00 as they have been determined to be both responsive and responsible.
January 30, 2014

From: Ray Giglio, Hearing Officer
To: Commissioners, KLWTD; Margaret Blank, General Manager
Re: Hearing Officer’s Recommended Decision with regard to
Biosolids Digester Project Bid Protest and Award

RECOMMENDATION:

In accordance with subsection 1.06.3 of subsection 1.06 of PART 1 of section 00425 of the Bid Documents for the District’s Biosolids Digester Project, the undersigned, as the designated Bid Protest Hearing Officer makes the following recommendation to the District Board of Commissioners:

As there are no facts in dispute, and as the protestor, Douglas N. Higgins, Inc., has not presented any grounds or credible evidence to require, justify, or support overturning the Recommendation of Award, it is recommended that the contract for the District’s Biosolids Digester Project be awarded to Wharton-Smith, Inc.

In accordance with subsection 1.06.3 of the Bid Documents, the District Board of Commissioners may accept, reject, or modify the hearing officer’s recommended decision.

BACKGROUND:

The Project and the Bids Received:

In the fall of 2013, the Key Largo Wastewater Treatment District ("District") requested sealed bids for the construction of a biosolids digester as well as the conversion of an existing
digester into a third train sequential batch reactor. This Project is referred to as the **Biosolids Digester Project** ("Project").

The District received two bids for this Project. The bids were opened publicly and read aloud at the District’s administrative office on 2:00 P.M. on Wednesday, November 13, 2013. One bid was from Douglas N. Higgins, Inc. ("DNHi") in the amount of $3,988,000.00 and the other bid was from Wharton Smith, Inc. ("WSI") in the amount of $4,077,000.00.

**The District’s Recommendation of Award:**

Upon receipt of the bids from DNHi and WSI, District staff conducted a review and evaluation of both bids. Staff also conducted reference checks and reviewed the District’s experience with, as well as the litigation history of, both bidders.

Based upon the bid criterion contained in Section 1.15\(^5\), District staff determined that the bid submitted by DNHi was non-responsive. In addition, based upon the bid criterion contained Section 1.09\(^6\), District staff determined that DNHi did not meet the District’s Responsibility Requirements.

For those reasons, the lowest responsive and responsible bidder was determined to be Wharton Smith, Inc. Moreover, as appears from the December 12, 2013 Recommendation of Award prepared by Weiler Engineering Corporation, a copy of which is attached hereto as Exhibit "A," it was determined that, "**Wharton Smith, Inc is responsive, responsible and has the necessary construction capabilities to satisfactorily construct the Biosolids Digester Project within the contract time frames.**"

Therefore, on or about December 16, 2013, the District sent both bidders the "**NOTICE OF INTENT TO AWARD CONTRACT FOR BIOSOLIDS DIGESTER PROJECT**, a copy of which is attached hereto as Exhibit "B." This Notice indicated that the District “has determined that it intends to award the contract to the lowest responsive and responsible bidder, Wharton Smith, Inc.”

**Douglas N. Higgins Inc.’s Bid Protest:**

On or about December 27, 2013, the District received a “**Notice of Protest**” from Douglas N. Higgins, Inc., a copy of which is attached hereto as Exhibit "C." DNHi’s Notice of Protest was duly filed in accordance with the protest provisions of the bid documents.\(^7\) In that Notice of Protest DNHi disputed the District’s findings that DNHi’s bid was non-responsive and that

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\(^5\) Page 00200-6; Section 1.15 Responsiveness Requirements C. 1. d)
\(^6\) Page 00200-2; Section 1.09 Rejection of Nonperforming Bidders
\(^7\) Page 00425-1; Section 00425 PROTESTS, BID ERRORS, AND RELATED ISSUES; PART 1 PROTESTS; Subsection 1.02.1.3 Other Protests.
DNHI failed to meet the standards of a responsible bidder. DNHI also requested a Protest Hearing as provided for in the bid documents\textsuperscript{8}.

The Bid Protest Hearing:

In accordance with the “Hearings” provision of the bid documents\textsuperscript{9}, a bid protest hearing was duly held on January 13, 2014 at the District’s Wastewater Treatment Plant. Present at that hearing were representatives of DNHI and the District. The undersigned had been appointed as, and acted as, the Hearing Officer.

Pursuant to the procedures outlined in the bid documents\textsuperscript{10}, the hearing was conducted in an informal manner. The hearing was digitally recorded by the District. In addition, DNHI secured the services of a stenographer who transcribed the proceedings.

Subsequent to that hearing, District staff re-examined the bid documents, the bids received, and the basis upon which the recommendation of award had been made.

As will be discussed below, District staff determined that the fact that Section 0041 of the bid had not been individually signed by an authorized representative of DNHI (which was the basis for the District’s finding that the bid submitted by DNHI did not meet the District’s requirements\textsuperscript{11} for responsiveness) was a minor informality that could and should be waived by the District.

However, District staff further determined that, based upon the District’s past experience with DNHI and based upon DNHI’s recent involvement in litigation regarding governmental projects, that Higgins does not meet the responsibility requirements as set forth in the bid documents\textsuperscript{12}.

Douglas N. Higgins Inc.’s Request for an additional Evidentiary Hearing:

In a communication sent to the undersigned by electronic mail on January 27, 2014, a copy of which is attached hereto, as Exhibit “D,” DNHI indicated that they feel “that the meeting held on January 13, 2014 ... in no way... constituted the protest hearing under the KLWTD’s established bid protest process.”

In that communication DNHI further claimed that, “As there are facts which remain in dispute between DNHI and the KLWTD, an evidentiary hearing will be necessary to fully

\textsuperscript{8} Id. Section 1.06 Hearings
\textsuperscript{9} Page 00425-2; subsection 1.06 of PART 1 of section 00425
\textsuperscript{10} Id. Subsection 1.06.2.2 Procedures
\textsuperscript{11} Page 00200-5; Section 1.15 Responsiveness Requirements A.
\textsuperscript{12} Page 00200-5,6; Section 1.16
establish the position of both parties involved in this process.” They therefore, requested that the evidentiary hearing “be scheduled as expeditiously as possible” and that an “independent hearing officer be selected.”

However, for the reasons detailed below, it is clear that DHNI is not entitled to demand such an evidentiary hearing, nor is it entitled to demand an independent hearing officer. The District has, in all respects complied with the procedures outlined in the bid documents, and DHNI has been afforded the opportunity to be heard and to present evidence.

Moreover, as a result of the hearing that was held on January 13, 2014, the District has agreed to waive the bid-signing irregularity associated with the bid submitted by DHNI. Furthermore, while DHNI gratuitously asserts that “there are facts which remain in dispute,” examples of any facts such that are in fact in dispute are conspicuously absent.

In actual point of fact, it is precisely because there are no facts that are in dispute that no evidentiary hearing is required. The only “fact issue” involved the omission of the signature page in the bid documents. That issue was resolved in favor of DHNI.

At this point, the only issues raised by DHNI involve the interpretation of the bid documents and the 2005 Termination for Convenience Agreement and Release, signed by the District and DHNI. However, any such interpretation lies within the sole discretion of the District.

For all of these reasons, the District has determined that further hearings are not required and would not be, in any way, productive.

THE DISTRICT’S BIDDING REQUIREMENTS:

The District’s original Recommendation of Award was made based upon the criterion contained in the bid documents. In the case of the District, these documents contain the provisions and procedures governing the award of the bid. Unlike most state agencies\(^1\), special

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1 Part I of Ch. 287, of the Florida Statutes, states that for the procurement of commodities or contractual services by state agencies in excess of $35,000, the competitive solicitation processes must be used. However, with the exception of s. 287.055 (the Consultants’ Competitive Negotiation Act), the requirement set forth in 287.057(1) applies only to state agencies as defined by s. 287.012. Special districts (like the KLWTD) are not included within the foregoing definition. (See Attorney General’s Opinions 077-22 and 074-7 holding that special districts and other separate statutory entities are not considered state agencies.) Moreover, the Attorney General has ruled that “[i]n the absence of any statutory requirement, a public body has no legal obligation to let a contract under competitive bidding or to award the contract to the lowest bidder...” (AGO 071-366) This means that below $300,000, the District is not subject to the competitive purchasing requirements of part I, Ch. 287, F. S. (except for s. 287.055—the CCNA). The District is only bound by its charter (which is silent as to these matters) and its internal rules and regulation—i.e. the District’s purchasing policy.
districts like the District are, generally speaking, only required to "competitively award" construction contracts estimated to cost more than $300,000.\textsuperscript{14} The term "competitively award" means to award contracts based on the submission of sealed bids or proposals.

Because the Biosolids Digester Project was estimated to cost more than $300,000, the district was required to "competitively award" the contract. However, because the District is not subject to Florida’s Administrative Procedure Act\textsuperscript{15}, the procedures, time periods, etc. to be followed are determined solely by District’s procurement policy and the bid documents. The interpretation and implementation of those policies are within the sole discretion of the District.

The sole discretion of the District will only be disturbed by the courts if that discretion is abused and the District’s decision, rule, or ruling is found to be \textit{Arbitrary and Capricious}. In Florida,\textsuperscript{16} the courts use the \textit{Arbitrary and Capricious} standard when reviewing the discretionary authority of an administrative agency.\textsuperscript{17} That means that when an agency like the District makes a decision, rule, or ruling without reasonable grounds or adequate consideration of the circumstances, that decision, rule, or ruling is said to be \textit{Arbitrary and Capricious} and it can be invalidated by the courts on that ground.

There is no set standard for what constitutes an \textit{Arbitrary and Capricious} decision, rule, or act. Nonetheless, generally speaking an act or ruling is considered to be \textit{Arbitrary and Capricious} if there is an absence of a rational connection between the facts found and the choice made.\textsuperscript{18}

One section of Florida’s \textit{ADMINISTRATIVE PROCEDURE ACT}\textsuperscript{19} addresses the issue of when a rule is arbitrary or capricious. That section states that, “\textit{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;}”\textsuperscript{20}

\begin{flushleft}
\textsuperscript{14} Section 255.20, of the Florida Statutes requires special districts to "competitively award" construction contracts estimated to cost more than $300,000 [or $75,000 for electrical work], to appropriately licensed contractors
\textsuperscript{15} Units of local government having jurisdiction only in one county or part thereof and which are not inter-governmental or regional agencies or programs described in s. 120.52(1)(b), F. S., are subject to the provisions of Ch. 120, F. S., [the Administrative Procedure Act] only if expressly made subject thereto by special or general legislative act or an existing judicial decision. Since neither the courts by decision nor the Legislature by special or general act has expressly extended the provisions of the Administrative Procedure Act to the Key Largo Wastewater Treatment District, the District is not subject to the act. (See, AGO 77-142; See also, Sweetwater Utility Corp. v. Hillsborough County, 314 So.2d 194 (2 D.C.A. Fla., 1975))
\textsuperscript{16} As well as in every other state and in the Federal system
\textsuperscript{17} 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.
\textsuperscript{18} 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).
\textsuperscript{19} Chapter 120, F.S. Note: the District is not subject to the Administrative Procedure Act.
\textsuperscript{20} Section 120.57 (1) (e) 2. d. F.S. [which discusses when an agency’s action may be based upon unadopted rules]
\end{flushleft}
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 consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." 

Therefore, the touchstone inquiries for determining whether a decision, rule, or ruling by an agency like the District 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.

When dealing with the expenditure of public funds for a four million dollar project like the Biosolids Digester Project, a decision, rule, or ruling by the District would only be *Arbitrary and Capricious* if it is not reasonably and rationally related to the protection of those public funds or the selection of the best contractor for the project.

**BASIS FOR THE DISTRICT’S RECOMMENDATION OF AWARD:**

As mentioned above, the District received two bids for this Project. DNHI bid $3,988,000.00 and WSI bid $4,077,000.00. Notwithstanding the fact that the bid from WSI was approximately 2.2% higher than the bid from DNHI, District staff determined that Wharton Smith, Inc. was the lowest responsive and responsible bidder.

District staff made this initial determination based primarily upon the following factors.

**Douglas N. Higgins Inc.’s Failure to Sign the Bid Rendered it Nonresponsive:**

A bid form must be signed. Because the bid submitted by DNHI was not signed, it was not responsive. Because DNHI bid was not responsive, it was felt that it must be rejected. District staff reached that conclusion because the District’s bid documents for the Biosolids

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21 *Natural Resources v. U.S.*, 966 F.2d 1292, 97, [9th Cir.'92]

Digester Project specifically indicated that the Bid form must be completed in its entirety; that Bidders are required to be responsive and that:

"To be judged responsive ... the Bid shall be signed by the person or persons legally authorized to bind the Bidder to a Contract."

The bid documents also made it clear that:

"Failure to meet any of the responsiveness requirements set forth herein may be result in the Bidder being judged non-responsive."

It is well-settled law in Florida that a "responsive bid," is a proposal or reply that conforms in all material respects to the solicitation. In order to conform in all material respects to the solicitation (i.e. to be "responsive") a bid must constitute an unequivocal offer to perform the exact thing called for in the solicitation. To constitute an unequivocal offer to perform, the bid must bind the contractor to the terms and conditions of its bid. In order to bind the contractor to the terms and conditions of its bid, that bid must be signed by the bidder. It is, therefore, axiomatic that for a bid to be "responsive" it must be signed.

Because the requirement that a bid be signed is an essential, material requirement of the bid, it was felt that the failure of DNHI to sign its bid rendered that bid nonresponsive. Because DNHI's bid was nonresponsive, it was felt that it must be rejected.

However, at the bid protest hearing held on January 13, 2014, representatives of DNHI testified: that they had not received a signature page in the packet they downloaded from DEMANDSTAR; that they had signed the bid everywhere indicated or required; and that by so signing everywhere indicated and by submitting a bid bond, that they had made it clear that they intended to be—and were—bound by their bid submission.

Subsequent to the bid protest meeting, it was determined by District staff that in the process of scanning the final bid documents to create a PDF bid package that would be sent to DEMANDSTAR, the signature page had been omitted. It is assumed that the signature page must have stuck to the page in front of it, and that is why it was omitted.

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23 Page 00200-3; Section 1.10 D.
24 Page 00200-5; Section 1.15 Responsiveness Requirements; A. "All Bidders are required to be responsive. Failure to meet any of the responsiveness requirements set forth herein may be result in the Bidder being judged non-responsive."
25 Page 00200-6; Section 1.15 Responsiveness Requirements C. 1. d)
26 Page 00200-5; Section 1.15 Responsiveness Requirements A.
27 Florida Statutes, Title XIX PUBLIC BUSINESS, 287.012 Definitions.—“As used in this part, the term: (26) "Responsive bid," "responsive proposal," or "responsive reply" means a bid, or proposal, or reply submitted by a responsive and responsible vendor which conforms in all material respects to the solicitation.; Florida Administrative Code, 40E-7.669 Definitions, "(11) "Responsive" means a business's bid or proposal conforms in all material respects to the invitation to bid or request for proposal."
Because the signature page was inadvertently omitted, and based upon the evidence and testimony received at the protest hearing, the District has determined that DNHI’s omission of a signature is not and should not be viewed a fatal flaw in their bid. The District has determined that, in this case, the omission of a signature was a minor irregularity which can be, and should be, waived in accordance with the bid documents.28

Therefore, the omission of a signature is no longer a factor in the District’s decision or recommendation of award.

However, the other factors, discussed below, were and are part of the District’s recommendation to award the project to Wharton-Smith, Inc.

District experience with Douglas N. Higgins Inc.

In or about 2003, a project called Key Largo Park Wastewater System Project was awarded to DNHI, as the successful low bidder. Subsequently, a dispute ensued between DNHI and the District involving the parties’ respective rights and obligations. DNHI contended that it was entitled to additional compensation to perform the work and the District disagreed.

As a result of negotiations, the District and DNHI entered into a Termination for Convenience Agreement and Release ("Termination and Release"), a copy of which is attached hereto as Exhibit “E.” By the terms of this Termination and Release, the District and DNHI both agreed, inter alia, as follows:

"The District agrees to provide a neutral or positive recommendation regarding Higgins and the Agreement. The District shall not report or opine negatively regarding Higgins' bid, award, performance or termination for convenience of the Agreement. Higgins shall not report or opine negatively regarding the District's bid, award, performance or termination for convenience of the Agreement"29

Notwithstanding this provision, the District believes that it is permitted to consider its past relationship and dealings with DNHI.30 In accordance with Section 1.09, the District "may reject the bid of any Bidder that has made a claim against the [District], either as a contractor, a subcontractor of any tier, or a supplier of any tier, where the

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28 Section 00200-5 - Part 1.15.B. provides that: "Minor informalities are matters of form rather than substance, or insignificant omissions that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The District shall waive in writing these informalities or allow a bidder to correct them depending on which is in the best interest of the District."
29 Paragraph "3"
30 Page 00200-2; Section 1.09
claim was not, in the sole judgment of Owner made in good faith or was not supported by adequate documentation."

In addition, pursuant to Section 1.16, Responsibility Requirements31,

B. To be judged responsible, the Bidder shall meet the following standards:

1. The Bidder shall ... have a satisfactory record of ... performance ... including in particular, any prior performance upon contracts from the [District].

Therefore, the District is permitted to consider the following facts, all of which are part of the public record:

1. The District had a contract with DMHI;
2. There were disputes between the District and DNHI over the terms of that contract:
3. The District and DNHI did not have an acceptable working relationship;
4. Because the District and DNHI did not have an acceptable working relationship they mutually agreed to this said Termination and Release;
5. That as part of the Termination and Release, the District was required to pay DNHI the sum of $7,500.00
6. The District was required to hire a different contractor to complete the project.

Any situation where the District is required, for whatever reason, to enter into extensive communication and negotiation with a contractor; to terminate its agreement with that contractor; and to hire another contractor to complete the project, is—to say the least—not ideal. The District has the right, and the duty, to exercise due diligence to try to make certain that it has the best possible relationship with the contractor it hires, and that any such contractor will complete the project. For all of these reasons, based upon its past experience with DNHI, the District has determined that DNHI does not meet the requirements of sections 1.09 and 1.16.

It must be noted that DNHI has consistently claimed that based upon the above-quoted paragraph “3” of that said Termination and Release, that it is both improper and impermissible for the District to make any reference to the difficulties the District had with DNHI during this Key Largo Park Wastewater System Project.

However, the interpretation given to this paragraph by DHNI is inconsistent with the common meaning of the terms used and appears to be completely without merit. It seems clear that in this paragraph, the District is agreeing that it will “not report or opine negatively” to third parties about DHNI. To interpret this paragraph to mean that the District cannot even consider its prior dealings with DHNI in awarding a four million dollar project is beyond absurd.

31 Page 00200-5
It is worth noting that according to the Merriam-Webster online dictionary\(^2\), to “report” is “to give an account of” and to “opine” is to “to express opinions.” To agree not to give a negative account or not to express a negative opinion about a situation is very different from agreeing to totally forget and disregard that situation—especially with respect to internal matters under consideration. Moreover, given the requirements of Florida’s Sunshine Law, all of the above-mentioned information is readily available to anyone who requests it. It is absurd to think that District staff would be prohibited from accessing this information or to think that the District is forbidden to consider this information in making an important decision.

**The District Has the Authority to Determine that DNHI is Not Responsible:**

For all of the reasons detailed above, the District has the legal right, and the duty, to consider the difficulties it encountered with DHNI during the *Key Largo Park Wastewater System Project* and to weigh those facts in making its decision about whether DNHI is a responsible bidder with respect to the Digester Project.

Under Florida law, a responsible bidder is one “who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.”\(^3\) That is a rather vague standard, the interpretation of which is largely in the discretion of the District. As with most matters of interpretation and discretion, the courts will not disturb the decision of a governmental entity unless the governmental entity abuses its discretion and makes a decision is arbitrary and capricious.

For example, in one leading appellate case,\(^4\) a Miami city manager found a bidder not responsible based on his performance during a previous contract in which the bidder billed the city for work that it had not performed. A hearing officer disagreed with the city manager’s conclusion, reasoning that the city manager did not know all of the pertinent facts.\(^5\) The city commission, however, rejected the decision of the hearing officer, and still rejected the bid.\(^6\) The bidder who had been adjudged non-responsible, sought a temporary injunction. The appellate court\(^7\) held that the bidder was not likely to succeed on the merits because, based on

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\(^3\) Florida Statutes, Title XIX PUBLIC BUSINESS, 287.012(25) ; see also Broward Co. Procurement Code § 21.8 (b)(60)

\(^4\) Miami-Dade County v. Church & Tower, Inc., 715 So. 2d 1084, 1086 (Fla. 3d Dist. Ct. App. 1998)

\(^5\) Id. at 1085

\(^6\) Id. at 1086

\(^7\) The 3rd DCA—the District in which Monroe County is located
the bidder's performance under previous contract, it did not appear to be arbitrary to find the bidder non-responsible.\textsuperscript{38}

In the instant matter, the District's bid documents mirror the Florida Statute language cited above, requiring a bidder to have "the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance."\textsuperscript{39} In addition, the District's bid documents provide that: "All Bidders are required to be responsible. Failure to meet any of the responsibility requirements set forth herein may be result in the Bidder being judged non-responsible."\textsuperscript{40}

Moreover, as mentioned above, to be judged responsible, the District's bid documents require a Bidder to, "... have a satisfactory record of ... performance ... including in particular, any prior performance upon contracts from the [District]."\textsuperscript{41}

Given the issues associated with the Key Largo Park Wastewater System Project, it is clear that is not unreasonable, nor is it arbitrary and capricious, for the District to judge DNHI not to be a responsible bidder for a vitally important, four million dollar project such as the Biosolids Digester Project.

The District's No Litigation Requirement

The District's bid documents for the Biosolids Digester Project specifically indicate that:

"...the Contract will be awarded ... to the responsive, responsible Bidder who has submitted the lowest responsive Bid, in accordance with all other requirements of this section, including 1.09: Rejection of Nonperforming Bidders."\textsuperscript{42}

Section 1.09\textsuperscript{43} makes it clear that the District has the right to reject the Bid of any Bidder:

"who is in litigation with any governmental agency within the past five (5) years [or who] has made a claim against the [District],... where the claim was not, in the sole

\textsuperscript{38} Id. at 1091 (affirming the denial of the temporary injunction); see also Culpepper v. Moore, 40 So. 2d 366, 370 (Fla. 1949) (affirming the agency's decision that the low bidder was not responsible in part because of mistakes in the bid)
\textsuperscript{39} See, Note 20
\textsuperscript{40} Page 00200-6; Section 1.16 Responsibility Requirements; Section A.
\textsuperscript{41} Page 00200-6; Section 1.16 Responsibility Requirements; Section B. 1.
\textsuperscript{42} Page 00200-4; Section 1.14 Basis of Award; Section A.
\textsuperscript{43} Page 00200-2; Section 1.09 Rejection of Nonperforming Bidders
As part of the bid review process, District staff has undertaken to determine whether the two companies that responded to the bid, Douglas N. Higgins, Inc. and Wharton-Smith, Inc., have been in litigation with any governmental agency within the last five years.

**Wharton-Smith, Inc.**

Wharton-Smith, Inc. has submitted a Litigation and Claims History attached hereto as Exhibit "F." A review of that history indicates that WSI's litigation record for the past five years can be summarized as follows:

<table>
<thead>
<tr>
<th>Case Name</th>
<th>Gov't Agency Involved</th>
<th>Year suit filed</th>
<th>Nature of Lawsuit</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manalapan vs. Gerhardt Witt vs. Wharton-Smith</td>
<td>None*</td>
<td>2009</td>
<td>The Town of Manalapan sued Witt over a well project. Witt sued WSI as a 3rd Party Defendant. WSI was not involved in drilling the well</td>
<td>Case was settled during mediation 12/2010</td>
</tr>
<tr>
<td>Wharton-Smith vs. Reliable Constr</td>
<td>None</td>
<td>2009</td>
<td>WSI sued Reliable for damages suffered by WSI when Reliable damaged a 30&quot; sewer line</td>
<td>Mediated settlement 12/2009</td>
</tr>
<tr>
<td>Pond Bay Club (Lien foreclosure)</td>
<td>None</td>
<td>2009</td>
<td>WSI as GC, had filed a lien. WSI sued to foreclose on lien. 3rd party suit also filed vs WSI</td>
<td>All litigation closed or dismissed</td>
</tr>
<tr>
<td>Southern Atlantic vs. Wharton-Smith</td>
<td>None</td>
<td>2010</td>
<td>Southern Atlantic sued WSI alleged bidding misrepresentations and business interference</td>
<td>WSI is aggressively defending the suit</td>
</tr>
<tr>
<td>Wharton-Smith vs. Smith-Davis Constr</td>
<td>None</td>
<td>2011</td>
<td>WSI sued subcontractor for breach of contract. Subcontractor counter sued</td>
<td>Mediated settlement 09/2012</td>
</tr>
<tr>
<td>Wharton-Smith vs. Intern'l Fidelity Ins</td>
<td>None</td>
<td>2011</td>
<td>WSI sued IFIC for their failure to pay the costs associated with contractor's failed bid protest</td>
<td>Case was dismissed in October 2012</td>
</tr>
<tr>
<td>Wharton-Smith vs. Schweizer, Waldroff</td>
<td>None</td>
<td>2011</td>
<td>WSI sued Schweizer for breach of contract re design-build project for the Orlando FD</td>
<td>Mediated settlement 12/2012</td>
</tr>
<tr>
<td>Emerald Utilities vs. Wharton-Smith</td>
<td>None</td>
<td>2012</td>
<td>Emerald sued WSI for alleged breach of contract re Orange Cty So Reg Water Supply Facility</td>
<td>There is a pending mediation in case</td>
</tr>
</tbody>
</table>

* In this matter, it appears that the Town of Manalapan, in Palm Beach County, FL had contracted with Gerhardt M. Witt & Associates for the construction of a potable water well. Apparently, the well failed to produce as designed and, in 2008, the Town of Manalapan sued Witt & Associates. In March 2009, Witt & Associates sued Wharton-Smith, Inc. (and several other companies). WSI was the Design-Builder of the water treatment plant to which the well supplied potable raw water.

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44 Pages 00200-2 and 00200-3; Section 1.09
WSI points out that WSI was not sued by the Town of Manalapan. WSI was a third-party defendant brought into the lawsuit by Witt, acting as a third-party plaintiff. WSI also points out that WSI did not have anything to do with drilling the well.

Based upon the above, it does not appear that WSI has been “in litigation with any governmental agency within the past five (5) years.”

Douglas N. Higgins, Inc.

It appears from the public records of the Monroe County Clerk that on or about January 18, 2013, DMHI filed a lawsuit against the Florida Keys Aqueduct Authority with reference to the Cudjoe Regional Sewer Project.\(^ {45} \)

It further appears that, with reference to the Cudjoe Regional Sewer Project, DNHI had bid $85.3 million to build an extensive wastewater collection system, but was not awarded the contract. FKAA chose a lower bidder, Layne Heavy Civil Inc., which had reportedly bid $79.3 million. DNHI’s lawsuit charged that Layne did not meet all the bid requirements and “was non-responsive” to the Request for Proposals because Layne did not provide cost schedules, preliminary design, and pertinent financial information. It should be noted that this lawsuit presented a serious problem for FKAA and its partner on the project, Monroe County, because the lawsuit could have jeopardized $30 million in state funding the County and FKAA were hoping to receive from the State.

DNHI has, therefore, unquestionably been involved in litigation with a “governmental agency within the past five (5) years.” Section 1.09\(^ {46} \) makes it clear that the District has the right to reject the Bid of any Bidder who has been, “in litigation with any governmental agency within the past five (5) years.”\(^ {47} \) Therefore, the District has the right to reject the bid of Higgins in accordance with section 1.09\(^ {48} \) of the bid documents.

Conclusion

Based upon the District’s past experience with DNHI and based upon DNHI’s recent involvement in litigation regarding governmental projects, District staff has determined that Douglas N. Higgins, Inc. does not meet the responsibility requirements as set forth in the bid

45 Douglas N. Higgins, Inc., a Michigan Corporation v. Florida Keys Aqueduct Authority, an Autonomous Public Body Corporate and Politic; Monroe County Circuit Court Case No. CAK1360.
46 Page 00200-2 and 00200-3; Section 1.09 Rejection of Nonperforming Bidders
47 Id.
48 Page 00200-2 and 00200-3; Section 1.09 Rejection of Nonperforming Bidders, “Owner may reject the bid of any Bidder that has made a claim against the Owner, either as a contractor, a subcontractor of any tier, or a supplier of any tier, where the claim was not, in the sole judgment of Owner made in good faith or was not supported by adequate documentation.”
Therefore, in accordance with section 1.09 of the bid documents, the District has the right to reject the Bid of Douglas N. Higgins, Inc.

The bid of Wharton-Smith, Inc. was, in all respects, found by District staff to be responsive. District staff has determined that Wharton-Smith, Inc. has not been involved in litigation with any governmental agency within the past five years. District staff has also determined that Wharton Smith meets the responsibility requirements as set forth in the bid documents and has the construction capabilities to satisfactorily construct the Biosolids Digester Project within the contract time frames.

Consequently, the lowest responsive and responsible bidder has been determined to be Wharton Smith; and District staff has recommended award of the Biosolids Digester construction contract to Wharton Smith, Inc.

As there are no facts in dispute, and as Douglas N. Higgins, Inc., has not presented any grounds or credible evidence to require, justify, or support overturning the Recommendation of Award, it is recommended that the contract for the District’s Biosolids Digester Project be awarded to Wharton-Smith, Inc.

Respectfully submitted

Ray Giglio
12 December 2013

Mr. Daniel Saus, Operations Manager
Key Largo Wastewater Treatment District
98880 Overseas Highway
Key Largo, Florida 33037

Re: Recommendation of Award for Biosolids Digester Project

Mr. Saus,

Bids for the above referenced project were received at the Key Largo Wastewater Treatment District Office until 2:00 P.M. on Wednesday, November 13, 2013, opened publicly, and read aloud at the Key Largo Wastewater Treatment District office in Key Largo, Florida. Two bids were received.

Weiler Engineering has reviewed the bids to formulate an opinion of the contractors’ responsiveness with respect to the scopes of work advertised. The bid prices are presented below.

<table>
<thead>
<tr>
<th>Bidder</th>
<th>Biosolids Digester Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>Douglas N. Higgins, Inc.</td>
<td>$3,988,000.00</td>
</tr>
<tr>
<td>Wharton Smith, Inc.</td>
<td>$4,077,000.00</td>
</tr>
</tbody>
</table>

Upon conducting reviews and evaluations of the bids, we found that the bid form prepared by Douglas N. Higgins was not signed as required by the Instructions to Bidders. Otherwise, the documentation submitted by both Bidders conformed with the minimum requirements.

Rejection of the bid by Douglas N. Higgins, Inc., the low Bidder, has been recommended by District Counsel as detailed in his memorandum to the Board. Based on District Counsel’s recommendation, Weiler Engineering removed Douglas N. Higgins, Inc. from further consideration.

Based upon our references checks and review of the Bidder’s experience, it is our opinion that Wharton Smith, Inc is responsive, responsible and has the necessary
construction capabilities to satisfactorily construct the Biosolids Digester Project within the contract time frames. Weiler Engineering recommends award of the Biosolids Digester construction contract to Wharton Smith, Inc.

Please contact us if you need further information or have questions regarding our evaluation.

Sincerely,

Edward R. Castle, P.E.
Vice President, Director of Wastewater
**Biosolids Digester Project**

ENGINEER'S ESTIMATE  
$2,925,000.00

<table>
<thead>
<tr>
<th>Document/Contractor</th>
<th>Douglas N. Higgins, Inc</th>
<th>Wharton Smith, Inc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost</td>
<td>$3,988,000.00</td>
<td>$4,077,000.00</td>
</tr>
<tr>
<td>Addendums</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Insurance Requirements</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Bid Bond</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Copy of License</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Signature</td>
<td>N</td>
<td>Y</td>
</tr>
</tbody>
</table>

Deviation from Engineer's Estimate  
$1,063,000.00  
$1,152,000.00
NOTICE OF INTENT TO AWARD
CONTRACT FOR BIOSOLIDS DIGESTER PROJECT

<table>
<thead>
<tr>
<th>Procurement Method</th>
<th>Invitation For Bids</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owner</td>
<td>Key Largo Wastewater Treatment District</td>
</tr>
<tr>
<td>IFB Opening Time</td>
<td>November 13, 2013 at 2:00 PM</td>
</tr>
</tbody>
</table>

After taking into consideration the evaluation factors set forth in the Invitation for Bids for the Biosolids Digester Project, the Owner has determined that it intends to award the contract to the lowest responsive and responsible bidder, Wharton Smith, Inc.

Bidders are hereby notified that they have limited rights to protest this Notice of Intent to Award. Pursuant to Section 1.02.1.3 of the bid documents, a protest may be filed no later than 10 calendar days after receipt of oral or written notification of the intent to award.

Pursuant to Section 1.02.1.4, a protest is considered filed when received by the District Clerk. Protests must be filed in writing to be considered. Failure to file a protest within the time prescribed in Section 1.02.1.3 of the bid documents shall constitute a waiver of the right to protest. Protests filed after the 10-day period shall not be considered.

The lowest responsive and responsible bidder, is hereby on notice that any proposed contract arising from this procurement process shall be contingent upon the following occurrences having taken place: (1) lapse of the applicable waiting period; (2) in the event of a protest, final resolution of same in favor of going forward with the contract in accordance with the Intent to Award; (3) formal adoption of a resolution by the Board of Commissioners of the Key Largo Wastewater Treatment District awarding the contract.

This Notice of Intent to Award is being transmitted to all responding contractors on the following date in the following manner: December 16, 2013, USPS Certified Mail, RRR.

Date: December 16, 2013

Daniel Saus
Operations Manager
Key Largo Wastewater Treatment District
Transmitted VIA E-Mail to carol.walker@klwtd.com, Hand Delivery and US Mail

December 27, 2013

Ms. Carol Walker
District Clerk
Key Largo Wastewater Treatment District
P. O. Box 491
Key Largo, FL 33037

Subject: Notice of Protest
Biosolids Digester Project - Key Largo Wastewater Treatment District

Ms. Walker:

Douglas N. Higgins, Inc. (DNHI) has prepared this Notice of Protest of the intended award by the Key Largo Wastewater Treatment District (District) to Wharton Smith, Inc. (WSI) on the Biosolids Digester Project. In accordance with requirements of the bid documents under Section 00425 – Part 1.02.2, DNHI is providing the following information to support this protest:

Per Section 00425 – Part 1.02.2.1 the name, address and telephone number of the protestor are provided below:

Douglas N. Higgins, Inc.
Attention: Daniel Higgins – Vice President
3390 Travis Pointe Road, Suite A
Ann Arbor, Michigan 48108
(734) 996-9500 – Office Phone
(239) 253-3701 – Mobile Phone

Per Section 00425 – Part 1.02.2.2 the appropriate identification of the procurement is provided below:

Biosolids Digester Project
Key Largo Wastewater Treatment District

Per Section 00425 – Part 1.02.2.3 and Part 1.02.2.4 the statement of the reasons for the protest and supporting exhibits, evidence of documents to substantiate these claims are provided below and as attachments to this letter:

In a memorandum prepared by Ray Giglio, General Counsel for the KLWTD dated December 16, 2013 (Memo), it was claimed that the bid submitted by DNHI was non-responsive and that DNHI failed to meet the standards of a responsible bidder. DNHI disagrees with these findings and will detail how its bid was responsive and responsible in the following sections:
Responsive Requirement

In the Memo, it was stated that the sole reason DNHI’s bid was non-responsive was because it was not signed as outlined in Section 00200-5 – Part 1.15.C.1.d. What the Memo fails to elaborate on is that DNHI fully executed its bid in each and every location of the bid documents provided by the KLWTD and that a signature section was omitted and not issued in Section 00410. Where required and provided in the bid documents issued by the KLWTD, DNHI fully signed and executed all required forms including its Bid Bond Form (Section 00420), Trench Safety Statement Form (Section 00430) and Appendix A to the Florida Department of Environmental Protection Supplementary Conditions.

The stated purpose of the signature requirement in Section 00200-5 – Part 1.15.C.1.d is to “bind the Bidder to a Contract”. By fully executing the Bid Bond Form (Section 00420), DNHI is fully bound to enter into a contract with the KLWTD for the Biosolids Digester Project at the bid price submitted and has accomplished that purpose. The intent of the bid bond and its direct correlation to this purpose is supported by Part 1.11.B within the same section:

“If for any reason the Bidder withdraws his Bid after Bid Opening or fails to execute an Agreement or to provide the specified bonds, insurance, and insurance certification, such Bidder shall be in default. The defaulting Bidder and his surety shall forfeit the bid security to Owner as liquidated damages, and not as a penalty.”

The fact that Section 00410 was not individually signed is a minor informalities and one that shall be waived by the KLWTD in accordance with Section 00200-5 – Part 1.15.B.

“Minor informalities are matters of form rather than substance, or insignificant omissions that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The District shall waive in writing these informalities or allow a bidder to correct them depending on which is in the best interest of the District.”

The bid documents are clear that the KLWTD has two (2) options when a minor informality exists. They shall waive the informality in writing or allow a bidder to correct them depending on which is in the best interest of the District. This section does not allow the KLWTD to take a minor informality and find a bidder non-responsive because of that informality which is precisely what the KLWTD is attempting to accomplish in this case.

Additionally, Section 00200 provides additional provisions to the release and execution of bid documents.

• Part 1.01.B indicates that no partial sets of the bidding documents will be issued. DNHI had no reason to believe that an incomplete or partial set of bid documents had been issued. Five (5) addenda were issued with which Weiler Engineering Corporation or the KLWTD could have corrected the bid form to include the missing signature page if it was a critical responsiveness requirement;

• Part 1.10.B indicates that the bidder is not permitted to make changes in the bid form provided. The fact that WSI modified page 00410-3 to include a signature line and specific contract language to explain its reasoning for this signature directly violates this instruction to bidders; and
Notice of Protest - Biosolids Digester Project - Key Largo Wastewater Treatment District
December 27, 2013

Page 3

- Part 1.02 indicates that any bidder who is in doubt as to the true meaning of any part of the bidding documents or finds a discrepancy or omission therein, must submit to the engineer a written request for interpretation or correction. At bid time, DNHI was unaware of the missing signature page and had no reason to think that a partial set of bid documents had been issued or that it had the liberty to modify and/or change the bid form provided. By modifying and then signing their bid form prior to bid time, WSI was clearly aware of the discrepancy and/or omission and had an obligation to notify the engineer as provided for in this section.

Failure of DNHI to explicitly sign Section 00410 (Bid Form) is, at most, a minor informality and should be addressed by the KLWTD as provided for in Section 00200.1.15.B. It is does not constitute a non-responsive submission by DNHI.

Responsibility Requirement

In the Memo it was stated that the sole reason DNHI failed to meet the responsibility requirement is related to past litigation with KLWTD as well as with litigation with other government agencies within the past five (5) years. Three (3) cases were improperly cited and each will be addressed separately below.

DNHI Contractual Lawsuit with the KLWTD for Key Largo Park

Of all cases referenced by the Memo this one, in particular, is most concerning to DNHI as it should not have been considered based on the “Termination of Convenience Agreement and Release” found as Attachment A to this letter. Item 3 of the agreement clearly requires that neither party shall report or opine negatively as a result of this termination of convenience. By referencing this case within our responsibility check and including a one-sided, lengthy attachment related to the background of the termination of convenience the KLWTD has done just that. DNHI executed and honored this agreement in good faith and trusts that the KLWTD will do the same from this point forward.

DNHI Contractual Lawsuit with the City of Naples for Basin VI Storm Drainage Improvement

This case was settled over ten (10) years ago and falls outside of the KLWTD’s stipulated five (5) year timeframe with which to consider valid litigation. It should also be noted that since this time DNHI has completed several successful projects for the City of Naples and an award to DNHI was never stayed based on the results of this litigation.

DNHI Contract Award Lawsuit with the FKAA for the Cudjoe Regional Sewer Project

This lawsuit between DNHI and the FKAA was based on the award of a complex, design-build project which involved numerous evaluation criteria aside from price and not a contract or construction dispute. DNHI continues to bid, be awarded and successfully complete projects for the FKAA. It should also be noted that the FKAA found DNHI fully capable, responsive and responsible to complete an $85 Million design-build project and never claimed that we were acting in bad faith.

It is necessary to point out that DNHI is fully responsible meeting all criteria the bid documents. Section 00200 – Part 1.16 defines eight (8) specific items which a bidder must respond to in order to be considered responsible at bid time. DNHI fully addressed each of these items within its bid. Section 00200 – Part 1.17 defines the responsibility requirements that the low bidder is to respond to post bid; one of which includes litigation with governmental agencies. DNHI was never given the opportunity to respond to any of the items under this section. Instead the KLWTD focused on one of seven criteria to determine DNHI was not responsible without providing it the opportunity to provide a complete response as provided for in the bid documents. Of the three (3) cases improperly cited by the KLWTD, one should not have been referenced based on an agreement with the KLWTD regarding the contract termination for
convenience, one falls outside of the five (5) year timeframe with which to consider litigation and one is based on a contract award dispute and not a contractual or construction dispute.

The considerations above in no way make DNHI a non-responsible bidder but do show how the KLWTD has not followed its established procedure to determine a bidder’s responsibility.

Per Section 00425 – Part 1.02.2.5 the relief requested:

DNHI offers two (2) options in its request for relief:

1. Have the KLWTD issue the omitted signature page to Section 00410 (Bid Form) to all bidders, have them properly execute, attest and seal the signature page and resubmit this form to the KLWTD. At that point the KLWTD could then evaluate each bidder’s responsiveness and responsibility in accordance with the requirements and procedures established in Section 00200.

2. Find DNHI as the lowest, responsive and responsible bidder for the reasons outlined above and in accordance with the requirements and procedures established in Section 00200 and issue a Notice of Intent to Award to DNHI.

Per Section 00425 – Part 1.02.2.6 the signature of the protestor or the protestor’s representative:

In an effort to expedite resolution of this issue, DNHI would like to initiate scheduling of a hearing on either January 2nd, 3rd, 6th or 7th of 2014. Feel free to contact me at my office at (734) 996-9500, on my mobile phone at (239) 253-3701 or via e-mail at danh@dnhihiggins.com as soon as a hearing date can be established.

DNHI looks forward to the prompt resolution of this issue.

Sincerely:
Douglas N. Higgins, Inc.

Daniel Higgins
Vice President

Attachment: Attachment A - Termination of Convenience Agreement and Release for Key Largo Park

Cc: Daniel Saus, KLWTD (VIA E-Mail at dan.saus@klwtd.com)
Ray Giglio, KLWTD (VIA E-Mail at ray.giglio@klwtd.com)
Date: February 4, 2005

To: Daniel Higgins
From: Paul Ullom

Client/Matter No.: 37637/82119
Employee No.: 234

Total Number of Pages Being Transmitted, Including Cover Sheet: 4

Messages: Please see attached letter and Termination for Convenience Agreement and Release.

☐ Original to follow Via Regular Mail  ☑ Original will Not be Sent  ☐ Original will follow via Overnight Courier

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (if long distance, please call collect) and return the original message to us at the above address via the U.S. Postal Service. Thank you.

If there are any problems or complications, please notify us immediately at:
(813) 223-7000

Telescopier operator: ________________________________
February 4, 2005

Thomas M. Dillon, Esquire
94220 Overseas Highway
Suite 2B
Tavernier, Florida 33070-3005

Re: Key Largo Wastewater Treatment District

Dear Tom:

Enclosed please find a copy of my draft agreement. By copy of this letter, I am sending the draft agreement simultaneously to my client who has not yet approved its form. I would ask that you both contact me with your approval or any required revisions. As I explained, I will be in a hearing on Monday and ask that you leave me a voice mail message detailing any revisions if required.

Thank you for your assistance in this matter.

Sincerely,

[Signature]

Paul J. Ullom

PJU:blh
Enclosure
cc: Dan Higgins, Via Facsimile
TERMINATION FOR CONVENIENCE AGREEMENT AND RELEASE

This Termination for Convenience Agreement and Release by and between Douglas N. Higgins, Inc. (hereinafter “Higgins”) and the Key Largo Wastewater Treatment District (hereinafter “District”) is made this ___ day of February, 2005 and the parties agree as follows;

WHEREAS, Higgins and the District have entered into a contract for the project known as Key Largo Park Wastewater System Project (hereinafter “Agreement”), and

WHEREAS, the parties have mutually agreed to terminate for convenience their respective obligations and rights under the Agreement, and

WHEREAS, the parties wish to release any and all claims related to the Agreement, it is therefore

AGREED AS FOLLOWS:

1. The Agreement between Higgins and Key Largo Wastewater Treatment District is hereby terminated for convenience. This project is ended by mutual agreement and it is agreed that neither party has defaulted or is in breach of the Agreement.

2. Higgins shall be entitled to receive, within fifteen (15) days from the date of the approval of this Agreement by the District’s Board, the sum of Seven Thousand Five Hundred Dollars ($7,500.00).

3. The District agrees to provide a neutral or positive recommendation regarding Higgins and the Agreement. The District shall not report or opine negatively regarding Higgins’ bid, award, performance or termination for convenience of the Agreement. Higgins shall not report or opine negatively regarding the District’s bid, award, performance or termination for convenience of the Agreement.

4. All other claims, causes of action, demands or other assertions of rights or entitlements are hereby waived between Higgins and the District related to the Agreement. Neither Higgins nor the District shall assert any claim, arbitration, litigation or other demand or action related to the Agreement. All claims or rights of the District regarding Higgins’ surety, Hartford Accident and Indemnity Company, are also waived.
5. Each party shall bear their own costs and fees.

6. There are no other agreements, understandings or terms related to this Termination for Convenience Agreement and Release other than those contained herein.

Contractor
Douglas N. Higgins, Inc.
2887 Tamiami Trail East, Suite 1
Naples, Florida 34112

By: ______________________
Its: ______________________

Owner
Key Largo Wastewater Treatment District
P.O. Box 491
Key Largo, Florida 33037

By: ______________________
Its: ______________________
Mr. Ray Giglio
General Counsel
Key Largo Wastewater Treatment District
P.O. Box 491
Key Largo, FL 33037

Subject: Protest Process Follow-Up from January 13, 2014 Meeting
Biosolids Digester Project - Key Largo Wastewater Treatment District

Mr. Giglio:

Douglas N. Higgins, Inc. (DNHI) would like to thank the Key Largo Wastewater Treatment District (KLWTD) for its time on January 13, 2014 for the preliminary discussions related to DNHI's protest on the above referenced bid. The intent of this letter is to present DNHI's understanding of the process moving forward and the open items which the KLWTD is still considering in making its award to DNHI:

1. Per Section 00425 “Protests, Bid Errors, and Related Issues” – Part 1.06, DNHI is requesting that a date for the hearing of this protest be scheduled as expeditiously as possible. Additionally, DNHI requests that an independent hearing officer be selected so that both parties are more agreeable to the ultimate decision reached as a result of the hearing. As there are facts which remain in dispute between DNHI and the KLWTD, an evidentiary hearing will be necessary to fully establish the position of both parties involved in this process. While DNHI believes that the meeting held on January 13, 2014 was extremely productive, it, in no way, accepts that this meeting constituted the protest hearing under the KLWTD’s established bid protest process.

2. Through our conversation last Thursday, January 23rd, DNHI understands that its lack of modifying the bid form to incorporate a separate signature line within Section 00410 “Bid Form” (a portion of the bid documents) is no longer being considered a lack of responsiveness with the bid submitted by DNHI. Additionally, DNHI understands its 2001 contract with the City of Naples for the Basin VI Storm Drainage Improvement Project is no longer being considered an item to determine DNHI’s responsibility on this project.

3. With the items referenced above no longer in dispute, DNHI understands that two (2) items remain which are being considered by the KLWTD to determine its responsibility to be awarded this project:
   - The termination for convenience of the KLWTD Key Largo Park Project; and
   - DNHI's bid protest on the FKAA Cudjoe Regional Sewer Project.
For the reasons outlined in our bid protest letter of December 27, 2013 and conversations with
the KLWTD during our meeting of January 13, 2014, DNHI does not believe that either of
these items should prevent an award of the above referenced project to our firm. I have
attached the fully executed “Termination for Convenience Agreement and Release” related to
the Key Largo Park Project which was specifically prepared to prevent this type of negative
consideration.

DNHI wants to stress that our ultimate goal through this process is to be awarded the project and execute
its completion to a level which exceeds the expectations of the KLWTD. To this end, DNHI looks forward
to completing the hearing, if needed to formalize an award to our firm, and moving forward on the
construction of this project as soon as possible.

If DNHI’s understanding of how the process will be moving forward from this point or which items are still
be considered to determine DNHI’s responsiveness and responsibility are not in-line with how the KLWTD
intends to proceed the favor of a prompt reply, in writing, would be appreciated.

Please contact me on my mobile phone at (239) 253-3701 or via e-mail at danh@dnhiggins.com as soon
as the requested hearing date can be established.

Sincerely:
Douglas N. Higgins, Inc.

[Signature]
Daniel Higgins
Vice President

Attachment: Attachment A - Termination of Convenience Agreement and Release for Key Largo Park
TO: Douglas Higgins  
2887 Tamiami Trl East Suite 1  
Naples, FL 34112  

Date: Feb. 17, 2005  
Attention: Douglas Higgins  
RE: Termination for Convenience Agree.  

We are sending you:  

☐ ATTACHED ☐ UNDER SEPARATE COVER VIA:  

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☐ For Approval  
☐ For your Use  
☐ As Requested  
☐ For Review  
☐ Approved as Note  
☐ Returned as Corrected  
☐ For Your Records  
☐ Resubmit Copies for Approval  
☐ Submit Copies for Distribution  
☐ Return Corrected Prints  

REMARKS

________________________________________________________________________

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TERMINATION FOR CONVENIENCE AGREEMENT AND RELEASE

This Termination for Convenience Agreement and Release by and between Douglas N. Higgins, Inc. (hereinafter "Higgins") and the Key Largo Wastewater Treatment District (hereinafter "District") is made this 6th day of February, 2005 and the parties agree as follows;

WHEREAS, Higgins and the District have entered into a contract for the project known as Key Largo Park Wastewater System Project (hereinafter "Agreement"), and

WHEREAS, the parties have mutually agreed to terminate for convenience their respective obligations and rights under the Agreement, and

WHEREAS, the parties wish to release any and all claims related to the Agreement, it is therefore

AGREED AS FOLLOWS:

1. The Agreement between Higgins and Key Largo Wastewater Treatment District is hereby terminated for convenience. This project is ended by mutual agreement and it is agreed that neither party has defaulted or is in breach of the Agreement.

2. Higgins shall be entitled to receive, within fifteen (15) days from the date of the approval of this Agreement by the District's Board, the sum of Seven Thousand Five Hundred Dollars ($7,500.00).

3. The District agrees to provide a neutral or positive recommendation regarding Higgins and the Agreement. The District shall not report or opine negatively regarding Higgins' bid, award, performance or termination for convenience of the Agreement. Higgins shall not report or opine negatively regarding the District's bid, award, performance or termination for convenience of the Agreement.

4. All other claims, causes of action, demands or other assertions of rights or entitlements are hereby waived between Higgins and the District related to the Agreement. Neither Higgins nor the District shall assert any claim, arbitration, litigation or other demand or action related to the Agreement. All claims or rights of the District regarding Higgins' surety, Hartford Accident and Indemnity Company, are also waived.
5. Each party shall bear their own costs and fees.

6. There are no other agreements, understandings or terms related to this Termination for Convenience Agreement and Release other than those contained herein.

Contractor
Douglas N. Higgins, Inc.
2887 Tamiami Trail East, Suite 1
Naples, Florida 34112

By: [Signature]
Its: VICE PRESIDENT

Owner
Key Largo Wastewater Treatment District
P.O. Box 491
Key Largo, Florida 33037

By: [Signature]
Its: CHAIRMAN OF KLWTD BOARD
KEY LARGO WASTEWATER TREATMENT DISTRICT
(TWO SIGNERS REQUIRED OVER $2,500)
P.O. Box 481
Key Largo, FL 33037

PAY TO THE ORDER OF Douglas N. Higgins, Inc. $7,500.00

Seven Thousand Five Hundred and 00/100**********

Douglas N. Higgins, Inc.
2887 Tamiami Trail East
Suite 1
Naples, FL 34112

MEMO,

2/17/2005 Bill

TIB Bank

7,500.00
Exhibit "E"

TERMINATION FOR CONVENIENCE AGREEMENT AND RELEASE

This Termination for Convenience Agreement and Release by and between Douglas N. Higgins, Inc. (hereinafter “Higgins”) and the Key Largo Wastewater Treatment District (hereinafter “District”) is made this 26th day of February, 2005 and the parties agree as follows;

WHEREAS, Higgins and the District have entered into a contract for the project known as Key Largo Park Wastewater System Project (hereinafter “Agreement”), and

WHEREAS, the parties have mutually agreed to terminate for convenience their respective obligations and rights under the Agreement, and

WHEREAS, the parties wish to release any and all claims related to the Agreement, it is therefore

AGREED AS FOLLOWS:

1. The Agreement between Higgins and Key Largo Wastewater Treatment District is hereby terminated for convenience. This project is ended by mutual agreement and it is agreed that neither party has defaulted or is in breach of the Agreement.

2. Higgins shall be entitled to receive, within fifteen (15) days from the date of the approval of this Agreement by the District’s Board, the sum of Seven Thousand Five Hundred Dollars ($7,500.00).

3. The District agrees to provide a neutral or positive recommendation regarding Higgins and the Agreement. The District shall not report or opine negatively regarding Higgins’ bid, award, performance or termination for convenience of the Agreement. Higgins shall not report or opine negatively regarding the District’s bid, award, performance or termination for convenience of the Agreement.

4. All other claims, causes of action, demands or other assertions of rights or entitlements are hereby waived between Higgins and the District related to the Agreement. Neither Higgins nor the District shall assert any claim, arbitration, litigation or other demand or action related to the Agreement. All claims or rights of the District regarding Higgins’ surety, Hartford Accident and Indemnity Company, are also waived.
5. Each party shall bear their own costs and fees.

6. There are no other agreements, understandings or terms related to this Termination for Convenience Agreement and Release other than those contained herein.

Contractor
Douglas N. Higgins, Inc.
2887 Tamiami Trail East, Suite 1
Naples, Florida 34112

By: Daniel N. Higgins
Its: Vice President

Owner
Key Largo Wastewater Treatment District
P.O. Box 491
Key Largo, Florida 33037

By: 
Its: Chairman of KLWTD Board
Wharton-Smith, Inc. - Litigation and Claims History

Wharton-Smith believes that potential conflicts can easily be avoided by developing trustworthy relationships early on with all parties involved on a project and by encouraging open communications. The successes we have had on our projects are due in large part to our commitment to partnering and conflict prevention and resolution. Occasionally, a situation arises where a 3rd party mediation is needed, despite all efforts to avoid it. Our litigation record for the past five years is as follows:

LITIGATION RECORD

Town of Manalapan vs. Gerhardt M. Witt & Associates v. Wharton-Smith and others (Case No. 50 2008 CA017810XXXMBAD in the Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, FL): In March 2009, Witt & Associates sued Wharton-Smith, Inc. and several other companies. Witt was previously sued by the Town of Manalapan regarding a potable water well that had failed to produce as designed. The Town of Manalapan did not sue Wharton-Smith. Wharton-Smith is a third-party defendant brought into the lawsuit by Witt, acting as a third-party plaintiff. Wharton-Smith was the Design-Builder of the water treatment plant that the potable water well supplied raw water to. Wharton-Smith did not have anything to do with drilling the well. The case was settled during mediation in December 2010.

Wharton-Smith, Inc. vs. Reliable Constructors, Inc.: In June 2009, Wharton-Smith sued Reliable Constructors to recover damages that Reliable caused to a 30" sanitary sewer line that Wharton-Smith had installed on a project. In September 2007, Reliable was working on a separate project installing power poles and drilled through pipe installed by Wharton-Smith for an ongoing project. After trying to negotiate a settlement for over 20 months, Wharton-Smith sued Reliable. The lawsuit was settled during mediation in December 2009.

Pond Bay Club (First American Development Group/Carib, LLC). (Case No. 535/2009. Superior Court of the Virgin Island): In 2009, First American Development Group/Carib, LLC (FADG) defaulted on its loan agreements on the mortgage between FADG and West LB AG, a German bank. West LB has sued FADG to seek the appointment of a Receiver for the property and also to foreclose on the loan and property. Wharton-Smith, acting as Construction Manager and General Contractor to FADG, along with 47 other contractors/suppliers, filed a Lien on the property and is moving to foreclose on that Lien. As a Lien holder, WSI is an additional claimant on all the other Liens and also with the bank filings for receiver and foreclosure. WSI has terminated its contract with FADG. Various claims and counterclaims have been made by FADG and against FADG by parties to the original claims in regard to the default by FADG. In addition to the above litigation involving FADG, FADG and WSI have been named as claimants in a lawsuit (District Court of the Virgin Islands, Case No. ST-09-CV-00022) filed by Borinquen Excavators Equipment, Inc. in regard to a claim made by a rental equipment company against a Subcontractor of FADG due to an act of arson to the equipment supplied to a FADG Subcontractor by Borinquen and other suppliers of rental equipment while located on the FADG project site. Coverage of the claim is being pursued under the FADG Builders Risk policy. The suit filed by Borinquen against WSI as a Third Party Defendant has been dismissed. The bank has foreclosed on FADG and all litigation has been closed.
Southern Atlantic Companies, LLC vs. Wharton-Smith, Inc. (Case No. 10CA-7820-11-G The Circuit Court of the 18th Judicial Circuit, Seminole County, Florida): In December 2010, Southern Atlantic Companies, LLC, filed suit against Wharton-Smith, Inc. over alleged misrepresentations during a bidding process and for alleged interference with their business relationships subsequent to the bidding. Wharton-Smith’s position is that the allegations are false and without basis and is aggressively defending this position.

Wharton-Smith, Inc. vs. Smith-Davis Construction, LLC (Case No. 11-CA-946-15-L Consolidated with 2011-CA-4256-15-I The Circuit Court of the 18th Judicial Circuit, Seminole County, Florida): In March 2011, Wharton-Smith filed suit against its subcontractor for breach of contract in regards to their failure to complete their subcontract work on the Orange County Utilities Southern Regional Water Supply Facility project. In October of 2011 Smith-Davis counter sued Wharton-Smith. This case was settled during mediation in September of 2012.

Wharton-Smith, Inc. vs. International Fidelity Insurance Company and Southern Atlantic Companies, LLC (Intervenor) (Case No. 2011-CA-9630-O The Circuit Court of the Ninth Judicial Circuit, Orange County, Florida): In November 2011, Wharton-Smith filed suit against IFIC for their failure to pay the costs associated with SAC’s failed bid protest. SAC had posted a protest bond for which IFIC was the surety. This case was dismissed in October 2012.

Wharton-Smith, Inc. vs. Schweizer, Waldroff Architects, Inc. (Case No. 2011-CA-016703-0 The Circuit Court of the Ninth Judicial Circuit For Orange County, Florida): In December 2011, Wharton-Smith filed suit against Schweizer Waldroff for breach of contract regarding the design-build project for the City of Orlando Fire Station No. 1 project. Upon completion of construction the HVAC system was found to have several design errors and omissions requiring Wharton-Smith to spend a significant amount of money to remedy the work. Schweizer Waldroff has filed a third party complaint against John J. Christie & Associates of Florida, Inc., the MEP design engineer on the project. The case settled during mediation in December 2012.

Emerald Utilities & Site Development, Inc vs. Wharton-Smith, Inc (Case No. 2012-CA-015654-O The Circuit Court, Ninth Judicial Circuit, Orange County, Florida): In September 2012, Emerald Utilities filed suit against Wharton-Smith over alleged breach of contract regarding a claim on the Orange County Southern Regional Water Supply Facility. Wharton-Smith maintains that the claim, if valid, is a pass through claim to the owner, Orange County Public Utilities, which has denied the claim. The case presently has a pending mediation.
KEY LARGO WASTEWATER TREATMENT DISTRICT
Agenda Request Form

Meeting Date: Feb. 4, 2014
Agenda Item No. 6

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

SUBJECT: Trip to Washington D.C.

RECOMMENDED MOTION/ACTION:

Approved by General/Manager
Date: 1/30/2014

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| Department Review:     | [ ] Engineering | Advertised: |
|                        | [ ] Clerk | Date: |
|                        | [Operations] | Paper: |
|                        | [Customer Service] | [X] Not Required |

Summary Explanation/Background: Margaret Blank will give a report on the trip to Washington D.C.

Resulting Board Action:

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

Agenda Request Form

Meeting Date: Feb. 4, 2014

Agenda Item No. 7

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

SUBJECT: Reclaimed Water System

RECOMMENDED MOTION/ACTION:

Approved by General Manager

Date: 1/30/2014

Originating Department: General Manager

Costs: $0

Funding Source: n/a

Attachments: Memo

Department Review:

[ ] District Counsel
[X] General Manager
[ ] Finance

[ ] Engineering
[ ] Clerk
[Operations]
[Customer Service]

Advertised:

Date: 

Paper: 

[X] Not Required

Summary Explanation/Background:

Resulting Board Action:

☐ Approved      ☐ Tabled      ☐ Disapproved      ☐ Recommendation Revised
MEMORANDUM

To: Margaret Blank
From: Ed Castle, PE
Date: 29 January 2014
Re: Reclaimed Water Design and Permitting

In conjunction with District staff, I have prepared the attached detailed capital cost estimate for the reclaimed water distribution systems from MM 92.5 to MM 104.8, including the necessary upgrades at the WWTP site. This is a conceptual level cost estimate at this time. It is based on the cost of pipe work and WWTP work from recently completed projects in Key Largo and Marathon. A 20% contingency has been added to ensure that unforeseen conditions that may be encountered are included in the budgetary number.

It should be noted that a large portion of the construction cost is restoration of US Highway 1. The recent KLWTD and Islamorada sewer projects were designed to make use of the most convenient and least costly corridors that were available. Both of those projects were designed to avoid work in the US 1 paved areas and to avoid the Heritage Trail to the extent possible. With all the existing water, sanitary sewer, storm sewer and other utilities in the right of way, it is likely that another underground piping project will be unable to avoid the US 1 and Heritage Trail asphalt in many locations. Since a full lane overlay of the US 1 asphalt will likely be required, the asphalt restoration cost is high.
### Cost Estimate for Reclaimed Water Transmission Mains

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<td>$10,000.00</td>
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</table>

**Subtotal Excluding US1 Restoration**: $1,108,800.00

**Subtotal Including US1 Restoration**: $1,371,300.00

### Cost Estimate for Reclaimed Water Storage and Pumping System

<table>
<thead>
<tr>
<th>Unit</th>
<th>Unit Price</th>
<th>Quantity</th>
<th>Total Price</th>
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<tbody>
<tr>
<td>Site Grading and Drainage</td>
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<td>Tank Foundation</td>
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<td>Pre-Stressed Storage Tank</td>
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<td>Hydropneumatic Pumping System</td>
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<td>Electrical</td>
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<td>$75,000.00</td>
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<td>Yard Piping</td>
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<td>$33,750.00</td>
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<td>Mobilization</td>
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<td>Bonds and Insurance</td>
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</table>

**SubTotal Distribution Piping**: $3,576,239.50

**Total Cost Estimate for Reclaimed Water Project**: $12,010,645.72

**20% Contingency**: $2,402,129.14

**Grand Total Cost Estimate for Reclaimed Water Project**: $14,412,774.87

Consulting Engineer Design and Permitting $245,331
MEMORANDUM

To: Margaret Blank
From: Ed Castle, PE
Date: 29 January 2014
Re: Reclaimed Water

I have estimated the amount of reclaimed water that may be used in the District’s currently projected service area from mile marker 92.5 to mile marker 104.8. A list of users and the irrigable area is attached. Currently existing irrigation areas are shown in black while areas of potential future development are shown in red.

The estimated total current irrigable area is 63.6 acres while the potential future irrigable area is 80.5 acres. Using a range of typical application rates of irrigation water, I estimated the daily consumption of reclaimed water for both current and future conditions. Based on these consumption rates, I calculated annual gross revenue that would be generated for each condition and application rate. A table summarizing the potential revenue is attached.

For currently existing irrigable acreage, and at the median application rate, we could expect to generate gross revenue of approximately $290,000 per year in 2014 dollars. Since we are assuming that the capital investment will be covered by the Mayfield grant funding, the only direct expenses to the District will be the additional operation and maintenance cost associated with producing the reclaimed water.

The District is already required to treat the wastewater to reclaimed water levels, so there is no increase in staffing, chemicals or WWTP power. The only increase in cost will be electricity and maintenance costs for the reclaimed water pumps, tank and piping. The annual cost for this for 300,000 GPD has been estimated to be $35,000. Subtracting this from the annual gross revenue gives an estimated annual net revenue of $255,000.

As we move forward with the study phase of the design for the reclaimed water, we will explore the option of providing reclaimed water to Islamorada’s existing reclaimed water storage tank at the North Plantation Key wastewater treatment plant site. The existing reclaimed water system at that site is intended to provide irrigation water to Founders Park.
<table>
<thead>
<tr>
<th>Property</th>
<th>Address</th>
<th>Total Acreage</th>
<th>Estimated Irrigation Acreage</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Key Largo School</td>
<td>107801 OSH</td>
<td>29.1</td>
<td>10.2</td>
<td>Sports fields, lawns, etc.</td>
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<tr>
<td>Largo Sun Vista Acquisitions</td>
<td>104550 OSH</td>
<td>8.1</td>
<td>6.1</td>
<td>Vacant Waterfront, Rowell's Marina?</td>
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<td>Medina Land Holdings, LLC</td>
<td>104180 OSH</td>
<td>2.6</td>
<td>2.6</td>
<td>Vacant Waterfront, three parcels, one ownership</td>
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<td>Marrkey LLC</td>
<td>103800 OSH</td>
<td>8.9</td>
<td>2.7</td>
<td>Key Largo Marriott</td>
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<td>Mahogany Bay</td>
<td>102000 OSH</td>
<td>4.4</td>
<td>1.3</td>
<td>Existing landscaping</td>
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<td>Tarpon Basin Villas</td>
<td>101900 OSH</td>
<td>4.3</td>
<td>2.2</td>
<td>Existing landscaping</td>
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<td>Industrial Acres/Hibiscus Park</td>
<td>101301 OSH</td>
<td>1.3</td>
<td>0.7</td>
<td>County owned park</td>
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<tr>
<td>Magnolia 101 LLC</td>
<td>next to WWTP</td>
<td>4.0</td>
<td>1.0</td>
<td>Industrial area next to FKAA, potential future use</td>
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<td>Hollkey &amp; Marinakey LLC</td>
<td>99701 OSH</td>
<td>9.8</td>
<td>2.0</td>
<td>Existing landscaping</td>
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<td>Monroe County &amp; adjacent parcels</td>
<td>320 Laguna</td>
<td>14.2</td>
<td>7.1</td>
<td>County park, ball fields, etc.</td>
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<tr>
<td>Northstar Resort Enterprises Corp</td>
<td>99060 OSH</td>
<td>11.7</td>
<td>2.9</td>
<td>Scarified, redevelopment</td>
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<tr>
<td>Everglades National Park &amp; adjacent</td>
<td>98630 OSH</td>
<td>8.5</td>
<td>5.1</td>
<td>Open space, scarified, turn into nature park?</td>
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<td>Interstate Property Holdings &amp; Others</td>
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<td>1.9</td>
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<td>Rock Harbor</td>
<td>97652 OSH</td>
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<td>Mariners Club</td>
<td>97601 OSH</td>
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<td>2.2</td>
<td>Common areas only</td>
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<td>Hilton Key Largo Grand</td>
<td>97000 OSH</td>
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<td>Buttonwood Bay Club</td>
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<td>Silver Shores Mobile Home Park</td>
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<td>KLOR</td>
<td>94825 OSH</td>
<td>19.0</td>
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<td>Cemex</td>
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<td>Water to be used for mixing concrete, need data</td>
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<td>Harry Harris Park</td>
<td>Beach &amp; Dove Creek</td>
<td>15.4</td>
<td></td>
<td>County owned park</td>
</tr>
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</table>

Existing irrigable acreage 63.6

Existing plus future irrigable acreage 80.5
<table>
<thead>
<tr>
<th>Irrigation water application rate</th>
<th>Current Condition, Irrigation Use, GPD</th>
<th>Future Condition, Irrigation Use, GPD</th>
<th>Cemex Use, GPD</th>
<th>Current Condition, Total Use, GPD</th>
<th>Future Condition, Total Use, GPD</th>
<th>Annual Revenue, Current Condition @ $2.50/Thou</th>
<th>Annual Revenue, Future Condition @ $2.50/Thou</th>
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<tr>
<td>0.75&quot; per week</td>
<td>184,901</td>
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<td>1.25&quot; per week</td>
<td>308,168</td>
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<td>318,168</td>
<td>400,081</td>
<td><strong>$290,327.95</strong></td>
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<tr>
<td>2&quot; per week</td>
<td>493,068</td>
<td>624,129</td>
<td>10,000</td>
<td>503,068</td>
<td>634,129</td>
<td><strong>$459,049.72</strong></td>
<td><strong>$578,642.66</strong></td>
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This Task Order, made as of this ______ day of ______________________, 2014, will be a supplement to and made a part of, the Agreement for Professional Services, dated December 9, 2003, between the KEY LARGO WASTEWATER TREATMENT DISTRICT (DISTRICT), and THE WEILER ENGINEERING CORPORATION (ENGINEER/WEC).

ARTICLE 1 - SCOPE OF SERVICES

WEC will provide the DISTRICT with professional engineering services for the planning, design, and permitting phases for the reclaimed water distributions system as outlined in this Scope of Services. This will be referred to as the PROJECT to which this Agreement applies. These services will include serving as the DISTRICT's professional engineering representative for the PROJECT, providing professional engineering consultation and advice in furnishing customary engineering services.

A. Project Description

The DISTRICT has determined that it is in the best interest of the DISTRICT and the environment to provide reclaimed water to certain properties located within the DISTRICT. These properties are generally located adjacent to the US Highway 1 right of way from the Cemex Plant at approximately mile marker 92.5 to the Key Largo Elementary School at approximately mile marker 104.8. Highway crossings to serve properties on both sides of the highway will be included in the design. A branch line to provide irrigation water to Harry Harris Park will be included in the design, pending direction from the DISTRICT. The anticipated total length of reclaimed water distribution main will be approximately 13.5 miles. Permits from FDEP and FDOT will be needed for this portion of the project. Additional permitting may be required for the anticipated direction drill crossing of the Marvin D. Adams waterway.

Modifications at the wastewater treatment plant will be needed for installation of a reclaimed water storage tank, a hydropneumatic tank and reclaimed water pumps. These modifications will require a Major Modification to the existing WWTP Operating Permit and an Environmental Resources Permit, both issued through FDEP.

Permitting of the reclaimed water project through the FDEP is not anticipated to be difficult. The Department encourages the reuse of treated effluent where feasible. Due to recent improvements in the US 1 corridor, the design of the distribution main will need to minimize cutting of new pavement in the roadway and the Heritage Trail in many locations. Close coordination with FDOT will be needed to ensure that the interests of all stakeholders area protected.

WEC will establish the layout of the project and the size, location and grade of the reclaimed water distribution lines. This will include the location of existing utilities and other facilities' locations (as are readily available), which may impact the design of the reclaimed water distribution system.

B. Scope of Services

The Project will include the following services to complete the design and permitting:

Task 1 - Project Administration and Management

This task focuses on the administration of the project including project setup and tracking, reporting, client
interface, contracting with sub-consultants, project scheduling, and project invoicing.

**Task 2 - Preliminary Design Report**

WEC will produce a reclaimed water conceptual report, summarizing estimated capital costs, operation and maintenance costs, revenue to be generated from the sale of reclaimed water and the potential environmental impacts of the project. A preliminary layout of the reclaimed water distribution system will be provided.

Specific tasks included in this preliminary engineering report will include but are not limited to:

1. WEC will review existing KLWTD data gathered from reports, maps, aerials, surveys, and the Monroe County Property Appraiser's Office data, along with a review of the requirements of the agencies having jurisdiction over this project.

2. WEC will utilize existing irrigation water flows obtained from existing FKAA reports and estimated future flows based on dimensions and uses of properties in the service area to determine the overall flow rate for this project and from each commercial establishment, park, school, etc.

3. WEC, in cooperation with District staff, will determine which parcels within the proposed service area will be provided with reclaimed water.

4. WEC will prepare a preliminary layout of the proposed reclaimed water distributions system. This will include all areas to be served with estimated flow nodes identified. WEC will identify potential conflicts with other utilities and determine where special construction techniques need to be utilized. WEC will also outline any required easements and/or temporary construction easements.

5. WEC will prepare a preliminary cost analysis based on the layout and determine the life cycle cost benefit for the sale of reclaimed water.

6. WEC will prepare a design report outlining these findings and conclusions. The report will include a draft layout of the system, the preliminary design, permit requirements, and conclusions and recommendations for further execution of the project.

7. WEC will meet with the DISTRICT and discuss the report and obtain approval for continuation of the project.

**Task 3 - Survey and Geotechnical Investigations**

This task includes determining what survey services will be required, based on the degree of changes and improvements since the last survey conducted by the District. WEC will recommend the minimum survey required to collect the necessary field data for the design. It is not anticipated that geotechnical investigation will be needed with the possible exception of areas where deep directional drilling techniques will be required. WEC will identify such area, if any. Specific items include:

Coordinate with a survey consultant to provide the necessary survey information including:

**Topographic digital mapping** of the project corridors collected to five feet beyond the rights-of-way, or to the back of the sidewalk, whichever is greater, for the mapping corridors. The corridors will be limited to those areas identified by WEC as in need of updated survey due to recent improvements in the right of way. For those areas, the following data will be collected:
Cross sections will be cut perpendicular to the road centerline out of the mapping band at 100 foot intervals. Elevations will be shown on the centerlines, edges of pavement, right-of-way, and breaks in grade. Significant breaks in grade in intervals less than 100 feet shall be included.

Establish control references with horizontal and vertical data along the route. The controls will be comprised of a permanent reference mark that is recoverable during a construction phase and which will be referenced on the drawings.

   a. The horizontal coordinates will be relevant to the North American Datum of 1983 (NAD 83), East Zone, current adjustment, and will be adjusted and referenced to the National Geodetic Survey (NGS) control network utilizing GPS and certified to Third Order, Class 1, as defined by the Federal Geodetic Control Committee.

   b. The vertical datum shall be relative to the National Geodetic Vertical Datum of 1929 (NGVD1929) and referenced to published benchmarks established by NGS. The new control benchmarks will be established as defined by the Federal Geodetic Control Committee where the maximum allowable error of closure shall not exceed ±0.05 times the square root of the length of the circuit in miles.

Invert elevation, pipe size, material and direction of flow of all existing utilities that are accessible will be obtained (primarily pertaining to storm drain structures and any existing gravity mains).

Platted boundary lines within the digital files will be graphically depicted. All pertinent recorded plats and right-of-way maps will be obtained. Sufficient monumentation will be recovered in the field to spatially place the plats within the digital files.

Street addresses will be obtained from building and/or mailboxes, and will be included on the digital map.

A site map will be provided in AutoCad, Version as required, suitable to serve as the base file for design of the proposed improvements. All data points will be provided in a manner so that digital terrain mapping (DTM) can be utilized in AutoCad, Version as required.

Obtain the services of a geotechnical engineer and perform deep borings as necessary along the pipeline route to assure proper installation where deep directional drilling is required. Review the geotechnical report to be sure that it includes site conditions and blow counts at each location, all of the testing and sampling methods, the soil classifications at each location, the depth of groundwater at the time of the exploration, and any necessary geotechnical recommendations for the construction of the reclaimed water distribution mains.

Task 4 - Preparation of Construction Documents

This task consists of the engineering and the development of plans and specifications necessary to construct this project. Specific items include:

1. WEC will prepare the construction documents in accordance with standard accepted practices governing utility design. These documents will include plan views of the entire project and profile views of conflicts, channel crossings and other areas where profile views are desired. The plans will be based on a 1" = 20' scale on 22" x 34" size sheets. These drawings can be half-sized to 11" x 17" drawings. These drawings will include all of the survey data and will show the location of the proposed reclaimed water distribution lines and associated valves along with all existing utilities and any
potential known conflicts.

2. WEC will prepare contract documents in accordance with the DISTRICT'S previous projects and will utilize the EJCDC format. The front-end contracts portion of the contract documents will be provided by the DISTRICT and will be reviewed and modified for this particular project by WEC.

3. Sets of plans will be developed for the project and will be submitted at the 30%, 60% and 100% design levels. Each stage of the submittal will contain the following information:

a. 30% Submittal

**Plan View**
- Proposed Alignment.
- Flow arrows and utility main call outs with corresponding size and material.
- Reclaimed water branch line connections.
- Match line with corresponding station and drawing continuation.
- North arrow with appropriate direction. North arrow should never be pointing down passing the horizontal (exceptions may apply).
- Street names correctly aligned.
- Station equations for intersecting streets.
- Continuation notes for proposed utility lines continuing to adjacent roads.
- Existing utilities labeled.
- Line types correctly set:
  - center line
  - right-of-way
  - proposed improvements
  - by others
  - existing utilities

**Profiles (where needed)**
- Grid with elevations.
- Stations in profiles shall match with station in plan view.
- Match lines in profiles shall match with match lines in plan view.
- Continuation notes in profiles shall match with continuation notes in plan view.

b. 60% Submittal - Shall contain modifications from 30% submittal revisions and:

**Plan View**
- Properties to "be served", "not to be serviced", and "serviced through adjacent property" text to be added.
- Fittings, fitting call outs with corresponding station and offset.

**Profiles (where needed)**
- Grade line acquired from surface file.
- Correct elevations based on location of grade line.
- Existing utilities crossing with correct symbols (sizes), indicating type of utility, size of
utility, and material (if available), all of these crossings should be set at the correct elevation indicated by record drawings.

- Pipe layout, graphically indicating top and bottom of pipe, and center of pipe. Layout shall consider minimum clearances between existing utilities.
- Text indicating length, diameter, size, and slope of pipe shown in profile.
- Fitting aligned with corresponding plan view.
- Main and branch connections aligned with plan view.
- Future pipes with corresponding line type.
- Text indicating invert elevations in NGVD at beginning, intermediate and end of sewer line.
- Text indicating station and offset and invert elevation of mains and branches, valves and other fittings

c. **100% Submittal - Shall contain modifications from 60% submittal reviews and:**

   **Plan View**
   - Property addresses and RE number aligned with right-of-way or property line for properties to be provided with reclaimed water.
   - Call outs for deflection in pipes.
   - Location of valves, tees, and other fittings.
   - Spot elevations.

   **Profile (where needed)**
   - Restoration call outs and description.
   - Text indicating clearances between proposed improvements and existing utilities.
   - Text indicating station and offset, invert elevation, and street location where a main/branch connection is being done.

4. WEC will submit an Engineer's Opinion of Probable Construction Cost for the project at the 30%, 60% and 100% plan completion levels.

**Task 5 - Permitting**

WEC shall schedule a pre-application meeting with the associated regulatory agencies to discuss the project requirements and inform the DISTRICT of the date and time. The DISTRICT may elect to attend in person or by telephone conference call. WEC shall provide minutes of the meeting to the DISTRICT in a summary of the findings with the 30% submittal.

WEC shall prepare and submit all required permit applications associated with the project to applicable regulatory agencies including but not limited to the FDEP, FDOT, SFWMD, FKAA, and Monroe County and will provide advice to the DISTRICT regarding the timing of permit application submittals with the goal of obtaining permits prior to bidding. WEC shall respond to requests for additional information received as a result of the submittal packages. All permit fees shall be paid for by the DISTRICT directly to the agency.

Submission of permit applications will take place during the 60% Design phase.
ARTICLE 2 - METHOD OF PAYMENT

As consideration for providing the services enumerated in Article 1, the DISTRICT shall pay the WEC fees as described below:

A. Design Phase

1. The DISTRICT shall pay for the services enumerated in Article 1, Section B – Scope of Services, Tasks 1, 2, 4, 5 and 6, on an hourly rate basis not to exceed $267,490.00, without DISTRICT authorization.

2. The DISTRICT shall pay WEC for direct expenses as outlined in task 3 for survey and geotechnical services and such as travel expenses outside of Monroe, Charlotte or Lee Counties, printing and photocopying, electrical, mechanical services and utility locating services. This amount does not include costs of any survey or geotechnical exploration that may be needed. This will be billed on a cost basis as outlined in the Agreement not to exceed $8,269.00 without authorization by the DISTRICT.

These fees have been determined in accordance with the Scope of Work breakdown attached. This proposal does not include the provision of the following items:

1. Any hydrogeologic work required for the design of dewatering systems or to evaluate the impact of construction dewatering systems for contamination sites within a quarter mile radius of the project site.

2. Easement acquisitions and legal work as required.

3. Payment of permitting fees.

4. On-site irrigation system designs.

5. Bidding Assistance

6. Construction services.

ARTICLE 3 - TIME OF COMPLETION

The design and permitting for this project will be completed in approximately 16 weeks but may vary depending on District and regulatory review times. While the 30%, 60% and 100% submittals are sequential, the 30% Design and Survey will run concurrently and the 30% plans can begin prior to the finished survey. Following are our estimated times to complete each phase.

Preliminary Design Report - 3 Weeks

Survey & Geotechnical Investigation – Concurrent with 30% Design

Submittal of 30% Drawings after receipt of the approved Design Report – 4 Weeks

Submittal of 60% Drawings after receipt of approval of 30% Drawings – 8 Weeks

Submittal of 100% Drawings after receipt of approval of the 60% Drawings – 3 Weeks

ARTICLE 4 - DATA OR ASSISTANCE TO BE PROVIDED BY DISTRICT
The following documents need to be provided by the DISTRICT to WEC for assistance in designing this project:

1. Copies of all reports pertinent to the design of this project.

2. A copy of the contract portion of the Contract Documents in Word format as developed for previous projects.

3. Provide assistance with regulatory agencies and pay all permitting fees.

4. Review all submittals made by WEC in a timely manner.

5. Provide any standards which the DISTRICT has developed for the construction of vacuum, gravity, and low pressure systems along with any standard specifications the DISTRICT would like to use. It is anticipated that the construction details as they currently exist will be utilized for this project.

6. Provide a certified copy of the US 1 corridor survey as necessary for this assignment.
ARTICLE 5 – AUTHORIZATION

In WITNESS WHEREOF, the parties herewith subscribe the same in duplicate,

The Weiler Engineering Corporation

KEY LARGO WASTEWATER TREATMENT DISTRICT INC

BY: ____________________________________  BY: ____________________________________

R. Jeff Weiler, P.E.
President, The Weiler Engineering Corporation

ATTEST

BY:

District Clerk

Effective Date: day of ___________, 2008.

APPROVED AS TO FORM:

____________________________________

District Attorney
### TABLE 1

**SPECIFICATION SECTIONS**

<table>
<thead>
<tr>
<th>Bidding Requirements, Contract Forms and Conditions of the Contract</th>
</tr>
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<tbody>
<tr>
<td>00005 Certifications Page</td>
</tr>
<tr>
<td>00015 List of Drawings</td>
</tr>
<tr>
<td>00100 Invitation for Bids</td>
</tr>
<tr>
<td>00200 Instructions to Bidder</td>
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<tr>
<td>00320 Geotechnical Data</td>
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<tr>
<td>00410 Bid Form</td>
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<td>00420 Bid Bond Form</td>
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<td>00425 Protests, Bid Errors, and Related Issues</td>
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<td>00430 Trench Safety Statement</td>
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<td>00510 Notice of Award Form</td>
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<td>00520 Agreement Form</td>
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<td>00530 Notice to Proceed Form</td>
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<td>00605 Public Construction Bond</td>
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<td>00617 Consent of Surety to Final Payment</td>
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<td>00620 Insurance Endorsement Form</td>
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<td>00625 Contractor's Application for Payment Form</td>
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<td>00626 Certificate of Substantial Completion</td>
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<td>00627 Certificate of Final Completion</td>
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<td>00640 Contractor's Partial Release of Lien Form</td>
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<td>00645 Contractor's Release of Lien (Final and Complete)</td>
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<td>FDEP Supplementary Conditions</td>
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<td>00930 Request for Information</td>
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<td>00940 Project Field Order Form</td>
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<td>01410 Regulatory Requirements</td>
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<td>01415 Stormwater Pollution Prevention/NPDES (on Plans)</td>
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<td>01420 References</td>
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<td>01425 FDOT Standards Reference (on Plans)</td>
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<td>01450 Quality Control</td>
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<td>01520 Temporary Facilities and Controls</td>
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<td>01550 Maintenance of Traffic (on Plans)</td>
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<td>01630 Product Selection and Substitution Procedures</td>
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<td>11310-2</td>
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<tr>
<td>11310-3</td>
<td>Pump Station – Specific</td>
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<td>11310-5</td>
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<td>13700</td>
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<td>16120</td>
<td>Wire and Cable</td>
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<td>16160</td>
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TABLE 2

The plan set for each basin will generally include:

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<tr>
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<td>G-1</td>
<td>Cover Sheet</td>
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<td>G-2</td>
<td>Project Location Map and Index to Drawings</td>
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<tr>
<td>G-3</td>
<td>General Notes and Abbreviations</td>
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<tr>
<td>G-4</td>
<td>Piping Schedules and Legends</td>
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<tr>
<td>G-5</td>
<td>Vacuum Pit Designation and Notes</td>
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<tr>
<td>G-6</td>
<td>Service Areas</td>
</tr>
<tr>
<td>G-7</td>
<td>Site Plan Paving and Drainage</td>
</tr>
<tr>
<td>G-8</td>
<td>Site Utility Plan</td>
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<tr>
<td>G-9</td>
<td>Stormwater Pollution Prevention Plan</td>
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<td>L-1</td>
<td>Vacuum Station Landscaping</td>
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<td>Lift Station Landscaping</td>
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<td>L-3</td>
<td>Details</td>
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<td>C-1 through C-132</td>
<td>Plan and Profile of Vacuum and Gravity Mains</td>
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<tr>
<td>C-133 through C-143</td>
<td>Site Plans of Gravity Pump Stations</td>
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<td>C-144</td>
<td>Utility Site Plan of Vacuum Pump Station</td>
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<td><strong>SD</strong></td>
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<td>SD-1 through SD-8</td>
<td>Standard Details</td>
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<td>M-1 through M-2</td>
<td>Vacuum Pump Station Piping</td>
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<tr>
<td>M-3 through M-5</td>
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Plumbing
P-1 through P-2          Vacuum Pump Station Plumbing

Architectural
A-1 through A-8         Vacuum Pump Station Architectural

Electrical
E-1 through E-3          Electrical Plans for Vacuum Pump Station
E-4 through E-7           Electrical Standard Details

Process and Instrumentation (P & ID)
P&ID 1 through P&ID 2         Control Schematic Vacuum Station
## Cost Estimate for Reclaimed Water Transmission Mains

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<th>Quantity</th>
<th>Total Price</th>
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**SubTotal Distribution Piping**

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## Cost Estimate for Reclaimed Water Storage and Pumping System

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**SubTotal**

|                      | $951,582.00 |          |             |

**GRAND TOTAL COST ESTIMATE FOR RECLAIMED WATER PROJECT:** $5,323,790.32

- Design and Permitting: $259,221
- Reimbursables: $8,269
- Total: $267,490
- Total length of pipe: 74,700
- No. of P&P Sheets @ 600 ft per sheet: 125
- No. of WWTP Sheets: 18
- Notes, Std details, etc.: 15
- TOTAL SHEETS: 159
- Total manhours @ 20 hours per sheet: $315,000