

**KEY LARGO WASTEWATER TREATMENT DISTRICT  
BOARD OF COMMISSIONERS  
TRANSITION MEETING AGENDA**



April 11, 2011 4:00 PM  
98880 Overseas Hwy  
Key Largo, FL 33037

Robert Majeska	Chair
Andrew Tobin	Vice Chair
Susan Hammaker	Secretary-Treasurer
Norman Higgins	Commissioner
Charles Brooks	Commissioner
.....	
Charles F. Fishburn	General Manager
Thomas Dillon	District Counsel
Carol Walker	District Clerk

PLEASE TAKE NOTICE AND BE ADVISED, that if any interested person desires to appeal any decision of the KLWTD Board, with respect to any matter considered at this meeting, such interested person will need a record of the proceedings, and for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Persons with disabilities requiring accommodations in order to participate in the meeting should contact the 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. CONFLICT OF INTEREST POLICIES  
RELATED TO COMMISSIONERS, STAFF AND VENDORS**
- F. GENERAL MANAGER, CHARLES FISHBURN CONTRACT and  
TRANSITION GOVERNANCE**
- G. COMMISSIONERS ROUNDTABLE**
- H. ADJOURNMENT**



## MEMORANDUM

**FROM:** Thomas M. Dillon, Attorney at Law  
Board Certified in Construction Law  
P.O. Box 370736  
Key Largo, Florida 33037-0736

**Tel:** 305-240-1767  
**Fax:** 305-723-6333  
**E-mail:** lawtmd@gmail.com

**To:** Susan Ford Hammaker Commissioner  
Key Largo Wastewater Treatment District

**Date:** April 7, 2011  
**Subject:** Conflict of Interest

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At your request, I am providing a summary of conflict of interest laws and policies.

### I. Conclusions

There are numerous requirements imposed by statute, District contracts, and common law that prohibit or limit conflicts of interest on the parts of District Commissioners, District employees, and District vendors. These requirements are summarized below.

### II. Commissioners

#### A. Voting

A Commissioner is prohibited under Section 112.3143(3)(a), Florida Statutes, from voting on an issue that would inure to the benefit of the Commissioner or one of the types of persons enumerated in that section. That section provides, in relevant part:

(3)(a) No ... local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, ... or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer....

The Florida Commission on Ethics has issued many opinions on the subject of conflict of interest by a public officer. In summarizing the rule, the Commission said:

In numerous opinions interpreting the phrase "special private gain," we have said that the requirements of Section 112.3143(3) do not turn on the nature of the official's vote--either for or against the measure--but rather on whether the interest which he holds is such that he or his principal would stand to gain or lose as a direct outcome of the vote. See CEO 90-66 and other opinions cited therein. In CEO 91-61, we went further and said that where the official's (or principal's) gain (or loss) would require many steps and be subject

to many contingencies, with the outcome by no means certain, any gain or loss would be remote and speculative.<sup>1</sup>

In addition to the "remote or speculative exception" described above, the Commission also looks at the size of the class of persons to be benefited by the vote. Obviously, a District Commissioner, who resides in the District, potentially benefits by every action the District takes. However, because the District Commissioner's benefit is incidental the benefit conferred on the community at large, the District Commissioner is not prohibited from voting. The Commission has held that ownership of a 50% interest in one of 40 properties affected by an agenda item is not sufficient to constitute a prohibited conflict of interest.<sup>2</sup>

Under date of 4/3/09, I provided a more extensive review of the voting conflict of interest issue. In that case, a District Commissioner had questioned whether Commissioner Tobin, who owns property in Islamorada, was prevented from voting in favor of the District entering into an agreement with the Village regarding treatment of Village wastewater. I concluded that Commissioner Tobin was not prevented from voting in favor of such an agreement.

#### B. Employment prohibited by general law

Section 112.313(7)(a), Florida Statutes, prohibits a public official from:

- Having or holding "any employment or contractual relationship with any business entity ... which is ... doing business with, an agency of which he or she is an officer or employee."<sup>3</sup> This prohibition, however, does not apply to an agency like the Key Largo Wastewater Treatment District, which is created by special law and is limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction.<sup>4</sup>
- Having or holding "any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties."<sup>5</sup>

Therefore, taken as a whole Section 112.313(7) prohibits a District official from employment by, or a contractual relationship with, a company doing business with the District only where the employment or contractual relationship will create a continuing or frequently recurring conflict between the official's private interests and the performance of the official's full and faithful discharge of his or her public duties.

Generally speaking, the Board has the authority to determine on a case-by-case basis whether such a conflict exists. The conflict could arise out of employment or a contractual relationship that takes up so much of the official's time that he or she cannot dedicate sufficient time to his or her public duties. It could also arise out of employment or a contractual relationship that could appear to other vendors, or the public, to affect the official's ability to treat vendors fairly and impartially.

#### C. Employment prohibited by the Key Largo Wastewater Treatment District Act<sup>6</sup>

Under Section 14 of the Key Largo Wastewater Treatment District Act, "No member, officer, agent, or employee of the district, either for himself or herself, or as agent for anyone else, or as a stockholder or

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<sup>1</sup> CEO 94-18.

<sup>2</sup> CEO 90-64.

<sup>3</sup> Section 112.313(7)(a), F.S.

<sup>4</sup> Section 112.313(7)(a)(1), F.S.

<sup>5</sup> Section 112.31.(7)(a), F.S.

<sup>6</sup> Ch. 2002-337, Laws of Florida, as amended.

owner in any other legal entity, shall participate or benefit directly or indirectly in or from any sale, purchase, lease, franchise, contract, or other transaction entered into by the district." This law essentially restores the employment or contractual relationship conflict prohibition in Section 112.317(7)(a).

#### D. Professional responsibility

Commissioners who are attorneys or practitioners of other professions are required by professional codes of ethics to conduct all of their affairs honestly, and failure to do so may result in professional sanctions. Those requirements are beyond the scope of this memorandum.

#### III. Employees

District employees are subject to the same prohibitions as described in Sections II.B, II.C, and II.D, above.

In addition, and employee is subject to conflict of interest provisions in the employment contract.

Under the terms of the employment contracts, an employee must use his or her best efforts, knowledge, skill, and attention to the performance of his or her District employment duties. He or she is prohibited from accepting any other employment for compensation without the prior consent of his or her supervisor (or, for the General Manager the District Board). If the employee's supervisor (or the District Board) reasonably believes that such employment would negatively affect the quality of the employee's services to the District, the supervisor (or the Board) may withhold its consent to such outside employment.

The contract does not spell out in detail the nature of prohibited employment or the factors that may be considered in approving or disapproving outside employment. The person or body charged with determining whether the employment may consider any factors that give rise to a reasonable belief as to the effect of the outside employment on the employee's performance of District functions.

The contractual requirement imposes an obligation on an employee desiring to accept other employment for compensation to make a full and complete disclosure to his or her supervisor (or the Board) of the relevant terms of the proposed employment agreement. He or she must disclose terms that might be grounds for the supervisor (or the Board) to conclude that the employment would negatively affect the quality of the employee's services to the District.

#### IV. Vendors

Vendors do not have a statutory duty to the District to avoid conflicts of interest. However, every contract includes an implied duty of good faith and fair dealing, which prohibits a party to the contract from engaging in behavior that would tend to frustrate the purposes of the contract.

## MEMORANDUM

FROM: Thomas M. Dillon, Attorney at Law  
Board Certified in Construction Law  
P.O. Box 370736  
Key Largo, Florida 33037-0736

Tel: 305-240-1767  
Fax: 305-853-2693  
E-mail: lawtmd@gmail.com

To: Susan Ford Hammaker, Chair  
Key Largo Wastewater Treatment District

Date: April 3, 2009

Subject: Conflict of Interest

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This memorandum addresses the question raised by you yesterday regarding the possibility of a conflict of interest on the part of a commissioner who owns property in Islamorada.

In response to your query, I provided a quick response based on general principles of ethics and conflict. I have now taken the opportunity to conduct further research on this issue. In particular, I have reviewed Section 112.3143(3)(a), Florida Statutes, opinions of the Florida Attorney General and the Florida Commission on Ethics construing the statute.

Based on that research, I have concluded that the fact that a commissioner is a property owner and business owner in the Village of Islamorada DOES NOT constitute a conflict of interest that would prevent the commissioner from voting to conduct discussions with the Village regarding a potential connection of the Village to the District wastewater facilities.

This memorandum supersedes the email correspondence of yesterday and today.

### FACTS

Commissioner Andrew Tobin is a resident of Key Largo and the owner of property in the Village. He has undertaken efforts to persuade the Village to consider the possibility of sending Village wastewater to the District for treatment. One of the bases upon which he has argued is that the Village and its property owners would be able to have their wastewater treated at a lower cost than if the Village developed its own wastewater treatment facilities.

### ISSUE

Is Mr. Tobin's interest in his land and business in the Village a conflict of interest that would prevent him from voting as a member of the Key Largo Wastewater Treatment District Board of Commissioners to entertain the possibility of allowing the Village to

connect to the District? For the reasons set out below, I believe that the answer is negative.

#### APPLICABLE LAW

The applicable statute is Section 112.3143, Florida Statutes, which provides, in relevant part:

(3)(a) No ... local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, ... or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer....

The statute prohibits a local public officer, such as a District commissioner, from voting in an official capacity upon a measure that would inure to his "special private gain" or to "special private gain" of a client. The prohibition is absolute, and cannot be waived by the District.

The issue in this matter turns on the meaning of the term "special private gain," as used in the statute. There are no reported judicial decisions or attorney general opinions interpreting the term. However, the Florida Commission on Ethics has issued a number of opinions that provide guidance in this respect. The Commission provided a cogent summary of its interpretation of the term, as follows:

In numerous opinions interpreting the phrase "special private gain," we have said that the requirements of Section 112.3143(3) do not turn on the nature of the official's vote--either for or against the measure--but rather on whether the interest which he holds is such that he or his principal would stand to gain or lose as a direct outcome of the vote. See CEO 90-66 and other opinions cited therein. In CEO 91-61, we went further and said that where the official's (or principal's) gain (or loss) would require many steps and be subject to many contingencies, with the outcome by no means certain, any gain or loss would be remote and speculative.

CEO 94-18 (copy attached.)

Thus, where the commissioner would stand to gain as a "direct outcome" of the vote, there is a conflict of interest which prohibits the commissioner from voting. On the other hand, where any gain would require many steps and be subject to many contingencies, the potential gain is remote and speculative, and would not constitute a conflict of interest under the statute.

In some cases, the Commission has focused on the size of the class of persons to be benefited by a measure in determining whether the gain would be "special." (CEO 91-61, copy attached.) If the commissioner stands to gain by virtue of his membership in a small group of benefitted persons, then the Commission is more likely to conclude that a conflict exists. On the other hand, where the commissioner stands to gain by virtue of his membership in a large group of benefitted persons, then the Commission is more likely to conclude that the gain is not a "special" gain, and no conflict exists.

## DISCUSSION AND CONCLUSIONS

In order to determine whether Mr. Tobin is precluded by statute from voting on an issue involving Islamorada, I have considered the nature of issue on which his vote might be cast.

If the vote is simply a vote on whether to proceed with discussions on whether to allow the Village to connect to the District, then I conclude that there is no conflict. The gain that Mr. Tobin or his clients might receive would, in the words of the Commission, "require many steps and be subject to many contingencies, with the outcome by no means certain." Thus the potential gain is remote and speculative and does not constitute a conflict prohibiting Mr. Tobin from voting.

Assuming that discussions were to take place and a wastewater agreement between the District and the Village were to come before the District Board, I would want to consider this question again. However, given the current state of Commission decisions, I think that it is likely that Mr. Tobin's status as one of a large class of Village business and property owners would lead to the conclusion that any benefit he might obtain is not a "special" benefit, and would not preclude his voting on the question. Likewise, I believe it likely that his clients' status as part of the same large class would lead to the same result.

CEO 94-18 -- April 21, 1994

**VOTING CONFLICT OF INTEREST**

**COUNTY COMMISSIONERS VOTING ON RESOLUTION  
OPPOSING PROMULGATION OF FEDERAL "CLUSTER RULES"  
FOR PULP AND PAPER INDUSTRY WHERE COMMISSIONERS  
ARE EMPLOYED AT LOCAL PAPER MILL OR HAVE RELATIVES  
INVOLVED IN PULPWOOD INDUSTRY**

To: *Vance R. Howell, Chairman, Taylor County Board of County Commissioners (Perry)*

**SUMMARY:**

County commissioners were not prohibited from voting on a resolution opposing regulations for the pulp and paper industry being proposed by the U. S. Environmental Protection Agency where they are employed by a paper mill which may be adversely affected by the regulations or where the spouse of one commissioner owns a logging business that contracts with a lumber company which supplies pulpwood to the mill. Under Section 112.3143(3), Florida Statutes, the measure would not inure to the commissioners' special private gain, to the private gain of their principal (the mill), or to the private gain of the spouse. The effect of the commission's resolution on EPA's final regulations and how those regulations will impact the local mill are too remote and speculative to find a special private gain under the circumstances. CEO's 91-61, 90-66 and 84-108 are referenced.

**QUESTION:**

Would a voting conflict of interest be created where members of a county commission who are employed by a local paper mill or who have relatives working in affiliated industries vote on a resolution opposing the U.S. Environmental Protection Agency's promulgation of "Cluster Rules" for the pulp and paper industry?

Your question is answered in the negative.

You advise that this opinion is sought on behalf of yourself and fellow Taylor County Board of County Commissioners Irvin Hill and Frank Russell. We are advised through your letter of inquiry and other information obtained by our staff that the U.S. Environmental Protection Agency (EPA) has proposed regulations for the pulp and paper industry which, if adopted, will affect standards applicable to wastewater discharges, air emissions, and other aspects of pulp and paper production operations. The 700-plus pages of proposed regulations, referred to as the "Cluster Rules," were published in the December 17, 1993 issue of the Federal Register. We are further advised that the rule promulgation process includes a public comment period during which interested persons and entities submit their comments about the proposed

regulations to the EPA and that that agency will take into consideration those comments and ultimately issue its final regulations in late 1995 or sometime thereafter. It also is anticipated that, following the adoption of the final regulations, there will be an extended period in which facilities will achieve compliance with the new standards, the estimated date of which is late 1998.

You further advise that the County Commission, desirous of participating in the public comment portion of EPA's rule promulgation process, recently considered a resolution opposing the proposed "Cluster Rules" due to the perceived devastating effect that compliance with those regulations would have on a pulp mill located in the County. It has been estimated that the cost of compliance for that facility could be in excess of \$200 million, and company executives have indicated that the mill may be forced to close rather than comply with the "Cluster Rules" as presently proposed. As the single largest employer in the County, it is widely believed that the mill's closure would have a devastating effect on the County's economy.

You relate that you and another County Commissioner are employed at the pulp mill and that the spouse of a third Commissioner owns a logging business that contracts logs for a lumber company which sometimes delivers pulpwood to the mill. Because of these various ties to the mill, you question whether a voting conflict of interest was created when you and the other Commissioners voted on the subject resolution.

The voting conflicts law, Section 112.3143(3), Florida Statutes, states in relevant part:

No county, municipal, or other local public officer shall vote in his official capacity upon any measure which would inure to his special private gain; which he knows would inure to the special private gain of any principal by whom he is retained or to the parent organization or subsidiary of a corporate principal by which he is retained, other than an agency as defined in s. 112.312(2); or which he knows would inure to the special private gain of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of his interest in the matter from which he is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

This statute prohibits local public officers from voting in certain situations, including when the matter being voted upon inures to their special private gain, to the special private gain of a principal by whom they are retained, or to the special private gain of a relative, including a spouse.

In our view, none of the Commissioners were faced with a voting conflict of interest when they voted on the resolution. First, with regard to the two Commissioners employed at the paper mill, there is no indication that their votes inured to either their special private gain or to the special private gain of their employer, the paper mill, who is their "principal" for purposes of Section 112.3143(3). See CEO 84-108. In numerous opinions interpreting the phrase "special private gain," we have said that the requirements of Section 112.3143(3) do not turn on the

nature of the official's vote--either for or against the measure--but rather on whether the interest which he holds is such that he or his principal would stand to gain or lose as a direct outcome of the vote. See CEO 90-66 and other opinions cited therein. In CEO 91-61, we went further and said that where the official's (or principal's) gain (or loss) would require many steps and be subject to many contingencies, with the outcome by no means certain, any gain or loss would be remote and speculative.

Here, it cannot be said what effect the Commission's resolution will have on EPA and its final version of the "Cluster Rules" for the pulp and paper industry. Whether the local mill ultimately chooses to comply with the EPA regulations or decides to close is subject to many contingencies, few of which depend upon action by the County Commission. Therefore, under the circumstances presented, it is our opinion that any gain or loss as a result of the Commission's resolution is too speculative and remote to allow us to conclude that voting in favor of the resolution opposing the "Cluster Rules" inured to the special private gain of the two Commissioners employed at the mill or to the mill itself. Even more speculative and remote is the impact of the resolution on the logging business owned by the Commissioner's spouse.

Accordingly, we find that the subject Commissioners were not prohibited from voting on the resolution opposing EPA's proposed "Cluster Rules" for the pulp and paper industry.

**VOTING CONFLICT**

**CITY COMMISSIONER VOTING ON MEASURE TO EXTEND SIDEWALK  
TO ENCIRCLE LAKE NEAR WHICH COMMISSIONER RESIDES**

To: *Robert J. Antonello, City Attorney, City of Winter Haven*

**SUMMARY:**

A city council member is not prohibited from voting on a measure to extend a public sidewalk to encircle a lake near which she lives. Under Section 112.3143(3), Florida Statutes, the measure would not inure to the special gain of the member because no special assessment is being used to pay for the extension, no compensation would be paid the member if her property were used for a portion of the extension's route, and any more profitable or commercial use of the property occasioned by the extension's completion would be dependent on a zoning change. CEO's 90-64, 90-71, and 91-17 are referenced.

**QUESTION:**

Is a city council member prohibited by Section 112.3143(3), Florida Statutes, from voting on the proposed extension of a public sidewalk to encircle a lake which lies across a public road from the commissioner's residence?

Under the facts presented, your question is answered in the negative.

By your letters of inquiry and telephone conversation with our staff, we are advised that Ellie Threlkel is a City Commissioner of the City of Winter Haven. You advise further that the Commissioner resides across a public road from Lake Elbert, a lake of approximately 171 acres, which is encircled by the road. On the non-lake side of the road, there are approximately 39 residential homes surrounding the lake, including the Commissioner's home. On the lake side of the road, there are two residential homes. The population of the City is approximately 25,000. The Commissioner's property is zoned residential, single-family, low-density. A zoning change would be required in order for the property to be used for commercial or other more intensive uses.

A public sidewalk, 2,160 feet in length, runs along the lake, between the lake and the road. The City Commission is considering whether to extend the sidewalk to completely encircle the lake. Funding for the extension would come from general revenue, and thus no special assessment would be placed upon the property of the Commissioner or others. To complete the sidewalk, some private property may have to be condemned by the City. However, if an easement is needed over the Commissioner's property, she has consented to provide it without compensation or legal consideration. The Commissioner's property already has access to the lake. The purpose of the sidewalk extension is to provide safety for pedestrian traffic around the lake, you relate. Further, you advise that it is not known whether the extension of the

sidewalk would increase the value of the Commissioner's property, and no property appraisals have been done in that regard.

The Code of Ethics for Public Officers and Employees provides in relevant part:

No county, municipal, or other local public officer shall vote in his official capacity upon any measure which would inure to his special private gain; which he knows would inure to the special private gain of any principal by whom he is retained or to the parent organization or subsidiary of a corporate principal by which he is retained, other than an agency as defined in s. 112.312(2); or which he knows would inure to the special private gain of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of his interest in the matter from which he is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes. [Section 112.3143(3)(a), Florida Statutes.]

This provision prohibits a local official from voting on a matter which inures to her special private gain.

At times, in considering questions such as yours, we have focused on the size of the class of persons to be benefited by a measure in determining whether the gain would be "special." See CEO 90-64 and CEO 90-71. However, we do not need such a numerical analysis here because, under the facts you relate, any gain from the measure, if present at all, is remote and speculative.

To begin with, since the sidewalk will be funded entirely from general revenue and there will thus be no potential financial assessment against the Commissioner's property, the measure would not be one which would cause the Commissioner to owe more money to the City. See CEO 90-64. In addition, since the Commissioner would be willing to allow placement of the sidewalk on her property, if necessary, without being paid compensation, we find the Commissioner's situation to be distinguishable from the facts present in CEO 91-17, where we found that condemnation of property did result in special gain to the owner, "condemnation" being important because it necessarily carries with it the possibility of a monetary payment to the owner whose property is utilized for the public improvement. Finally, since the current zoning of the Commissioner's property would preclude more profitable and intensive use of the property without a zoning change, assuming for the sake of argument that such a sidewalk extension would create real economic possibilities, and since effecting a zoning change would require many steps and be subject to many contingencies with the outcome of a request for rezoning by no means being certain, we find that any gain would be remote and speculative. See CEO 91-17.

Accordingly, we find that, under the circumstances presented, the subject City Commissioner would not be prohibited from voting on a measure to extend a sidewalk to encircle a lake near which the Commissioner lives.

**KEY LARGO WASTEWATER TREATMENT DISTRICT**  
**Agenda Request Form**

Meeting Date: April 11, 2011

Agenda Item No. *F*

PUBLIC HEARING

RESOLUTION

DISCUSSION

BID/RFP AWARD

GENERAL APPROVAL OF ITEM

CONSENT AGENDA

Action

**SUBJECT:** GM Charles Fishburn Contract & Transition Governance

**RECOMMENDED MOTION/ACTION:**

**Approved by General Manager**

**Date:** 4-6-11

*C. J. 2*

<b>Originating Department:</b> Commissioner Hammaker	Costs: Approximately \$  Funding Source:	<b>Attachments:</b> Contract
<b>Department Review:</b> <input type="checkbox"/> District Counsel <input checked="" type="checkbox"/> General Manager <i>C. J.</i> <input type="checkbox"/> Finance	<input type="checkbox"/> Engineering _____ <input type="checkbox"/> Clerk _____	<b>Advertised:</b> Date: _____ Paper: _____ <input checked="" type="checkbox"/> Not Required

**Summary Explanation/Background:**

**Resulting Board Action:**

Approved

Tabled

Disapproved

Recommendation

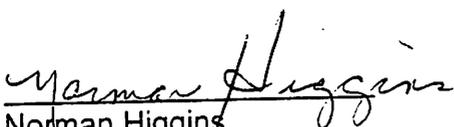
**KEY LARGO WASTEWATER TREATMENT DISTRICT  
EMPLOYMENT CONTRACT**

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

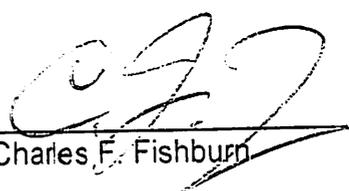
- |   |                     |
|---|---------------------|
| 1. Employee Name and Address:   | Charles F. Fishburn |
| 2. Employee Title:  | General Manager     |
| 3. Employee Compensation Rate:  | See below           |
| 4. Effective Date of this Employment Contract:  | June 1, 2010        |
| 5. Term of Employment Contract:   | One year            |
| 6. Date of first District Employment:   | June 1, 2004        |
| 7. General Provisions of Employment:  | See Attachment A    |
| 8. Employee Duties:   | See Attachment B.   |
| 9. Special Terms of Employment:   |                     |
| a. Employee's Compensation Rate from June 1, 2010 through December 31, 2010 shall be \$11,500/month.  |                     |
| b. If employed by the District on January 1, 2011, Employee's compensation rate shall be \$5,000/month. At that time, the parties will amend Attachment B to reflect a lower level of job responsibilities. |                     |

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

Key Largo Wastewater  
Treatment District

By   
Norman Higgins  
Its Chairman

Employee

  
Charles F. Fishburn

Attest:

By   
Susan Ford Hammaker  
Its: Secretary/Treasurer

**ATTACHMENT B**  
**KEY LARGO WASTEWATER TREATMENT DISTRICT**  
**EMPLOYMENT CONTRACT**  
**DISTRICT GENERAL MANAGER DUTIES**

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

- A. Executing Board's direction in identifying, selecting and contracting with rate consultants, auditors, insurance consultants, lab service contractors, consulting engineers, hydro geologists, and other consultants and professionals required by the District.
- B. Acting as custodian of the District's books and records in accordance with Florida Statutes Section 189.9.
- C. As directed by the District Board, serving as intergovernmental liaison between the District and local governments within which the District provides wastewater service, including, without limitation, coordination of service extensions with applicable comprehensive plans, communicating with public officials on all matters that pertain to the District, attending governing board and staff meetings to discuss District issues.
- D. Providing the Board, or individual members thereof, upon request, with data or information concerning District construction and operations, and providing advice and recommendations to the Board.
- E. Coordinating with District's Chief Financial Officer, Engineer, and Counsel, staff, and supervising other District staff.
- F. Negotiating leases, contracts, and other agreements, including consultant services, for the District, subject to Board approval.
- G. Overseeing all governmental filings.
- H. Monitoring the performance of all terms and conditions in all leases, contracts, and agreements, and notifying the Board of known violations thereof.
- I. Monitoring the operations and billing functions of the District and ensuring compliance with the Board's policy and direction.
- J. Preparing annual reports.
- K. Consulting with, and supervision of, contractors as reasonably required and necessary with regard to construction of capital projects.
- L. In consultation with the District Engineer and District Counsel, as appropriate, issuing interpretations and clarifications of contract documents.
  - a. Evaluating requests for substitutions or deviations therefrom.

- b. Providing recommendations concerning requests for substitutions or deviations therefrom.
  - c. Preparing work orders.
  - d. Monitoring all required project records.
  - e. Reviewing applications for payment.
  - f. Conducting comprehensive inspections of construction projects.
  - g. Developing list of items needing completion or correction.
- O. Negotiating contracts with engineers and other consultants regarding scope and cost of proposed contract change orders.
  - P. Providing proof of compliance with funding and grant requirements.
  - Q. Requesting advances and reimbursements consistent with funding and grant requirements.
  - R. Exercising due diligence with respect to construction management efforts consistent with governmental standards.