

MEMORANDUM

TO: Glenton "Glen" Gilzean, Jr., Chair
FROM: Steven J. Zuilkowski, Deputy Executive Director and General Counsel
RE: Your Request for a Legal Opinion
DATE: August 17, 2023



QUESTION PRESENTED

Section 112.321(1), Florida Statutes, provides that no member of the Commission on Ethics may hold any public employment. In light of this, you ask whether you may continue to serve as a member of the Commission on Ethics while simultaneously serving as District Administrator for the Central Florida Tourism Oversight District.

DISCUSSION

The Facts

At your request, I have written this memorandum. The conclusions reached in this memorandum represent my legal opinion. You requested this review "in an abundance of caution and in light of concerns that were raised [on Monday, August 14, 2023]." In your email to me, you referenced a conference call conversation between yourself, Executive Director Kerrie Stillman, and me that occurred on April 26, 2023. During that conference call, Ms. Stillman informed you of the requirement in Section 112.321(1) and you informed us that you had received legal advice elsewhere about holding both positions. You stated you would contact me if you wanted my legal opinion. During the conversation, you discussed your calling for public service and your commitment to fulfilling your term as the Chair of the Commission on Ethics. I was not present for any other conversations you may have had with Ms. Stillman about Section 112.321(1). As part of this review, you have now supplied me with a copy of your Employment Agreement with the Central Florida Tourism Oversight District. I have attached a copy of it to this memorandum.

You are the Chair of the Commission on Ethics ("the Commission"). You were first appointed to the Commission on August 23, 2019, by Governor Ron DeSantis to fill an unexpired term that had been left vacant by a former member. The Governor reappointed you to the Commission on December 11, 2020, and again on August 26, 2022. You were confirmed by the Florida Senate on March 13, 2020; April 29, 2021; and April 26, 2023. At the January 27, 2023 meeting of the Commission on Ethics, the members of the Commission unanimously elected you to become Chair for a term to begin on February 1, 2023.¹

You also are the District Administrator for the Central Florida Tourism Oversight District ("the District"). On May 10, 2023, Board of Supervisors for the District considered and approved a document entitled "Employment Agreement" ("the Agreement"), which would have the effect of hiring you for District Administrator.²

¹ Commission on Ethics. (Jan. 27, 2023). *Minutes of Public Session Meeting of the Commission on Ethics*. Retrieved from <https://ethics.state.fl.us/Documents/Ethics/MeetingAgendas/Mar23Materials/PublicSessionMinutes.pdf>

² Central Florida Tourism Oversight District. (May 10, 2023). *Agenda of Meeting of the Board of Supervisors*. Retrieved from <https://www.rcid.org/document/5-10-23-bos-package/>

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The entire understanding between you and the District is contained within the Agreement's nine pages.³ The Agreement is effective from May 10, 2023, throughout your service and for a specified amount of time after your service ends.⁴ The Agreement does not limit the period of your service to the Board of Supervisors; by all appearances in the Agreement, your service could be indefinite.

The Agreement refers to your relationship with the District as "employment" and your status as an "employee." According to the terms of the Agreement, you report directly to the Board of Supervisors, serving as the Chief Executive Officer of the District.⁵ The Agreement requires your compliance with all District policies, practices, agreements, and customs while performing all tasks assigned by the Board of Supervisors.⁶

The Agreement details the terms and consequences of its termination in four scenarios. First, the Agreement contemplates that it might be terminated as a result of the dissolution of the District itself, in which case you will receive all unpaid compensation earned to date and, if you sign a separation, waiver and release agreement, and satisfy other requirements, a severance in an amount specified in the Agreement.⁷ Second, it contemplates that the District could terminate the Agreement with reason.⁸ Such reasons include a failure or refusal to comply with District policies or a failure to adequately perform your duties.⁹ Third, the Agreement contemplates that it may be terminated by the District without reason.¹⁰ In this scenario, the District must provide you 45 days' notice and you must report to work each of those days.¹¹ The Agreement bars your unapproved application of vacation or sick leave during the notice period.¹² As in the first scenario, you will receive all unpaid compensation earned to date and, if you sign a separation, waiver and release agreement, and satisfy other requirements, a severance in an amount specified in the Agreement.¹³ Fourth, the Agreement contemplates that you might terminate it by resigning with notice, in which case you must report to work each day of the prescribed 30-day notice period without applying unapproved vacation or sick time.¹⁴

The Agreement also details your compensation package.¹⁵ It calls for the District to pay you a specified annual salary on a bi-weekly basis or in accordance with the District's usual payroll practices.¹⁶ The Agreement calls for the District to deduct applicable taxes and other legal withholdings and specifies a floor for discretionary raises by the Board of Supervisors.¹⁷ The Agreement allows you to participate in the District's employee health benefit plans and

³ Employment Agreement, p. 7.

⁴ Employment Agreement, p. 1.

⁵ *Id.*

⁶ *Id.*

⁷ Employment Agreement, p. 2.

⁸ Employment Agreement, pp. 2-3.

⁹ Employment Agreement, p. 2.

¹⁰ Employment Agreement, pp. 3-4.

¹¹ Employment Agreement, p. 3.

¹² *Id.*

¹³ Employment Agreement, pp. 3-4.

¹⁴ Employment Agreement, p. 4.

¹⁵ Employment Agreement, pp. 4-5.

¹⁶ Employment Agreement, p. 4.

¹⁷ Employment Agreement, pp. 4-5.

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retirement benefit plans, and calls for you to accrue vacation, sick, and holiday leave at rates consistent with the District's personnel policies.¹⁸

The Agreement indicates the District will provide you with a corporate credit card and may provide certain other instrumentalities, including a mobile phone, a laptop, and other District-owned property for your use.¹⁹ The Agreement classifies all documents, card files, notebooks, Rolodex, and electronic media containing District information as District property, regardless of whether you or someone else compiled it.²⁰

The Agreement calls for the Board of Supervisors to perform annual reviews of your performance.²¹ It also restricts your ability to seek outside employment opportunities from any business entity unless the chair of the Board of Supervisors specifically grants his or her approval.²²

The Legal Landscape

The qualifications for the members of the Commission on Ethics are specified in Section 112.321, Florida Statutes. Of relevance here, Section 112.313(1), Florida Statutes, states, "No member may hold any public employment."²³ The Code of Ethics for Public Officers and Employees (found in Part III of Chapter 112 of the Florida Statutes) does not define what "public employment" or "employment" is, but an appellate court has determined that, in the context of Chapter 112, an "employee" is:

[a] person in the service of another under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed.²⁴

In 2023, the Florida Legislature passed law to constitute the District from its predecessor, the Reedy Creek Improvement District.²⁵ According to that session law, the Board of Supervisors may appoint or remove the District Administrator, who "must be a district employee but may be an independent contractor on an interim basis."²⁶

The Courts have long recognized a distinction between employees and independent contractors.²⁷ When determining whether an individual is an employee or an independent contractor, the Courts look to the agreement of the parties to see whether the parties claim a

¹⁸ *Id.*

¹⁹ Employment Agreement, p. 5.

²⁰ Employment Agreement, p. 6.

²¹ Employment Agreement, p. 5.

²² Employment Agreement, p. 6.

²³ In 1974, when the Code of Ethics initially became law, the requirement read, "No member may be a state or public officer or employee." Ch. 74-106, § 2, Laws of Fla. It was modified to its current wording in 1975. Ch. 75-199, § 3, Laws of Fla.

²⁴ *Loebig v. Fla. Comm'n on Ethics*, 355 So. 3d 527, 532 (Fla. 1st DCA 2023) (citing *Employee*, Black's Law Dictionary (6th ed. 1990)).

²⁵ Ch. 2023-5, Laws of Fla.

²⁶ Ch. 2023-5, § 4, Laws of Fla.

²⁷ See, e.g., *Keith v. News & Sun Sentinel Co.*, 667 So. 2d 167 (Fla. 1995)

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master-servant (employer-employee) relationship or disclaim such a relationship in favor of an independent contractor relationship. The only exception to looking to the agreement of the parties occurs if the actual practices undertaken by the parties do not support the relationship claimed in the agreement, in which case the actual practice would control.²⁸ To determine whether the actual practice indicates an employment or independent contractor relationship, ten factors are considered:

- (1) the extent of control which, by the agreement, the master may exercise over the details of the work;
- (2) whether or not the one employed is engaged in a distinct occupation or business;
- (3) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
- (4) the skill required in the particular occupation;
- (5) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;
- (6) the length of time for which the person is employed;
- (7) the method of payment, whether by the time or by the job;
- (8) whether or not the work is a part of the regular business of the employer;
- (9) whether or not the parties believe they are creating the relation of master and servant; and
- (10) whether the principal is or is not in business.²⁹

Of these factors, the first, addressing the extent of control, is the most important.³⁰ As the First District Court of Appeal found, "[c]ontrol matters because it identifies whose orders and direction the employee has agreed to subject himself to in exchange for wages."³¹

Analysis

Regarding your status with the District, Chapter 2023-5, Laws of Florida, leaves only two possibilities: either you are an independent contractor on an interim basis or you are a district employee. If you are a District employee, that would make you a public employee, given that the District is a special taxing district and a political subdivision of the State of Florida.

Turning to the Agreement itself, which appears to be the terms of service agreed to by yourself and the District, it seems to indicate that you do not hold the position of District Administrator temporarily or on an interim basis. In fact, the Agreement does not limit the period of your service to the Board of Supervisors, but only contemplates your service ending if the Board terminates you with or without reason, if the District dissolves, or if you resign. None

²⁸ McGillis v. Dep't of Econ. Opportunity, 210 So. 3d 220, 224 (Fla. 3d DCA 2017) (citing Keith, 667 So. 2d at 171).

²⁹ McGillis, 210 So. 3d at 224.

³⁰ McGillis, 210 So. 3d at 224-225 (citing Verchick v. Hecht Invs., Ltd., 924 So.2d 944, 946 (Fla. 3d DCA 2006)).

³¹ Loebig, 355 So. 3d at 532.

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of those events are scheduled and the date of their occurrence cannot be predicted. Further indicating an indefinite tenure with the District, the Agreement grants you an annual salary, with raises potentially occurring at unspecified times in the future, and the Agreement allows the Board of Supervisors to review your service annually. These terms indicate the parties contemplated a lengthy engagement, rather than a temporary one.

Not only does the Agreement appear to contemplate a lengthy engagement, but it also seems the parties to the Agreement acknowledged that the relationship between them would be an employment relationship. With frequency, the Agreement refers to your relationship with the District as "employment" and your status with the District as that of an "employee." Among those references, the Agreement states "the District desires to *employ* [you] as District Administrator upon the terms and conditions set forth herein, and [you are] willing to continue *employment*" ³² The Agreement again refers to you as an employee by noting that the District will not modify or terminate benefits in a manner that will "discriminate between [you] and *other employees* of the District" and by granting you use of "District owned property for [your] use *as a District employee*." ³³

For these reasons, it appears the Agreement treats you as a District employee. Your engagement with the District does not appear to be limited in duration, temporary, or on an interim basis, which forecloses the possibility that you are an independent contractor under Chapter 2023-5, Laws of Florida.

Even setting aside the Agreement, it appears the factors emphasized by the Courts for determining one's status as an employee or independent contractor would justify the same conclusion. As mentioned above, the Courts would first look at whether the parties to an agreement have claimed an employment relationship or disclaimed one in favor of an independent contractor relationship. In this case, as mentioned before, the Agreement repeatedly refers to the relationship between you and the District as "employment" and to you as an "employee." At no time does the contract explicitly claim to structure the relationship as an independent contractor relationship.

The Courts would next look to whether the practices detailed in the agreement confirm the type of relationship claimed by the parties by applying the ten facts enumerated above, with the extent of the control being exerted by the master being the most important factor.

Here, according to the Agreement, the District and the Board of Supervisors exert a high degree of control over you as District Administrator. The Agreement requires you to comply with all District policies, practices, agreements, and customs while performing tasks assigned to you by the Board of Supervisors. Additionally, you are subject to an annual review of your performance of these tasks by the Board of Supervisors. You do not have the ability to set your compensation rates for these tasks, though the Board may, at its discretion, raise your salary. Although you likely have the ability to set your hours to perform this job as the District's Chief Executive Officer, it appears that your ability to choose which days you work is limited to your ability to accrue and apply vacation, sick, and holiday leave in accordance with District policies

³² Employment Agreement, p. 1 (emphasis added).

³³ Employment Agreement, p. 5 (emphasis added).

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and, during notice periods leading to the termination of the Agreement, you must seek approval to apply any leave time. The Agreement renders all notes and digital media compiled by you to be District property, rather than your property, if it contains District information. Taken together, this level of control indicates an employment relationship.

The other factors also confirm this finding. You are not engaged in a distinct business, but rather are performing the work of the District as its Chief Executive Officer. The District supplies many of the essential supplies, according to the Agreement, and reclaims all of that property at the termination of the Agreement. The agreement is for an indefinite period of time, rather than a finite period. The method of payment is an annualized salary, paid bi-weekly, and the Agreement contains provisions for a severance, which is indicative of an employment relationship rather than an independent contractor relationship. You are not paid by the task or for a set list of tasks. The work you perform in your role is the precise business of the District, rather than a task that merely enables the District to perform its own work. When viewed in its totality, the terms of the Agreement tend to confirm what the Agreement claims explicitly: that you are a District employee and, therefore, a public employee.

CONCLUSION

Section 112.321(1), Florida Statutes, states that no member may hold any public employment. For the reasons explained above, it appears that your position as District Administrator for the District is public employment. Maintaining the public employment is inconsistent with the requirements in Section 112.321(1).

---End of Memorandum---

Zuilkowski, Steven

From: Gilzean, Glenton <glen@glengilzean.com>
Sent: Monday, August 14, 2023 3:46 PM
To: Zuilkowski, Steven
Cc: Stillman, Kerrie
Subject: CFTOD
Attachments: CFTOD - G. Gilzean - Employment Agreement 5-7-2023.pdf

Importance: High

Good afternoon,

Based on our conversations from a few months ago, I remained on the Commission on Ethics after starting employment with the Central Florida Tourism Oversight District. In an abundance of caution and in light of concerns that were raised today, will you please provide me a written legal opinion by the close of business on Wednesday as to whether I can continue to serve on the Commission. I don't want there to be any appearance of a conflict of interest. To the extent it will impact your analysis, I have attached a copy of my fully executed agreement with CFTOD.

Glen

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (“Agreement”) has been entered into and is effective on May 10, 2023, between the Central Florida Tourism Oversight District, a public corporation and public body corporate and politic of the State of Florida whose mailing address is Post Office Box 10170, Lake Buena Vista, Florida 32830-0170 (hereinafter referred to as the “District”), and Glenton Gilzean, Jr. (“Executive”) (collectively referred to as “Parties”).

RECITALS

WHEREAS, the District desires to employ Executive as District Administrator upon the terms and conditions set forth herein, and Executive is willing to continue employment and enter into this Agreement under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the District and Executive agree as follows:

Section 1. **RECITALS.** The Recitals set forth above are incorporated fully herein are true and correct and form a material part of this Agreement.

Section 2. **NATURE OF EMPLOYMENT AND DUTIES OF EXECUTIVE.** In accordance with the terms of the Central Florida Tourism Oversight District Charter (“CFTOD”), Executive is designated by the District's Board of Directors (the “Board”) to serve as District Administrator. Executive acknowledges that he meets the requirements to serve as the District Administrator. Executive will report to the Board. As District Administrator, Executive will serve as the Chief Executive Officer and be responsible for performing all duties pursuant to the CFTOD Charter, the District’s policies, and as otherwise assigned by the Board. In the performance of his duties, Executive shall at all times comply with District customs, practices, policies, personnel and governance policies, and nondisclosure agreements, whether currently in existence or as may come into existence and whether or not in written form. Examples of such District practices and policies include, but are not limited to, its Code of Ethics and Nondiscrimination Policies. In addition, Executive agrees to perform such other or additional powers and duties as the Board may deem appropriate, or as may be delegated to him by the Board.

Section 3. **EFFECTIVE DATE OF AGREEMENT.** The effective date of this Agreement will be May 10, 2023 (“Effective Date”), and the Agreement shall remain effective and continue in force and effect as provided hereafter during Executive’s employment and for the periods of time thereafter as set forth in this Agreement.

Section 4. TERMINATION OF EMPLOYMENT.

Section 4.1 Termination by the District upon Dissolution. It is specifically agreed and understood that Executive's employment and this Agreement may be terminated by the District at any time in the event the District ceases to exist by way of legislation or final disposition of litigation. In that event, Executive's employment and this Agreement will terminate immediately upon delivery of written notice to Executive. In that event, the District shall have no further obligations to Executive, except that any salary which has been earned but not paid as of the date of the termination shall be paid to Executive by the District in accordance with the District's regularly payroll practices and policies. No other monies, compensation, bonuses, benefits, or incentives will be due or owing to Executive with respect to services performed.

Where a termination occurs pursuant to this Section 4.1, provided Executive signs (and does not revoke) a separation, waiver and release agreement (to be prepared by the District) of all claims (known or unknown) against the District arising out of or relating to his employment with the District or termination thereof, as well as any other terms and conditions required by the District, and provided Executive fully complies with any restrictive covenants that survive termination of his employment, Executive shall be entitled to receive as severance an amount equal to twenty (20) weeks of base compensation (calculated based on the salary in effect at the time of termination and minus applicable withholdings and deductions) to be paid in a lump sum payment consistent with the terms of the above-referenced waiver and release agreement. There shall be no set-off of the severance if Executive obtains alternate employment prior to the end of the twenty (20) week severance period.

Section 4.2 Termination by the District with Reason. At any time the District may immediately, upon written notice to Executive, terminate Executive's employment and this Agreement "with reason" at the sole discretion and judgment of the Board. Executive has no right to challenge the Board's determination of the "with reason" termination, or the reasons provided in support of such termination. For purposes of this Agreement, Executive's employment shall be considered terminated "with reason" if Executive's employment is terminated by the District on account of the occurrence of one or more of the following, or similar, events:

- (a) Executive's: (i) failure or refusal to comply with the policies and procedures of the District, as established from time to time by the Board and communicated to Executive or by the Executive himself and/or his designees; (ii) failure to adequately perform his duties whether under this Agreement or as otherwise determined by the Board; or, (iii) engagement in behavior unbecoming to an officer of the District (as determined in the sole discretion of the Board).
- (b) Executive's commission of any act of dishonesty, fraud, violation of law or

any act which subjects the District, its officers, directors, or employees, to ridicule, humiliation or disrepute, including without limitation Executive engaging in a transaction in which he received an improper personal benefit.

- (c) Executive's engagement in conduct deemed a crime under Florida or federal law.
- (d) Executive's violation, and final adverse determination thereof, of Florida's Code of Ethics, Chapter 112, Part III of Florida Statutes.
- (e) Executive's engagement in conduct as defined by Florida Statute 443.036(29).

Upon any termination "with reason," after the termination date is communicated to Executive, the District shall have no further obligations to Executive under this Agreement, except that any salary that is earned and unpaid through the date of termination shall be paid to Executive by the District in accordance with the District's regular payroll practices. Executive will continue to receive any health insurance benefits through the date of termination. No other monies, compensation, bonuses, benefits, or incentives will be due or owing to Executive. No severance will be provided to Executive.

Section 4.3 Termination by the District without Reason. The District may terminate Executive's employment and this Agreement "without reason" by giving Executive forty-five (45) days' written notice of such termination ("Section 4.3 Notice Period") with termination to occur on the 45th day or later as specified in the written termination notice ("Separation Date"). Executive must continue to report to work each day and fully perform his duties during this notice period and is not permitted to take vacation or other time off during this Section 4.3 Notice Period, unless permitted by the Board. The District shall have the option of accelerating the Section 4.3 Notice Period and relieving Executive of his duties immediately, or at any time during the Section 4.3 Notice Period, but Executive shall be paid any earned salary through the Separation Date in accordance with the District's regular payroll practices and policies. No other monies, compensation, bonuses, benefits, or incentives will be due or owing to Executive with respect to services performed. Executive will continue to receive any health insurance benefits through this Section 4.3 Notice Period.

Where a termination occurs pursuant to this Section 4.3, provided Executive signs (and does not revoke) a separation, waiver and release agreement (to be prepared by the District) of all claims (known or unknown) against the District arising out of or relating to his employment with the District or termination thereof, as well as any other terms and conditions required by the District, and provided Executive fully complies with any restrictive covenants that survive termination of his employment, Executive shall be entitled to receive as severance an amount equal to twenty (20) weeks of base

compensation (calculated based on the salary in effect at the time of termination and minus applicable withholdings and deductions) to be paid in a lump sum payment consistent with the terms of the above-referenced waiver and release agreement. There shall be no set-off of the severance if Executive obtains alternate employment prior to the end of the twenty (20) week severance period.

Section 4.4 Resignation upon Notice by Executive. Executive may resign his employment and terminate this Agreement at any time by providing the District with thirty (30) days' written notice of such resignation ("Section 4.4 Notice Period") with resignation to occur on the 30th day or later as specified in the written termination notice ("Resignation Separation Date"). Executive must continue to report to work each day and fully perform his duties during this Section 4.4 Notice Period and is not permitted to take vacation or other time off during this Section 4.4 Notice Period, unless permitted by the Board. Upon Executive providing notice of resignation to the District, the District shall have the option of accelerating the Section 4.4 Notice Period and relieving Executive of his duties immediately, or at any time during the Section 4.4 Notice Period, but Executive shall be paid any earned salary through the Resignation Separation Date, provided the Section 4.4 Notice Period is not longer than thirty (30) days, in accordance with the District's regular payroll practices and policies. Executive will continue to receive any health insurance benefits through this Section 4.4 Notice Period. No other monies, compensation, bonuses, benefits, or incentives will be due or owing to Executive with respect to services performed.

Executive acknowledges and agrees that during the Section 4.4 Notice Period his employment will still be governed by the terms of this Agreement as well as this Section. Accordingly, while Executive's employment shall not be terminated pursuant to Section 4.3 of this Agreement (termination without cause) during the Section 4.4 Notice Period, Executive's employment may still be terminated in accordance with the terms of the Section 4.1 and 4.2 should Executive engage in conduct warranting termination "with reason" and/or should the District cease to exist. In that case, the provisions of the applicable section of this Agreement, Section 4.1 or Section 4.2, would apply to and govern the terms of Executive's termination.

Section 5. SALARY AND BENEFITS.

Section 5.1 Salary. The District shall pay to Executive and Executive shall accept from the District for the services described hereunder, an annual salary, of four hundred thousand dollars and zero cents (\$400,000.00), less applicable taxes and other legal withholdings, payable only as earned on a bi-weekly basis, or as otherwise provided for pursuant to the District's normal and customary payroll practices, during the Agreement's Term. It is specifically agreed and understood that any increases in Executive's salary will be made at the sole discretion of the Board or any District committee to which such responsibility may be delegated; however, Executive shall receive no less of an increase of his yearly base salary than any percentage increase

approved by the Board for non-bargaining unit employees. The Board shall endeavor to conduct a performance evaluation for Executive on an annual basis.

Section 5.2. Benefits. As of the Effective Date, Executive and his eligible dependents, as defined by applicable benefits plans, shall be eligible to participate in the District's employee health benefit plans, and any retirement and other benefits plans, which are provided to other employees in similar positions. Executive understands that he must meet any and all eligibility requirements of the particularly benefit plan(s) as a condition of Executive's participation in any such plan. The District may, in its sole discretion, change, modify, amend or terminate any of the benefits provided to its employees, including Executive, at any time in a manner which does not discriminate between Executive and other employees of the District who are eligible to participate in such benefits and as otherwise permitted by law.

Section 5.3 Vacation, Sick, and Holidays. Executive shall accrue and be eligible to use vacation, sick, and holiday time in accordance with the District's personnel policies as applied to executive level employees of the District (Director and above). Carryover and/or payout of accrued unused vacation and/or sick and/or holiday time will be determined in accordance with applicable District policies which may be amended from time to time and at the District's sole discretion with or without notice or reason.

Section 5.4 Use of Corporate Credit Card. Executive shall be provided use of a District corporate credit card solely for business expenses incurred pursuant to District policy, practices, and customs. Executive may only use this corporate card for business (not personal) expenses pursuant to District policy, practices, and customs. Expenses charged must relate to District business and expenses will be reimbursed consistent with District policies, practices, and customs. Executive's corporate card must be immediately returned by Executive to the District at the sole discretion and demand of the District and may be cancelled at any time by the District for any reason.

Section 5.5 Place of Residence. Executive must at all times reside in Florida.

Section 6. DISTRICT PROPERTY AND EQUIPMENT. Executive acknowledges that he may be provided a mobile phone, laptop computer, wireless card, tablet, corporate credit card, and/or other District owned property for his use as a District employee. Executive agrees to use and operate these District owned devices in accordance with District policy and for the purpose of fulfilling Executive's duties under this Agreement. Executive understands and agrees that personal communications using electronic devices provided by the District (cell phone, tablet, laptop), including, but not limited to emails, text messaging, instant messaging, telephone calls, etc., are to be limited and at all times professional, and that communications via such devices are subject to disclosure in compliance with Florida's Public Records Law. Executive agrees to return all property and all documents and/or electronic media related to the District (and including all copies thereof) upon termination of employment and/or upon request by the Board or its

designee at any time. Such property includes, but is not limited to, contracts, financing, research and development, business development plans, education programs, training materials and manuals, policy manuals, personnel manuals, keys, equipment, files, documents, copies of documents, computer printouts or software, electronic media, unpublished advertisements, brochures, business plans, records, drawings, materials, papers and copies thereof. It is specifically agreed that any documents, card files, notebooks, Rolodex, electronic media, etc. containing District information are the property of the District regardless of by whom they were compiled.

Section 7. EXCLUSIVITY OF SERVICES; CONFLICT OF INTERESTS & SELF-DEALING RESTRICTIONS.

Section 7.1 Exclusive Services. Executive shall perform all duties under this Agreement on a full-time basis and Executive agrees to devote his full efforts and attention to his duties and responsibilities at the District. During his employment, Executive shall not participate in, render services to, become employed by, or otherwise receive remuneration for any services rendered from any business or entity, unless specifically approved in writing by the Board Chair. This Section is not intended to limit Executive's participation in or service on any Board of Directors (generally referred to hereinafter as "BOD"), even if he is compensated separately, on which Executive is currently serving and/or intends to serve or any business Executive has an ownership interest in as of the Effective Date. Any and all income or other compensation earned by Executive from outside activities shall be paid to and retained by him, and such income or other compensation shall have no effect on the amount of salary, compensation, and benefits he is otherwise entitled to receive hereunder. However, Executive agrees that he will disclose, in writing, to the Board Chair each current BOD position held by Executive along with the name of the BOD and the term of service as well as the name of any business Executive has an ownership interest prior to executing this agreement, and (2) during the term of Executive's employment, Executive will make the same disclosures (BOD position, term of service, and name of BOD) with regard to any BOD he intends to serve on and/or any business Executive has an ownership interest in while employed.

Section 7.2 Conflicts of Interest. Executive must report any real, potential or perceived conflict of interest to the Board Chair immediately upon learning of such conflict of interest, whether involving himself or others. Executive and the District agree that Executive will be permitted to serve on any BOD of his choosing provided a non-waivable conflict does not exist between the District and/or the District's Board members and the BOD on which Executive is serving/intends to serve. In the event a waivable conflict exists with respect to any BOD where Executive is serving/intends to serve, the District will willingly provide the waiver necessary on its behalf to permit Executive to continue his BOD service.

Section 8. REPRESENTATIONS AND WARRANTIES. The District and Executive mutually represent and warrant that each party has the full right and power to enter into and fully

perform this Agreement. Furthermore, the District and Executive mutually represent and warrant that they have not made (nor will they make) any contractual or other commitments which would conflict with the performance of their obligations under this Agreement or the full enjoyment by the other party of the rights granted by the Agreement.

Section 9. MISCELLANEOUS.

Section 9.1 Applicable Law. This Agreement is made in the State of Florida, shall be governed, construed and regulated under and exclusively by the laws of the State of Florida (without giving regard to its choice of law provisions). Jurisdiction for any suit, action or legal proceeding arising out of or related to this Agreement shall be brought in the courts of the State of Florida, in Orange County.

Section 9.2 Modification, Change and Waiver. No modifications or change shall be made to the terms and conditions of this Agreement, except as mutually agreed upon in writing by the parties. Any agreement on the part of a party to any waiver of any provision of this Agreement will be valid only if set forth in an instrument in writing signed on behalf of such party. A waiver by a party of the performance of any covenant, agreement, obligation, condition, representation or warranty will not be construed as a waiver of any other covenant, agreement, obligation, condition, representation or warranty. A waiver by any party of the performance of any act will not constitute a waiver of the performance of any other act or an identical act required to be performed at a later time.

Section 9.3 Entire Understanding. This Agreement represents the entire understanding of the parties regarding the subject matter of this Agreement and neither party is relying upon any representation not contained in the Agreement. This Agreement supersedes and replaces any and all prior agreements or understandings between the Parties arising out of or relating to the employment or contractual relationship between Executive and the District.

Section 9.4 Severability. In the event that any provision of this Agreement shall be deemed invalid, unreasonable or unenforceable by a court of competent jurisdiction, such provision shall be stricken from the Agreement or modified so as to render it reasonable, and the remaining provisions of this Agreement or the modified provision shall continue in full force and effect and be binding upon the parties so long as such remaining or modified provisions reflect the interest of the parties at the date of this Agreement.

Section 9.5 Headings. The headings at the beginning of each paragraph and subparagraph of this Agreement are for convenience only and shall not in any way affect the interpretation of any paragraph of this Agreement or the entire Agreement.

Section 9.6 Execution in Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

Section 9.7 Remedies, Attorney Fees and Costs. In the event of one party's breach of this Agreement, the other party shall be entitled to any remedies and damages available in law or equity. In the event of any action brought under this Agreement, the prevailing party shall be entitled to recover attorney's fees, including any appellate proceedings. The remedies provided for herein or otherwise available to the parties shall be cumulative, and no one such remedy shall be exclusive of any other and the exercise of any one shall not preclude the exercise or be deemed a waiver of any other remedy nor shall the specification of any remedy exclude or be deemed to be a waiver at law or in equity which may be available to a party, including any rights to damages or injunctive relief.

Section 9.8 Additional Documents. The parties shall execute and deliver any and all additional papers, documents and other instruments and shall do any and all further acts and things reasonable and necessary in connection with performance of their obligations hereunder to carry out the intent of this Agreement.

Section 9.9 Notice. All notices, demands and other communications required or permitted to be given or made under this Agreement shall be in writing and will be deemed to have been given: (a) on the date of personal delivery; or (b) (i) three (3) business days after the date of deposit in the United States Mail, postage prepaid, by registered or certified mail, return receipt requested, (ii) on the date of transmission by facsimile or electronic transmission, or (iii) the day following the date of delivery to a nationally recognized overnight courier service, in each case addressed as follows, or to such other address or person or entity as the parties may designate by notice to each party in accordance with this subsection 9.9:

To the District: Central Florida Tourism Oversight District
 Attention: Board of Supervisors, Chair
 P.O. Box 10170
 Lake Buena Vista, Florida 32830-0170

To Gilzean: Glenton Gilzean, Jr.
 2314 Pesaro Circle
 Ocoee, FL 34761

Section 9.10 Assignment and Successors. The rights and obligations of Executive under this Agreement are not assignable. The rights and obligations of the District under this Agreement inure to the benefit and, to the extent permitted by law, shall be binding upon the successors and assigns of the District.

Section 9.11 Set Off. The District shall be entitled to set off against any amounts it owes to Executive, any amounts Executive owes to the District, consistent with applicable law, including all such costs, damages, or liability against any payments otherwise owed to the District by Executive.

Section 9.12 Jury Trial. **THE PARTIES HEREBY KNOWINGLY, WILLINGLY AND VOLUNTARILY WAIVE IRREVOCABLY ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY IN CONNECTION WITH THIS AGREEMENT AND EXECUTIVE'S EMPLOYMENT WITH THE DISTRICT.**

Section 9.13 Certificate of Understanding. Executive represents and agrees that he received a copy of this Agreement for review and study before being asked to sign it; read this Agreement carefully; had sufficient opportunity before the Agreement was signed to ask questions about the provisions of the Agreement; understands his rights and obligations under the Agreement and voluntarily signed this Agreement.

IN WITNESS WHEREOF, the parties have executed this nine (9) page Employment Agreement on the dates indicated below and to be effective on the day and year specified herein.

Date

Glenton Gilzean, Jr.

Central Florida Tourism Oversight District

Date

Martin Garcia, Chair