

## AGENDA

### MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

Any person who wishes to be heard shall provide the Clerk with his or her name and residence and the agenda item on which he or she wishes to be heard. Such information shall be on a card provided by the County. Once public input begins, there will be no further speaker cards allowed to be submitted to the Clerk for that subject. An individual has three minutes and a person representing an organization has five minutes to address the Board (except that individuals wishing to speak during public hearings pertaining to land use issues will have five minutes). The first person representing the organization will be allowed the five minutes. Subsequently, all other speakers on behalf of that organization have three minutes to address the Board. Once an individual has addressed the Board, he or she will not be permitted to return to the podium for follow-up comments, unless the issue involved is quasi judicial in nature. In that case, the applicant may return to the podium to conclude his or her position at the end of the public hearing.

***ADA ASSISTANCE: If you are a person with a disability who needs special accommodations in order to participate in this proceeding, please contact the County Administrator's Office, by phoning (305) 292-4441, between the hours of 8:30 a.m. - 5:00 p.m., no later than five (5) calendar days prior to the scheduled meeting; if you are hearing or voice impaired, call "711".***

**Pleas note that all time approximate items are listed in bold.**

Monday, September 10, 2012  
Marathon Government Center  
2798 Overseas Highway, MM 47.5 (Gulf)  
Key West, Florida

#### TIME APPROXIMATE

#### SPECIAL MEETING

3:00 P.M. CALL TO ORDER  
INVOCATION  
SALUTE TO FLAG

- A. ADDITIONS, CORRECTIONS, DELETIONS
- B. Discussion And Direction Regarding The Recently Released Monroe County Grand Jury Report Involving County Staff And Property.  
Documents: [B.PDF](#)
- C. Approval Of A Resolution Of The Board Of County Commissioners Of Monroe County, Florida Supporting Legislation To Exclude Safe Harbor Enterprises, Inc. And Robbie's Safe Harbor Marine Enterprises, Inc. From The Coastal Barrier Resources System.  
Documents: [C.PDF](#)
- D. Discussion And Approval Of Settlement Agreement In The Florida Association Of Counties, Et. Al., V. The Florida Department Of Revenue And The State Of Florida Agency For Health Care Administration (Medicaid) Lawsuit And Approval For The County Administrator To Execute Exhibit One.  
Documents: [D.PDF](#)

**BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: 9/10/12 - MAR Department County Attorney

Bulk Item: Yes  No  Staff/Contact Person: Bob Shillinger x3470

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**AGENDA ITEM WORDING:** Discussion and direction regarding the recently released Monroe County Grand Jury Report involving County staff and property.

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**ITEM BACKGROUND:** The Monroe County Grand Jury recently released a report which details their findings and recommendations regarding incidents involving County staff and County property. On 8/15/12, the BOCC authorized a special BOCC meeting be held on September 10, 2012 at 3:00 p.m. to discuss the contents of the report and to take action.

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**PREVIOUS RELEVANT BOCC ACTION:**  
8/15/12 BOCC approved a special meeting be held on 9/10/12 at 3:00 p.m. in Marathon, FL

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**CONTRACT/AGREEMENT CHANGES:**  
N/A

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**STAFF RECOMMENDATIONS:**  
N/A

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**TOTAL COST:** \_\_\_\_\_ **INDIRECT COST:** N/A **BUDGETED:** Yes  No

**DIFFERENTIAL OF LOCAL PREFERENCE:** N/A

**COST TO COUNTY:** \_\_\_\_\_ **SOURCE OF FUNDS:** \_\_\_\_\_

**REVENUE PRODUCING:** Yes  No  **AMOUNT PER MONTH** \_\_\_\_\_ **Year** \_\_\_\_\_

**APPROVED BY:** County Atty  OMB/Purchasing \_\_\_\_\_ Risk Management \_\_\_\_\_

**DOCUMENTATION:** Included  Not Required \_\_\_\_\_

**DISPOSITION:** \_\_\_\_\_ **AGENDA ITEM #** \_\_\_\_\_

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT  
IN AND FOR MONROE COUNTY, FLORIDA

FINAL REPORT OF THE MONROE COUNTY GRAND JURY  
SPRING TERM 2012

**THE INVESTIGATION INTO THE PURCHASE AND CRIMINAL  
MISAPPROPRIATION OF COUNTY-PURCHASED IPHONES AND IPADS BY THE  
SENIOR ADMINISTRATOR OF MONROE COUNTY'S TECHNICAL SERVICES  
DEPARTMENT**

MEMBERS OF THE SPRING TERM 2012 GRAND JURY

DENNIS W. WARD  
State Attorney

MARK WILSON  
Assistant State Attorney

## I. INTRODUCTION

It is the province and duty of the Grand Jury to investigate possible unlawful actions by all persons, private citizens and public officials alike, and to return indictments when warranted; it is also the Grand Jury's lawful and proper function to consider the actions of public bodies and officials in the use of public funds, and to report or present findings and recommendations as to practices, procedures, incompetency, inefficiency, mistakes, and misconduct involving public offices and public monies.<sup>1</sup>

On February 27, 2012, Chief Assistant County Attorney Robert Shillinger notified the State Attorney's Office that county staff had discovered that a number of county-purchased Apple iPhones and iPads were unaccounted for, and had possibly been sold by Lisa Druckemiller, Senior Administrator of Monroe County's Technical Services Department. Mr. Shillinger reported that Ms. Druckemiller had abruptly retired from county employment on February 24, 2012, and had agreed to repay the county \$5,600.92 for the missing items. The agreement between Ms. Druckemiller and the county was not an admission of theft on her part but rather an admission of responsibility. The State Attorney's Office initiated an investigation into the allegations and ultimately presented its findings to the Monroe County Grand Jury. On July 11, 12, and 13, 2012, the Grand Jury heard testimony from thirty-one witnesses involved in the case, including Lisa Druckemiller. On July 13, 2012, the Grand Jury returned a two-count indictment charging Ms. Druckemiller with Organized Scheme to Defraud Over \$20,000 and Dealing in Stolen Property. This report represents the culmination of the Grand Jury's inquiry.

## II. THE FACTS

Lisa Druckemiller was the Senior Administrator of Monroe County's Technical Services Department, which provides information management services to county offices and employees. Among her duties as Senior Administrator, Ms. Druckemiller was responsible for the acquisition and distribution of cellular telephones to county employees whose jobs required them. Apart from her supervisees in the Technical Services Department, it was not Ms. Druckemiller's responsibility to determine whether

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<sup>1</sup>Kelly v. Sturgis, 453 So. 2d 1179, 1182 (Fla. 5th DCA 1984).

a particular county employee needed a cellular telephone to perform his or her job effectively – that decision was made by the employee’s department head. Rather, Ms. Druckemiller’s job was to purchase the phone (with the attendant service contract), activate the account, and furnish it to the employee.

Prior to Roman Gastesi becoming County Administrator, Monroe County issued Nextel cellular phones from Sprint to its employees. When Mr. Gastesi arrived he sought to convert the county to BlackBerry smartphones because he was accustomed to using them in his previous job. Ms. Druckemiller informed him the county’s existing servers could not support BlackBerry devices, and it would cost upwards of \$15,000 to buy servers that would. In light of this expense, Mr. Gastesi opted to switch to iPhones from AT&T, which would give county employees smartphone capability without necessitating the purchase of new servers. Ms. Druckemiller implemented this change.

In the spring of 2010, Danny Kolhage, Monroe County Clerk of the Circuit Court, directed his Internal Audit Department to conduct an audit of the county’s cellular telephone policies and procedures. This audit necessarily focused on the manner in which the Technical Services Department obtained and accounted for county-purchased cellular telephones. By way of background, the audit noted, “The Technical Services Department handles the ordering and repair of cellular telephones, the physical control of on hand cellular telephones and accessories, the activation and termination of cellular service and the approval of cellular service bills for submittal to accounts payable for payment and recording.”<sup>2</sup> The Senior Administrator of the Technical Services Department at the time of the audit was Lisa Druckemiller.

The audit made nine findings and twenty-one recommendations to improve the county’s policies and procedures regarding cellular telephones. These findings and recommendations were forwarded to County Administrator Roman Gastesi, who responded to them in writing. Mr. Gastesi’s responses were incorporated into the final

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<sup>2</sup> Audit Report of Monroe County Cellular Telecommunications Policies and Procedures (April 5, 2010), p. 2.

audit report, which was issued on April 5, 2010. Copies of the report were furnished to Mr. Gastesi, Ms. Druckemiller, and the Board of County Commissioners.<sup>3</sup>

The audit's most important findings were that the Technical Services Department lacked an inventory and tracking system for county cell phones, and that there was an inadequate separation of duties regarding their custody and control.<sup>4</sup> In response to the first issue—the absence of an inventory and tracking system—the county administrator responded that the Technical Services Department had implemented a database to account for county cell phones. This database included which employees had cell phones, and the telephone and serial number assigned to each user.<sup>5</sup> In response to the second issue—the recommendation that a separation of duties be instituted in the custody and control of county cell phones—the county administrator stated he was “satisfied with the distribution of responsibilities with regard to cellular telephones.”<sup>6</sup>

Once the alleged misappropriation of county-purchased iPhones and iPads came to light in February 2012, Mr. Kolhage directed his Internal Audit Department to conduct a second audit of the Technical Services Department. This audit was performed by Director of Internal Audit Sandra Mathena and Auditor Pamella Sellers, who

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<sup>3</sup> By law, it is the county administrator's duty to “[s]upervise the care and custody of all county property.” § 125.74(1)(g), Fla. Stat. The clerk of the circuit court, in contrast, is custodian of all county funds. Art. VIII, § 1(d), Fla. Const. Accordingly, while the clerk of the circuit court can recommend changes in policy or procedure concerning the care and custody of county property, it is the county administrator who ultimately decides if these changes should be implemented. The administrator's decisions in that regard—as in all matters—are subject to the ultimate review of the elected board of county commissioners. See §§ 125.01(1)(s), 125.73, 125.74, Fla. Stat.

<sup>4</sup> See Audit Report of Monroe County Cellular Telecommunications Policies and Procedures (April 5, 2010), pp. 9, 11.

<sup>5</sup> Under section 69I-73.002 of the Florida Administrative Code, property worth less than \$1000.00 is not required to be inventoried and recorded in the county's fixed asset system. Individual iPhones fall below this threshold. Nonetheless, given the number of iPhones in use by county employees (sixty-three at the time of the audit) and their aggregate value (\$12,537), the clerk—and apparently the county administrator—agreed county iPhones should be inventoried and accounted for.

<sup>6</sup> Letter from Roman Gastesi, County Administrator, to Danny L. Kolhage, Clerk of the Circuit Court, dated April 1, 2010, and attached to the final audit report as Exhibit C. (The letter was signed by Debbie Frederick, Deputy County Administrator, on behalf of Mr. Gastesi.)

coordinated their work with Investigator Christopher Weber of the State Attorney's Office. The focus of their work was to ascertain, to the fullest extent possible, how many iPhones and iPads had been purchased by the county, who had them, and under what circumstances the items had come into their possession. The auditors first decided to physically inspect each cellular phone owned by the county to ensure their inventory was accurate. And given that the suspected wrongdoer was the former head of the Technical Services Department—and thus in a position to falsify the data—the auditors did not rely on the inventory maintained by that department to determine who was (or who had been) in actual possession of the equipment. Instead, the auditors obtained from AT&T a list of iPhones and iPads the county had purchased since October 21, 2010. (Information from this date was the earliest AT&T could provide.) Working from this data, the auditors discovered that although the Technical Services Department had instituted an iPhone inventory and tracking system in response to the clerk's 2010 audit, the 2012 audit revealed the resultant inventory was incomplete because iPhones had not been added to the inventory at the time of purchase. Instead, iPhones had been added only at the time they were issued to an employee and activated. Thus, there was a gap between purchase and issuance when the Technical Services Department had actual possession of equipment that was not reflected in the inventory. And because most of the missing iPhones were misappropriated before being issued to anyone, the inventory did not reveal their absence. The inventory system thus significantly undercounted the true number of items the county had purchased.

After physically inspecting the iPhones and iPads legitimately in possession of county employees, and recognizing there were many items the county had purchased that remained unaccounted for, the State Attorney's Office subpoenaed records from AT&T and Apple in an effort to locate the missing equipment. The AT&T subpoenas sought subscriber information for the missing items based on each phone's IMEI (International Mobile Equipment Identity) number, which is unique to each phone and is not affected by the replacement of the phone's SIM (subscriber identity module) card. This enabled the State Attorney's Office to determine the subscriber for each phone—i.e., who was billed for service. The Apple subpoenas sought iTunes account information, on the assumption that many iPhone users subscribe to iTunes. The users of most missing iPhones and iPads were identified either by AT&T records, Apple records, or both. Five misappropriated iPhones and one iPad remain unconnected to any identifiable user. In

total, the investigation found that fifty-two items purchased by the county were unaccounted for: thirty-nine iPhones, twelve iPads, and one LG phone.

Lisa Druckemiller was interviewed three times. The first two interviews occurred shortly after she resigned from county employment and the extent of the alleged theft was not fully known. During the initial interview she denied any involvement with the missing iPhones and iPads. Eventually she admitted to taking five iPads and two iPhones and gifting them to persons she declined to name. She denied selling any county property. During the second interview, Ms. Druckemiller admitted to taking five 64 GB iPads II's and three iPhone 4S's. She stated she sold one iPad and two iPhones to County Administrator Roman Gastesi for \$600.00, gave three iPads and one iPhone to her subordinate Henry ("Hank") Kokenzie, and gave one iPad to her brother-in-law William Riech. After all the missing items had been identified and investigators had spoken with their recipients, Ms. Druckemiller was interviewed a third time. During this final interview, she admitted to selling numerous iPhones and iPads to coworkers, relatives, neighbors, and friends. She said she spent some of the money she received on office parties and kept the rest.

Based on records obtained from AT&T and Apple, interviews with Ms. Druckemiller, and interviews with the recipients, the following persons received county-purchased equipment from Lisa Druckemiller:

<u>RECIPIENT</u>	<u>ITEM</u>	<u>PRICE PAID<sup>7</sup></u>	<u>COUNTY'S COST</u>
Irina Baker	iPhone 4	gift	\$299.00
Irina Baker	iPhone 4S	gift	\$399.99
Irina Baker	iPad II	gift	\$829.00
Tina Boan	iPhone 4	\$99	\$299.00
Tina Boan	iPhone 4S	\$129.99 <sup>8</sup>	\$399.99

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<sup>7</sup> In some cases there was a disparity between the amount Ms. Druckemiller reported receiving and the amount the recipients claim to have paid. Because most of the sales were in cash, it is impossible to resolve these discrepancies. Whatever the price or manner of payment, none of the purchasers paid sales tax.

Lacy Caraballo	iPhone 4S	\$100 <sup>9</sup>	\$399.99
Heather Carruthers	iPhone 4	\$99.99 <sup>10</sup>	\$299.00
Sol Connelly	iPhone 4	\$100	\$299.00
Isabel Desantis	iPhone 4	gift	\$299.00
Isabel Desantis	iPhone 4S	gift	\$399.99
Brandon Druckemiller	iPhone 4	gift	\$299.00
Brandon Druckemiller	iPhone 4	gift	\$299.00
Brandon Druckemiller	iPad II	gift	\$829.00
Lisa Druckemiller	iPhone 4	gift	\$299.00
Lisa Druckemiller	iPhone 4S	gift	\$399.99
Lisa Druckemiller	iPhone 4S	gift	\$399.99
Lisa Druckemiller	iPad II	gift	\$729.00
Lisa Druckemiller	iPad II	gift	\$829.00
Ryan Druckemiller	iPhone 4	gift	\$299.00
Ryan Druckemiller	iPhone 4	gift	\$299.00
Ryan Druckemiller	iPhone 4S	gift	\$399.99
Ryan Druckemiller	iPad II	gift	\$829.00
Vicki Fleck-Lockwood	iPhone 4	\$80	\$299.00
Roman Gastesi	iPhone 4	\$100	\$299.00

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<sup>8</sup> Ms. Boan paid by check for this phone. The check was made payable to Lisa Druckemiller.

<sup>9</sup> Ms. Druckemiller reports Ms. Caraballo paid \$129 for this phone. Ms. Caraballo states she paid \$100.

<sup>10</sup> Ms. Carruthers paid by check for this phone. The check was made payable to Lisa Druckemiller.

Roman Gastesi	iPhone 4S	\$99	\$399.99
Roman Gastesi	iPhone 4S	\$125 <sup>11</sup>	\$399.99
Roman Gastesi	iPhone 4S	\$125 <sup>12</sup>	\$399.99
Roman Gastesi	iPad II	\$450	\$829.99
Thomas Hampton	iPhone 4	\$100	\$299.00
Thomas Hampton	iPhone 4	\$100	\$299.00
Lance Hoverson	iPhone 4	\$50	\$299.00
Lance Hoverson	iPhone 4	\$50	\$299.00
Lance Hoverson	iPhone 4	gift	\$299.00
Henry Kokenzie	iPhone 4S	\$200 <sup>13</sup>	\$399.99
Henry Kokenzie	iPhone 4S	\$200	\$399.99
Henry Kokenzie	iPad II	\$450	\$829.99
Henry Kokenzie	iPad II	\$450	\$829.99
Henry Kokenzie	iPad II	\$450	\$829.99
Alexsondra Leto	iPhone 4	\$80	\$299.00
Alexsondra Leto	iPhone 4	\$80	\$299.00
Alexsondra Leto	iPhone 4S	\$150 <sup>14</sup>	\$399.99
Michael Pontarelli	iPad II	\$450	\$848.00

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<sup>11</sup> Ms. Druckemiller reports Mr. Gastesi paid \$100 for this phone. Mr. Gastesi states he paid \$125.

<sup>12</sup> Ms. Druckemiller reports Mr. Gastesi paid \$100 for this phone. Mr. Gastesi states he paid \$125.

<sup>13</sup> Ms. Druckemiller reports she gave this phone to Mr. Kokenzie and received no payment for it. Mr. Kokenzie states he paid \$200 for it.

<sup>14</sup> Ms. Druckemiller reports Ms. Leto paid \$129 for this phone. Ms. Leto states she paid \$150.

Sheryl Rahming	LG LC900	\$50 <sup>15</sup>	\$99.99
William Riech	iPad II	gift	\$829.99
Donna Smyth	iPad II	\$450	\$829.00
Elizabeth Wood	iPhone 4	\$200	\$299.00

Irina Baker, Isabel Desantis, Brandon Druckemiller, Ryan Druckemiller, Vicki Fleck-Lockwood, Lance Hoverson, and William Riech are related to Ms. Druckemiller by blood or marriage. Sol Connelly, Michael Pontarelli, and Donna Smyth are Ms. Druckemiller's neighbors or friends. Tina Boan, Lacy Caraballo, Heather Carruthers, Roman Gastesi, Thomas Hampton, Henry Kokenzie, Alexsondra Leto, Sheryl Rahming, and Elizabeth Wood are county employees.<sup>16</sup>

Ms. Druckemiller, while admitting to misappropriating the items just listed, denied ever having offered to obtain these items for others. Many witnesses attest otherwise. Significantly, several persons who purchased nothing from her stated Ms. Druckemiller said she could obtain discounted iPhones from AT&T. Ms. Druckemiller states her conversion of county property began in late 2009 or early 2010 when County Administrator Roman Gastesi appeared in her office, placed two \$100 bills on her desk, and said, "I want two iPhones for my kids. Make it happen." Shortly after obtaining the phones for Mr. Gastesi, Ms. Druckemiller stated other high ranking county employees approached her about obtaining iPhones for themselves. She assumes Mr. Gastesi mentioned to others that she was able to procure steeply discounted iPhones. She said she was confused and didn't know what to do, but ultimately ordered the phones and pocketed the money she received. This pattern went on for at least eighteen months.

Mr. Gastesi denies this account. He stated he mentioned to Ms. Druckemiller in 2009 that he wanted to replace two iPhones for his sons, and she told him she could obtain new iPhones at a reduced price. Similarly, he asserted Ms. Druckemiller offered to procure a discounted iPad for him shortly before Christmas 2011. He stated discounts for public employees are commonplace, and he believed the iPhones were available to

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<sup>15</sup> Ms. Druckemiller reports Ms. Rahming paid \$40 for this phone. Ms. Rahming states she paid \$50.

<sup>16</sup> Ms. Desantis and Ms. Fleck-Lockwood are also county employees, but their principal connection to Ms. Druckemiller is through blood or marriage rather than by virtue of public employment.

Ms. Druckemiller for that reason. He stated he paid for the items in cash because it was more convenient for him than writing a check. Mr. Gastesi also denies having mentioned to others that Ms. Druckemiller could obtain discounted iPhones. Other witnesses, however, say he did.

Because the AT&T records go back only to October 21, 2010, it is impossible to determine whether Mr. Gastesi received the first misappropriated iPhones. Clearly, Ms. Druckemiller had begun to misappropriate county-purchased iPhones before that date.<sup>17</sup> Accordingly, it is impossible to confirm Ms. Druckemiller's claim that Mr. Gastesi was the genesis of her pattern of misappropriating county property.

Two people not listed above also merit discussion. In November 2011, County Mayor David Rice asked Ms. Druckemiller about buying an iPad for his wife. Mr. Rice broached the subject because he knew Ms. Druckemiller, as head of the Technical Services Department, was more familiar with computer equipment than he was. After consulting with her, Ms. Druckemiller used Mr. Rice's credit card and purchased—directly from Apple—an iPad, an iPad cover, and an external keyboard. Mr. Rice provided his credit card bill and receipt for this purchase, which showed he paid full price for the items as well as sales tax.

Deputy County Administrator Debbie Frederick, Lisa Druckemiller's friend and direct supervisor, admitted to buying a phone from her for personal use. Ms. Frederick gave Ms. Druckemiller her credit card to do this. Ms. Frederick reported that shortly thereafter, she noticed her credit card statement included multiple unauthorized charges for Lisa Druckemiller's personal bills (utility payments and the like). Ms. Frederick stated she confronted Ms. Druckemiller about the charges and Ms. Druckemiller told her they were a mistake and that she would correct them. Instead of stopping, the unauthorized charges continued for a period of eight months, totaling approximately \$23,000, and only stopped when Ms. Frederick canceled her credit card. Ms. Frederick stated Ms. Druckemiller agreed to repay her in installments, and has since repaid over \$10,000. Ms. Frederick stated she never reported this theft to law enforcement authorities or to County Administrator Gastesi because she and Ms. Druckemiller were friends.

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<sup>17</sup> The records reveal five iPhone 4's were purchased by the county on October 21, 2010, and converted to private use. One phone could not be located or connected to any known individual. The others were found to have been used by Tina Boan, Ryan Druckemiller, Roman Gastesi, and Elizabeth Wood. (Two phones, purchased on August 5 and August 8, 2010, were traced by other means to Alexandra Leto.)

Ms. Druckemiller denies this account. She admits using Ms. Frederick's credit card for her own purposes, but insists it was with Ms. Frederick's express permission. She stated Ms. Frederick was experiencing personal problems, and in order for her to have access to cash, they agreed Ms. Druckemiller would use Ms. Frederick's credit card and Ms. Druckemiller would repay Ms. Frederick in cash. Ms. Druckemiller denies using Ms. Frederick's credit card without her consent.

### III. OUR ASSESSMENT

We have two major concerns. The first is with those who bought iPhones and iPads from Lisa Druckemiller. The second is with the county's efforts—or lack thereof—to account for these items and adopt measures to prevent thefts like this from occurring.

We are of the opinion that most people who purchased iPhones and iPads from Lisa Druckemiller should have known something was amiss. The combination of the low price, cash payment, and the lack of a receipt should have prompted all but the most credulous purchasers to question the propriety of these deals. As the old adage goes, if something sounds too good to be true, it probably is. We recognize Ms. Druckemiller may have allayed buyers' concerns by telling them she was able to obtain these items at a steep discount by virtue of her job, but this explanation only addresses the matter of price. The days of cash sales for expensive consumer electronics are long gone—unless you are buying items that fell off the back of the proverbial truck. And wouldn't an ordinary person expect a receipt of some sort for warranty purposes? Apparently not the people who bought iPhones and iPads from Ms. Druckemiller.

But although everyone should have known better, not everyone is equally to blame. We believe county employees who availed themselves of these deals deserve greater censure than, for example, Lisa Druckemiller's next-door neighbors. Public employees are generally familiar with how public money and public property is accounted for, and Ms. Druckemiller's fellow employees knew the position she held. More so than the ordinary person, her fellow employees should have been doubly cautious about the propriety of obtaining a benefit of this sort that was unavailable to the public at large.

We recognize that perfection is an unrealistic and unobtainable standard for public employees and ordinary citizens alike. But while we acknowledge the reality of human imperfectability, we think it is not too much to ask public employees—when a conflict

arises between the public's interest and their own—to place the public's interest first. Few would disagree with that simple statement. The situation here is somewhat more nuanced, of course, because virtually all county employees who availed themselves of cut-rate iPhones and iPads from Lisa Druckemiller claimed to have no suspicions about their origins, despite their unusually favorable price. We heard from a number of county employees who stated they had no misgivings because they knew iPhones were available for \$99. To put the matter delicately, we are skeptical about the candor of these statements. Anyone even passingly familiar with cell phones knows that when a new model hits the market, older models are offered at steep discounts. And anyone even passingly familiar with iPhones knows the newest models have never been available for \$99, especially without a service contract. So we are being asked to accept that people who bought the latest, greatest iPhones had no qualms about the low (cash) price because other (older) iPhones could be had for \$99. With all due respect, this doesn't wash with us. Only one person who bought an iPhone from Ms. Druckemiller (ironically not a public employee) candidly admitted that when he paid \$100 for what he knew to be a \$500-600 iPhone, the deal was too good to be true.<sup>18</sup> Unfortunately, no county employee was similarly forthcoming.

Another common refrain we heard was that Ms. Druckemiller told buyers (and prospective buyers) that the exceedingly low price was available because the county's AT&T representative gave her an AT&T employee discount, which she would then pass on. An alternative version of this was that Ms. Druckemiller told buyers the county was periodically eligible to receive a certain number of discounted iPhones because of the volume of business the county did with AT&T. While these explanations are facially plausible, everyone seems to have accepted them without question. Even if it were true the county could receive discounted iPhones, why were they paid for in cash? Why were no receipts offered or requested? These obvious questions were simply never asked.

In deciding whether those who bought equipment from Ms. Druckemiller should be criminally charged, we considered the applicability of the Dealing in Stolen Property statute.<sup>19</sup> A person is guilty of Dealing in Stolen Property if he or she "traffics in" (i.e.,

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<sup>18</sup> The county actually paid \$299 for this iPhone, but that price included a two-year service contract.

<sup>19</sup> Section 812.019(1), Florida Statutes.

buys, receives, possesses, obtains control of or uses) property he or she *knows or should know was stolen*. The requisite intent—“knows or should know”—is satisfied if (1) the person had knowledge the property was stolen at the time he or she received it, or (2) the circumstances of the transaction were sufficiently suspicious to put a person of ordinary intelligence and caution on inquiry.<sup>20</sup> The question we considered was whether those who purchased iPhones and iPads from Lisa Druckemiller—in cash, at bargain prices, and without receipts—*should have known* those items were stolen. In other words, were the circumstances of the transactions sufficiently suspicious to put a person of ordinary intelligence and caution on inquiry that these items were stolen? The consensus of the Grand Jury was that the answer to this question is arguably yes.

Nonetheless, we elected to indict only Lisa Druckemiller. Why only her? In short, because although we have deep reservations about whether those who benefited from Ms. Druckemiller’s thefts were truly ignorant, it is possible that some genuinely were, and naïveté is not a crime. We believe it is preferable to allow those involved to escape criminal liability—even though some arguably deserve not to—rather than indict the merely gullible. Separating the two isn’t easy. Ultimately, we believe most people who purchased iPhones and iPads from Lisa Druckemiller engaged in some form of willful blindness. Willful blindness (also referred to as contrived ignorance or conscious avoidance) has been defined as a “strong suspicion of wrongdoing coupled with an active indifference to the truth.”<sup>21</sup> The question here is whether those who bought items from Ms. Druckemiller consciously avoided asking questions in order to obtain the benefit of cheap iPhones and iPads so they would not be burdened by knowledge they were benefiting from theft. Of the utility of willful blindness, David Luban has written, “Deniability refers to one’s capacity to deny guilty knowledge truthfully.... Virtually all of us prefer not to know things, if knowing them will require us to take unwelcome action. Why does our conscience work that way? The reason, I suspect, is that the quest for deniability seems not as bad as dishonesty. A dishonest person simply learns the truth and then lies about it. Evading truth is an expedient for *avoiding* lies.”<sup>22</sup> Willful

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<sup>20</sup> State v. Graham, 238 So. 2d 618, 620 (Fla. 1970).

<sup>21</sup> United States v. Draves, 103 F.3d 1328, 1333 (7th Cir. 1997).

<sup>22</sup> David Luban, *Contrived Ignorance*, 87 Geo. L.J. 957, 959 (1999) (emphasis in original).

blindness thus allows its practitioners to obtain a benefit in suspicious circumstances with a relatively clean conscience. It seems to us this is most likely what happened here.

As for the county's efforts to account for iPhones and iPads, we think the simplest and best course is to eliminate them. We recognize, of course, that such items aid many county employees in carrying out their public duties. Nevertheless, the county could address this by implementing a stipend for those employees whose jobs require them.<sup>23</sup> Clerk of the Circuit Court Danny Kolhage put it best: the county should "get out of the business" of providing county employees with iPhones. A stipend system would eliminate the need to purchase, track, and account for these items. It would eliminate overage charges for telephone usage and text messages, which apparently was a regular occurrence. It would eliminate the need to replace iPhones lost or damaged by county employees, which occurred with disturbing frequency. (It is no novel observation that people tend to take greater care of their own property than the property of others.) And it would eliminate the absurd pretense of Monroe County Administrative Instruction 4403.2(4)A, which forbids the personal use of county cell phones. It is hard to imagine a policy more frequently flouted than this one.

We realize that no set of safeguards—in the form of policies and procedures—can be instituted that will eliminate the possibility of theft and fraud. The human ingenuity for such things is impossible to fully anticipate and prevent. And of course at a certain point, the costs of safeguards outweighs the costs of theft. But commonsense rules can and should be adopted to make theft and fraud more difficult and easier to detect. Apart from doing away with county-issued iPhones and iPads entirely, we think the change that would likely have prevented the theft by Ms. Druckemiller was one suggested in the clerk's 2010 audit report: institute a separation of duties regarding the custody and control of cell phones. The authority to purchase, issue, and track cell phones was vested solely in Lisa Druckemiller, as was the authority to approve cellular service bills. No one else played a meaningful role in this process. Accordingly, the integrity of the system depended on the competence and honesty of Lisa Druckemiller alone. In hindsight, trust in her was obviously misplaced. But it was clear in 2010 (to the auditors, anyway) that a

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<sup>23</sup> A related matter is the number of county employees who have county-issued iPhones. We understand there are more than 100 such employees. Do so many people really need county iPhones to do their jobs? We doubt it. We suspect county-issued iPhones have morphed from necessities into perquisites. But that is for the county administrator and board of county commissioners to judge.

system exclusively dependent on a single person was a bad idea. Unfortunately, the county administrator declined to implement a separation of duties in accordance with this recommendation.

As stated previously, we recognize humans are imperfect, and any organization as big as the county will inevitably employ persons of less-than-stellar character or persons whose once stellar character has fallen off. Well designed systems account for this. James Madison famously wrote, "If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.... *[E]xperience has taught mankind the necessity of auxiliary precautions.*"<sup>24</sup> Wherever possible, systems should not depend on the honesty of a single individual. This is particularly true when the items at issue are as sought after as iPhones and iPads. People will steal anything, of course, but some things are more tempting than others. Portable computers and cell phones merit closer scrutiny than manhole covers. There undoubtedly are other kinds of county property that, like iPhones and iPads, are susceptible to theft but fall beneath the \$1000 inventory threshold. Instead of choosing a lower threshold, we think the best course for the county is to direct department heads to identify the most theft-prone items in each department and include those items in their general inventory of property worth \$1000 or more. This will accomplish the goal of tracking theft-prone property without vastly expanding the number of items the county must inventory each year.

Auditors from the clerk's office shared the findings and recommendations of their 2012 audit with the Grand Jury. Their audit report will be released upon issuance of the Grand Jury's report. Many of these recommendations would become moot if the county stopped issuing cell phones altogether. However, if the county elects to continue issuing cell phones, we urge the county to adopt the auditors' recommendations. It should surprise no one that several of the auditors' recommendations in 2012 are identical to those made in 2010. It is largely the failure of the county to adopt the auditors' previous recommendations that allowed Ms. Druckemiller to commit her alleged crimes and go undetected as long as she was.

In sum, we believe County Administrator Roman Gastesi's actions warrant his dismissal. His first error in judgment was rejecting the auditors' recommendation to

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<sup>24</sup> James Madison, *The Federalist No. 51* (1788) (emphasis added).

institute a separation of duties regarding county cellular telephones. As mentioned above, the failure to adopt this recommendation is what allowed this misappropriation to happen. In itself, a policy misjudgment of this sort would not be grounds for dismissal. However, Mr. Gastesi eagerly availed himself of at least four cut-rate iPhones and one cut-rate iPad from Lisa Druckemiller, paying only \$899 for items that cost county taxpayers \$2,328.96. And the reason the county paid only \$2,328.96 for this equipment is because it entered into multi-year service contracts as well. On the open market—where Mr. Gastesi should have been in the first place—the cost of these items without service contracts would have been much higher. As mentioned previously, we don't know what suspicions people in Mr. Gastesi's situation may or may not have had, but between the low price, cash payment, and lack of receipts, if he had no suspicions, he should have. We have no way of knowing whether the idea for these discounted sales originated with Mr. Gastesi or Ms. Druckemiller. But it is enough to say that the county administrator, who sits atop the organization and should set the standard for probity, should have steered clear of these sweetheart deals even if they were Ms. Druckemiller's idea. We believe Mr. Gastesi did, in fact, encourage other county employees to obtain iPhones and iPads from Lisa Druckemiller. His encouragement and poor personal example fostered a permissive environment—a culture of entitlement, if you will—in which it was acceptable for county employees to avail themselves of special discounts from Ms. Druckemiller that were not available to the public at large. In our view, the deplorable personal example he set for his subordinates merits special condemnation. Moreover, Mr. Gastesi personally benefited from a theft he could have prevented. He should be dismissed.

We believe Deputy County Administrator Debbie Frederick should be dismissed as well. As Lisa Druckemiller's direct supervisor, Ms. Frederick was in the best position to monitor whether county-purchased iPhones and iPads were being misappropriated. As with Mr. Gastesi, she was aware of the auditors' 2010 recommendation that a separation of duties be instituted in regard to county cell phones. She was equally aware that Mr. Gastesi declined to implement that recommendation. But by far her greatest error in judgment was failing to alert the county administrator—or anyone else for that matter—of the fact Lisa Druckemiller had stolen from her. It is unnecessary to sort out whose account of this event should be believed. Accepting everything Ms. Frederick says to be true, she was the victim of a \$20,000+ credit card fraud by Lisa Druckemiller. Whether to

report the theft of her own money to the police is her business, of course, and for reasons of friendship or otherwise Ms. Frederick elected not to report it. But knowing that Ms. Druckemiller was willing to steal from her—a friend—Ms. Frederick had a duty to the taxpayers to report the matter to Mr. Gastesi so that Ms. Druckemiller's handling of public money and public property could be painstakingly monitored. Ms. Druckemiller was a department head, and as her direct supervisor Ms. Frederick knew very well the authority Ms. Druckemiller had over county property. If a person is capable of stealing from a friend, what is stealing from the public in comparison? In light of what she knew, Ms. Frederick's failure to protect the public from Ms. Druckemiller is more than willful blindness—it is inexcusable inaction in the face of knowledge of Ms. Druckemiller's dishonesty—and in our view warrants her dismissal.

Of the county employees who purchased items from Lisa Druckemiller, Henry ("Hank") Kokenzie merits special mention. Mr. Kokenzie worked in the Technical Services Department and was personally responsible for maintaining the database created in response to the clerk's 2010 audit. This database proved to be woefully inadequate to track and account for county-purchased iPhones. The clerk's 2012 audit will detail its manifold deficiencies. More importantly, Mr. Kokenzie is conversant with information technology—it is his job, after all—and thus of all the people who bought cheap iPhones and iPads, he is the one who should have been most skeptical of Ms. Druckemiller's explanations. For example, he stated Ms. Druckemiller told him the iPads included six months of free service. That is an uncommon benefit, yet he apparently accepted it unquestioningly. Furthermore, Mr. Kokenzie knew the county's AT&T representative—the source of the supposed discount. Yet Mr. Kokenzie never asked the AT&T representative, even in passing, about how such a great deal was available. But instead of sounding the alarm, he paid Ms. Druckemiller more than \$1000 in cash for three iPads and an iPhone. For someone with his knowledge and experience, this is the zenith of willful blindness. His conduct merits particular condemnation.

We believe that among the other county employees who took advantage of cheap iPhones from Lisa Druckemiller, Tina Boan and Alexsondra Leto merit censure. Both bought multiple iPhones under circumstances that should have raised questions about the propriety of the sales. (To her credit, Ms. Boan wrote a check for one of the phones she purchased.) Like Ms. Druckemiller, they are senior managers who not only should have known better but should set a high standard for their subordinates when it comes

to obtaining benefits by virtue of their public positions that are unavailable to the public at large.

We would be remiss if we failed to point out that in 2010 the Monroe County Board of County Commissioners was aware that Mr. Gastesi had elected to reject the auditors' recommendation to institute a separation of duties regarding county cellular phones. We recognize the county commission cannot—and should not—micromanage the decisions of the administrator. Nevertheless, if the commission becomes aware the administrator has chosen to reject well-reasoned recommendations designed to improve accountability over public property, we believe the commission should require an explanation from the administrator why the recommendation is either unnecessary or unsound. Mr. Gastesi's response to the 2010 audit recommendation simply states, "The County Administrator is satisfied with the distribution of responsibilities with regards to cellular telephones."<sup>25</sup> In our view, this is an inadequate explanation why the recommendation was rejected. Audits such as the one conducted in 2010 are not routine, and they deserve meaningful scrutiny by the county commission. We think simply providing a copy of each audit to the members of the county commission is insufficient. In order to fulfill its oversight responsibility for decisions made by the county administrator in response to audit recommendations, we believe the commission should, as a matter of routine, place such audits on its agenda for review and public discussion. That would ensure that audit recommendations—and the administrator's responses thereto—will receive meaningful attention by the county commission, which has ultimate responsibility for the efficient operation of county government and the safeguarding of county property.

We wish to acknowledge County Mayor David Rice for purchasing his iPad at full price, with a credit card, and paying sales tax. We wish other county employees had been as prudent as Mr. Rice in their dealings with Ms. Druckemiller.

Finally, we wish to commend Investigator Christopher Weber of the State Attorney's Office for his diligent investigation of this matter. We also wish to thank the members of the clerk's Internal Audit Department for their thorough examination of the operational deficiencies of the Technical Services Department, both in 2010 and 2012.

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<sup>25</sup> Letter from Roman Gastesi, County Administrator, to Danny L. Kolhage, Clerk of the Circuit Court, dated April 1, 2010, and attached to the final audit report as Exhibit C.

SO SAY WE ALL,



**OFFICE OF THE STATE ATTORNEY  
SIXTEENTH JUDICIAL CIRCUIT**

**INVESTIGATIVE DIVISION**

**INVESTIGATIVE REPORT**

**SA CASE #:** 2012-SA-00045-A-K

**OTHER CASE #:**

**COMPLAINANT(s):** Monroe County Attorney's Office

**DATE OF INCIDENT:** 2009 through 2/2012

**DATE REPORTED:** 02/28/2012

**INVESTIGATOR:** Christopher Weber

**REFERRED BY:** Monroe County Attorney

**WITNESS NAME(s):** Delineated in Chronology

**SUBJECT/SUSPECT:** Lisa L DRUCKEMILLER, 1200 Truman Ave. Ste. 211, Key West, FL 33040

**EVIDENCE:** Delineated Property Receipts

**LOCATION OF OFFENSE:** Monroe County, Florida

**ALLEGATION/COMPLAINT:** Grand Theft, Scheme to Defraud, Dealing in Stolen Property

**CHARGES:** § 817.034(4)(a)2 Organized Scheme to Defraud (2F)  
§ 812.019(1) Dealing in Stolen Property (2F)

**DISPOSITION:** July 13,2012 Indicted by Grand Jury

**PERSONS(s) INTERVIEWED:** Delineated in Chronology

**PERSONS(s) NOT INTERVIEWED:** Delineated in Chronology

## **CHRONOLOGY OF FACTS:**

### **February 27, 2012**

Chief Assistant Monroe County Attorney Robert Shillinger contacted Investigator Weber of the State Attorney's Office regarding an alleged theft of county property by a former employee. Shillinger said the missing items are iPhones and iPads and the suspect is the recently retired Senior Administrator of the Monroe County Technical Services Department.

The employee, LISA DRUCKEMILLER, retired on Friday 02/24/2012 after being confronted with the allegation of stealing property. DRUCKEMILLER agreed to resign from her position as the Senior Administrator of the Technical Services Department. She did so after agreeing to repay the county \$5,600.92 for the missing equipment. The agreement was signed by both DRUCKEMILLER and the Deputy County Administrator, Debbie Frederick. The missing equipment included five Apple iPad II's and three Apple iPhone 4s's: the total cost of these items was the basis of the repayment amount. Each of the items is equipped with a serial number and identifiers that are specific to each one. The agreement specified that the signing of the agreement was not an admission of theft but rather an admission of responsibility.

Based upon the records supplied by Monroe County and the repayment agreement signed by the suspect, an investigation was initiated.

Investigator Weber reviewed the documentation received from the county about the missing items. After review, the suspect was interviewed at her residence.

### **Lisa Druckmiller**

The interview was surreptitiously recorded incident to a law enforcement investigation. Initially DRUCKEMILLER denied any knowledge of the missing property and said she was persuaded into signing the agreement. She said she signed it because she was worried she would be terminated and lose her retirement pension. She said she had no choice in the matter. When confronted by Investigator Weber as to whether she sold or gave away any of the missing items, she said she had paid for them. (DRUCKEMILLER was alluding to the repayment agreement.) After several more denials, DRUCKEMILLER eventually admitted to taking five iPads and two iPhones. She said she gifted the equipment to people but would not provide the names of the recipients. She did admit giving one of the iPads to her brother-in law Bill Reich, who is employed by Monroe County in the Public Works Department. She repeatedly said she was in fear of losing her pension if she provided any other information. She asked if an appointment could be arranged with Monroe County regarding her pension and her further cooperation. During the interview DRUCKEMILLER was asked numerous times whether she sold any of the items. Each time she denied selling the items; instead, she insisted she gave the items away. The interview was terminated after approximately seventy-five minutes. An audio recording of the interview was placed into property at the State Attorney's Office.

Investigator Weber spoke to Chief Assistant County Attorney Robert Shillinger who agreed to meet with DRUCKEMILLER on February 28<sup>th</sup> at 11 AM. Mr. Shillinger also provided further

information about the possible whereabouts of some of the missing equipment.

### **Hank Kokenzie**

Investigator Weber met with Hank Kokenzie. Kokenzie is employed in the Monroe County Technical Services Department. Kokenzie reported to LISA DRUCKEMILLER as his direct supervisor prior to her resignation.

During the interview, Kokenzie said he was asked by Deputy County Administrator Debbie Frederick to help locate the missing equipment. Kokenzie said approximately three days before DRUCKEMILLER resigned she had asked him to throw away a bag of trash. When he took the bag a prescription bottle fell out. Kokenzie became concerned because the name on the bottle was for a neighbor of DRUCKEMILLER's. Kokenzie kept the bag, which included several county receipts for both iPads and iPhones, with names written in hand on the receipts. Kokenzie turned the receipts and the prescription bottle over to Investigator Weber. The receipts and the bottle were secured in an evidence bag and stored at the State Attorney's Office. The prescription was in the name of Donna Smyth, who was known to Hank Kokenzie as a neighbor of DRUCKEMILLER's. Kokenzie had been to Smyth's house at DRUCKEMILLER's request to help with computer issues.

Kokenzie said that when he was requested to look into missing property he was initially told one iPad was missing. After inquiry he found several were missing. It was at that time he thought about his purchasing two iPads from DRUCKEMILLER in December 2011. He paid \$450.00 for each iPad (for a total of \$900.00). Kokenzie said DRUCKEMILLER told him due to her buying Apple equipment in bulk she could get a reduced rate on four items per month. He said after he was asked about the missing equipment he realized the items he purchased must have been Monroe County property. Kokenzie agreed to retrieve the iPads and provide them to Investigator Weber for serial number comparison. He also agreed to provide an affidavit regarding his dealings with DRUCKEMILLER.

The receipts also identified County Administrator Roman Gastesi as possibly having purchased an iPad from DRUCKEMILLER. Mr. Gastesi agreed to provide a written statement as to his dealings with DRUCKEMILLER.

### **Donna Smyth / MaryAnn Smyth**

Donna Smyth resides at 1213 14<sup>th</sup> St #U, which is directly across the street from LISA DRUCKEMILLER's house. Investigator Weber spoke to Donna Smyth who lives with another person named Maryann Smyth. Donna Smyth admitted knowing DRUCKEMILLER. She said she had no idea how or why there would a prescription bottle of hers at the Technical Services Department. She said she throws her bottles away when the prescription is finished.

Both Donna and Maryann Smyth denied having purchased an iPad or iPhone from LISA DRUCKEMILLER. They also denied any knowledge of these items being sold by DRUCKEMILLER. Both Maryann and Donna Smith know Kokenzie because he had come over to their house to help put a couch together and help them with a computer. Other than that, they had no

dealings with DRUCKEMILLER except for the fact they were neighbors. Maryann Smith said they had an iPad, which was reported by both parties as having been purchased in Boston and brought to the Keys when they moved here.

**February 28,2012**

**LISA DRUCKEMILLER** agreed to a second interview which took place at the State Attorney’s Office. Present during the interview was Chief Assistant County Attorney Bob Shillinger and Investigator Weber. The interview was surreptitiously recorded and kept for evidentiary purposes.

During the interview, Drukemiller admitted taking county property and either gifting the property to others or selling the property. She admitted taking five Apple iPad II’s and three Apple iPhone 4s’s. According to DRUCKEMILLER, she distributed the stolen equipment in the following manner:

<b><u>Person Receiving</u></b>	<b><u>Relationship</u></b>	<b><u>iPad II 64GB</u></b>	<b><u>iPhone 4s</u></b>	<b><u>Compensation</u></b>
Roman Gastesi	Employer	1	2	\$600.00
Hank Kokenzie	Subordinate	3	1	Gift
Bill Riech	Brother-in-law	1	0	Gift

The above would account for the original list of all missing equipment; however, an audit of the Technical Services Department will have to be conducted to determine the extent of the theft.

**William Riech**

Investigator Weber met with William Riech who is the brother-in-law of DRUCKEMILLER. Riech immediately admitted to having an iPad. He said his wife had given it to him for Christmas. He was not sure where she had bought it but thought his sister-in-law DRUCKEMILLER may have gotten a deal on the iPad because of her position at the County. Investigator Weber requested he turn the iPad over to the State Attorney’s Office as evidence. He did so immediately. Investigator Weber provided him with Monroe County Sheriff Office Property Receipt # 121037. He was told his wife would have to be interviewed regarding where the iPad came from. Riech immediately called his wife to set up a time for her to come to the State Attorney’s Office. When Catherine Reich got on the phone, she asked why I was calling. When Investigator Weber told her it was about her husband’s iPad, she said, “I bought that iPad,” and immediately said she would come down to the State Attorney’s Office, and hung up the phone.

Approximately two hours later Catherine and Bill Riech came to the State Attorney’s Office and agreed to an interview. During the interview, Catherine Riech denied buying the iPad even though she had previously stated that she had bought it. She said her sister LISA DRUCKEMILLER gave her husband the iPad for Christmas. She did not know DRUCKEMILLER was giving it to him and knew nothing about it. She repeatedly denied buying or having been given the iPad by DRUCKEMILLER to give to her husband. Neither party provided a written affidavit at that time.

**February 29, 2012**

After the initial allegations were reported to the SAO, LISA DRUCKEMILLER's office was secured until further notice. Investigators Weber and Cohens went to the office with Debbie Frederick to determine if any supporting documents could be located.

The office was secured on 02/24/2012 when DRUCKEMILLER resigned. A search of the office did not yield any additional information. There were a large number of phone cases and chargers for iPads and iPhones. There was also a box of used, broken, or inactive iPhones that had been replaced with new equipment. There was also one broken iPad. Many of the phones had stickers attached indicating who was assigned the phone when it was traded for new equipment. The presence of the used and broken phones suggests that replacing broken phones was common practice. An inventory by serial number was impossible because the serial numbers are located in the software and most of the phones could not be interrogated due to their inactive or broken status.

All of the Technical Services Department employees were interviewed to determine whether they had purchased or had been offered any equipment at reduced rates.

According to information gleaned from DRUCKEMILLER and other Monroe County employees, new iPhones were ordered on a regular basis. Rather than order new phones without a contract, DRUCKEMILLER would order new phones when employees' phones were available for reissue at a reduced AT&T subsidized rate. This method of ordering saved Monroe County money when replacing broken equipment. The phones were then issued on an "as needed" basis to whoever had phone problems. This was common practice and was known to staff and supervisors.

This method of replacement, although cost effective, created an inventory problem. Phones ordered under one employee's name would end up in the possession of another employee.

**The following employees were interviewed by Investigators Weber and Cohens:**

**Maria Guerra**, DOB 02/10/1961, 30-year Monroe County employee, handled the billing information for DRUCKEMILLER. Guerra was responsible for coding the AT&T bills and sending them to their respective departments for approval. Guerra said that she was never offered any electronic equipment at a reduced rate from any employee, nor had she heard anyone was selling equipment. Guerra explained the purchase procedure for iPhones, which included buying phones when they were available at a subsidized rate from AT&T. She also explained most employees picked up their replacement phones at the Technical Services Department. When that occurred, the employee would then activate their phone and provide the IMEI and serial number to Hank Kokenzie. Kokenzie was tasked with creating and maintaining a database for all iPhone and iPads issued to Monroe County Employees.

**Joseph Tuttle**, DOB 05/27/1986, 9-month Monroe County employee, Systems Analyst. Tuttle said he never heard of anyone offering iPhones or iPads at a reduced rate.

**Gabriel Price**, DOB 10/10/1980, 18-month Monroe County employee, Systems Analyst. Price said he never heard of anyone offering iPhones or iPads at a reduced rate.

**George Swaby**, DOB 04/30/1960, 2-year Monroe County employee, Systems Analyst. Swaby said he never heard of anyone offering iPhones or iPads at a reduced rate.

**J A (Jethone) Williams**, DOB 09/18/1975, 7-year Monroe County employee, Videographer. Williams said he never heard of anyone offering iPhones or iPads at a reduced rate.

**Christine Thompson**, DOB 04/01/1971, 8-year Monroe County employee, Systems Analyst. Thompson said that in December 2011 she had a conversation with DRUCKEMILLER regarding buying Christmas presents for her daughter. According to Thompson, DRUCKEMILLER offered to sell her an iPad at a reduced rate. However, she wasn't interested due to knowing that even at a reduced rate it would be more money than she wanted to spend. Thompson provided an affidavit attesting to the information above.

### **March 6, 2012 Interviews**

#### **Sylvia Murphy**

Investigator Weber spoke with Murphy over the phone to inquire as to whether she had purchased any iPhones or iPads from any county employees at a reduced rate. Murphy said she had no use for a personal iPad or iPhone. She said she was unaware of anyone selling any iPads or iPhones at a reduced rate.

#### **Teresa Aguiar**

Investigator Weber met with and interviewed Monroe County Human Resources Director Teresa Aguiar. She reported that sometime during 2011, DRUCKEMILLER approached her and asked whether she was interested in getting any iPhones or iPads. DRUCKEMILLER told her, "I can get them at a reduced rate." Aguiar was not interested and did not purchase any of the items. Aguiar said this occurred either before or after a Monroe County directors meeting at the Gato Building in Key West. When asked about other equipment, she said DRUCKEMILLER let it be known that she had a closet filled with iPhone cases in any color you could want.

#### **Mayor David Rice**

Investigator Weber met with and interviewed Monroe County Mayor David Rice. Rice was concerned because he had purchased an iPad from DRUCKEMILLER in November 2010. Rice provided his credit card bill showing he was billed by Apple for the iPad, an iPad cover, and an external keyboard.

Rice said he had initiated the matter with DRUCKEMILLER because she was the head of the Technical Services Department and is more familiar with computer equipment than he is. Rice further stated DRUCKEMILLER never offered to sell him any other equipment at any time for a discounted rate. Rice also stated approximately six months after his credit card was used at the

Apple Store, there were numerous fraudulent purchases on his credit card. The fraudulent purchases totaled \$4,598.59 and appeared to be made in north and central Florida. His credit card company cancelled his card and did not hold him responsible. The fraudulent use appears to be coincidental to his purchase from the Apple Store. The credit card information and the invoice were provided and are maintained in the file.

### **Roman Gastesi**

Investigator Weber met with and interviewed Monroe County Administrator Roman Gastesi. Gastesi had previously told deputy County Administrator Debbie Frederick he had purchased iPads and iPhones from DRUCKEMILLER at a reduced rate.

Gastesi said in 2009 after a conversation with DRUCKEMILLER about iPhones, he asked her if he could purchase iPhones from her directly. He wanted to replace the iPhones his teenage sons had broken. DRUCKEMILLER told Gastesi she could get phones at a reduced rate. Sometime in 2009, DRUCKEMILLER gave Gastesi two phones which he believes he paid \$100 each for, but he isn't sure on the pricing or how and where the transaction took place.

In November 2011, during a conversation that occurred around Christmas, Gastesi asked DRUCKEMILLER if she could get an iPad at the same reduced rate. Gastesi said he wanted to get an iPad for his girlfriend for Christmas and two iPhones to replace the previous phones he had given to his sons. DRUCKEMILLER said she could get them at a reduced rate.

Gastesi said he does not remember the exact amount he paid but thought the cost was \$450.00 for the iPad and \$125.00 per iPhone for a total of \$700.00. He said he paid cash for the items and never received receipts for the purchases. Gastesi provided a cash withdrawal receipt from Bank of America for \$900.00 on Nov 19, 2011. He does not know why he withdrew \$900.00 other than keeping extra cash after he paid for the items. Gastesi does not remember how he received the items, whether in his office or he picked them up. Gastesi said he is aware of vendor programs that allow for employee purchases at a reduced rate. He thought this was one of those deals and that DRUCKEMILLER would write a check for all of the products received after receiving cash.

Gastesi turned over one iPad, two iPhones, and an iPad cover that were obtained from DRUCKEMILLER. The items were placed into property at the State Attorney's Office under Property Receipt # 121043. Gastesi provided an affidavit attesting to the above.

### **Henry (Hank) Kokenzie**

Investigator Weber met with and interviewed Hank Kokenzie, Monroe County Systems Analyst. Kokenzie had previously given an interview regarding his purchase of three iPads and two iPhones from DRUCKEMILLER in December 2011. Kokenzie provided a written sworn affidavit attesting to purchasing the items. He turned over three iPads and two iPhones to Investigator Weber. The items were placed into property at the State Attorney's Office under Property Receipt # 121044. Kokenzie provided an affidavit attesting to the above.

Kokenzie is conducting a search of all iPhones and iPads issued to Monroe County Employees. In addition, he has inventoried all iPhones that were turned in due to either malfunction or breakage. These phones would have been replaced in the normal course of business. During the inventory Kokenzie located two iPhone 3G's which were labeled "RYAN." Ryan is the son of DRUCKEMILLER and is not a county employee. Further follow-up is required to determine whether "RYAN" was issued county property and who paid the bill for the phone.

### **Sheryl Rahming**

Investigator Weber met with and interviewed Sheryl Rahming. Rahming works at the Monroe County Tax Collector's Office, which is located on the first floor of the Gato Building (the same building where the Technical Services Department is located). Rahming said sometime in approximately May 2011, she had a conversation with DRUCKEMILLER. Rahming said during the conversation she said she wanted to buy a new phone and did not know what to buy. DRUCKEMILLER spoke to her about purchasing an LG phone and that she could probably get it for \$50.00. Rahming agreed to the purchase. Approximately one week later, DRUCKEMILLER called Rahming to tell her the phone was available for pick up. Rahming went up to her office, paid DRUCKEMILLER \$50.00, and took the phone and charger. Rahming provided her contact information as well as photographs of the phone and its identifying characteristics.

AT&T is supplying a list of all phone equipment purchased by Monroe County for the past two years. Once that list is received, a cross reference of all current and inactive equipment can be identified. When this is completed, a comprehensive list of all missing equipment can be clearly established.

### **March 7, 2012 Interviews**

#### **George Neugent**

Investigator Weber spoke with George Neugent over the phone to ask whether he had purchased any iPhones or iPads from any county employees at a reduced rate. Neugent said he had county equipment issued to him for business use but did not have any of this type of equipment for personal use. He said he was unaware of anyone selling any iPads or iPhones at a reduced rate.

#### **Monroe County Clerk Danny Kolhage**

Danny Kolhage is initiating an audit of the Technical Services Department. The audit will include all iPhones and iPads even though they fall under the statutory amount (\$1,000.00) for required inventory.

### **March 8, 2012 Interviews**

#### **Jean Herman**

Investigator Weber spoke with and interviewed Jean Herman. Herman is the mother of Hank Kokenzie. Herman said she and her son were talking about Christmas presents and she thought about getting her grandchildren (Kokenzie's children) an iPad and iPhone for Christmas. Some

days later Kokenzie called her and asked her if she was still interested in buying the iPads. According to Herman, Kokenzie told her the sales representative from AT&T was coming into town and he had iPads and iPhones at reduced rates. The rates she was quoted was \$450.00 for the iPad and \$200 for the iPhone. Herman said she looked and found she only had \$800.00 in cash so she went to the bank and withdrew \$300.00 for a total of \$1,100.00. She then took the full amount to Kokenzie who subsequently bought the iPads and gave them to her. She gave those items to her grandchildren as Christmas presents. Herman provided an affidavit attesting to the above.

### **Heather Carruthers**

Investigator Weber spoke with and interviewed Commissioner Heather Carruthers. Carruthers uses an iPad and iPhone in her business as a county commissioner. Carruthers said she ordered the items through the Technical Services Department and paid for them with her own money.

The iPad was ordered and paid for with a county issued credit card, commonly referred to as a "P card." Carruthers subsequently paid for the iPad with a check payable to Monroe County in order to pay off the charge that was previously made with the "P card." Carruthers also purchased an iPhone 3G in the same manner.

Sometime in 2010-2011, Carruthers wanted a phone upgrade and wrote a check to LISA DRUCKEMILLER for \$99.99. Carruthers is unsure why she wrote the check to DRUCKEMILLER. She provided a copy of the cancelled check. The phone was not taken into property at this time because there has been no confirmation the phone was stolen.

### **March 12, 2012**

Investigator Weber met with DRUCKEMILLER's attorneys Robert Cintron and Ron Strauss. Strauss wanted to convey his client's willingness to cooperate in the current investigation. During the meeting Cintron presented four additional iPhone 4's, two Samsung Rugby II phones, and a car charger that DRUCKEMILLER turned over to him. The iPhones were reported to have been used by family members and the rest of the equipment was left in her car after she retired from the county.

According to Cintron, DRUCKEMILLER said this was the last of the equipment she had in her possession that belonged to Monroe County. An inventory of the equipment was taken and placed into evidence under Property Receipt # 121042 at the State Attorney's Office.

No new information was provided other than the returned equipment.

### **March 13, 2012**

**Isabel Desantis**, the secretary of Monroe County Clerk Danny Kolhage, contacted Investigator Weber to offer information about the investigation. She reported she was married to LISA DRUCKEMILLER's nephew. Desantis said for about the past two years she had been on DRUCKEMILLER's AT&T family plan.

Desantis said she was unable to get a service contract in her own name so DRUCKEMILLER offered to add her onto her contract as a family member. Desantis acquired two phones from DRUCKEMILLER and paid her \$130.00 per month for service and use of the phones. Her phone numbers were 304-394-3081 and 305-393-1700. On March 10, 2012, after becoming concerned the phones DRUCKEMILLER had given her might be Monroe County property, she contacted DRUCKEMILLER and returned the phones to her. She said she never asked DRUCKEMILLER where the phones came from. Desantis then opened an account in her own name.

### **March 16, 2012**

Attorney Ron Strauss provided a list of property DRUCKEMILLER had sold to Monroe County employees. The list reportedly included all remaining items sold by DRUCKEMILLER that have not been turned over to the State Attorney's Office.

The list included:

- Alexa Leto, Director of Guardian Ad Litem: 2 phones
- Tom Hampton, Guardian Ad Litem: 1 phone
- Lacy Caballero, Guardian Ad Litem: 1 phone
- Tina Boan, Director of Budget: 2 phones
- Debbie Frederick, Deputy County Administrator: 1 phone
- Roman Gastesi, County Administrator: 5 phones

The three employees at the Guardian Ad Litem admitted to purchasing phones as indicated below:

**Alexandra Leto** is Director of the Monroe County Guardian Ad Litem Program. She refused to be interviewed and would not provide a sworn statement to Investigator Weber. However, she did spontaneously volunteer information about how she came to have the iPhone in her possession.

Leto said she had had a discussion with DRUCKEMILLER about the screen on her phone being broken when DRUCKEMILLER asked whether she was interested in replacing her broken phone. Leto said she bought the phone for \$150.00 cash. Leto said when DRUCKEMILLER called to ask about payment for the phone, she was out of town. Leto said she asked an employee, Lacy Caraballo, to take money from her drawer and go to the Technical Services Department and give it to DRUCKEMILLER. Caraballo did as requested. Leto said she wasn't suspicious of the purchase because she knew the county was paying \$99.00 for iPhones and with tax the phone would have cost about \$150.00.

Investigator Weber spoke to is Leto's attorney Tom Woods. Woods said his client would not provide a written statement but he recounted her obtaining an iPhone from DRUCKEMILLER for \$150.00. He stated any further communication with Leto would have to be through him. Investigator Weber put the phone in question into evidence under Property Receipt #126963.

**Tom Hampton** is the Supervising Attorney for Guardian Ad Litem. He provided a sworn statement attesting to purchasing a phone after DRUCKEMILLER asked him whether he was interested in buying an iPhone for \$100.00. Hampton agreed and DRUCKEMILLER ordered the phone. Sometime during 2011, he received a phone call from DRUCKEMILLER who told him the phone was available for pick-up. Hampton said he took \$100.00 in cash and went to the Technical Services Department. DRUCKEMILLER was not present at the time so he gave the cash to Maria Guerra and she gave him the phone. Hampton used his own SIM card to activate the phone. Investigator Weber put the phone in question into evidence under Property Receipt #126961.

**Lacy Caraballo** is an employee at Guardian Ad Litem. She provided a sworn statement attesting to purchasing a phone after DRUCKEMILLER asked her whether she was interested in buying a phone at a reduced rate. Caraballo confirmed she gave DRUCKEMILLER \$150.00 for the purchase of Leto's phone. This was when DRUCKEMILLER asked her if she needed a phone for herself. Caraballo agreed to pay \$100.00 for a phone and approximately a week later she gave DRUCKEMILLER \$100.00. About a month later she picked up both phones from DRUCKEMILLER. Investigator Weber put the phone in question into evidence under Property Receipt #126960.

### **April 3, 2012**

**Debbie Frederick** is the Deputy County Administrator. Frederick admitted to purchasing a phone from DRUCKEMILLER for her personal use. The purchase was made with her personal credit card, which Frederick gave to DRUCKEMILLER to make the purchase. Frederick does use an iPhone for county business that is issued by Monroe County. Frederick provided an affidavit attesting to the above.

**Tina Boan** is the Monroe County Director of Budget. Boan admitted buying an iPhone from DRUCKEMILLER for personal use. Boan said she was originally issued an iPhone by Monroe County while also having a personal phone. When the county phone was going to be upgraded she asked DRUCKEMILLER whether she could purchase the new phone and pay AT&T directly. This way she could avoid carrying two phones. It was at that time that Boan bought her first iPhone from DRUCKEMILLER. She is unsure but believes she paid \$99.00 or \$100.00 in cash to DRUCKEMILLER. The bill was switched and Boan took over the phone number and paid the bill directly to AT&T. The phone number switched to her personal use was 305-747-2875. Boan used this phone and phone number for both personal and business purposes. Sometime later, Boan damaged her phone and contacted DRUCKEMILLER about replacing it. DRUCKEMILLER replaced the phone with an iPhone 4S and charged her \$130.00. Boan wrote a check for \$130.00 and DRUCKEMILLER cashed it at Keys Federal Credit Union on 01/12/2012. Boan said she remembers DRUCKEMILLER complaining, "I don't bank at Keys Federal." Boan provided an affidavit to Investigator Weber attesting to the above. Investigator Weber put the phone in question into evidence under Property Receipt #121045. In April 2012, Boan switched her phone service back to Monroe County and was issued another county phone.

**Roman Gastesi** had previously admitted to purchasing four phones from DRUCKEMILLER. He does not remember buying a fifth phone and said he returned all of the property he purchased from DRUCKEMILLER except for the first two phones, which he could not return because he had previously disposed of them.

**Sheryl Rahming** was previously identified as having purchased a phone from DRUCKEMILLER. Rahming purchased an LG L900 smartphone sometime in 2011. AT&T records indicate Monroe County purchased one LG L900 in 2011. Rahming provided a sworn statement attesting to her purchasing an LG L900 from DRUCKEMILLER paying \$50.00 for the phone. Investigator Weber put the phone in question into evidence under Property Receipt #126962.

**Brandon Druckemiller** is the son of LISA DRUCKEMILLER and is employed by the City of Key West Public Works Department. Investigator Weber met with Druckemiller at the Public Works building on Palm Ave. During the interview, Brandon Druckemiller denied having any knowledge of iPads or iPhones being sold by his mother or anyone else. He said he spoke to his mother every day and she looked after his child. He said other people in county government had pushed her into selling phones to them. Brandon Druckemiller had no further information to add during this interview.

AT&T provided purchase records as requested. The records do not include all IMEI numbers on all purchases. However, the records do confirm the majority of assets placed into evidence as having been purchased by Monroe County. The records may be updated by AT&T as more information becomes available.

#### **April 2012**

The State Attorney's Office subpoenaed AT&T and Apple regarding the missing iPads and iPhones that the Clerk of Courts identified as missing and unaccounted for. The subpoenas should identify the users of the phones by the IMEI number associated with each phone.

AT&T reported on three occasions that they have been unable to reply due to a "vendor switch" problem. The vendor switch issue is a computer communication issue needed to correlate the IMEI number to a subscriber independent of a phone number.

#### **May 2012**

**Elizabeth Wood** gave a verbal statement in which she said she purchased an iPhone from LISA DRUCKEMILLER sometime in 2010 for \$200.00 cash. She said DRUCKEMILLER approached her about overage charges on her county phone bill and felt she should have her own phone.

**Regarding the Apple and AT&T subpoenas:** On May 15, 2012, Apple responded that they needed more time to comply with the subpoena. On May 16, 2012, AT&T responded that the "vendor switch" issue had been resolved and the requested information was being compiled in accordance with the subpoena.

As previously reported, there were numerous broken iPhones and iPads located in the Monroe County Technical Services Department. Some of this equipment was identified as having been previously issued to county employees. However, there were several pieces of equipment that could not be interrogated and were unlabeled.

During the interrogation process, a first generation iPad was found that did not correspond to any purchase by Monroe County. Apple reported the purchaser was Rita McMonigle in Ormond Beach, Florida. Ms. McMonigle confirmed to Investigator Weber that she did have an iPad that her son purchased for use by her husband. Rita McMonigle said her husband, who is handicapped, could not take advantage of the iPad so it was returned to her son.

**Joseph McMonigle:** The purchaser, Joseph McMonigle Jr., is stationed at NAS Key West and is employed by the US Navy as a flight commander assigned to the “Sundowners” flight group. McMonigle was cooperative and provided a statement in which he identified Josh Atwell (a minor child) as the person to whom he traded the iPad after he found an ad on Craigslist soliciting someone to trade an iPad for a computer.

**Josh Atwell:** Investigator Weber interviewed Josh Atwell. Atwell is a minor and came with his mother, Sylvia Atwell, who is employed by Monroe County Code Compliance. Josh Atwell provided a statement in which he said that sometime in early 2011 he wanted to trade a Macbook computer he owned for an iPad so he put an ad on Craigslist. The ad generated a response from McMonigle who agreed to trade the iPad and \$200.00 for the Macbook. Atwell kept the iPad for several months and decided it didn’t suit his needs so he decided to try to sell it on Craigslist.

A family friend, Hank Kokenzie, contacted Atwell and they agreed Kokenzie would buy it for \$200.00-\$300.00. Atwell was unsure about the actual price. Hank Kokenzie is a senior systems analyst in the Monroe County Technical Services Department.

Sylvia Atwell told Investigator Weber she happened to be speaking with Kokenzie and asked if he still had the iPad Josh had sold him. Kokenzie told Atwell the iPad had been stolen from his truck.

### **30 May 2012**

The final equipment reconciliation is a list of missing equipment purchased by Monroe County as confirmed by the Internal Audit Department of the Office of the Clerk of Courts. The audit used purchase records kept by Monroe County purchasing and compared this to the vendor sales list supplied by both AT&T and Apple. The audit went back to the earliest period where an accurate purchase list could be compiled. The equipment list has an IMEI number associated with each item. The IMEI (International Mobile Equipment Identity) is attached to all phones and acts as a secondary serial number for every phone. Each iPhone or iPad has a unique IMEI number, which can identify each piece of equipment to which it is attached.

In order to properly identify the users of all missing equipment, both Apple (manufacturer) and AT&T (service provider) were previously subpoenaed.

The State Attorney's Office is in receipt of the subpoenaed records from both Apple and AT&T. A review of these documents was conducted by Investigator Weber with the assistance of Monroe County Auditor Pamela Sellers. The review identified all users of the missing equipment except for five iPhones and one iPad. The inability to identify a user of these six units can be attributed to the equipment never having been used in the Apple operating environment (Apple ID) or never having been used on the AT&T network. These units remain unidentified and are still missing.

The final reconciliation includes all missing equipment including items taken into evidence by Investigator Weber. The review includes sixteen previously unidentified pieces of equipment that were traced back to users through Apple, AT&T, or both. Some of these users had previously admitted purchasing equipment from LISA DRUCKEMILLER.

Each unit or piece of equipment is identified by line number on the final reconciliation.

#### **Interviews: Identified Users of Missing Equipment**

**Lance Hoversen** was identified through Apple records as using and registering equipment purchased by Monroe County. The identified equipment is two iPhone 4s, line items 14 and 15.

Investigator Weber interviewed Hoversen who said he purchased two iPhones from LISA DRUCKEMILLER approximately one year ago. He said he paid \$50 cash for each phone for a total of \$100.00. Hoversen said his wife Cecelia Hoversen is DRUCKEMILLER's niece. He said DRUCKEMILLER told him she received discounted equipment from AT&T due to her position as Senior Administrator of the Technical Services Department. Hoversen said he would try to locate the equipment but he had recently upgraded his phones and was unsure where they were. Hoversen agreed to provide an affidavit about his purchase from DRUCKEMILLER.

**Igor Kuznetsov** was identified through Apple records as using and registering equipment purchased by Monroe County. The item was identified as an iPhone 4s, line item 7. This line item was also identified by AT&T records as being registered to Irina Baker.

Investigator Weber interviewed Kuznetsov who said he received the phone from his sister as a gift. Kuznetsov's sister is Irina Baker. Kuznetsov provided the equipment to Investigator Weber for documentation purposes. The iPhone 4's setting screen was photographed and placed into evidence. Both the IMEI number and the serial number matched the equipment purchased by Monroe County. Investigator Weber told Kuznetsov the equipment would have to be taken into property. However, since his personal information was presently on the phone he was given until June 5, 2012, to turn it over.

Kuznetsov said he knew LISA DRUCKEMILLER because she was the mother of Irina's boyfriend, Brandon Druckemiller. Kuznetsov did not know the equipment was stolen and was unable to provide any additional information. Kuznetsov is a Russian national and works as a peddie cab driver in Key West.

#### **June 4, 2012**

**Irina Baker** was identified through Apple records as having an iPad and an iPhone registered to her, line items 11 (iPad) and 23 (iPhone). LISA DRUCKEMILLER is the grandmother of Baker's child. Brandon Druckemiller is the father of Baker's child. The iPad and iPhone had been previously turned over to Investigator Weber by LISA DRUCKEMILLER's attorney Ron Strauss.

Brandon Druckemiller and Irina Baker came to the interview together. They cohabitate as husband and wife and have one child together and a second one scheduled to be born on June 8, 2012. During this interview, Baker said LISA DRUCKEMILLER gave her both the iPad and the iPhone as Christmas presents. She said in February 2012 DRUCKEMILLER asked for the items back without offering an explanation why. She also said DRUCKEMILLER had given her an iPhone in 2010 and when her brother's phone broke she gave him her iPhone.

Baker provided the iPhone that was previously identified as being registered to her brother Igor Kuznetsov. The phone was placed into evidence under Property Receipt # 141801. According to Baker, she had no knowledge where the iPhones came from and just accepted them as gifts. Igor Kuznetsov, Brandon Druckemiller, and Irina Baker share a common residence at 16 Coral Drive, Bay Point.

**Michael Pontarelli** and **Marshall Cacavarro** were identified through Apple records as using and registering an iPad purchased by Monroe County, line item 4.

Investigator Weber interviewed both Pontarelli and Cacavarro. Cacavarro said he bought the iPad from DRUCKEMILLER on the recommendation of a friend, Donna Smyth. Smyth told him DRUCKEMILLER had access to an employee purchase program. Smyth's name also showed up on Apple records for line item 3. Pontarelli provided the equipment to Investigator Weber. The iPad's setting screen was photographed for identification purposes and both the IMEI number and serial number matched the list of equipment purchased by Monroe County. Investigator Weber told Pontarelli the equipment would have to be taken into property. However, since his personal information was presently on the iPad he was allowed until June 5, 2012, to turn the equipment over to the State Attorney's Office. Pontarelli said he knew LISA DRUCKEMILLER because he was introduced to her by a mutual friend, Donna Smyth.

**Donna Smyth** and **Maryann Smyth** were identified by Apple records as "Smyth," line item 3 (an iPad). This line item was identified by AT&T records as being registered to Pontarelli. In interviewing Pontarelli, he identified Donna Smyth as having introduced him to LISA DRUCKEMILLER and having helped facilitate the purchase of an iPad from DRUCKEMILLER.

Investigator Weber is familiar with Donna and Maryann Smith from a previous interview conducted on February 27, 2012, in regard to this investigation. During that interview both Donna and Maryann Smyth had denied any knowledge of the missing iPads or purchasing an iPad or iPhone from DRUCKEMILLER.

Investigator Weber met with Donna and Maryann Smith. Maryann Smith immediately said, "We were wondering when you would be back." Investigator Weber asked what she meant by that. Maryann said they realized they had bought one of the stolen iPads and they were scared. She said they had bought an iPad from DRUCKEMILLER, who told them she was getting an employee discount. Both Maryann and Donna Smyth restated they were scared and didn't know what to do.

According to both women, they paid \$450.00 cash for the iPad. They were unsure about the exact purchase date. Maryann Smith said they told Pontarelli about the iPad, and they helped coordinate the purchase of the iPad for Pontarelli from DRUCKEMILLER.

Maryann Smyth provided the equipment to Investigator Weber. The iPad's setting screen was photographed for identification purposes, and both the IMEI number and serial number matched the list of equipment purchased by Monroe County. Investigator Weber told Smyth the iPad would have to be taken into property. However, since their personal information was presently on the iPad they would be allowed until June 6, 2012, to turn the equipment over to the State Attorney's Office.

### **June 6,2012**

On June 6, 2012, Maryann and Donna Smyth turned over the iPad to Investigator Weber. The iPad, iPad cover, and a charger were placed into evidence under Property Receipt #141802. Both Maryann and Donna Smith provided sworn affidavits attesting to their involvement as stated above.

**Scott Raymond** was identified through Apple records as using and registering an iPhone purchased by Monroe County, line item 22. Raymond said he bought the phone from Ryan Druckemiller after posting on Facebook, "Broke my phone, need a replacement can anyone help."

Raymond received a reply from Ryan Druckemiller offering an iPhone for \$125.00. Raymond said he agreed to buy the iPhone and met Ryan Druckemiller at the Key West Citizen building on Northside Drive in Key West. Raymond gave \$125 cash to Ryan Druckemiller who gave him an iPhone with no box or charger. He told Raymond it was his personal phone. Scott Raymond provided a sworn affidavit attesting to his involvement as stated above.

**Audra Gootee** was identified through AT&T records as using and registering an iPhone purchased by Monroe County, line item 9. The same line item is shown by Apple to be associated with Ryan Baker.

Gootee said she was given a phone by her former boyfriend Ryan Baker. Gootee said she is always losing or breaking her phone and that when her phone broke Ryan Baker gave her an iPhone. She never questioned where he got it and considered it a present. Gootee lost the phone the weekend of June 1, 2012, and reported it to AT&T as lost/stolen. Audra Gootee provided a sworn affidavit attesting to her involvement as stated above.

**Ryan Baker** was identified through Apple records as having an iPhone purchased by Monroe County registered in his name, line item 10. Audra Gootee reported Baker had given her an iPhone as a gift. Ryan Baker met with Investigator Weber and said he had purchased two iPhones from Brandon Druckemiller in 2010. He said he knows DRUCKEMILLER from Key West but is primarily acquainted with him because they attended Fire College together. Sometime during their classes at Fire College a conversation occurred in which Baker said his iPhone was broken and he wanted to get a new one. Baker said Brandon Druckemiller told him he had an online source where he could get iPhones cheap. Baker does not remember the amount they agreed on but he purchased two phones for either \$50.00 or \$100.00 each. He also said he never paid DRUCKEMILLER for the phones because "it wasn't important for him, so it wasn't important to me." Baker said his son threw the iPhone into a puddle, and after that he sold it for parts to an unknown person for \$50.00. Ryan Baker provided a sworn affidavit attesting to his involvement as stated above.

#### **June 7, 2012**

**Bianca Peralta** and **Natasha Blanco** were identified through Apple records as having an iPhone purchased by Monroe County registered in both of their names, line item 13. The records indicate both names due to their being billed on the same account. Bianca Peralta was the actual purchaser of the iPhone. Peralta told Investigator Weber she originally had a joint AT&T account with Blanco for phones they had purchased at Radio Shack. Sometime thereafter, her phone was shattered and she did not have one for approximately two weeks. Peralta read on Facebook that a friend, Bryan Connelly, had two iPhones available for purchase. Peralta contacted Connelly about purchasing one of the phones. Peralta and Blanco met Connelly at an unknown address in Stadium Trailer Park to make the purchase. She gave him \$100.00 cash and Connelly gave her an iPhone in a box. Peralta registered the phone and used it until March 2012 when she lost that phone. She then purchased a new phone from AT&T that she still uses.

Peralta tried to obtain the messages from Facebook showing the conversation between the parties, but the messages were no longer available. Peralta added that LISA DRUCKEMILLER called her on June 6, 2012, and asked if she had been contacted about buying an iPhone. DRUCKEMILLER asked if she had bought her phone from one of DRUCKEMILLER's sons. Peralta told her she bought the phone from Bryan Connelly. DRUCKEMILLER then said Connelly must have stolen the phone from the porch at her house. Bianca Peralta provided a sworn affidavit attesting to his involvement as stated above.

**Bryan Connelly** was identified by Bianca Peralta as selling her an iPhone in July 2011. Connelly admitted selling Peralta the iPhone after his wife Sol Janeth Connelly bought an iPhone from LISA DRUCKEMILLER. Connelly said that Sol Connelly purchased an iPhone from DRUCKEMILLER for \$100.00-\$150.00, but he couldn't recall the exact amount. After that purchase, he placed an ad on Facebook advertising two iPhones for sale. The two iPhones included the one sold by DRUCKEMILLER and a second iPhone 3GS owned and purchased by Connelly's mother. Peralta responded to the ad and they agreed to the sale of the iPhone.

The sale amount is in dispute because Connelly said he sold the phone for \$200.00 and Peralta said she bought the phone for \$100.00. Brian Connelly said that his wife, Sol Connelly, knows Peralta and that is why she was friends with him on Facebook. Bryan Connelly provided a sworn affidavit attesting to his involvement as stated above.

**Sol Janeth Connelly** was identified by her husband, Bryan Connelly, as buying a phone from LISA DRUCKEMILLER. Sol Connelly admitted buying a phone from LISA DRUCKEMILLER for \$100.00 cash. At the time, Connelly and DRUCKEMILLER were neighbors in Stadium Trailer Park. Connelly said she asked DRUCKEMILLER if she had any phones for sale. Connelly said the whole DRUCKEMILLER family was using iPhones and she thought maybe DRUCKEMILLER had an old phone she could buy. Connelly said in July 2011 she gave LISA DRUCKEMILLER \$100 cash and received a new phone still in the box. Connelly then gave the phone to her husband Bryan Connelly. Sol Connelly said she never saw the phone again. She thought Bryan Connelly may have sold the phone to Bianca Peralta, but she could not say for sure. Sol Connelly provided a sworn affidavit attesting to her involvement as stated above.

## **June 12,2012**

**Hank Kokenzie** denied ever having another iPad that belonged to Monroe County. He said possibly the reason his name was on the iPad was because he used his Apple ID to arrange for repair of the unit. Apple confirmed the unit was scheduled for repair but was never received for repair. The IMEI from the missing unit matches that on the entry log and the serial number on the entry log matches the iPad previously found in the broken box. Kokenzie could not explain how that iPad ended up in the broken box. He said it was stolen out of his truck. This is consistent with the information provided by Sylvia Atwell.

**Lance and Cecelia Hoverson** gave Investigator Weber the iPhones they purchased from DRUCKEMILLER. They were provided Property Receipt # 121046 and both phones were placed into evidence. They also identified a third phone in the broken box. According to both parties, after the original purchase one of the phones exhibited some problems and DRUCKEMILLER replaced that phone with one of the phones that was identified and provided to the State Attorney's Office. The third phone was removed from the broken box and placed into evidence under Property Receipt # 141803. This phone was also added to line item 37. Lance and Cecelia Hoverson provided affidavits attesting to their purchase of these phones for personal use.

**Michael Pontarelli** turned over the iPad he purchased, including the charger and USB Cord. The item was placed into evidence under Property Receipt #121040.

**Vicki Fleck-Lockwood** was identified through AT&T records through her mother Lillian Fleck. AT&T listed Lillian Fleck as the responsible party for an iPhone. Vicki Fleck-Lockwood confirmed the account was originally in her mother's name. She said her mother is 83 years old and lives in a nursing home. Fleck-Lockwood said she had purchased a used iPhone from LISA DRUCKEMILLER for \$50.00. She said DRUCKEMILLER had previously given her a used phone through Cecelia Hoversen that turned out to be broken.

DRUCKEMILLER replaced the broken phone with a different iPhone that also appeared to be used. She was under the impression the phone had belonged to Ryan DRUCKEMILLER. Fleck-Lockwood said she gave the money to Cecelia Hoversen to give to DRUCKEMILLER. Hoversen never mentioned this information when she was asked whether she knew of any other iPhone sales from DRUCKEMILLER. Fleck, Hoversen, and DRUCKEMILLER are all related by blood.

Fleck-Lockwood is employed by the Monroe County Sheriff's Office as a deputy sheriff. She knew of this investigation but thought the phone was used and therefore the sale was legitimate. Fleck-Lockwood provided an affidavit attesting her involvement as set forth above.

#### **June 21, 2012**

Grand Jury witness list compiled and subpoena service commenced.

#### **June 22, 2012**

Investigator Weber conducted a consensual interview of LISA DRUCKEMILLER at the law office of Robert Cintron. Present were attorneys Robert Cintron and Ron Strauss.

During the interview, DRUCKEMILLER was cooperative and answered all questions regarding her involvement in the sale and distribution of iPads and iPhones that is the subject of this investigation.

DRUCKEMILLER admitted taking iPhones and selling them to her co-workers and family members. She said that early in 2010 or late 2009 she was approached by Monroe County Administrator Roman Gastesi. According to DRUCKEMILLER, Gastesi placed two \$100 dollar bills on her desk and said, "I want two iPhones for my kids. Make it happen." DRUCKEMILLER said that soon afterward she was approached by other high level county employees about getting iPhones. She felt confused and didn't know what to do. DRUCKEMILLER ordered the phones, pocketed the money, and continued in this manner for a period of approximately 24 months.

She denies ever having made an offer to sell an iPad or iPhone to anyone and stands by her statement that she was approached by many high level employees at the suggestion of Gastesi. According to DRUCKEMILLER, she did not know how to say no to any requesting party. She

admitted taking money for the equipment and keeping it for herself. She said sometimes she would spend it on co-workers for office parties. She offered no explanation as to why she gave equipment to friends and family.

Robert Cintron cut the interview short due to a scheduling conflict. The interview was never continued.

### **June 25, 2012**

**Cecelia Hoversen:** Investigator Weber spoke to Cecelia Hoversen about why she failed to mention she had acted as a go-between DRUCKEMILLER and Vicki Fleck-Lockwood for the purchase of an iPhone. Hoversen said the phone was obviously used and she felt the phone belonged to DRUCKEMILLER's son, and therefore was not part of this inquiry.

### **June 28, 2012**

**Natasha Blanco:** Investigator Weber spoke to Natasha Blanco about her involvement in purchasing the iPhone. Blanco confirmed her previous verbal statement in which she said that she and Bianca Peralta were billed on the same plan. She said she was present when Brian Connelly sold the phone to Peralta. She said the phone was new and in a box when the purchase was made. Blanco provided a sworn affidavit attesting to her involvement as stated.

**Mark Anderson:** Investigator Weber spoke to Mark Anderson, who works for Monroe County Facilities Maintenance at the Harvey Government Center. Anderson had previously provided an affidavit in which he stated that in a conversation with LISA DRUCKEMILLER around Christmas 2011, she offered to give him a vendor discount if he was interested in purchasing an iPhone or iPad. Anderson said he was flattered she would offer him the deal because he knew it was all of the high level employees who were making purchases. According to Anderson, it was common knowledge that DRUCKEMILLER was selling iPhones. Anderson declined the offer.

### **June 29, 2012**

All witnesses have been served with Grand Jury subpoenas.

### **July 9, 2012**

Investigator Weber met with LISA DRUCKEMILLER at the office of her attorney Robert Cintron. Cintron provided me with an Apple iPad (IMEI# 012800006946957, SN# DN6G6M9MDFJ2). This iPad was listed on the list of missing equipment, line item 45. Previous to the receipt of this iPad it was identified as missing. The iPad and a Frogs cover were placed into evidence under Property Receipt # 141858.

During the interview DRUCKEMILLER was forthcoming and admitted selling and gifting the equipment to co-workers, friends, and family. She continued to deny having offered the

equipment to anyone “on a vendor discount program,” despite the statements of other witnesses. DRUCKEMILLER said if it wasn’t for Roman Gastesi asking her to get him equipment, the scheme would never have begun. She said, “Roman started it and I finished it.”

The interview was terminated with no new information.

**July 11-13, 2012**

The Grand Jury convened for three days and heard testimony of witnesses relevant to this investigation.

On July 13, 2012, the Grand Jury indicted LISA DRUCKEMILLER on the following charges:

Count	Statute	Description
1 Count	§ 817.034(4)(a)2	Organized Scheme to Defraud > \$20,000 (2F)
1 Count	§ 812.019(1)	Dealing in Stolen Property (2F)

A capias warrant was issued and signed by Judge Miller who set a \$15,000 bond on each count for a total of \$30,000. The indictment was sealed pending service of the capias.

**July 17, 2012**

LISA Druckemiller turned herself in to Investigator Weber at the Monroe County Detention Center. She was booked on the above charges without incident.

**FINDINGS OF THE INVESTIGATION:**

The investigation revealed the following facts. During the period of October 2009 to February 2012, LISA DRUCKEMILLER engaged in a business of selling or gifting equipment purchased by Monroe County. In total, during this period \$23,311.29 was spent by Monroe County on equipment that was never used by Monroe County and for which LISA DRUCKEMILLER received remuneration in the amount of \$4,777.98.

Of the forty-three distinct acts of theft, twenty-eight ended with her selling the equipment to other parties, co-workers, friends, or family. LISA DRUCKEMILLER engaged in a scheme to defraud Monroe County of its equipment while at the same time enriching herself and her family. By doing this, she created an environment in which the possession and distribution of expensive electronic equipment was the norm.

Although LISA DRUCKEMILLER sold equipment to many high level Monroe County employees, the number of the sales lends credence to the suggestion there may have actually been a vendor discount. According to Apple there is a discount offered to customers. This discount

amounts to roughly ten percent of the retail price. The retail price far exceeds the subsidized price being paid by Monroe County for on-contract sales. The retail price for any iPhone purchased off contract would be close to \$699.00 (depending on the exact model). The average price of the sales made by DRUCKEMILLER was \$100.00, which would be roughly 15-20% of the retail price meaning that all of the sales would be 80-85% off retail.

The investigation also revealed information contradicting DRUCKEMILLER's claim she never offered the phones to anyone or announced a vendor discount program to anyone. Most of the purchasers said the vendor discount was the primary or motivating factor in making the purchase. On at least four separate occasions, co-workers of DRUCKEMILLER said that during conversation she offered the "vendor discount" to them for Apple equipment. These four co-workers did not purchase anything.

Although LISA DRUCKEMILLER was eventually forthcoming about her activities regarding the sale and distribution of equipment owned by Monroe County, she did this after an initial denial and after the equipment was either found or turned over by her attorney.

In addition to the sales made by DRUCKEMILLER herself, at least three items of stolen equipment were sold by her sons Brandon and Ryan Druckemiller. The environment of sales and distribution, the ease of replacement and availability, and the fact that both parties gave different sources to the end purchasers of the stolen equipment, all go to their knowledge that the equipment was not from a legitimate source.

## **CONCLUSION NARRATIVE:**

Investigator Weber has probable cause to believe LISA DRUCKEMILLER engaged in a scheme to defraud wherein she used her position as Monroe County Senior Administrator of Technical Services to obtain technology equipment and sell this equipment to benefit herself. Her position also allowed her to conceal the scheme by not following up on purchases and concealing the purchases by using a loose reporting and billing detail to various county departments.

During the execution of this scheme LISA DRUCKEMILLER committed no less than sixteen counts of theft and twenty-eight counts of dealing in stolen property.

Brandon Druckemiller also sold two pieces of equipment to a colleague saying he had an online source for inexpensive Apple equipment. He committed this act with the foreknowledge the equipment was not obtained through legitimate channels and he did not purchase the equipment online as he claimed.

Ryan Druckemiller also sold one piece of equipment advertising it on Facebook for sale. The purchaser was told the iPhone was Ryan Druckemiller's old phone. The iPhone, although not in its original packaging, was new and was unused. Ryan Druckemiller was the recipient of several iPhones and had picked up on a least one occasion a replacement phone at the Monroe County

Technical Services Department located in the Gato Building in Key West. He committed this act with the foreknowledge that the equipment was not obtained through legitimate channels and did not purchase the equipment for resale.

The evidence and the associated supporting documents are maintained at the Office of the State Attorney pending presentation to the Grand Jury as directed by State Attorney Dennis Ward.

LISA DRUCKEMILLER turned herself into Investigator Weber and was booked into the Monroe County Detention Center without incident.

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**Weber , Christopher**  
**Investigator**

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**Date:**

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**Mark Wilson, Assistant State Attorney**

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**Date:**

**AMENDMENT TO AND EXTENSION OF  
EMPLOYMENT AGREEMENT  
COUNTY ADMINISTRATOR**

**THIS AMENDMENT AND EXTENSION** is made and entered into this 14th day of December, 2011, between the Board of County Commissioners of Monroe County, Florida, hereinafter "County", and Roman Gastesi, hereinafter "Administrator."

**WHEREAS**, on April 16, 2008, the parties entered into an agreement for County Administrator for the period May 12, 2008, through May 11, 2012; and

**WHEREAS**, the contract was amended June 29, 2010 to clarify compensation includable in retirement calculations; and

**WHEREAS**, it has been determined that the cost to administrator to provide in-county transportation needs to be reflected by an increase in salary of \$300 per month; and

**WHEREAS**, both parties desire to renew and extend the agreement for another term, with minor modifications; now therefore,

**IN CONSIDERATION OF** the mutual covenants contained herein, The Parties agree as follows:

1. The contract entered between the parties on April 16, 2008, as amended on June 29, 2010, shall be amended as follows:

- a) Paragraph 7.A. shall be amended by adding one sentence to reflect an extension of this agreement, and the entire paragraph shall now read:

The normal term of this agreement shall be for a period of forty- eight (48) months, commencing at 8:00 A.M. on the 12<sup>th</sup> day of May, 2008, and ending at 5:00 P.M. on the 11<sup>th</sup> day of May, 2012. Renewal and extension of this agreement shall commence at 5:01 P.M. on the 11<sup>th</sup> day of May, 2012, and continue through 5:00 P.M. on the 11<sup>th</sup> day of May, 2016, after which the one-year renewal terms in Paragraph 7.B shall apply.

- b) Paragraph 8 shall be amended to read as follows:

**SALARY.** As partial consideration for the agreements and services to be performed by the Administrator for the benefit of the BOCC and County as contained elsewhere in this Agreement, the BOCC will pay to the Administrator an annual salary of ONE HUNDRED SIXTY-THREE THOUSAND THREE HUNDRED DOLLARS (\$163,300.00). After six months' employment and an opportunity for the Administrator and any commissioner to confer regarding County policies and the role of the County Administrator, that salary shall be raised to ONE HUNDRED SEVENTY-THREE THOUSAND THREE HUNDRED DOLLARS (\$173,300.00), which amount shall be automatically increased on December 1, unless conflicting action is taken prior to that date. The salary shall be increased thereafter according to

the County policy of cost-of-living and merit increases provided to other County employees. Effective January 1, 2012, there shall be an additional \$300 per month or \$3,600 per year, added to the salary.

A. The salary shall be paid in installments at the same time and in the same manner as other County employees are paid, and will be subject to all legally required deductions. Currently, payments are paid in equal biweekly installments (26 pay periods per annum).

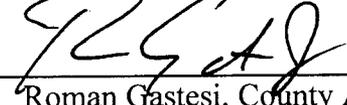
B. Administrator shall be entitled to health, accidental death & dismemberment and life insurance coverage under County group policies.

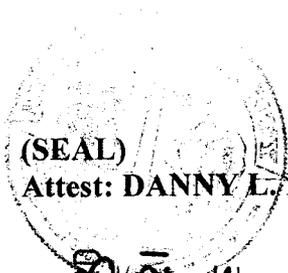
2. In all other respects, the Agreement entered April 16, 2008, as amended June 29, 2010 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused these presents to be executed in their respective names on the date first set above.

Mayor Rice	<u>Yes</u>
Mayor Pro Tem Wigington	<u>Yes</u>
Commissioner Neugent	<u>Yes</u>
Commissioner Carruthers	<u>Yes</u>
Commissioner Murphy	<u>Yes</u>

ROMAN GASTESI:

By:   
Roman Gastesi, County Administrator



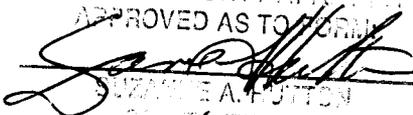
(SEAL)  
Attest: DANNY L. KOLHAGE, Clerk

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

By:   
Deputy Clerk

By:   
Mayor/Chairperson

FILED FOR RECORD  
2011 DEC 16 PM 4:51  
DANNY L. KOLHAGE  
CLERK

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM  
  
SUZANNE A. MUTTON  
11/29/11

**AMENDMENT TO EMPLOYMENT AGREEMENT  
COUNTY ADMINISTRATOR**

**THIS AMENDMENT** is made and entered into this 21st day of July, 2010, between the Board of County Commissioners of Monroe County, Florida, hereinafter "County", and Roman Gastesi, hereinafter "Administrator."

**WHEREAS**, on April 16, 2008, the parties entered into an agreement for County Administrator for the period May 12, 2008, through May 11, 2012; and

**WHEREAS**, the contract has been interpreted by the County's auditors and the Florida Retirement System (FRS) to preclude the inclusion in regular compensation, subject to state retirement calculations, of the automobile allowance; and

**WHEREAS**, all prior Monroe County Administrators and prior and current Monroe County Attorneys, the employees of Monroe County normally under contract, have received automobile allowance as regular compensation, subject to FRS contributions and included in retirement calculations; and

**WHEREAS**, both parties to this agreement contemplated that the compensation package, other than employee benefits listed in Paragraph 17, would be subject to County contributions to the FRS and included in the final average compensation computation for calculating retirement benefits;

**WHEREAS**, the County has been making the contributions into the FRS for the compensation heretofore described as salary and automobile allowance; and

**WHEREAS**, the parties find it in the best interests of both to amend the agreement to render the existing contract consistent with expectations of the parties; now therefore,

**IN CONSIDERATION OF** the mutual covenants contained herein, The Parties agree as follows:

1. 2. The contract entered between the parties on April 16, 2008 shall be amended to revise paragraphs 8, 9, and 17.D to read, effective May 12, 2008, as follows:

8. **SALARY.** As partial consideration for the agreements and services to be performed by the Administrator for the benefit of the BOCC and County as contained elsewhere in this Agreement, the BOCC will pay to the Administrator an annual salary of ONE HUNDRED SIXTY-THREE THOUSAND THREE HUNDRED DOLLARS (\$163,300.00). After six months' employment and an opportunity for the Administrator and any commissioner to confer regarding County policies and the role of the County Administrator, that salary shall be raised to ONE HUNDRED SEVENTY-THREE THOUSAND THREE HUNDRED DOLLARS (\$173,300.00), which amount shall be automatically increased on December 1, unless conflicting action is taken prior to that date. The salary shall be increased thereafter according to the County policy of cost-of-living and merit increases provided to other County employees.

A. The salary shall be paid in installments at the same time and in the same manner as other County employees are paid, and will be subject to all legally required deductions. Currently, payments are paid in equal biweekly installments (26 pay periods per annum).

B. Administrator shall be entitled to health, accidental death & dismemberment and life insurance coverage under County group policies.

9. **TRANSPORTATION.** Administrator agrees that he will be responsible for providing his own motor vehicle for transportation within the limits of Monroe County that may be necessary, required, or appropriate in fulfilling his responsibilities and duties under this Agreement. For travel out of Monroe County by motor vehicle, Administrator will be reimbursed by Board on a per trip basis at the rate allowed for under Chapter 112, Florida Statutes, with mileage calculated as if departure commenced at the Monroe County-MiamiDade County line and return ended at the Monroe County-MiamiDade County line. At its sole discretion, and upon request by Administrator, Board may authorize the reimbursement of Administrator's actual expenditures where documented evidence is provided detailing the actual expenses incurred.

17. **D. Other Customary Benefits.** The Administrator shall have the right to participate in and receive the benefits of other employment-related benefits, other than in-county mileage reimbursement, as are available to other non-union County employees.

2. In all other respects, the Agreement entered April 16, 2008, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused these presents to be executed in their respective names on the date first set above.

<b>Mayor Sylvia Murphy</b>	<u>Yes</u>
<b>Mayor Pro Tem Heather Carruthers</b>	<u>Yes</u>
<b>Commissioner George Neugent</b>	<u>Absent</u>
<b>Commissioner Mario Di Gennaro</b>	<u>Absent</u>
<b>Commissioner Kim Wigington</b>	<u>Yes</u>

FILED FOR RECORD  
 2010 JUL -1 AM 11:35  
 DANNY L. KOLHAGE  
 CLERK OF BOARD OF COUNTY COMMISSIONERS  
 MONROE COUNTY, FLORIDA

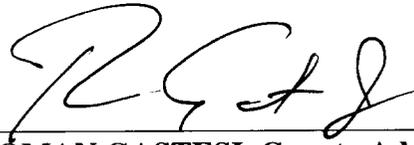
(SEAL)  
Attest: **DANNY L. KOLHAGE**, Clerk

**BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA**

By *Isabel C. DeSantis*  
Deputy Clerk

By *Sylvia J. Murphy*  
Mayor/Chairperson

ATTORNEY  
 APPEARED FOR:  
*[Signature]*  
 6/23/10



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**RÓMAN GASTESI, County Administrator**

**EMPLOYMENT AGREEMENT  
BETWEEN  
MONROE COUNTY, FLORIDA  
AND  
ROMAN GASTESI  
FOR POSITION OF  
COUNTY ADMINISTRATOR**

**THIS AGREEMENT** is entered into April 16, 2008, by and between Monroe County, Florida, acting through its Board of County Commissioners ("Board or "BOCC"), a political subdivision of the State of Florida, whose main business address is 1100 Simonton Street, Key West, Florida 33040, and Roman Gastesi ("Administrator"), whose present residence address is 87200 Overseas Highway, Unit S-10, Islamorada, Florida 33036.

**WHEREAS**, the Monroe County is currently operating under the administration of an acting County Administrator; and

**WHEREAS**, the BOCC has advertised for applicants for the position of Monroe County Administrator; and

**WHEREAS**, after review of applications, meeting with selected applicants, and conducting interviews of four finalists, the BOCC has selected Roman Gastesi as its first choice to be offered the position of Monroe County Administrator; and

**WHEREAS**, negotiations between Monroe County and Roman Gastesi has resulted in this mutually acceptable Employment Agreement ("Agreement"); now therefore,

IN CONSIDERATION of the covenants and promises contained herein, the **PARTIES** hereby agree as follows:

**1. EMPLOYMENT.** Roman Gastesi is hereby employed by the BOCC as County Administrator for Monroe County, Florida (hereinafter "Administrator").

**2. FULL-TIME EMPLOYMENT.** County and Administrator agree that the position of County Administrator will be a full-time position. Work hours performed, annual leave, personal leave, and sick leave hours taken will be documented on a form or forms to be provided by County.

**3. DUTIES OF ADMINISTRATOR.**

**A.** Administrator will perform the duties of County Administrator as provided for in Sections 125.70 through 125.74, Florida Statutes, known as the "County Administration Law of 1974"; all duties required by other applicable provisions of Florida law; all duties required by the Monroe County Code and lawfully adopted Resolutions of the BOCC; and all duties as may be set forth in administrative and personnel policies and procedures adopted by use by the County.

**B.** Additionally, Administrator shall perform those duties, functions, and assignments which may from time to time be directed by the BOCC.

C. Duties shall be performed in a professional, respectful, and timely manner and in accordance with the highest standards of ethical behavior established by the Code of Ethics of the International City/County Manager Association and with Part III, Chapter 112, Florida Statutes, entitled Code of Ethics for Public Officers and Employees.

D. Administrator understands and agrees his duties under this Agreement will require him to routinely work varied hours in excess of the normal County workday, and the hours worked shall be consistent with the needs of the position. Administrator shall not receive overtime compensation for hours worked in excess of forty (40) per week, including work done pre- or post-disaster, including but not limited to hurricanes.

E. Nothing in this Agreement or in the BOCC's policies, rules, and procedures will limit the Administrator's right to make passive financial investments; to participate in charitable service or work with charitable organizations and other community activities, including trade and professional organizations; or to undertake other activities which do not interfere with the performance of the Administrator's duties under this Agreement, it being mutually agreed that the Administrator's participation in such activities is of such benefit to the BOCC and the County.

F. The Administrator will be reasonably available to BOCC members and key County staff twenty-four (24) hours per day. Such availability will be by telephone or electronic messaging, or in person.

G. Due to the nature of the Administrator's duties and the requirements of the position, interference with the Administrator's private life is to be expected and it is recognized that Administrator may from time to time absent himself during normal business hours for personal reasons; however, Administrator shall remain reasonably available to Board members and key Board staff by telephone or other electronic means.

**4. SOLE EMPLOYMENT.** In partial consideration for the agreements to be performed by the BOCC for the benefit of the Administrator as contained elsewhere in this Agreement, Administrator agrees that he will not perform any work, consulting services, or other activities for any other person or entity, whether for remuneration or at no charge, without the prior express written approval of the BOCC. It is the intent that Administrator's attentions will be devoted solely to County-related duties and obligations.

**5. POST-EMPLOYMENT RESTRICTIONS.** In partial consideration for the agreements to be performed by the BOCC for the benefit of the Administrator as contained elsewhere in this Agreement, Administrator agrees that for a period of twenty-four (24) months from the effective date of termination or cancellation of this Agreement, Administrator will not personally appear on behalf of another person or entity for compensation before the BOCC sitting in its legislative or quasi-judicial capacity, unless Administrator is appearing on behalf of another governmental agency. Additionally, Administrator agrees that for a period of twenty-four (24) months from the effective date of termination or cancellation of this Agreement, Administrator will not lobby the BOCC sitting in its legislative or quasi-judicial capacity. For purposes of this section, "lobbies" and "lobbyist" will have the same meaning as defined in Section 112.3215(d) and (e), Florida Statutes. This section will survive the termination or cancellation of this Agreement, but may be waived by a majority vote of the BOCC at a public meeting.

**6. DISCLOSURE OF FINANCIAL INTERESTS.** Section 112.3145, Florida Statutes, requires financial disclosure by a "local officer", and subsection (1)(a)3, defines local officer to include any person holding one or more of the following positions: ...county...manager; chief administrative employee of a county...". Administrator agrees to make such disclosures on such forms and at such times as may be required by state law.

## **7. TERM OF AGREEMENT; TERMINATION; CANCELLATION; GENERAL RELEASE.**

**A. Normal Term of Agreement.** The normal term of this agreement shall be for a period of forty-eight (48) months, commencing at 8:00 A.M. on the 12<sup>th</sup> day of May, 2008, and ending at 5:00 P.M. on the 11<sup>th</sup> day of May, 2012.

**B. Extension of Normal Term.** This Agreement may be renewed for periods of one year by written agreement executed by both parties unless either the BOCC or the Administrator gives the other notice of its or his intent to terminate the Agreement. Such written notice shall be given not less than ninety (90) days prior to the normal expiration date of this Agreement, or sixty (60) days prior to the expiration of any renewal term year, as applicable. Once either party gives written notice under this section, this Agreement will not be modified or extended except as may be mutually agreed, in writing, by and between the BOCC and the Administrator.

**C. Termination of Agreement by BOCC for Cause.** This Agreement may be terminated by the BOCC for cause, only by majority vote of the BOCC at a public meeting duly noticed and held. At least fifteen (15) days prior to the date on which the agenda for the BOCC is prepared that contains the item of termination to be acted upon, BOCC shall provide to the Administrator a detailed written statement of the reason or reasons for which termination is being sought. The statement will include, but not be limited to, the act or acts, omission or omissions, or default or defaults which form the basis for which termination is sought, along with the relevant date or dates, time or times, and location or locations. As used in this Section 7, "for cause" will mean (a) dishonesty with respect to the business and operation of the BOCC; (b) confirmed violation of the BOCC's drug policy; (c) refusal to cooperate in an investigation regarding any aspect of the business or operation of the BOCC or County, which investigation is conducted by or at the express direction of the BOCC, the State Attorney, or any federal or state agency with jurisdiction over the matter under investigation; (d) conviction of a crime which is classified as a felony or a crime involving moral turpitude; (e) gross neglect or willful and intentional misconduct; (f) conviction of a crime directly relating to the powers, duties, or privileges of County Administrator; (g) violation of a provision of the Monroe County Code; (h) repeated or egregious violation of County policies adopted in writing by the BOCC; and (i) breach of any material term or condition of this Agreement by the Administrator. In the event that the Administrator prevails in any litigation challenging his termination for cause, he shall receive from the BOCC his reasonable attorneys' fees, costs of litigation, and related expenses, both at the trial and appellate levels.

**D. Termination of Agreement by Administrator for Breach by BOCC.** This Agreement may be terminated by Administrator upon a breach of this Agreement by the BOCC, provided the BOCC has not cured the breach within thirty (30) days following the notice of the breach. If the breach has not been cured, termination will be effective on the thirty-first day following receipt of written notice from the Administrator by the BOCC. Upon termination of this Agreement due to breach by the BOCC, the Administrator shall be entitled to receive the prospective benefits as if this Agreement had been cancelled by the BOCC.

**E. Termination of Agreement by Normal Expiration.** This Agreement shall terminate upon its normal expiration date as stated in Sub-section 7.A unless renewed under the terms of Sub-section 7.B.

**F. Cancellation of Agreement by BOCC.** The BOCC may cancel this Agreement without cause, effective thirty (30) days after giving written notice to the Administrator. Such cancellation will be by a Resolution adopted by a majority vote of the BOCC at a duly noticed public meeting. Upon the effective date of the cancellation, the Administrator will be entitled to receive from the Board, and within fifteen (15) days will be paid by the BOCC, a sum equal to the cost of three months' health insurance premiums for

employee coverage only plus, after six months' employment, a sum equal to six months' salary.

(i) **General Release.** Upon timely payment by the BOCC of the sum required for cancellation without cause, the Administrator will execute a general release in favor of all officers, members, and employees of the BOCC and County relating to any cause or causes of action the Administrator has, had, or may have related to the Agreement and the cancellation thereof. The general release will encompass all applicable federal, state, and local laws and ordinances relating to claims of illegal discrimination, intentional and unintentional torts, whistle blower rights, and all other types of claims whether known or unknown through the date of cancellation. To the extent that it is prohibited by applicable federal, state or local law, this provision will be deemed void and of no effect.

**G. Termination of Agreement by Resignation of County Administrator.** This Agreement will be terminated upon the effective date of resignation by the Administrator. In the event that the Administrator does not give at least sixty (60) days written notice to the BOCC of his effective date of resignation, Administrator shall forfeit the pay of accrued sick and personal leave provided under County policy for all employees, which shall not be a penalty but shall be considered as compensation to the BOCC to be used at the discretion of the BOCC for the costs and expenses of hiring an interim administrator or replacement administrator. This section shall survive the termination or cancellation of this Agreement.

**H. Abolishment of Position of County Administrator.** If the BOCC takes such action as to lawfully abolish the position of County Administrator during the term of this Agreement, the abolishment of the position, for the purposes of this Agreement, shall be deemed to be a termination of this Agreement by cancellation by the BOCC.

**8. SALARY.** As partial consideration for the agreements and services to be performed by the Administrator for the benefit of the BOCC and County as contained elsewhere in this Agreement, the BOCC will pay to the Administrator an annual salary of ONE HUNDRED FIFTY-FIVE THOUSAND DOLLARS (\$155,000.00). After six months' employment and an opportunity for the Administrator and any commissioner to confer regarding County policies and the role of the County Administrator, that salary shall be raised to ONE HUNDRED SIXTY-FIVE THOUSAND DOLLARS (\$165,000.00), which amount shall be automatically increased on December 1, unless conflicting action is taken prior to that date. The salary shall be increased thereafter according to the County policy of cost-of-living and merit increases provided to other County employees.

**A.** The salary shall be paid in installments at the same time and in the same manner as other County employees are paid, and will be subject to all legally required deductions. Currently, payments are paid in equal biweekly installments (26 pay periods per annum).

**B.** Administrator shall be entitled to health, accidental death & dismemberment and life insurance coverage under County group policies.

**9. TRANSPORTATION.** Administrator agrees that he will be responsible for providing his own motor vehicle for transportation within the limits of Monroe County that may be necessary, required, or appropriate in fulfilling his responsibilities and duties under this Agreement. In lieu of the preparation, maintenance, submission, review, approval, and auditing of detail travel expense reimbursements, and as partial consideration for Administrator's entering into this Agreement, Board agrees to pay to Administrator the sum of SIX HUNDRED FIFTY DOLLARS (\$650.00) per month as and for a transportation allowance. For travel out of Monroe County by motor vehicle, Administrator will be reimbursed by Board on a per trip

basis at the rate allowed for under Chapter 112, Florida Statutes, with mileage calculated as if departure commenced at the Monroe County-MiamiDade County line and return ended at the Monroe County-MiamiDade County line. At its sole discretion, and upon request by Administrator, Board may authorize the reimbursement of ~~Administ~~ actual expenditures where documented evidence is provided detailing the actual expenses incurred. ~~rator's~~

**10. TRAVEL REIMBURSEMENT.** The BOCC agrees to pay to or reimburse the Administrator for the costs of mileage, meals, other expenses and lodging incurred by the Administrator for travel outside the County by any mode other than motor vehicle that may be necessary, required, or appropriate in fulfilling the Administrator's duties and responsibilities under this Agreement. Meals, expenses other than mileage, and lodging will be paid for or reimbursed at the rates provided for by applicable Monroe County Code provisions, and shall be consistent with the provisions of this Agreement. At its sole discretion, and upon request by the Administrator, the BOCC may authorize the reimbursement of the Administrator's actual expenditures where documented evidence is provided detailing the actual expenses incurred.

**11. FLORIDA RETIREMENT SYSTEM.** The BOCC agrees that the position of County Administrator will be a position classified as, and eligible for the benefits provided under, the Senior Management Service Class, in accordance with Section 112.055, Florida Statutes. The BOCC will contribute such amounts at such times as is required by the Florida Retirement System law, and any other applicable law or statute.

**12. PROFESSIONAL MEMBERSHIPS.** The Administrator shall, as a minimum, maintain membership in the following professional organizations and interest groups: International City/County Managers Association and Florida City/County Managers Association. All dues, occupational licenses, fees, and costs for obtaining and maintaining the memberships delineated above will be paid for by the BOCC.

**13. LOCAL LIAISONS AND MEMBERSHIPS.** The Administrator shall establish and maintain liaisons with his counterparts in local governmental and public agencies located within the geographical limits of Monroe County, and with such agencies of the State of Florida and the federal government as may be appropriate and desirable. Any reasonable costs, fees, charges, or other expenses incurred in establishing and maintaining these liaisons shall be reimbursed or paid for by the BOCC. Additionally, the Administrator is authorized to become a member of civic clubs or organizations deemed to be appropriate by Administrator, and the costs of membership shall be paid for by the BOCC; provided, however, that the costs of membership and participation in such civic organizations shall not exceed ONE THOUSAND DOLLARS (\$1,000.00) each fiscal year.

**14. OFFICE SPACE; OFFICE STAFF; AND SUPPORTING SERVICES.**

**A. Office Space.** The BOCC will provide office space for the Administrator at the Historic Gato Cigar Factory Building at 1100 Simonton Street, Key West, Florida, and this space will be the primary office for the Administrator.

**B. Staff.** The BOCC will provide qualified and trained staff to assist the Administrator in efficiently, productively, and professionally meeting the mission, goals and objectives of the office of the County Administrator and the duties of Administrator,

**C. Supporting Services.** The BOCC will provide utilities, telephone service, computer hardware and software, electronic research and e-mail services, world wide web and internet access, books and

subscriptions, periodicals, office supplies, photocopy equipment, county web-page presence and server access and storage space, postage, office equipment and furniture, an other similar materials, equipment and services as may be necessary for the proper, productive, and efficient operation of the County Administrator's office.

#### **15. ANNUAL LEAVE; SICK LEAVE; PERSONAL LEAVE; TRANSFER OF LEAVE.**

A. The Administrator will earn and be credited with annual leave at a rate per month equal to the highest rate earned by any other employee or officer of the BOCC. The Administrator may accumulate annual leave without limit and no unused annual leave shall be forfeited due to nonuse, any provisions of the Personnel Policies and Procedures Manual to the contrary notwithstanding.

B. The Administrator will earn and be credited with sick leave at a rate per month equal to the highest rate earned by any other employee or officer of the BOCC. The Administrator may accumulate sick leave without limit and no unused sick leave shall be forfeited due to nonuse, any provisions of the Personnel Policies and Procedures Manual to the contrary notwithstanding. Additionally, the Administrator shall have the option of joining and receiving the benefits of the Monroe County Sick Leave Pool in accordance with the policies and procedures that are applicable and in effect.

C. The Administrator will be credited with five (5) days of paid personal leave each year, commencing with the date of May 12, 2008, and each anniversary of that date thereafter. Such leave may be used by the Administrator at his discretion, and may be accumulated without limit, except that any accrued such leave shall not be included in final payment when this agreement terminates for any reason.

**16. PARTICIPATION IN EDUCATIONAL AND COUNTY-RELATED EVENTS.** The BOCC agrees to budget for and to pay the costs incurred by the Administrator in attending seminars, continuing education courses, BOCC and County-related events and out-of-county meetings as may be necessary or appropriate to the Administrator's duties and responsibilities under this Agreement.

#### **17. EMPLOYMENT BENEFITS.**

**A. Cell Phone; Laptop Computer.** The BOCC agrees to provide a cell phone of its choice with a carrier of its choice to the Administrator, and shall provide a laptop computer of its choice to Administrator. The costs of acquisition, use, upgrade, and other expenses related to the supplying and use of the cell phone and laptop computer shall be paid for by the BOCC.

**B. Health, Medical, Dental, Vision, and Related Benefits.** The BOCC agrees to make available to the Administrator all health, medical, dental, vision, and related benefits as it currently offers to other non-union County employees, under the same terms and conditions as offered to other non-union County employees, and as may be changed, amended, deleted, or added to from time to time. The BOCC shall pay the premiums required for single medical coverage for the Administrator, and the Administrator shall be responsible for the premiums required for individual dental and vision coverage and dependent coverage.

**C. Holiday Benefits.** The Administrator will receive the same paid holidays as the County's non-union employees receive.

**D. Other Customary Benefits.** The Administrator shall have the right to participate in and receive the benefits of other employment-related benefits as are available to other non-union County employees.

**E. One-time Relocation Expense.** The salary set forth in Section 8 has been negotiated to include the maximum amount of relocation expense reimbursement which would have been available to an administrator hired from outside the county since the Administrator had a home in Monroe County prior to the time of hire.

**F. Bonds.** The BOCC will obtain a fidelity bond and any other applicable bonds covering the Administrator while employed during the term of this Agreement, and the costs and expense of obtaining and maintaining such bonds shall be paid for by the BOCC.

## **18. INDEMNIFICATION AND COOPERATION.**

**A. Indemnification.** The BOCC agrees to defend, hold harmless, and indemnify the Administrator against any tort, professional liability, or other legal demand, claim, or action which is related directly or indirectly to the Administrator's action in his capacity as County Administrator.

**B. Cooperation.** In the event of actual or threatened litigation and/or administrative proceedings involved the BOCC or the County which arises out of an action or actions which occurred or are alleged to have occurred while the Administrator was acting in the capacity of County Administrator, the Administrator will cooperate with the BOCC and its counsel in defending and resolving the litigation or proceeding. In such regard, the BOCC agrees to pay the Administrator's reasonable travel and subsistence expenses incurred in cooperating with the BOCC and its counsel, including preparation for and actual discovery, settlement, and trial and hearing of such matters.

(i) The Administrator agrees that, unless required by law, he will not cooperate with or assist any party, person, or entity who has, had, or may have, or asserts that he, she or it has or may have any claim of any nature against the BOCC or the County, its agents, officers, or employees, unless the BOCC or its authorized agent expressly consents in writing to waive this provision of this Agreement.

(ii) The Administrator will not disclose to any person, party, or entity any confidential, proprietary, time-sensitive, or non-public information relating to the BOCC, the County, and its operations unless required by law to do so.

(iii) The restrictions, prohibitions, and conditions set forth in Section 18.B(i) and (ii) will not be applicable in instances where one or more governmental entities with jurisdiction over a claim or a violation of law are involved.

**19. GOVERNING LAW; ATTORNEY'S FEES AND COSTS; VENUE.** This Agreement is made in the State of Florida and will be governed by Florida law. The prevailing party in any litigation, arbitration, or mediation relating to this Agreement will be entitled to recover its reasonable expenses and attorneys' fees from the other party for all matters, including but not limited to, appeals. Monroe County, Florida will be the proper venue for any litigation involving this Agreement.

**20. FORM OF AGREEMENT.** This is the entire agreement between the BOCC and the Administrator and may not be modified or amended except by a written document signed by the party against whom the enforcement is sought. This Agreement may be signed in more than one counterpart, in which case each counterpart will constitute and original of this Agreement. Paragraph headings are for convenience only and are not intended to expand or restrict the scope or substance of the provisions of this Agreement. Wherever used herein, the singular will include the plural, the plural will include the singular, and pronouns will be read as masculine, feminine, or neuter as the context requires.

**21. PERFORMANCE EVALUATION.** The BOCC and Administrator shall periodically define goals, performance objectives, relative priorities, and time lines for performance which the BOCC and Administrator mutually agree are minimally necessary for the proper operation of county government and achievement of the BOCC's policy objectives. The mutual agreement shall be memorialized by a Resolution or Resolutions of the BOCC, and the Resolution or Resolutions shall become the basis for review and evaluation of the Administrator's work performance. A review and performance evaluation of the Administrator may be conducted as often as the BOCC may deem appropriate.

**22. OTHER TERMS AND CONDITIONS.**

**A.** If any provision, term, or portion of this Agreement shall be held to be unconstitutional, illegal, invalid, or enforceable by a court of competent jurisdiction, the remaining terms, conditions, and portions shall remain in full force and effect as if originally agreed to without the term, condition, or portion that has been determined to be unconstitutional, illegal, invalid or unenforceable.

**B.** The waiver by either the BOCC of the Administrator of a breach or violation of any term or provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach or violation by the other party.

**C.** This Agreement shall be binding upon and shall inure to the benefit of the heirs or estate of the Administrator.

**D.** Should the Administrator die during the term of this Agreement, the obligations of the BOCC under this Agreement shall immediately terminate except for payment of accrued and unused leave balances to the Administrator's designated beneficiaries of his estate; payment of all outstanding hospitalization, medical, dental, and vision bills in accordance with the County's plans, policies, and procedures; and payment of all life insurance benefits in accordance with the terms of the County's insurance policies or plans.

**E.** The BOCC and Administrator acknowledge that each has shared equally in the drafting and preparation of this Agreement and, accordingly, no court or administrative hearing officer shall construe any provision of this Agreement more strictly against one party over the other party, and every term, condition, covenant, and provision of this Agreement shall be construed simply according to its fair meaning.

**F.** This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. It is further agreed that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained herein, and no deviation from the terms hereof shall be predicated upon any prior representations, offers, promises, inducements, or agreements, whether oral or written, and by whomever made. The text herein constitutes the entire agreement between the BOCC and the Administrator, and this agreement cannot be amended except by a written document mutually agreed to and executed with the same formalities as this Agreement.

G. The rights and obligations of this Agreement are personal to the Administrator and cannot be assigned, transferred, or otherwise impaired by the Administrator.

WHEREFORE, the parties hereto have signed and sealed this agreement on the date first above written.

(SEAL)  
Attest: DANNY L. KOLHAGE, Clerk

By: *D. De Santis*  
Deputy Clerk

BOARD OF COUNTY COMISSIONERS OF  
MONROE COUNTY, FLORIDA

By: *[Signature]*  
Mayor/Chairman

Witnesses:

*Ludjick*  
*Justance J. Jr*

ROMAN GASTESI

By: *[Signature]*

FILED FOR RECORD  
2008 APR 17 PM 12: 38  
DANNY L. KOLHAGE  
CLK. CLERK OF  
MONROE COUNTY, FLA.

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM

*[Signature]*  
SUZANNE A. HUTTON  
COUNTY ATTORNEY  
Date *4/15/08*

**BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: September 10, 2012 Division: BOCC

Bulk Item: Yes  No  Department: George R. Neugent

Staff Contact Person/Phone #: T. Colonna 4512

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**AGENDA ITEM WORDING:**

Approval of a resolution of the Board of County Commissioners of Monroe County, Florida supporting legislation to exclude Safe Harbor Enterprises, Inc and Robbie's Safe Harbor Marine Enterprises, Inc. from the Coastal Barrier Resources System.

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**ITEM BACKGROUND:**

Resolution No. 426 2004  
Resolution No. 004 1992

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**PREVIOUS RELEVANT BOCC ACTION:**

Heard at August 15, 2012 regular meeting and continued to Special Meeting September 10, 2012

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**CONTRACT/AGREEMENT CHANGES:**

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**STAFF RECOMMENDATIONS:**

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**TOTAL COST:** \_\_\_\_\_ **INDIRECT COST:** \_\_\_\_\_ **BUDGETED:** Yes \_\_\_ No \_\_\_

**DIFFERENTIAL OF LOCAL PREFERENCE:** \_\_\_\_\_

**COST TO COUNTY:** \_\_\_\_\_ **SOURCE OF FUNDS:** \_\_\_\_\_

**REVENUE PRODUCING:** Yes \_\_\_ No \_\_\_ **AMOUNT PER MONTH** \_\_\_\_\_ **Year** \_\_\_\_\_

**APPROVED BY:** County Atty  OMB/Purchasing \_\_\_ Risk Management \_\_\_

**DOCUMENTATION:** Included  Not Required \_\_\_

**DISPOSITION:** \_\_\_\_\_ **AGENDA ITEM #** \_\_\_\_\_

RESOLUTION NO \_\_\_\_ - 2012

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA SUPPORTING LEGISLATION TO EXCLUDE SAFE HARBOR ENTERPRISES, INC. AND ROBBIE'S SAFE HARBOR MARINE ENTERPRISES, INC. FROM THE COASTAL BARRIER RESOURCES SYSTEM**

**WHEREAS**, Robbie's Safe Harbor Marine Enterprises, Inc. (Monroe County Real Estate Parcel ID Number 00123660-000000) and Safe Harbor Enterprises, Inc. (Monroe County Real Estate Parcel ID Number 00123720-000400) have been included by the Federal Government in its Coastal Barrier Resource System ("System") which prohibits development in high coastal flood areas; and

**WHEREAS**, the System was not intended to include properties that had already been developed; and

**WHEREAS**, Robbie's Safe Harbor Marine Enterprises, Inc. and Safe Harbor Enterprises, Inc. were fully developed, as that term is defined in the Coastal Barrier Resource Act, 16 U.S.C.A. §§ 3501, *et seq.*, as an operational marina and auto salvage yard, respectfully, prior to the effective date of the Coastal Barrier Resources Act ("CBRA"), on October 18, 1982, and their inclusion in the System on November 16, 1990; and

**WHEREAS**, the Monroe County Board of County Commissioners has previously recognized Robbie's Safe Harbor Enterprises, Inc.'s inclusion in the Coastal Barrier Resource System was in error and supported legislation removing it from the System pursuant to Monroe County's *Resolution 004-1992*; and

**WHEREAS**, Monroe County has recognized the importance of Safe Harbor's use as a port and its development as a port and included in its Comprehensive Plan Policy 502.1.5 which states "*Monroe County shall support a proposal to amend the Coastal Barrier Resources System Map adopted by the Coastal Barrier Improvement Act of 1990, to delete the improved port property along the Safe Harbor entrance channel from the system, unit 57*"; and

**WHEREAS**, Robbie's Safe Harbor Marine Enterprises, Inc. and Safe Harbor Enterprises, Inc. have requested the County's support in its intent to obtain removal from the Coastal Barrier Resource System;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA**, that it supports legislation to remove Robbie's Safe Harbor Marine Enterprises, Inc. and Safe Harbor Enterprises, Inc. from the Federal Coastal Barrier Resource System.

**PASSED AND ADOPTED** by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2012.

<b>Mayor David Rice</b>	_____
<b>Mayor Pro Tem Kim Wigington</b>	_____
<b>Commissioner Heather Carruthers</b>	_____
<b>Commissioner Sylvia Murphy</b>	_____
<b>Commissioner George Neugent</b>	_____

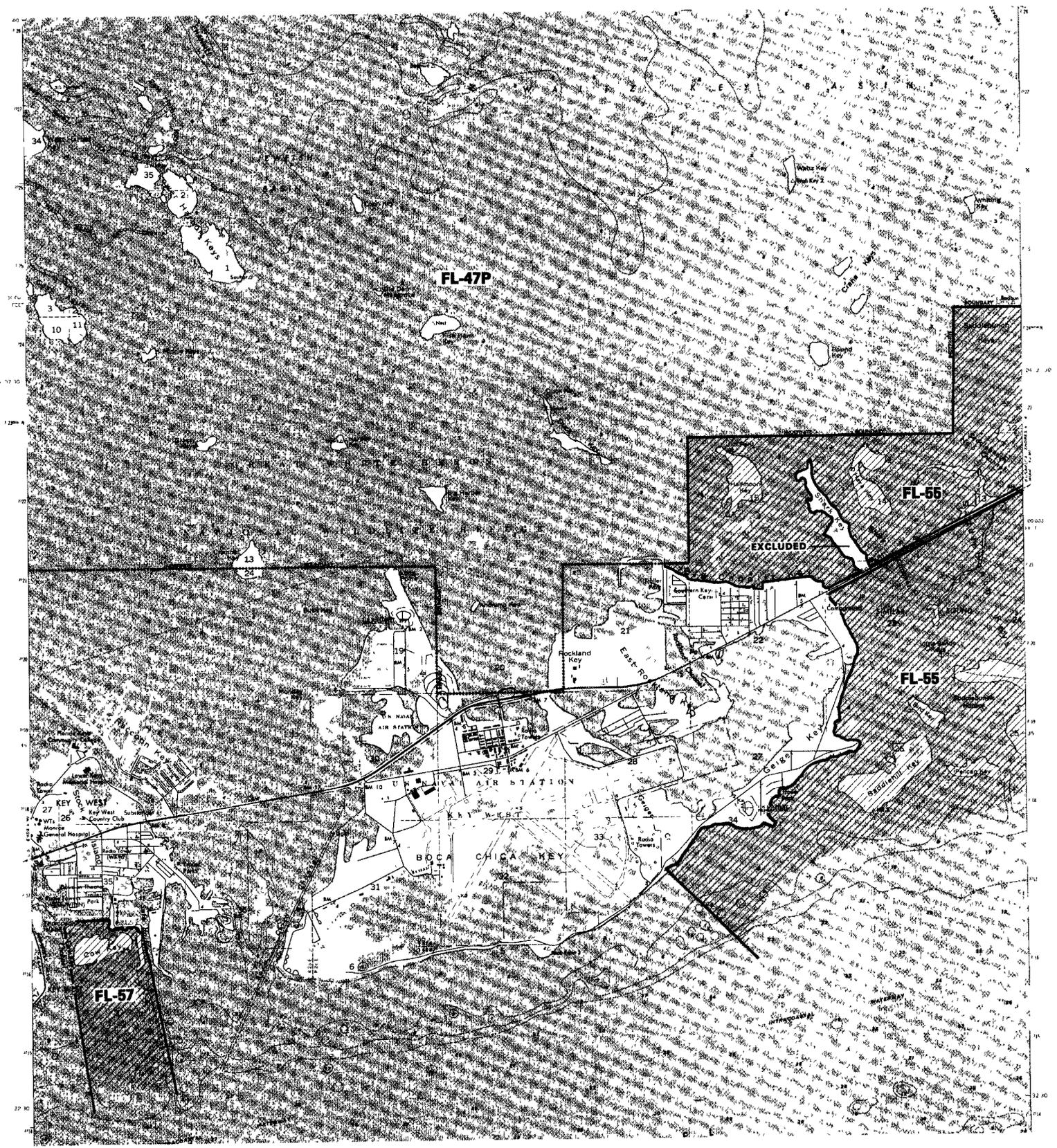
(SEAL)  
ATTEST: **Danny L. Kolhage, Clerk**

**BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA**

By: \_\_\_\_\_  
**Deputy Clerk**

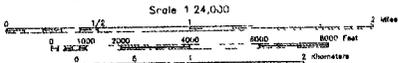
By: \_\_\_\_\_  
**Mayor David Rice**

MONROE COUNTY ATTORNEY  
 APPROVED AS TO FORM:  
 \_\_\_\_\_  
**ROBERT H. HILLINGER, JR.**  
 CHIEF ASSISTANT COUNTY ATTORNEY  
 Date: 8-27-12



**COASTAL BARRIER RESOURCES SYSTEM  
 KEY DEER/WHITE HERON UNIT FL-47P  
 SADDLEBUNCH KEYS UNIT FL-55  
 COW KEY UNIT FL-57**

This map has been produced by the US Fish and Wildlife Service from a set of maps adopted by Congress pursuant to the Coastal Barrier Improvement Act P.L. 101-501 and supersedes all previous maps prepared by the Service concerning undeveloped coastal barriers. The boundary delineation of this map is identical to that adopted by Congress.



Solid lines depict units in the CBRS

Dotted lines depict "otherwise protected areas" not within the CBRS. These areas are shown with the Letter "P" following the unit number.

October 24, 1990

**BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

Meeting Date: November 17, 2004 Division: Commissioner Spehar

Bulk Item: Yes  No  Department: fall

**AGENDA ITEM WORDING:** Approval of a resolution reaffirming the County's support to exclude Robbie's Safe Harbor Marine, Enterprises, Stock Island from the Coastal Barrier Resources System.

**ITEM BACKGROUND:**

In 1992, the Board of County Commissioners declared its support to remove Robbie's Safe Harbor Marine, Enterprises, Stock Island from the Coastal Barrier Resource System by approving Resolution No. 004-1992. This property had been auctioned by the Federal Government at the same time the Coastal Barrier Improvement Act of 1990 became law. In 1987 the Department of the Interior held public hearings in Monroe County for the purpose of taking public recommendations on the addition or removal of property from the Coastal Barrier Resource System. At that time, the property was owned by the Federal Government and no recommendations were made. As twelve years have passed, this new resolution is intended to reaffirm the County's continued support to remove Robbie's Safe Harbor Marine, Enterprises, Stock Island from the Coastal Barrier Resource System.

**PREVIOUS RELEVATION BOCC ACTION:** Approved Resolution No. 004-1992 in support of excluding Robbie's Safe Harbor Marine, Enterprises from the Coastal Barrier Resources System.

**CONTRACT/AGREEMENT CHANGES:** N/A

**STAFF RECOMMENDATIONS:** Approval

**TOTAL:** N/A

**BUDGETED:** Yes N/A No

**COST TO COUNTY:** N/A

**REVENUE PRODUCING:** Yes N/A No  **AMOUNT PER MONTH** N/A **Year** N/A

**APPROVED BY:** County Attorney X OMB/Purchasing N/A Risk Management N/A

**DIVISION DIRECTOR APPROVAL:** Dixie M. Spehar  
Commissioner Dixie Spehar

**DOCUMENTATION:** Included X To Follow  Not Required

**DISPOSITION:** \_\_\_\_\_

**AGENDA ITEM #** 0-4

RESOLUTION NO. 426 2004

**A RESOLUTION REAFFIRMING THE COUNTY'S SUPPORT TO REMOVE ROBBIE'S SAFE HARBOR MARINE, ENTERPRISES, STOCK ISLAND FROM THE COASTAL BARRIER RESOURCES SYSTEM.**

CLERK OF COUNTY COMMISSIONERS  
MONROE COUNTY, FLA.  
11/17/04 - 9:11 AM

WHEREAS, Resolution No. 004-1992 confirmed the commitment of support from the Board of County Commissions to remove Robbie's Safe Harbor Marine, Enterprises, Stock Island from the Coastal Barrier Resources System; and

WHEREAS, the property was owned by the Federal Government during 1987 when the Department of Interior held public meetings in Monroe County for the purpose of taking public input for recommendations on the addition or removal of property from the Coastal Barrier Resource System and no recommendation to remove the property was presented; and

WHEREAS, prior to the effective date of the Coastal Barrier Resources Act, on October 18, 1982 the site had been a fully developed and operational marina;

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA that it supports the necessary legislation to remove Robbie's Safe Harbor Marina Enterprises, Stock Island from the Federal Coastal Barrier Resource System.

PASSED AND APPROVED by the Board of County Commissioners of Monroe County, Florida, at a meeting of said Board held on the 17th day of November, A.D. 2004.

Mayor Murray Nelson	<u>not present</u>
Commissioner Charley "Sonny" McCoy	<u>not present</u>
Commissioner George Neugent	<u>yes</u>
Commissioner David Rice	<u>yes</u>
Commissioner Dixie Spehar	<u>yes</u>



(SEAL)  
By DANNY L. KOLHAGE, Clerk  
By Daniel C. Anastasia  
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA  
By Dixie M. Spehar  
Mayor/Chairperson

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM  
Suzanne A. Hutton  
SUZANNE A. HUTTON  
ASSISTANT COUNTY ATTORNEY  
Date 11/02/04

FILED 500 570050

W. J. W. 15 40 12

Planning Department

RESOLUTION NO. 004-1991

A RESOLUTION DECLARING THE SUPPORT OF THE  
COUNTY COMMISSIONERS OF MONROE COUNTY, FLORI-  
DA, OF LEGISLATION TO EXCLUDE ROBBIE SAFE  
HARBOR MARINE ENTERPRISES, INC. FROM THE  
COASTAL BARRIER RESOURCES SYSTEM

WHEREAS, the Florida Keys have been designated by the Legis-  
lature of the State of Florida as an Area of Critical State Con-  
cern requiring the development and implementation of a comprehen-  
sive plan and land development regulations; and

WHEREAS, the State and County statutes, ordinances and guide-  
lines require protection of the shoreline and marine resources  
including mangroves, coral reef formations, seagrass beds, wet-  
lands, fish and wildlife and their habitat, as well as upland  
resources and habitat; and

Whereas, Robbins Safe Harbor Marine Enterprises, Inc. has been  
included by the Federal Government in its Coastal Barrier Resourc-  
es System; and

WHEREAS, prior to the effective date of the Coastal Barrier Re-  
sources Act, on October 18, 1982 this was a fully developed and  
operational marina ;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, that it supports the necessary legislation to remove Robbies Safe Harbor Marine Enterprises, Inc. from the Federal Coastal Barrier Resource System

PASSED AND ADOPTED by the Monroe County Board of Commissioners of Monroe County, Florida, at a regular meeting of said board held on the 7th day of January A.D., 1992.

Mayor Harvey	<u>Yes</u>
Mayor Pro Tem London	<u>Yes</u>
Commissioner Cheal	<u>Yes</u>
Commissioner Jones	<u>Yes</u>
Commissioner Stormont	<u>Yes</u>

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

By William Harvey  
Mayor/Chairman

(SEAL)

Attest: DANNY L. KORNHAGE, Clerk

APPROVED AS TO FORMS  
AND LEGAL SUFFICIENCY  
By Robert N. [Signature]  
All [Signature]  
Date 12-7-91

Daniel L. Connelly, D.C.  
Clerk

December 12, 1991

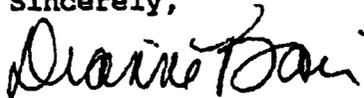
State of Florida, Department  
of Community Affairs  
Post Office Box 990  
Key West, FL 33041

Dear DCA Representative:

Enclosed please find the attached photocopies of the following  
Flood Variance Application(s):

1. Lawrence E. Van Arkel
2. Lynn & Georgia Mapes
3. Robbies Safe Harbor Marina Enterprises, Inc.

Sincerely,



Dianne Bair,  
FEMA Coordinator/SPC

Transmitted and hand delivered to the State of Florida, Depart-  
ment of Community Affairs on:

---

Monroe County Building Department

Received by:

---

Department of Community Affairs

FMTRANSM.DCA/TXTMDB

ROBBIES SAFE HARBOR MARINE ENT. INC.  
P.O.BOX 86  
ISLAMORADA, FLA 33036

MARINA LOCATION      END OF OLD SHRIMP RD., STOCK ISLAND

12-5-91

MONROE COUNTRY PLANING  
DIANE BAIR

RE: ROBBIES SAFE HARBOR MARINE ENTERPRISES , INC      PROPERTY  
FORMER SAFE HARBOR BOAT REPAIR, INC  
(4-J-FL- 914)  
PURCHASED FROM : OFFICE OF REGIONAL COUNSEL  
GSA, REGION IV, ATLANTA, GA

WE ARE ~~RESENTING~~ REQUESTING A RESOLUTION FROM THE MONROE COUNTRY BOARD OF  
COMMISSIONERS TO REMOVE THIS PROPERTY FROM THE COASTAL BARRIER PLAN.

THANK YOU

  
R.E. RECKVERDT PRES.

M E M O R A N D U M

TO: Bob Herman, Director, GMD  
FROM: Dianne Bair, FEMA Coordinator   
DATE: June 3, 1991  
SUBJECT: FL 57 and Safe Harbor Property

---

Pursuant to the attached request I am submitting the following findings:

This property was confiscated by the Federal Government in 1982. In June of 1990 it was listed by the U.S. General Services Administration for auction. R.E. Reckwerdt submitted the high bid in November 1990, and the property was sold to him. Also, in November of 1990 the "Coastal Barrier Resources Act of 1990" became law and this property was included in unit FL 57.

During the 1987 public hearings held in Monroe County by the Department of the Interior for the purpose of taking public input for recommendations for additions or deletions, this property was owned by the Federal Government and had been for some time. There were no recommendations to delete the property from unit FL 57.

I spoke to Frank McGilverey, CBRS Coordinator, with regard to Monroe County recommending this property be deleted under "TECHNICAL REVISIONS OF MAPS; MODIFICATION TO BOUNDARIES; ADDITIONS TO THE SYSTEM". However, because this section of the Public Law is for the purpose of minor and technical changes for clarification and is generally looking to expand a boundary not delete it, and due to the size of the property, that process would not be the appropriate vehicle. That process is specifically used in the event a unit boundary cuts through the center of a condominium project. This would be both minor and technical as it is not the intent to include a part of a condominium in the system and not the other part. The boundary could be changed to exclude the entire condominium from the CBRS.

I was advised that it would take an act of legislation presented by the State Representative or Senator to delete the property at this time. The property owner seeking the deletion must request the State Representative or Senator to present such legislation to Congress. Monroe County should provide a resolution declaring support for such legislation the same as was done for Brian Schmidt on Crawl Key.

In researching the property, aerial photographs dating back to 1954 show the development in progress. The finished project

consists of a completely developed Marina including 3 buildings of approximately 20,400 square feet, 1,350+ feet of concrete bulkhead 150+ feet of concrete breakwater and 750,000 gallon capacity tank farm. A resolution declaring support for the exclusion of this property from FL 57 is appropriate.

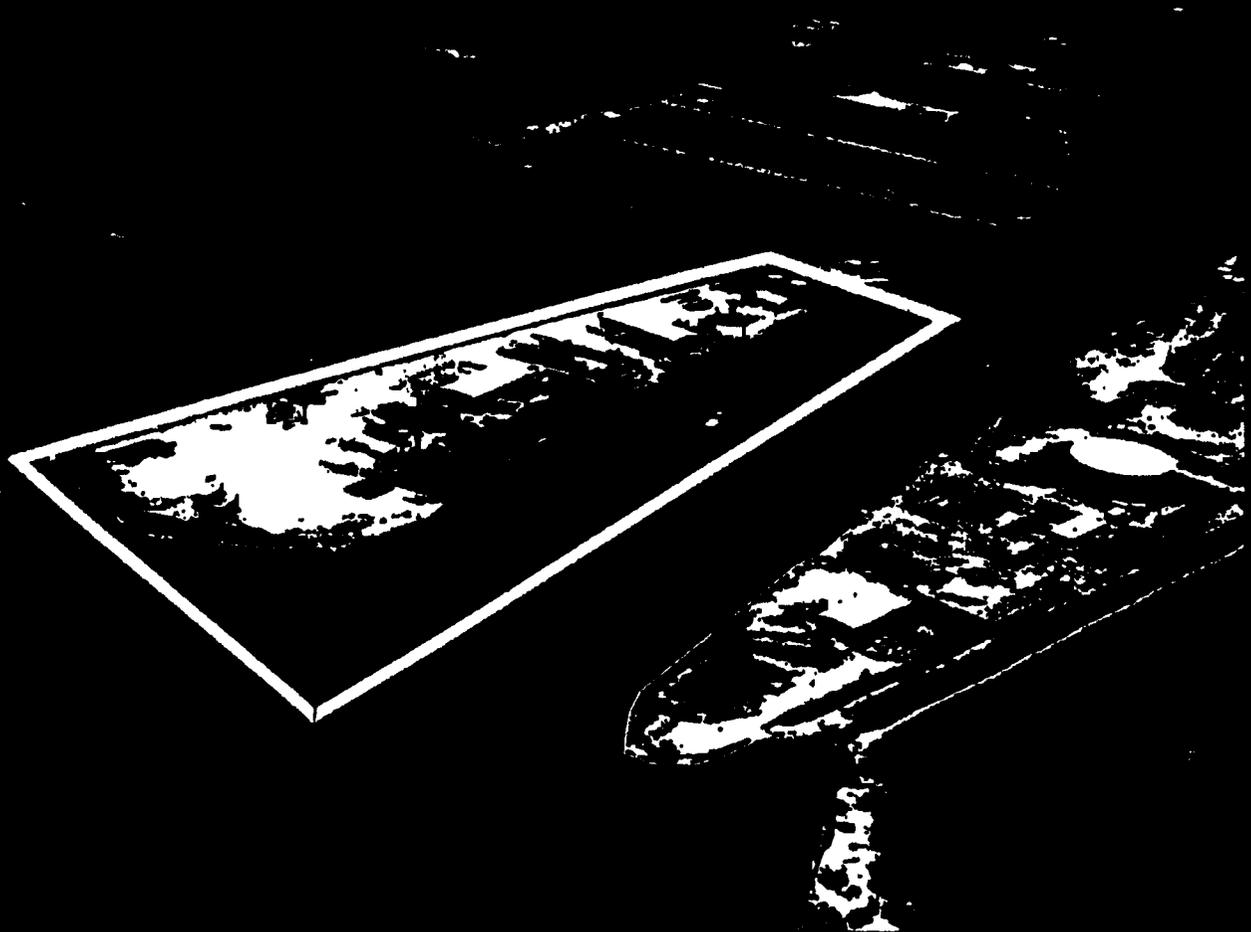
MEMO.028/TXTMDB





# AUCTION

U.S. General Services Administration



June 21, 1990  
23.48± Acres,  
Key West, Florida



U.S. General Services Administration  
Federal Property Resources Service  
Office of Real Estate Sales

Perimeter lines on maps and photographs are approximate only. They are not presented as, and must not be construed to represent, the legal boundaries of the offered property.

U.S Highway 1

KEY WEST

5th St.

5th Avenue

S. Roosevelt Blvd.

STOCK  
ISLAND

Old Shrimp Road

Dog Track

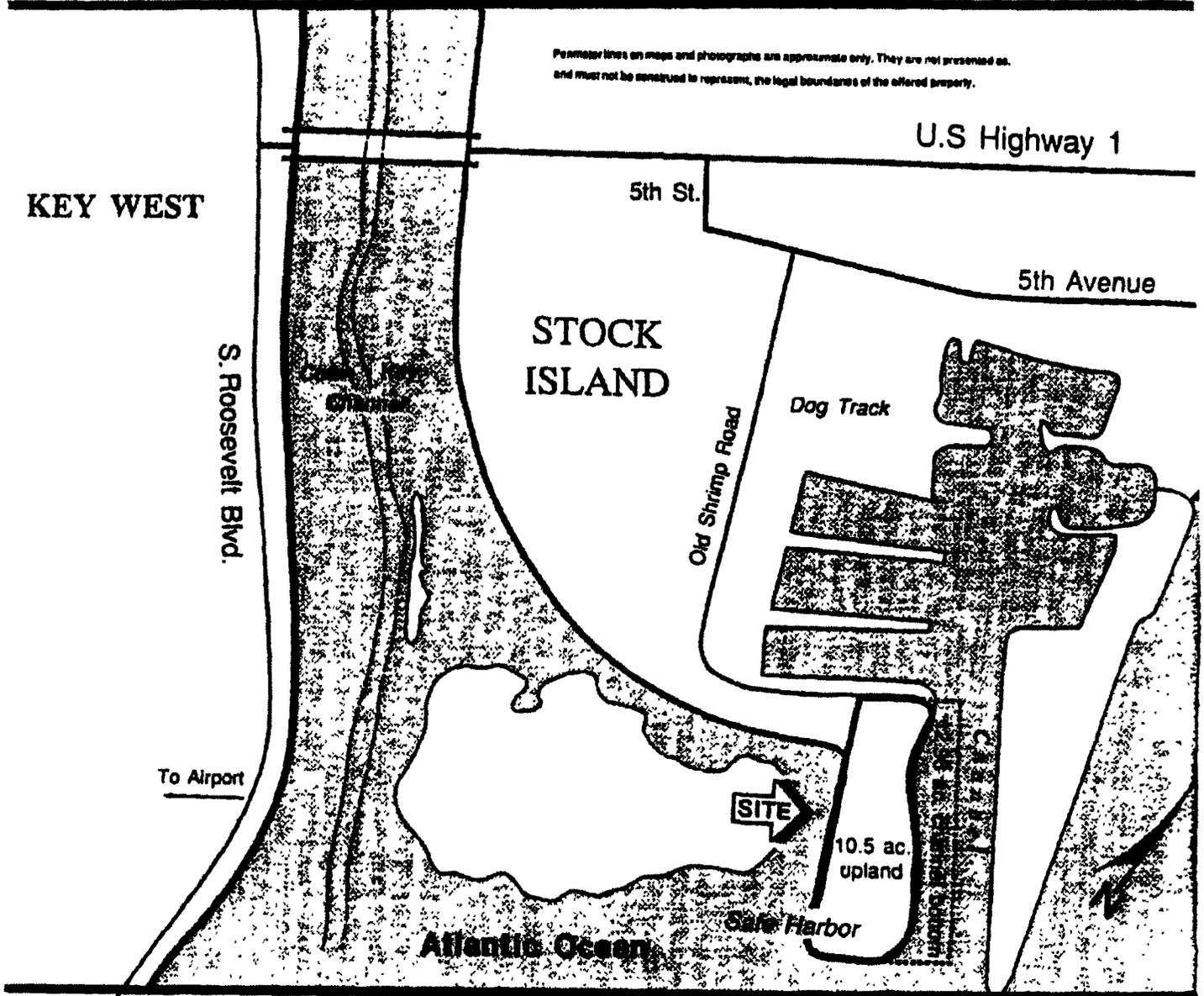
To Airport

SITE

10.5 ac.  
upland

Atlantic Ocean

Safe Harbor



# INVITATION TO BID

**23.48+ Acres**  
**(10.5+ Acres Upland, 12.98+ Acres of Channel Bottom)**  
**End of Old Shrimp Road, Stock Island**  
**Monroe County, Key West, Florida**

The U. S. General Services Administration, on behalf of the U. S. Attorney, Southern District of Florida, invites you to bid on this prime Marine/Industrial deep water facility located in the greater Key West, Florida, area.

**Auction Date:** June 21, 1990 - 11:00 a.m. (On Site)

**Bid Deposit:** A bid deposit of \$250,000 is required for registration. Bid deposit should be in the form of a cashier's or certified check endorsable to the General Services Administration.

**Terms:** All cash/as-is (60 days to close).

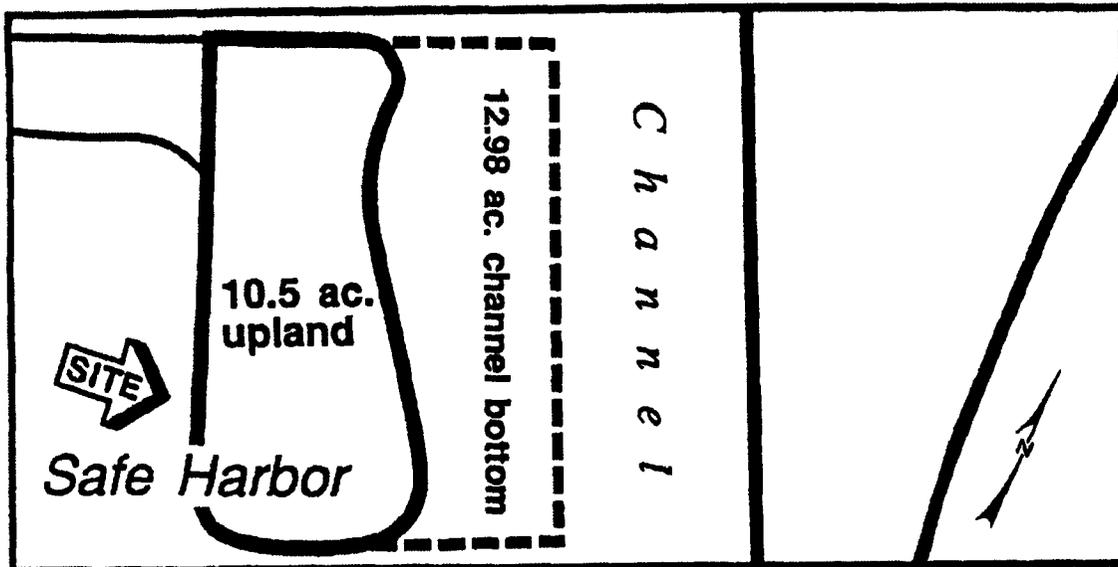
**Property Inspections:** A GSA representative will be on site: April 20-21, May 22, June 20 (10:00 a.m. - 3:00 p.m.)

**Additional Information:** Contact: Bill Holcombe  
General Services Administration (4DR)  
75 Spring Street, SW, Rm. 818  
Atlanta, Georgia 30303  
(404) 331-2697

**RECEIVED**

**MAY 3 1990**  
**MONROE COUNTY**  
**LAND AUTHORITY**  
BY *Di. Acosta*

# SITE PLAN



Additional information concerning the property may be obtained from the following:

## State of Florida

Florida Department of Natural Resources  
Division of State Lands  
Bureau of Submerged Lands Management  
11400 Overseas Hwy., Suite 121  
Marathon, Florida 33050  
(305) 743-4508

Florida Department of Environmental Regulations  
11400 Overseas Hwy., Suite 123  
Marathon, Florida 33050  
(305) 743-5955

Florida Department of Natural Resources  
Division of Beaches and Shores  
Bureau of Coastal Engineering & Regulations  
3900 Commonwealth Blvd.  
Tallahassee, Florida 32399-3000  
(904) 487-4475

## Utilities

Florida Keys Aqueduct Authority  
1100 Kennedy Drive  
Key West, Florida 33041-1239  
(305) 296-2454

City Electric System  
1001 James Street  
Key West, Florida 33041  
(305) 294-5272

## Monroe County

Planning & Zoning Department  
5825 Jr. College Road, West  
Stock Island  
Key West, Florida 33040  
(305) 294-2908

Property Appraiser  
500 Whitehead Street  
Key West, Florida 33040  
(305) 294-6656

Division of Environmental Resources  
5825 Jr. College Road, West  
Stock Island  
Key West, Florida 33040  
(305) 294-5487

## U. S. Government

U. S. Army  
Corps of Engineers  
Engineering Regulatory Office  
P.O. Box 1619  
U. S. Highway 1  
Big Pine Key, Florida 33043  
(305) 872-3205 (Vic Anderson)

# PROPERTY DATA

**Access:** Via an easement situated at the End of Old Shrimp Road.

**Land Area:** 23.48± Acres (10.5± Acres Upland - 12.98± Acres Channel Bottom)

**Improvements:** 3 Buildings, approximately 20,400 sq. ft.  
1,350± foot Concrete Bulkhead  
150± foot Concrete Breakwater  
750,000 Gallon capacity Tank Farm

**Zoning:** Potential Marine Industrial (M-I)

**Utilities:** Public water and electricity.

## SPECIAL TERMS & CONDITIONS OF SALE

1. Acceptance of the Offer to Purchase and the award of sale are subject to the approval of the United States Attorney, Southern District of Florida.
2. This property is being offered for sale, subject to a month-to-month lease in the amount of \$350.00 per month. Copy of the lease is available upon request.

# LEGAL DESCRIPTION

A parcel of filled and submerged land consisting of part of the area described in I. I. Deed 20793 and located southerly of Block 57 according to the plat of McDonald's Plat of Part of Stock Island dated 1910, recorded in Plat Book 1 at page 55 of Monroe County Official Records and is more particularly described as follows:

From the northwest corner of Block 57, according to said plat go easterly along the southerly line of Fifth Avenue a distance of 500 feet to a point; thence at right angles and southerly a distance of 2242.52 feet to a point; thence at right angles and easterly a distance of 1066.72 feet to a point which

point is the point of beginning; thence continue easterly along the prolongation of the previously described course a distance of 515.53 feet to a point; thence southeasterly making a deflection angle of 77 degrees 25 minutes with the prolongation of the previously described course a distance of 1536.92 feet to a point; thence westerly making a deflection angle of 102 degrees 35 minutes with the prolongation of the previously described course a distance of 848.36 feet to a point; thence northerly and at right angles a distance of 1500 feet back to the point of beginning. Containing 23.48 acres, more or less.

# EASEMENT DESCRIPTION

A parcel of land on Stock Island, Monroe County, Florida; and being described as follows: Commence at the Northwest corner of Block 57 of McDonald's Plat of a part of Stock Island as recorded in Plat Book 1 at page 55 of Public Records of Monroe County, Florida and run thence South 6 degrees 56 minutes East along the North boundary line of said Block 57 for a distance of 470 feet to the Point of Beginning of the parcel of land being described herein, thence run South 6 degrees 04 minutes West for a distance of 1283.02 feet; thence run South 41 degrees 58 minutes East for a distance of 40.35 feet to the Southeast corner of TIF Deed No. 24078 and the West boundary line of TIF Deed No. 20083, thence run South 6 degrees 04 minutes West along the West boundary of said TIF Deed No. 20083 for a distance of 932.25 feet to the Southwest corner of said TIF Deed No. 20083; thence run South 83 degrees 56 minutes East along the South boundary line of said TIF Deed No. 20083, the South boundary line

of TIF Deed No. 19837-A and the North boundary line of TIF Deed No. 20793 for a distance of 1116.72 feet; thence run North 6 degrees 04 minutes East for a distance of 10 feet; thence run North 83 degrees 56 minutes West for a distance of 1086.72 feet; thence run North 6 degrees 04 minutes East for a distance of 915.62 feet; thence run North 41 degrees 58 minutes West for a distance of 40.35 feet to the West boundary line of said TIF Deed No. 20083 and the East boundary line of said TIF Deed No. 24078; thence run North 6 degrees 04 minutes East along the West boundary line of said TIF Deed No. 20083 and the East boundary line of said TIF Deed No. 24078, extended Northerly, for a distance of 1269.65 feet to the North boundary line of the said Block 57; thence run North 83 degrees 56 minutes West along the North boundary line of the said Block 57 for a distance of 30 feet back to the Point of Beginning.

# INSTRUCTIONS TO BIDDERS

## 1. REGISTRATION OF BIDDERS

On the date set for the auction, each prospective bidder at the sale will be required to register. At the time of registration, immediately preceding the auction, each bidder will be requested to sign a brief statement to the effect that the Invitation For Bids was received prior to the actual commencement of the auction. Each bidder will also be required to possess and to exhibit upon request, the bid deposit in the amount and form specified herein.

## 2. BID FORM

a. The qualified bidder submitting the highest bid at the public auction will be required to complete and execute, in duplicate, the bid form attached to this Invitation For Bids, and all information and certifications called for thereon must be furnished. Bids submitted in any other manner or which fail to furnish all information or certifications required may be summarily rejected.

b. Bids shall be filled out legibly with all erasures, strikeovers, and corrections initialed by the person signing the bid and the bid must be manually signed.

c. Negligence on the part of the bidder in preparing the bid confers no right for withdrawal or modification of the bid.

## 3. BID EXECUTED ON BEHALF OF BIDDER

A bid executed by an attorney or agent on behalf of the bidder shall be accompanied by an authenticated copy of his Power of Attorney or other evidence of his authority to act on behalf of the bidder.

a. Corporation: If the bidder is a corporation, the Certificate of Corporate Bidder must be executed. The certificate must be executed under the corporate seal by some duly authorized officer of the corporation other than the officer signing the bid. In lieu of the Certificate of Corporate Bidder, there may be attached to the bid copies of so much of the records of the corporation as will show the official character and authority of the officer signing, duly certified by the secretary or assistant secretary, under the corporate seal, to be true copies.

b. Partnership: If the bidder is a partnership, and all partners sign the bid, with a notation that they are all the partners, the Government will not ordinarily require any proof of the existence of the

partnership. If all the partners do not sign the bid, then the names of all those except limited partners must be furnished on the bid and the Government, in its discretion, may require evidence of the authority of the signer(s) to execute the bid on behalf of the partnership.

## 4. BID DEPOSIT

Each bid must be accompanied by a bid deposit of not less than the amount required by this Invitation For Bids, in the form of a certified check, cashier's check, or postal money order made payable to the order of the General Services Administration or (Name of Bidder). This will enable bidders whose bids are rejected to negotiate the instrument once it is returned. Failure to so provide such bid deposit shall require rejection of the bid. Upon acceptance of a bid, the appropriate bid deposit of the successful bidder shall be applied toward payment of the successful bidder's obligation to the Government.

## 5. ADDITIONAL INFORMATION

The General Services Administration issuing office, at the address given in this Invitation For Bids, will, upon request, provide additional copies of this Invitation For Bids, Bid and Acceptance, and answer requests for additional information concerning the property offered to facilitate preparation of bids. Each bid submitted shall be deemed to have been made with full knowledge of all terms, conditions, and requirements contained in this Invitation For Bids.

## 6. NOTICE OF ACCEPTANCE OR REJECTION

Notice by the Government of acceptance or rejection of a bid shall be deemed to have been sufficiently given when telegraphed or mailed to the bidder or his duly authorized representative at the address indicated in the bid documents. The Government's processing of a bid deposit shall not, in itself, constitute acceptance of the bidder's offer. The Government reserves the right to reject any or all bids or portions thereof.

## 7. WAIVER OF INFORMALITIES OR IRREGULARITIES

The Government may, at its election, waive any minor informality or irregularity in bids received.

# GENERAL TERMS OF SALE

## 1. TERM - "Invitation For Bids"

The term "Invitation For Bids" refers to: The Instructions to Bidders; the General Terms of Sale; any Special Terms of Sale; the provisions of the Bid Form; and all as may be modified or supplemented by any addenda issued prior to the auction.

## 2. DESCRIPTION

The descriptions of the property set forth in the Invitation For Bids (Offer to Purchase) and any other information provided therein with respect to said property are based on information available to the GSA sales office and are believed to be correct, but any error or omission, including but not limited to the omission of any information available to the agency having custody over the property and/or any other Federal agency, shall not constitute ground or reason for nonperformance of the contract of sale, or claim by purchaser for allowance, refund, or deduction from the purchase price.

## 3. CONDITION OF PROPERTY

The property is offered for sale and will be sold "As Is" and "Where Is" without representation, warranty, or guaranty as to quantity, quality, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose for which intended, and no claim for any allowance or deduction upon such grounds will be considered after the auction.

## 4. CONTINUING OFFERS

The high bid received shall be deemed to be a continuing offer after the date of the auction for 60 calendar days, unless the bid is accepted or rejected by the Government before the expiration of the specified number of calendar days or the consent of the bidder shall be obtained prior to such expiration.

## 5. DELAYED CLOSING

The successful bidder will pay interest on the outstanding balance of the purchase price if the closing of the sale is delayed, and the delay is caused, directly or indirectly, by the successful bidder's actions and not by fault of the Government. This rate to be computed is based on the yield of 10-year United States Treasury maturities as reported by the Federal Reserve Board in "Federal Reserve Statistical Release H.15" plus 1-1/2% rounded to the nearest one-eighth percent (1/8%).

## 6. TAXES

As of the date of conveyance, the successful bidder shall assume responsibility for all general and/or special real and personal property taxes which have been or may be assessed on the property.

## 7. RISK OF LOSS

As of the date of conveyance, the successful bidder shall assume responsibility for care and handling and all risks of loss or damage to the property and have all obligations and liabilities of ownership.

## 8. REVOCATION OF BID AND DEFAULT

a. In the event of revocation of a bid after the auction but prior to acceptance, or in the event of revocation of a bid after notice of acceptance, or in the event of any default by the successful bidder in the performance of the contract of sale created by such acceptance, or in the event of failure by the successful bidder to consummate the transaction, the deposit, together with any payments subsequently made on account, may be forfeited at the option of the Government, in which event the bidder shall be relieved from further liability.

b. If this Offer to Purchase is accepted by the seller and:

(1) Seller fails for any reason to perform its obligations as set forth herein; or

(2) Title does not transfer or vest in the Purchaser for any reason although Purchaser is ready, willing, and able to close, Seller shall promptly refund to Purchaser all amounts of money Purchaser has paid without interest whereupon Seller shall have no further liability to Purchaser.

## 9. TITLE EVIDENCE

Any title evidence which may be desired by the successful bidder will be procured by him at his sole cost and expense. The Government will, however, provide a copy or allow the successful bidder or his authorized agent to examine and inspect such deeds, abstracts, affidavits of title, judgments in condemnation proceedings, or other documents relating to the title of the premises and property involved, as it may have available. It is understood that the Government will not be obligated to pay for any expense incurred in connection with title matters or survey of the property.

#### 10. TITLE

Conveyance of the property to the successful bidder will be accomplished by a Quitclaim Deed and, where appropriate, a bill of sale in conformity with local law and practice.

#### 11. TENDER OF PAYMENT AND DELIVERY OF INSTRUMENT OF CONVEYANCE

The successful bidder shall on a mutually agreeable date not later than 60 days after acceptance of the bid, or such longer period, as may be agreed upon in writing, tender to the Government, by wire transfer, the balance of the purchase price. Upon such tender being made by the successful bidder, the Government shall deliver the instrument(s) of conveyance.

#### 12. DOCUMENTARY STAMPS AND COST OF RECORDING

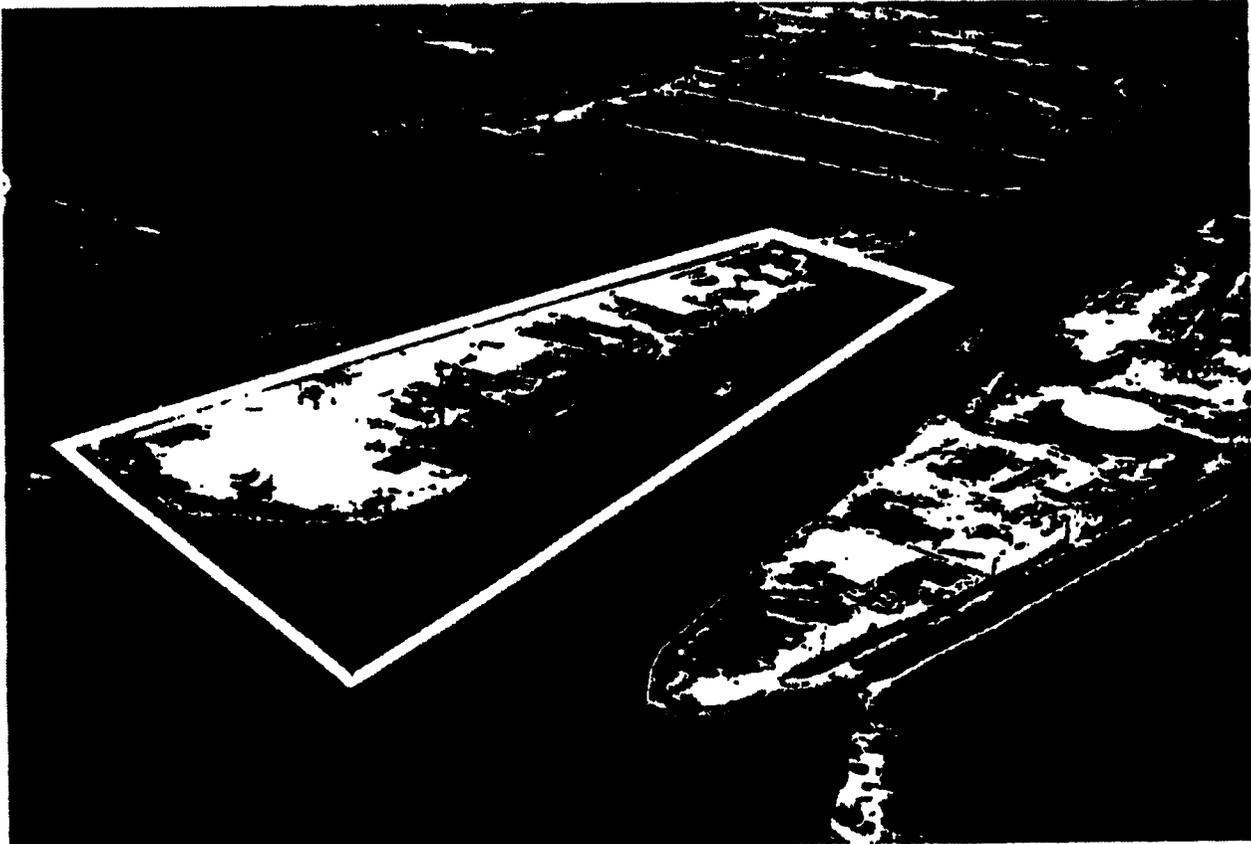
The successful bidder shall pay all taxes and fees imposed on this transaction and shall obtain at his own expense and affix to all instruments of conveyance and security documents such revenue and documentary stamps as may be required by Federal and local law. All instruments of conveyance and security documents shall be placed on record in the manner prescribed by local recording statutes at the successful bidder's expense.

#### 13. CONTRACT

The "Invitation For Bids," and the bid when accepted by the Government, shall constitute an agreement for sale between the successful bidder and the Government. Such agreement shall constitute the whole contract to be succeeded only by the formal instruments of transfer unless modified in writing and signed by both parties. No oral statements or representations made by, or for, or on behalf of either party shall be a part of such contract, or any interest therein, be transferred or assigned by the successful bidder, without consent of the Government, and any assignment transaction without such consent shall be void.

#### 14. OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of the contract of sale or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the contract of sale if made with a corporation for its general benefit.



BOCC  
Special / Ref  
N8 1/2/1992

Chapter 163, Florida Statutes, and Staff's recommendation for a joint proposal from Wallace-Roberts-Todd and Freilich, Leitner. Motion was made by Commissioner Stormont and seconded by Commissioner London to approve Staff recommendation for a minimal LDR system per the previous Board determinations. Roll call vote was unanimous.

The Board proceeded to discuss recommendations made by the Parks and Recreation Board. Motion was made by Commissioner Stormont and seconded by Commissioner Jones to approve the following:

Recommendation 91-10

The Parks Board recommends that the BOCC direct staff to take actions necessary to install lights at the tennis courts owned by the County on 33rd Street Gulf-side in Marathon, to be financed with impact fees, and to include a pay meter system.

Recommendation 91-11

The Parks Board recommends that the Public Works Department continue to yearly seek and acquire TDC funds for the use of beach maintenance.

Roll call vote was unanimous.

Motion was made by Commissioner Stormont and seconded by Commissioner London to adopt the following Resolution declaring the support of the County Commissioners of legislation to exclude Robbie Safe Harbor Marine Enterprises, Inc. from the Coastal Barrier Resources System. Roll call vote was unanimous.

RESOLUTION NO. 004-1992

See Res. Book No. 105 which is incorporated herein by reference.

Consent Agenda  
Boundary Determinations

Motion was made by Commissioner Jones and seconded by Commissioner London to adopt the following Resolution confirming the Administrative Boundary Interpretation of the Planning Director in Land Use District Map Boundary Interpretation Number 80, Lots 14, 15, 16 and 20, Block 7, Thompson's Subdivision, Key Largo, Monroe County, Florida, approximately Mile Marker 99. Roll call vote was unanimous.

RESOLUTION NO. 005-1992

See Res. Book No. 105 which is incorporated herein by reference.

Motion was made by Commissioner London and seconded by Commissioner Jones to adopt the following Resolution confirming the Administrative Boundary Interpretation of the Planning Director in Land Use District Map Boundary Interpretation Number 81, Lot 14, Raes Cuda Canal, Key Largo, Monroe County, Florida, approximately Mile Marker 95. Roll call vote was unanimous.

RESOLUTION NO. 006-1992

See Res. Book No. 105 which is incorporated herein by reference.

There being no further business, the meeting was adjourned.

\* \* \* \* \*

BOC 5/04  
11/15/04

Commissioner McCoy and Commissioner Nelson excused themselves from the meeting.

### COMMISSIONERS' ITEMS

Motion was made by Commissioner Neugent and seconded by Commissioner Rice to adopt the following Resolution reaffirming the County's support to remove Robbie's Safe Harbor Marine, Enterprises, Stock Island from the Coastal Barrier Resources System. Robbie Reckwerdt representing Robbie's Safeharbor Marine Enterprises addressed the Board. Motion carried unanimously, with Commissioner McCoy and Commissioner Nelson not present.

S. Neugent

### RESOLUTION NO. 426-2004

Said Resolution is incorporated herein by reference.

Commissioner McCoy and Commissioner Nelson returned to the meeting and took their seats.

### PUBLIC HEARINGS

**BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: September 10, 2012 Division: County Attorney

Bulk Item: Yes  No  Staff Contact Person: Suzanne Hutton, 292-3470

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**AGENDA ITEM WORDING:**

Discussion and approval of settlement agreement in the *Florida Association of Counties, et. al., v. the Florida Department of Revenue and the State of Florida Agency for Health Care Administration* (Medicaid) lawsuit and approval for the County Administrator to execute Exhibit One.

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**ITEM BACKGROUND:**

Monroe County joined 56 other counties, and the Florida Association of Counties (FAC), in filing a lawsuit challenging the enactment of HB 5301. The lawsuit challenged the constitutionality of the law's enactment and the legality of back billing the counties for invoices dating back to November 2001. Pursuant to negotiation, the overall liability to the 67 counties has been reduced from \$373 million to \$162 million. Monroe County's Medicaid liability has been reduced from over \$3.3 million to \$1,635,829.41. The settlement includes provisions for periodic payment of the backlog over a period of 5 years. The settlement also allows the County to pay the back log from a revenue source of the County's choosing rather than having the County's portion of Revenue Sharing withheld. The FAC and counsel are continuing to negotiate language regarding the correction of billing errors and the procedures for challenging billing errors. The recommendation from counsel is to accept the settlement.

This item is being placed on the agenda as a placeholder since the language of the settlement agreement is still being finalized. The settlement agreement will be provided once it is finalized.

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**PREVIOUS RELEVANT BOCC ACTION:** Approved joining lawsuit at the April 2012 regularly scheduled BOCC meeting.

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**CONTRACT/AGREEMENT CHANGES:** N/A

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**STAFF RECOMMENDATIONS:** Approval

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**TOTAL COST:** \$1,635,829.41 **INDIRECT COST:** \_\_\_\_\_ **BUDGETED:** Yes  No

**DIFFERENTIAL OF LOCAL PREFERENCE:** \_\_\_\_\_

**COST TO COUNTY:** \$1,635,829.41 **SOURCE OF FUNDS:** (TBD)

**REVENUE PRODUCING:** Yes  No  **AMOUNT PER MONTH** \_\_\_\_\_ **Year** \_\_\_\_\_

**APPROVED BY:** County Atty  OMB/Purchasing  Risk Management

**DOCUMENTATION:** Included To Be Provided Not Required

**DISPOSITION:** \_\_\_\_\_ **AGENDA ITEM #** \_\_\_\_\_

## ***Dudek v. Alachua***

### ***Stipulation Providing for Dismissal of Some Parties and Abatement of Case for Remaining Parties***

Contains multiple WHEREAS clauses, reciting many concessions and joint work that has been accomplished since the filing of the litigation. Among these accomplishments are the following:

- A 57% decrease in the statewide backlog amounts owed
- The opportunity for all counties to make a one time partial or total payment on the certified backlog amount and avoid or reduce revenue share withholding
- An identification of errors in the billing system
- A commitment to the creation of a joint workgroup between FAC and AHCA to continue working on problem identification and solutions
- An Advance Refund Request process that allows for review and withholding from payment disputed bills until further research can be conducted
- A Back End Refund Request process to dispute and resolve errors in billing
- An offer to those counties challenging the backlog in a Chapter 120 proceeding, a 90 day automatic stay in the proceedings so that negotiations can be conducted, individually between the county and AHCA
- Standardized and date certain review processes for bills; receipts for payments made and tracking of refund requests
- The opportunity to avoid Half Cent withholding by making direct monthly payments, by check or wire transfer

Additional recognitions are contained in the Stipulation. As to the active parts of the Stipulation, there are three categories of counties: settling, abating, and non-plaintiff. These categories are explained below.

### ***SETTLEMENT OPTION***

#### **Paragraph (3)**

Dismiss with prejudice Counts I and II; dismiss without prejudice Count III. In exchange for this dismissal, the settling counties are offered a direct periodic payment plan for the backlog of the county's choosing (e.g., monthly, quarterly). This allows the settling counties to avoid revenue share withholding for the backlog altogether.

The periodic direct payment plan option is available to all counties, whether challenging the backlog in a 120 proceeding or not, and whether a party to the litigation or not (para 11))

Settling counties will have the option to enter into a payment plan (monthly, quarterly, bi-annually) for the backlog. This option allows the county to choose the revenue source from which to pay the backlog amount for that incremental time.

Pre-payment, by the 5<sup>th</sup> of the month, quarter, other longer increment (para (7))

Can only miss one payment, then cannot have access to plan anymore. All future payments will be automatically deducted from revenue sharing (para (8))

AHCA acknowledges that the settling counties do not waive any right to assert any valid affirmative defenses it would otherwise have been able to assert in an administrative proceeding under the law being challenged by this litigation.

A county exercises this settlement choice by signing the Notice, found at Exhibit 6. The notice must be sent by email and US Mail by September 12, 2012.

A settling county that is not able to attain the final, formal approval necessary to settle, due to the short time frame, may provide a Tentative Notice of Acceptance (Exhibit 1), signed by the Chair of the BoCC or a member of senior staff (defined term), by September 12, 2012, the same as a settling county. The formal authority must be obtained by October 12, 2012.

### **ABATEMENT OPTION**

Paragraph (4)

For those counties choosing to remain in the litigation.

The litigation is being held in abeyance until December 31, 2012.

Any county or party can, however, individually dismiss the complaint without prejudice at any time and either refile an action on its own behalf or not.

This option is the default option. No notice is required to be provided in order to be in this category.

### **NON-PARTY COUNTIES**

Have the same access to the settlement option, and the periodic direct payment plan on the backlog. A limited waiver must be provided (Exhibit 5). These counties would be foregoing the opportunity to make a circuit court challenge to HB 5301 on the basis of a violation of the Unfunded Mandates Provision of the Florida Constitution. The waiver must be emailed and postmarked by September 12, 2012.

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA**

ALACHUA COUNTY, FLORIDA;  
ET AL,

Plaintiffs,

Case No.: 2012-CA-1328

vs.

ELIZABETH DUDEK, in her official capacity as  
SECRETARY of the STATE OF FLORIDA, AGENCY  
FOR HEALTH CARE ADMINISTRATION; and  
LISA VICKERS, in her official capacity as  
EXECUTIVE DIRECTOR of the STATE OF  
FLORIDA, DEPARTMENT OF REVENUE,

Defendants.

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**STIPULATION PROVIDING FOR DISMISSAL OF SOME PARTIES  
AND ABATEMENT OF CASE FOR REMAINING PARTIES**

This Stipulation Providing for Dismissal of some Parties and Abatement of Case for Remaining Parties is entered into between Plaintiffs ALACHUA COUNTY, FLORIDA; BAY COUNTY, FLORIDA; BREVARD COUNTY, FLORIDA; BRADFORD COUNTY, FLORIDA; BROWARD COUNTY, FLORIDA; CHARLOTTE COUNTY, FLORIDA; CITRUS COUNTY, FLORIDA; CLAY COUNTY, FLORIDA; COLLIER COUNTY, FLORIDA; DESOTO COUNTY, FLORIDA; DIXIE COUNTY, FLORIDA; DUVAL COUNTY, FLORIDA; ESCAMBIA COUNTY, FLORIDA; FLAGLER COUNTY, FLORIDA; FRANKLIN COUNTY, FLORIDA; GADSDEN COUNTY, FLORIDA; GILCHRIST COUNTY, FLORIDA; GULF COUNTY, FLORIDA; HAMILTON COUNTY, FLORIDA; HARDEE COUNTY, FLORIDA; HENDRY COUNTY, FLORIDA; HERNANDO COUNTY, FLORIDA; HIGHLANDS COUNTY, FLORIDA;

HILLSBOROUGH COUNTY, FLORIDA; INDIAN RIVER COUNTY, FLORIDA; LAFAYETTE COUNTY, FLORIDA; LAKE COUNTY, FLORIDA; LEE COUNTY, FLORIDA; LEON COUNTY, FLORIDA; LEVY COUNTY, FLORIDA; LIBERTY COUNTY, FLORIDA; MADISON COUNTY, FLORIDA; MANATEE COUNTY, FLORIDA; MARION COUNTY, FLORIDA; MARTIN COUNTY, FLORIDA; MIAMI-DADE COUNTY, FLORIDA; MONROE COUNTY, FLORIDA; NASSAU COUNTY, FLORIDA; OKALOOSA COUNTY, FLORIDA; OKEECHOBEE COUNTY, FLORIDA; OSCEOLA COUNTY, FLORIDA; PASCO COUNTY, FLORIDA; PINELLAS COUNTY, FLORIDA; POLK COUNTY, FLORIDA; PUTNAM COUNTY, FLORIDA; SANTA ROSA COUNTY, FLORIDA; SARASOTA COUNTY, FLORIDA; SEMINOLE COUNTY, FLORIDA; ST. JOHNS COUNTY, FLORIDA; ST. LUCIE COUNTY, FLORIDA; SUWANNEE COUNTY, FLORIDA; TAYLOR COUNTY, FLORIDA; VOLUSIA COUNTY, FLORIDA; WAKULLA COUNTY, FLORIDA; and WALTON COUNTY, FLORIDA; (hereafter the "Counties") and the FLORIDA ASSOCIATION OF COUNTIES (hereafter the "Association") and the Defendants, ELIZABETH DUDEK in her official capacity as Secretary of the State of Florida Agency for Health Care Administration (hereafter the "Agency") and MARSHALL STRANBURG in his official capacity as Interim Executive Director (in place of former Executive Director, LISA VICKERS) of the State of Florida Department of Revenue (hereafter the "Department"), collectively Plaintiffs and Defendants are hereafter the "Parties."

**WITNESSETH:**

**WHEREAS**, Plaintiffs have filed a Complaint against Defendants challenging the constitutionality of certain legislation (i.e., HB 5301), which was adopted by the House and Senate in the 2012 Legislative Session and signed into law by the Governor on March 29, 2012.

HB 5301 is now known as Chapter 2012-33, Laws of Florida. Section 12 of Chapter 2012-33 amends section 409.915, Florida Statutes, which relates to county contributions to Medicaid.

**WHEREAS**, Section 12 of Chapter 2012-33 (hereafter, "Section 12") amends section 409.915, Florida Statutes, as it previously existed to include:

a. Section 12 requires the Agency to certify to each county the amount of such county's unpaid billings from November 1, 2001, through April 30, 2012 (the "Prior Unpaid Amounts").

b. Section 12 provides that Counties may challenge the Prior Unpaid Amounts in an administrative process under chapter 120, Florida Statutes. Counties that do not challenge the Prior Unpaid Amounts shall pay only 85% of that county's Prior Unpaid Amounts. Counties that prove by a preponderance of the evidence that the Prior Unpaid Amounts were incorrect will be entitled to a credit on future payments.

c. Section 12 implements a "collection enforcement mechanism" in order to require Counties to pay for the Prior Unpaid Amounts. Over a five year period beginning October, 2012, the Department will deduct from each county's monthly distribution pursuant to section 218.26, Florida Statutes (the "County Revenue Sharing Funds"), that county's portion of the Prior Unpaid Amounts as certified by the Agency. The Department must leave sufficient County Revenue Sharing Funds to service outstanding debt secured by such funds.

d. Section 12 provides that, beginning May 7, 2012 and continuing on the 7th day of each month thereafter, the Agency will certify the Counties' monthly share of Medicaid reimbursement ("Future Billings") and thereafter the Department will deduct

Half Cent Sales Tax Funds from each County's distribution pursuant to section 218.61, Florida Statutes. Section 12 further provides, however, that the Department must leave sufficient Half Cent Sales Tax Funds to service outstanding debt secured by such funds.

e. Section 12 provides that Counties may contest Future Billings by requesting a refund under a process to be determined by the Agency, the Department, and FAC - which process is currently under rule development by the Agency. If the Agency determines the refund request is appropriate, the Department may refund the amount to the county from the General Revenue Fund or issue the refund in the form of a credit against the Future Billings which process is currently under development by the Agency.

**WHEREAS**, Plaintiffs have concern with the following circumstances, provisions or practices among others:

a. Section 12 requires monthly payment of prior unpaid amounts from each County's monthly distribution pursuant to § 218.26, Florida Statutes, of the Counties' revenue sharing monies rather than from a revenue source of each County's choosing.

b. Section 12 requires monthly future billings to be paid from the Counties' distribution pursuant to § 218.61, Florida Statutes of the shared Half Cent Sales Tax Funds rather than from a revenue source of each County's choosing.

**WHEREAS**, the Complaint filed by Plaintiffs includes three (3) counts. The first and second counts assert challenges pursuant to Article VII, section 18(a) and (c), Florida Constitution, for violation of the unfunded mandate provisions. The third count asserts that

unpaid claims extending from 2001 - 2008 are time barred pursuant to §§ 95.11(3)(f) and (p) and 95.11(6), Florida Statutes (2011).

**WHEREAS**, the Parties have worked together to identify and correct billing system errors.

**WHEREAS**, the Counties have had unprecedented access to Agency staff for collaboration in seeking solutions.

**WHEREAS**, the Parties, are creating a Joint Work Group comprised of representatives from the Agency and the Association (on behalf of the Counties) to raise, address and solve ongoing concerns and problems, that will meet on a regularly scheduled basis.

**WHEREAS**, to facilitate the orderly payment of these claims, the Agency has authorized the Counties to make a one time prepayment in whole or in part, to reduce or avoid the burden of revenue share withholding.

**WHEREAS**, in order to administer these claims, the Agency has permitted counties to dispute Prior Unpaid Amounts (sometimes referred to as "Backlog" claims) based upon Agency policies in effect at the time each claim was originally disputed.

**WHEREAS**, working in conjunction with the Counties, the Agency has created and implemented an Advanced Refund Request (ARR) process, allowing a prepayment dispute process on claims, and extending that process through April 2013.

**WHEREAS**, working in conjunction with the Counties, the Agency has created and implemented a Back End Refund Request (BERR) process, including the allowance of filing BERRs on the denied ARR, and thus allowing a prepayment dispute process on these claims as well, with finality and appeal rights.

**WHEREAS**, the Agency, working in conjunction with the Counties, has provided for direct monthly payments on prospective bills in order to allow Counties to choose to avoid revenue share withholdings.

**WHEREAS**, the Florida Department of Children and Families (“DCF”), working in conjunction with the Agency and the Counties has permitted the Counties unprecedented access to the DCF Medicaid eligible recipient address database.

**WHEREAS**, the Agency working in conjunction with the Counties, has provided for a 60 day County review cycle, and a date certain for receipt of monthly statements on the second business day of the month, as well as a process of tracking payments, refunds, and credits on a monthly basis.

**WHEREAS**, the Agency working in conjunction with the Counties, has created detailed time frames for responses and dispute resolution methods to avoid such backlogs from ever happening again.

**WHEREAS**, the Agency working in conjunction with the Counties, has worked to enhance the fairness of the collection system by: 1) providing a \$0 certification for the first month that HB 5301 was to be implemented, on May 7, 2012; 2) allowing for direct monthly payments on prospective bills to allow Counties to choose to avoid Half Cent Sales Tax withholding; 3) authorizing a one-time prepayment in whole or in part, by 11:59 p.m., Eastern Standard Time, on September 13, 2012 to allow Counties to choose to reduce or avoid the burden of revenue share withholding; and 4) has provided preliminary backlog statements in advance of the August 1, 2012 statutory certification date in order to facilitate the review and resolution of these disputed claims.

**WHEREAS**, the Counties, working in conjunction with the Agency and in order to show their willingness to pay their fair share of the State's Medicaid payment, have paid those amounts which are accurate, and due and owing during the pendency of this litigation.

**WHEREAS**, the Agency has begun the rule making process as required by Section 12 and has been working cooperatively with the Counties and the Association in an effort to address many of the Counties' concerns regarding how the collection process will be administered in the future and how the monthly payments for prior and future billings might be made directly to the Agency from revenue sources of the county's choice rather than providing for certification and automatic deduction by the Department from county revenue sources shared with the State.

**WHEREAS**, the Parties recognize that the Chapter 120 process has been legislatively sanctioned as the forum for disputes relating to the backlog amounts under HB 5301, and no abridgement of any rights to make such challenges is contemplated by this Stipulated Settlement and Dismissal.

**WHEREAS**, the Parties recognize that the Department's role is primarily ministerial and the Department does not have a role in disputing Medicaid billings unless there is an issue of the protection of existing bond commitments required under HB 5301.

**WHEREAS**, the Parties by entering into this stipulation recognize that the circumstances of the Counties on an individual basis may differ substantially; i.e., some Counties may be willing to accept the 15% discount available to Counties that do not challenge the Agency's certification, some Counties may want to bring an action under Chapter 120 challenging the prior unpaid amount that the Agency has certified including the right to assert a claim for what

the Counties perceive to be stale or time barred. Some Counties will be willing to dismiss their claims and some, though not prepared to dismiss their claims at this time are willing to agree to an abatement to facilitate further resolution of this matter, for an undefined period, but no later than December 31, 2012.

**NOW THEREFORE**, in consideration of the mutual promises set forth herein and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The above recitals are true and correct and by this reference are incorporated herein.

2. Those Counties and Association under this stipulation may choose between one of the two options (i.e., a SETTLEMENT OPTION or an ABATEMENT OPTION) set forth in paragraphs 3 and 4 below.

3. The SETTLEMENT OPTION is for Counties (or the Association) that intend to withdraw from this litigation. This includes both Counties that do not intend to challenge the Prior Unpaid Amounts and Counties that do intend to challenge the Prior Unpaid Amounts under Chapter 120 Florida Statutes. As to these Counties the Complaint will be deemed to be dismissed with prejudice as to Counts I and II and without prejudice as to Count III. As to these Counties, the Agency, as provided in paragraph 7 below, will accept periodic direct payment of such County's Prior Unpaid Amount. The Agency acknowledges that a county which enters into this Agreement does not thereby waive the right to assert any valid affirmative defense it would otherwise have been able to assert in an administrative proceeding pursuant to Section 409.915(7)(a), Florida Statutes. Counties choosing the SETTLEMENT

OPTION must provide notification of this choice to the Agency by sending a scanned copy of a signed and verified stipulation form (the "Stipulation Form") attached hereto as Exhibit 6 by email and U.S. Mail to the Agency's General Counsel (with a copy to the Association) which is emailed and post marked no later than September 12, 2012. An initial list of those Counties (or Association) choosing the SETTLEMENT OPTION is set forth in Exhibit 2.

4. The ABATEMENT OPTION is for Counties (or the Association) that intend to remain in this litigation. These Counties (including the Association) together with the Agency and the Department agree that this litigation will be held in abeyance by mutual agreement to facilitate further resolution of this matter for an undefined period but no later than December 31, 2012. This abatement is to the litigation only, and all provisions and deadlines of HB 5301 continue to take effect as set forth therein. The Parties acknowledge that the abatement applies only to the litigation and does not abate or otherwise affect the requirements imposed on the Parties by statute. Provided that nothing in this Stipulation shall prevent an abating county from individually dismissing the Complaint without prejudice and re-filing an action on its own behalf. An initial list of those parties choosing the ABATEMENT OPTION is set forth in Exhibit 3.

5. The Agency further agrees that any County (whether agreeing to settle or not) filing a Chapter 120 challenge of the Prior Unpaid Amount will be offered the opportunity to abate those proceedings to facilitate further resolution of the matter for a period not less than 90 days, which period may be extended upon the mutual agreement of the parties to such proceeding.

6. The Parties agree that Exhibits 2 and 3 of the Stipulation can be amended by the Association to add to Exhibit 2 the names of additional Counties choosing to settle and delete from Exhibit 3 the names of those Counties choosing to settle by filing such information in an addendum no later than September 16, 2012 at 5:00 p.m. (Eastern/Standard Time).

7. The Parties recognize that section 409.915(8), Florida Statutes, as amended by Section 12, provides for the payment of each county's Prior Unpaid Amount by the automatic deduction by the Department (over a sixty (60) month, or longer, time period) of each County's revenue sharing distribution. The Parties further recognize that the calculation and amount of each County's monthly deduction can be obtained from the Agency. As an accommodation to those Counties choosing THE SETTLEMENT OPTION that would like to avoid the automatic deduction of their revenue sharing distribution and that would like to make payments from a revenue source of their choosing, the Agency and Department agree that such Counties shall make periodic advance payments (in monthly, quarterly or greater increments or to be specified at the time the county enters into a payment plan with the Agency) to the Agency on or before October 5th by 11:59 p.m., (Eastern/Standard Time) and on or before the fifth day of each month thereafter by 11:59 p.m. (Eastern/Standard Time) from a revenue source of the County's choosing (unless an advance payment has already been submitted for that month). Once the Agency enters into a payment plan with a county, the Agency shall notify the Department of the details of the payment plan. If the incremental payment is not received by 11:59 p.m. of the date payment is required, the Agency shall notify the Department and the Department shall deduct that month's payment from that County's revenue sharing distribution. As set forth in paragraph 8 below, it is further agreed that a county's ability to continue to make the advance

payments provided in this paragraph shall be lost if the county fails to make a timely advance payment to the agency.

8. The Parties agree that if a County's incremental payment is not timely received by the Agency pursuant to paragraph 7, supra, that such County shall be in material and irreparable breach of this Agreement. As a consequence of that breach the Agency shall, within two (2) business days, amend its prior certification to the Department pursuant to section 409.915 (7), Florida Statutes, to include all amounts remaining unpaid by that County at the time of the breach. The Department shall act upon the Agency's amended certification in accordance with section 409.915 (8), Florida Statutes, by thereafter reducing the breaching County's distributions pursuant to that subsection, prospectively, from the time of the Agency's amended certification. The Counties hereby waive their right to administratively challenge the Agency's determination as to whether a payment has been timely received pursuant to this paragraph and paragraph 7, supra.

9. The Agency agrees to include the provisions of Composite Exhibit 4 in its proposed rules and further to move forward and work with the Counties and the Association in good faith with the proposed rules that are presently being considered for adoption. The Parties acknowledge that the Agency's draft rule attached hereto as Composite Exhibit 4 is presently in the administrative rulemaking process pursuant to Section 120.54, Florida Statutes, and that the draft rule will not become final until that process, including any administrative challenges that may be brought under Chapter 120, Florida Statutes, is successfully completed. The Parties agree that, should the rule or any other aspect of this settlement be successfully

challenged under Chapter 120, Florida Statutes, and be ruled invalid, it shall not constitute a breach by the Agency of this agreement or of any order entered that adopts this agreement.

10. The Parties agree that if any provision of this agreement is ruled by a judicial or administrative tribunal to be illegal, unenforceable, or void, then the Parties shall be relieved of their respective obligations arising under such provision, and the validity of the remainder of the agreement shall not be affected.

11. The Parties agree that in the interest of fairness the SETTLEMENT OPTION set forth in paragraph 3 above shall also be available to Counties that have not joined as Plaintiffs in this action, (the "Non-Plaintiff Counties") where any such County provides to the Agency by email and U.S. Mail to the Agency's General Counsel (with a copy to the Association), which is emailed and postmarked no later than September 12, 2012, a notice and waiver of such Counties' ability to pursue an action in Circuit Court challenging HB 5301 on the basis of an alleged violation of the unfunded mandate provisions of Art. VII, Sec. 18, Florida Constitution in substantially the form of the notice and waiver attached hereto as Exhibit 5. The Association shall provide a copy by email of this Stipulation to the County Attorney of all Non-Plaintiff Counties.

12. The Agency is willing to accept a tentative notice of acceptance of the settlement option (the "Tentative Notice of Acceptance") from those counties (both Plaintiff Counties and Non-Plaintiff Counties) that have not had an opportunity to make a formal determination of which option to accept. The Tentative Notice of Acceptance must be provided by the Chairman of the Board of County Commissioners or a member of such County's Senior Staff. The Tentative Notice of Acceptance must be accompanied by evidence that the Board of County

Commissioners will be formally considering the County's options no later than October 12, 2012, at 11:59 p.m. (Eastern/Standard Time) and shall be substantially the form attached hereto as Exhibit 1. Notice of the subsequent formal action of the Board of County Commissioners approving the settlement option ("Notice of Approval") must be provided by sending a scanned copy of a signed and verified Stipulation as provided in Exhibit 6 by email and U.S. Mail to the Agency's General Counsel (with a copy to the Association) and to the Department's Office of General Counsel no later than October 13, 2012 at 5:00 p.m. (Eastern/Standard Time). If a properly executed Notice of Approval which evidences that County's formal approval of the settlement option is not timely received by the Agency pursuant to this paragraph, that event shall constitute a material and irreparable breach of this Agreement. As a consequence of that breach the Agency shall, within two (2) business days, amend its prior certification to the Department pursuant to section 409.915 (7), Florida Statutes, to include all amounts remaining unpaid by that County at the time of the breach. The Department shall act upon the Agency's amended certification in accordance with section 409.915 (8), Florida Statutes, by thereafter reducing the breaching County's distributions pursuant to that subsection, prospectively, from the time of the Agency's amended certification. The Counties hereby waive their right to administratively challenge the Agency's determination as to whether a payment has been timely received pursuant to this paragraph

13. The Parties hereby agree that the signing of this Stipulation by any of them does not constitute an admission of any liability or wrongdoing whatsoever. Rather, the Parties have entered into this Stipulation in a desire to amicably compromise their differences and avoid protracted litigation, by dismissal and abatement.

14. This Stipulation shall not be construed against any one party, but shall be construed as if it were prepared jointly by all of them, and any uncertainty or ambiguity, or both, shall not be interpreted against any party.

15. The Parties agree that each shall pay their own attorney's fees and costs incurred in connection with this litigation.

DATED this \_\_\_\_ day of September, 2012.

/s/

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/s/

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/s/

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Stuart Williams, General Counsel  
Bill Roberts, Deputy General Counsel

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**EXHIBIT 1**

\_\_\_\_\_, 2012

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Re: Tentative Notice of Acceptance

Dear Mr. Williams & Mr. Mellichamp:

The purpose of this letter is to advise the Agency for Healthcare Administration (the "Agency") and the Florida Department of Revenue (the "Department") that [\_\_\_\_\_] County (the "County") intends to provide Tentative Notice of Acceptance that the County has elected to accept the Settlement Option as provided in paragraph 3 of **Stipulation Providing for Dismissal of Some Parties and Abatement of Case for Remaining Parties** (the "Stipulation") entered into in the case of *Alachua County, et al. vs. Elizabeth Dudek, et al.*, Case No. 2012-CA-1328 in the Circuit Court for the Second Judicial Circuit in and for Leon County, Florida (the "Lawsuit").

Although, the County intends to settle the Lawsuit, the Board of County Commissioners has not had the opportunity to formally consider the matter. Please accept this as the County's Tentative Notice of Acceptance of the Settlement Option. Attached I have provided evidence indicating that the County will formally consider the Settlement Option no later than October 12, 2012 at 11:59 p.m. (Eastern/Standard Time).

\_\_\_\_\_  
[Senior Staff/County Administrator/  
Manager/Deputy County Administrator/  
County Attorney]

cc: Ginger Delegal, General Counsel  
Florida Association of Counties

**EXHIBIT 2**

**List of Counties Choosing the Settlement Option:**

**EXHIBIT 3**

**List of Counties Choosing to Abate:**

**COMPOSITE EXHIBIT 4**

Notice of Change/Withdrawal

**AGENCY FOR HEALTH CARE ADMINISTRATION**

**Medicaid**

RULE NO.: RULE TITLE:

59G-1.025: Medicaid County Billing

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 38 No. 26, June 29, 2012 issue of the Florida Administrative Weekly.

The following changes have been made to the proposed rule.

THE FULL TEXT OF THE PROPOSED RULE IS:

59G-1.025 Medicaid County Billing.

(1) Retrospective Bills. This paragraph applies to the certification of county billings from November 1, 2001, through April 30, 2012, that remain unpaid, as provided in section 409.915(7), F.S.

(a) By August 1, 2012, the Agency will certify to each county the amount that is unpaid for retrospective bills.

(b) By September 1, 2012, a county may contest the amount certified by filing a petition under the applicable provisions of chapter 120. This procedure is the exclusive method to challenge the amount certified.

(c) September 13, 2012, 5:00 p.m. Eastern ~~Standard~~ Time, each county may make total or partial payment in the form of a check or wire transfer to the Agency of the amount certified by the Agency pursuant to subsection (1)(a).

(d) By September 15, 2012, the Agency will certify to the Department of Revenue:

1. 100 percent of the amount provided in subsection (1)(a) minus amounts credited to the counties and/or amounts paid and received by the Agency pursuant to subsection (1)(c) for each county that challenges the certified amount by filing a petition pursuant to subsection (1)(b) by ~~September 1, 2012~~.

2. 85 percent of the amount provided in subsection (1)(a) minus amounts credited to the counties and/or paid and received by the Agency pursuant to section (1)(c) for each county that does not challenge the certified amount by filing a petition pursuant to subsection (1)(b) by ~~September 1, 2012~~.

(2) Prospective Bills. This paragraph applies to the monthly amount of each county's contribution to Medicaid as required in section 409.915, F.S. The monthly bills will be rendered to the counties no later than the second business day of the month.

(a) Certification

1. For all certifications prior to June 1, 2013, the Agency will certify to the Department of Revenue by the 7<sup>th</sup> day of each month the amount of the monthly bill rendered one month prior less any amounts as provided in subsections (2)(b) and (2)(c).

2. For the June, 2013 certification, the Agency will certify to the Department of Revenue the amount of the monthly bills rendered in May, 2013 and June, 2013 less any amounts credited to a county pursuant to subsection (2)(b).

3. Beginning July 1, 2013, the Agency will certify to the Department of Revenue by the 7<sup>th</sup> day of each month the amount of the monthly bill rendered that month less any amounts as provided in subsection (2)(b).

4. If the 7<sup>th</sup> day of the month falls on a weekend or holiday, certification will be completed on the first business day following the 7<sup>th</sup> day of the month.

5. If the Department of Revenue determines there are insufficient funds to pay a county's monthly certified amount, the Department will notify the Agency of the amount still owed, and the Agency will send an invoice to the affected county within two months of receiving the Department's notice. The county shall pay the invoice within 60 days of receipt. The balance on any invoice that remains unpaid after 60 days will be re-certified to the Department of Revenue in subsequent months until paid in full.

(b) Payments

Each county may choose to submit payment in the form of a check or wire transfer to the Agency. Such payment must be received by 5:00 p.m. Eastern Standard Time two business days prior to the date of certification.

(c) Refund Requests

1. ~~Advanced~~ Refund Request

a. No later than the last business day of each billing month, each county may request an ~~advanced~~ refund request through the county billing portal for those claims on the same monthly billing that the county disputes. If the request is less than or equal to the amount of the county's highest monthly dispute rate reasonable, the Agency will stay certification of the amount requested in the ~~for the~~ advanced refund request.

b. Refund requests resulting in certification amounts stayed will be researched within 60 days by the Agency.

I. Denied refund requests will be certified to the county on a subsequent bill no later than 45 days from the completion of Agency research.

II. Bills for which a refund request is granted on the basis that the bill should have been submitted to a different county will be transferred and certified to the appropriate county on a subsequent bill no later than 45 days from the completion of Agency research.

c. A county does not waive any right to paragraph (c)2., Back End Refund Request, by making an advanced refund request.

d. Except for ~~sub-paragraph 1.b, , subsection paragraph 1.~~ shall expire on April 30, 2013.

## 2. Back End Refund Request

a. Each county may request a back end refund request ~~no later than 60 days from the date of certification of the monthly bill for which the back end refund request is being requested the last business day of the month following the bill issuance, each county may request a back end refund request.~~ no later than 60 days from the date of certification of the monthly bill for which the back end refund request is being requested

b. Back end refund requests must be in writing and must include the reason and documentation for the request, ~~and be received by the agency by the last business day of the month in which that bill was certified.~~

c. Within ~~90~~ 60 days of receipt of the certification request, the Agency will notify the county whether the request is granted, either in part or in whole. If any portion of the request is denied, the agency will provide information as to the reasons for the denial. If any portion of the refund request is granted, the refund will be in the form of a credit notification to the Department of Revenue, or a credit applied to a subsequent bill, within 60 days of the Agency's decision. Approved refunds that should have been billed to a different county, will be

transferred to the appropriate county on a subsequent bill, within 60 days of the Agency's decision.

(d) Receipts

1. The Agency will provide each county a monthly receipt of amounts billed, amounts paid and amounts certified to the Department of Revenue.

2. The Agency will provide each county a monthly receipt of action taken on Advance Refund Requests.

Actions taken include:

a. ARR Denied – Advance Refund Request Denied and the claim will appear on a subsequent bill with a status of ARR Denied;

b. ARR Transferred Out – Advance Refund Request Transferred Out and the claim will be transferred to a different county than the county requesting Advanced Refund;

~~c. Adjusted and closed.~~

~~3. The Agency will provide each county a written receipt approving or denying each Back End Refund Request.~~

~~a. Approved Back End Refund Requests will be credited to a future bill.~~

~~b. Denied Back End Refund Request will state the reason for denial.~~

Rulemaking Authority 409.919 FS. Law Implemented 409.915 FS. History–New \_\_\_\_\_.

Notice of Change/Withdrawal

**AGENCY FOR HEALTH CARE ADMINISTRATION**

**Medicaid**

RULE NO.: RULE TITLE:

59G-1.020: Definition of County of Residence

NOTICE OF CHANGE

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 38 No. 26, June 29, 2012 issue of the Florida Administrative Weekly.

The following changes have been made to the proposed rule.

THE FULL TEXT OF THE PROPOSED RULE IS:

59G-1.020 Definition of County of Residence.

For the purpose of county financial participation in the Medicaid Program, the county of residence for inpatient hospital care and nursing home care is determined by the recipient's address information contained in the federally approved Medicaid eligibility system.

(1) For hospital claims, whether through fee-for-service or managed care, the address is based on the current living or residential address, with the exception of when the resident lives in a nursing home. When an recipient individual lives in a nursing home, the address is based on the prior address.

(2) For nursing home claims, whether through fee-for-service or managed care, the address is based on the prior address, except when an recipient individual is admitted to a nursing home directly from a place of residence outside of the State of Florida. If the recipient individual is admitted to a nursing home from another state, the nursing home address will be used for county billing purposes.

**COMPOSITE EXHIBIT 4**

(3) Since address information for children in custody of the Department of Children and Families is unavailable, counties are not responsible for these payments.

~~(1) A person is considered to be residing in a county when they establish or maintain a physical living arrangement, outside of a medical facility, which they or someone responsible for them, consider to be home. A visit to another county does not make a person a resident of that county, nor does a planned temporary living arrangement prior to admission in a medical facility. Except in unusual situations related to an extended visit, it makes no difference how long a person has been physically located in the county if they maintain a primary residence in another county, and intend to return to that county. In all instances the person's intent to reside in a county is the determining factor, regardless of the length of time involved.~~

~~(2) When an applicant has been admitted to a nursing home directly from a place of residence outside of the State of Florida, so that no Florida residency has been established, the certified county of residency will be considered as that county in which the nursing home is located.~~

~~(3) In situations that are not clear cut, or otherwise unusually complicated, the determination of residency should be made on the basis of the preponderance of evidence. If a decision is not possible on this basis, the case should be referred to the Office of Social and Economic Services for determination.~~

Rulemaking Authority 409.919 FS. Law Implemented 409.915 FS. History—New 1-1-77, Formerly 10C-7.31, 10C-7.031, Amended \_\_\_\_\_.

**EXHIBIT 5**

\_\_\_\_\_, 2012

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Email: joe.mellichamp@myfloridalegal.com

Re: Notification and Waiver by Non-Plaintiff County

Dear Mr. Williams & Mr. Mellichamp:

The purpose of this letter is to provide notification to the Agency for Healthcare Administration (the "Agency") and the Florida Department of Revenue (the "Department") that [\_\_\_\_\_] County (the "County") intends to take advantage of those provisions available to a "non-plaintiff county" as set forth in paragraphs 3, 7 and 10 of that **Stipulation Providing for Dismissal of Some Parties and Abatement of Case for Remaining Parties** (the "Stipulation") entered into in the case of *Alachua County, et al. vs. Elizabeth Dudek, et al.*, Case No. 2012-CA-1328 in the Circuit Court for the Second Judicial Circuit in and for Leon County, Florida (the "Lawsuit").

As you may know the County did not join in the Lawsuit and has not otherwise filed a challenge to that certain legislation (i.e., HB 5301) which was passed in the 2012 Legislative Session and signed into law by the Governor on March 29, 2012.

The County's Board of County Commissioners has authorized me [as Chairman of the Board of County Commissioners or County Administrator/Manager or County Attorney] to provide this notification and to provide a limited waiver of the right of the County individually or in concert with others to make a Circuit Court challenge of HB 5301 on the basis of an alleged violation of the Unfunded Mandate Provision of Art. VII, Sec. 18, Florida Constitution. This notification and waiver is not in any way deemed to affect the ability of the County to challenge the amount of prior unpaid Medicaid billings in a Chapter 120 proceeding (as provided by existing law). Further, the County is not waiving the ability to assert in such 120 challenge or a subsequent Circuit Court Challenge any defenses which it might have, including defenses related to the statute of limitations, laches and equitable estoppel.

cc: Ginger Delegal, General Counsel  
Florida Association of Counties

**EXHIBIT 6**

\_\_\_\_\_, 2012

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General Counsel  
State of Florida Agency for  
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Re: Verified Stipulation

Dear Mr. Williams & Mr. Mellichamp:

The purpose of this letter is to verify that [\_\_\_\_\_] County (the "County") has elected to take the Settlement Option provided in paragraph 3 of the **Stipulation Providing for Dismissal of Same Parties and Abatement of Case for Remaining Parties** filed in *Alachua County, Florida et al v. Elizabeth Dudek et al*; Case No.: 2012-CA-1328 in the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida. The County's election to take this option was made by [Resolution, Motion or Delegation to the County Attorney].

[If by Resolution or Motion, attach verified copies to letter, if possible.]

[If by Delegation to County Attorney, indicate that the Board of County Commissioners has provided parameters for settlement of this case and has authorized the undersigned to settle on behalf of the County.]

cc: Ginger Delegal, General Counsel  
Florida Association of Counties