BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: July 19, 2006 - KW

Division: County Attorney

Bulk Item: Yes X No ___

Department: County Attorney

Staff Contact Person: Bob Shillinger

AGENDA ITEM WORDING:
Approval of Standard Legal Services Agreement with the *Law Offices of Stephen J. Moore, P.C.* for professional legal services in *Collins v. Monroe County v. State of Florida*, CAM-04-379.

ITEM BACKGROUND:
Stephen J. Moore, Esq. is presently defending the County in *Collins v. Monroe County v. State of Florida*, CAM-04-379. Mr. Moore was previously billing the County for legal services as a sub-contractor under the agreement with *White & Smith. LLC* but is now billing independently since *White & Smith* has withdrawn from the case.

PREVIOUS RELEVANT BOCC ACTION:
On November 29, 2004, the Board entered into a contract with *White & Smith, LLC*. Stephen J. Moore was billing as a sub-contractor through that Agreement for his legal services.

CONTRACT/AGREEMENT CHANGES:
N/A

STAFF RECOMMENDATIONS:
Approval.

TOTAL COST: _____

BUDGETED: Yes X No ___

COST TO COUNTY: _____

SOURCE OF FUNDS: _____

REVENUE PRODUCING: Yes ___ No ___

AMOUNT PER MONTH ____ **Year** ____

APPROVED BY: County Atty X OMB/Purchasing ____ Risk Management ____

DIVISION DIRECTOR APPROVAL: Suzanne A. Hutton 7/05/06
SUZANNE A. HUTTON, COUNTY ATTORNEY

DOCUMENTATION: Included X Not Required ____

DISPOSITION: _____

AGENDA ITEM # _____

Revised 2/05

MONROE COUNTY, FLORIDA
STANDARD LEGAL SERVICES AGREEMENT
(LITIGATION)

AGREEMENT NUMBER:
CAY LIT 2006-02-01

THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, as the legislative and governing body of Monroe County, Florida, and in accordance with the powers enumerated in Section 125.01, Florida Statutes (the "County") and LAW OFFICES OF STEPHEN J. MOORE, P.C. (the "Attorney") hereby enter into this Agreement regarding the retention of Attorney by County to provide legal advice and services:

1. Client: The Client is the County, and to the extent ethically permissible, its elected and appointed officers and its' employees, unless County advises Attorney otherwise. In the event that Attorney cannot ethically represent individuals in addition to County, Attorney shall advise County in writing of that fact immediately.

2. Attorney: The Attorney is the individual named above and whose signature appears at the bottom of this Agreement. Attorney has been admitted to appear in this matter. ~~If Attorney practices with others who may also provide services to County, he or she understands that County expects that Attorney will be responsible for managing the representation, assuring compliance of others with the terms of this Agreement and ethical requirements, preparing and substantiating all bills, and communicating with County. Attorney may not delegate or outsource this work without full written disclosure to, and prior written approval from, the County.~~ * see attachment

3. Matter: Attorney has been retained by County in connection with the matter described in **Exhibit A.** Attorney represents that he or she is competent and available to handle that matter. In the event that additional matters are assigned by County to Attorney, this agreement shall apply to those matters as well, unless a separate Agreement is required by the County.

3.1. Review of ethical obligations before initiating representation: Attorney has conducted a thorough investigation and determined that neither Attorney nor his or her firm has any ethical impediment, real or potential, to representing County. To the extent that any ethical impediment, real or potential, is discovered or ever arises, Attorney shall immediately inform County in writing of the impediment (regardless of whether Attorney believes he or she has taken all steps necessary to avoid the impediment and regardless of whether Attorney believes that the impediment is insubstantial or questionable), make full disclosure of the situation to County, obtain County's express, written consent to continue the representation of the other client, and take all steps requested by County to avoid or mitigate the impediment. Attorney understands that, if a direct or indirect conflict of interest arises which, in the opinion of the County, cannot be avoided or mitigated under the Rules of Professional Conduct of The Florida Bar, County may, in its discretion, (a) obtain reimbursement from Attorney for all fees and expenses paid to Attorney in this matter; (b) obtain cancellation of all amounts allegedly owed by County to Attorney; and (c) obtain reimbursement for consequential expenses incurred by County, including the cost of replacement counsel.

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MONROE COUNTY ATTORNEY
MONROE COUNTY ATTORNEY

3.2. Limitations to scope of representation: Except where prohibited by the Rules of Professional Conduct of The Florida Bar, the Monroe County Attorney's Office will serve as co-counsel in all matters covered by this Agreement. As co-counsel, the Office attorney's will assist Attorney by performing tasks assigned by Attorney, including but not limited to serving as local counsel; securing the cooperation of County employee's, officers, and others in discovery and other matters; obtaining evidentiary materials from County files; assisting with discovery; attending hearings and depositions; filing pleadings; arranging for closed attorney-client sessions with the Board of County Commissioners; and performing other tasks as necessary and convenient for Attorney. Decisions as to tactical approaches to be utilized shall be the ultimate responsibility of the Attorney, and issues which rise to the level of a client decision shall be resolved by the Board of County Commissioners. Any further limitations or special conditions shall be as set forth in **Exhibit A.**

3.3. Term of Agreement and Representation: This Agreement and representation by Attorney is effective upon acceptance and approval by County in accordance with County's policies, ordinances, or governing statutes. The representation shall continue until terminated by either the County, or by the Attorney in accordance with ethical requirements.

3.4. County expectations and goals: The County expects the Attorney to seek the best resolution for the County at the lowest reasonable cost to the taxpayers. At the earliest reasonable point during the representation, the Attorney shall report to the County, via the County Attorney, any reasonable potential for settlement, including related settlement costs and expenses, the estimated chances of the County prevailing on the merits, and the potential financial exposure should the County not prevail on the merits. Any other expectations and goals shall be as set forth in **Exhibit A.**

4. Attorney Fee (Hourly): Attorney will be paid for his or her services based on the number of hours expended on behalf of County (rounded to the nearest tenth hour for each time entry), not to include time billable to or compensated by other clients, multiplied by the Attorney's hourly rate as set forth in **Exhibit A.** The following minimum billing documentation and time-keeper requirements are a condition precedent to payment by the County.

4.1. Non-billable time: Attorney will bill County only for time reasonably and necessarily incurred to render professional services on County's behalf in accordance with this Agreement. Time attributable to billing questions is not billable. Time expended by time-keepers who have not been approved by County as indicated on **Exhibit A** is also not billable.

4.2. Changes to hourly rates: Attorney will charge no more than the hourly rate quoted in **Exhibit A** throughout the duration of the matter, unless otherwise agreed in writing signed by County.

4.3. Discounts to other Clients: The rates Attorney will charge County represent the lowest rates charged by the same time-keepers to other clients. In the event that lower rates or discounts are provided to other clients, Attorney and approved time-keepers will also provide them on the same basis to County.

4.4. Additional time-keepers: Additional time-keepers may not be added to the matter without advance written approval from County. In the event that additional time-keepers providing services which are to be billed to the County are to be added to the staff, then their hourly rates shall be provided to County in advance, and, upon written approval by the County, their rates and billing practices shall comply with the requirements of this Agreement. Additional time-keepers approved by the County are listed in **Exhibit A** to this Agreement, and this **Exhibit A** may be amended from time to time, upon mutual agreement of the County and the Attorney, to evidence the then-current circumstances.

4.5. Existing work product: To the extent the Attorney makes use of existing work product, e.g., in the form of research previously performed for another County, then Attorney may bill only that time expended in using that work product for County. In other words, no premium, markup, or other adjustment may be made to bill County for time spent on work already performed.

4.6. Travel: Travel restrictions, including restrictions on billing time during travel, are set forth below.

5. Billing of Fees and Expenses: Attorney shall comply with the following requirements as to billing fees and expenses as a condition precedent to County's obligation to pay each bill:

5.1. Monthly bills: Unless otherwise agreed in a writing signed by the County, bills shall be issued monthly by Attorney within 15 days after the close of each month. Attorney understands that County requires prompt bills in part to facilitate effective management of the representation and fees.

5.2. Bill format: Attorney shall provide detailed, itemized bills which shall, at a minimum:

5.2.1 Description. Provide a general description of the matter, to include the name of the County department or constitutional officer, if not indicated in the title of the matter, for which legal services are being performed (e.g. Richard Roe v. Monroe County–EEO Claim).

5.2.2 Personnel. Clearly identify each person performing services (i.e., time-keepers) in conjunction with each entry.

5.2.3 Other Personnel. Clearly identify all persons who are not full-time lawyers employed by the Attorney's firm (including subcontractors, independent contractors, temporary employees, and outsourcing providers).

5.2.4 Time Records. Record the time expended by each time-keeper separately. In those situations where the minimum billing increment exceeds the actual time spent on a task and several of these "minor" tasks are performed, it is expected that the services will be aggregated until the total actual time spent meets the minimum billing increment.

5.2.5 Totals and By Task. State the amount of time expended by each time-keeper daily (and, within each day, broken down by task where more than one project or task was worked upon within the same day).

5.2.6 Task Description. Describe within each itemized daily task entry, in sufficient detail to readily allow the County to determine the necessity for and reasonableness of the time expended, the services performed, the project or task each service relates to, the subject and purpose of each service, and the names of others who were present or communicated wit in the course of performing the service. Included should be a reasonably specific delineation of services sufficiently itemized to allocate time within a matter to such categories of effort as Legal Research, Fact Gathering, Internal Conferences, Communications with Client, Particular Document Drafting, Court Appearance, Deposition Attendance, and so forth.

5.2.7 Summary of Rates. In a summary at the beginning or end of the bill, provide the current hourly rate for each time-keeper, the total time billed by each time-keeper in that bill, the product of the total time and hourly rate for each time-keeper, the total fees charged, and a reconciliation between the amount charged and any applicable estimated or budgeted amount, by task. In addition, each monthly statement should show the aggregate billing for that matter from the commencement of the matter through the currently-billed month.

5.2.8 Digital/Electronic Copy. County is currently using Time Matters and Time Billing software in the County Attorney's office, and prefers that an electronic reporting software which can be incorporated into the County's software data base for tracking and reporting purposes be used by Attorney. Attorney should discuss the capabilities of Attorney's billing system with County before rendering the first bill. County should receive a digital electronic/computerized version of each bill, together with a paper copy, to facilitate bill review.

5.3. Expenses: County will pay the actual, reasonable cost of the following expense items if incurred in accordance with the guidelines below and promptly itemized in Attorney's monthly bill:

5.3.1 Reimbursable expenses: Actual cost for necessary long distance telephone calls, telecopying at $.25 per outgoing page, overnight or expedited delivery, couriers, photocopying at $.15 per page, postage, court fees, and other expenses approved in advance by County or as listed below:

5.3.1.1. Expedited or emergency services: Attorney is expected to avoid using expedited or emergency services, such as express delivery services, couriers, telecopying, overtime, and so on, unless necessary because of unexpected developments or extremely short deadlines. County may refuse to pay for any such expenses when incurred routinely or because of Attorney's failure to manage the matter efficiently.

5.3.1.2. Computerized research: Attorney is expected to use computerized research services cost-effectively to reduce time spent on research, for example, while closely-monitoring computerized research to insure that the charges are reasonable and

necessary. Attorney is expected to pass through to County any discounts or other arrangements that reduce the cost of computerized services.

5.3.1.3. Photocopying: Attorney is encouraged to use outside copying services to reduce the cost of large-volume copying, provided that these expenses are efficient, cost-effective, and incurred and billed in accordance with this Agreement. Attorney is responsible for insuring that all copying complies with copyright obligations.

5.3.1.4. Transcripts: Transcripts should not be ordered without prior approval from County. Transcripts should not be ordered on an expedited basis unless necessary and approved in advance by County. Attorney should obtain digital electronic/computerized copies of transcripts when available at a reasonable cost to avoid charging for time spent digesting or indexing transcripts, and to allow County to maintain a digital electronic/computerized database of all transcripts.

5.3.1.5 Travel Expenses: Travel expenses within the Attorney's local or metropolitan area will not be reimbursed if the time spent in transit is billed. Travel expenses outside the metropolitan area may only be reimbursed if the travel was approved in advance by County. Reimbursable travel expenses, if approved in advance, are the cost of transportation by the least expensive practicable means (e.g., coach class air travel), the cost of reasonable hotel accommodations, and the cost of transportation while out of town (e.g., by cab or rental car, whichever seems reasonable, at the lowest available rate). Travel expenses will be reimbursed in accordance with the applicable provisions for "approved travelers" of the Monroe County Code, will be summarized on the Monroe County Travel Form with all applicable receipts attached thereto.

5.3.1.6 Travel Time. Time spent in transit, locally or otherwise, may be billed only if (a) Attorney or time-keeper is unable to avoid traveling by using other forms of communication and (b) Attorney or time-keeper is unable to bill time in transit to other clients. Travel by more than one time-keeper at the same time to the same destination is not allowed without prior approval from County. Approved travel time during time-keeper's normal business hours will be billed at the hourly rate listed for the time-keeper on **Exhibit A**. Approved travel time outside of time-keeper's normal business hour's will be billed at one-half the hourly rate listed for the time-keeper on **Exhibit A.**

5.3.2. Non-reimbursable expenses: The following expenses will in no event be reimbursable, unless specifically agreed to in advance in a writing signed by County:

5.3.2.1. Personal and Office Costs. Meals for time-keepers, overtime, word processing or computer charges, personal expenses, expenses that benefitted other clients, expenses for books, costs of temporary employees, periodicals or other library materials, internal filing or other document handling charges, clerical expenses, stationery and other supply expenses, utilities, and any other expense that is either unreasonable or unnecessary. (The fact that the firm charges other clients or that other firms charge their clients for an expense does not make it reasonable or necessary.)

5.3.2.2. Experts, consultants, support services, outsourced services, etc. Attorney is not authorized to retain experts, additional counsel, consultants, support services, or the like, or to out source or delegate work outside Attorney's law firm, without prior written approval by County. Attorney will be responsible for selecting and managing the services of others so that their services and expenses will be rendered in accordance with the terms of this Agreement, including terms applicable to Attorney. Attorney will manage others to obtain cost-effective services for County. Unless otherwise agreed in writing, Attorney shall obtain a written retainer agreement, in a form which may be specified by County, from each service provider, with bills from each provider being sent to both Attorney (for management purposes) and County (for review and payment).

5.3.2.3. Expenses not passed through at actual cost. County will not pay any markup for expenses. County will only reimburse the Attorney for their actual approved out-of-pocket costs and expenses, whether incurred personally by an approved time-keeper or incurred by other approved personnel (such as experts, consultants, support services personnel, or outsourced services personnel).

5.3.2.4. Overhead not charged to County. County will not pay for any "expense" items that are in fact part of Attorney's overhead which should be included within Attorney's fee.

5.3.3. Advance approval of expenses. In addition to the items noted above, Attorney shall obtain advance approval from County before incurring any expense in excess of $ 1,000.00 if Attorney expects to be reimbursed for that expense. County may refuse to pay any expense for which advance approval was not obtained by Attorney.

5.3.4. Copies of receipts for expenses. Attorney shall include copies of receipts for all expenses with the itemized monthly bill. County may refuse to pay any expense item for which documentation is not provided by Attorney.

5.3.5. Expenses (and fees) after termination. Upon termination of the representation, Attorney shall promptly bill County for any remaining reimbursable expenses and fees. County may refuse to pay any fees or expenses not billed within 45 days of termination of the representation. Attorney is also expected to cooperate promptly with all aspects of termination and, if applicable, transition to other counsel. Payment for fees and expenses is contingent upon prompt, full cooperation.

5.4. Bill and expense documentation. Attorney understands that Attorney must have documentation to support all aspects of each bill, including fees and expenses, and must maintain that documentation until at least one year after the termination of the representation. This documentation shall be made available by Attorney to County (or County's designated representative, including an accountant, the County Clerk or County Clerk's representative, or legal bill auditor) upon County's written request. Attorney agrees to cooperate with any examination of this documentation and Attorney's fees and expenses, e.g., by responding promptly and completely

to any questions County or its designated representative may have. Attorney shall notify County in writing at least 60 days in advance of destroying any such records and, in the event that County requests that they be preserved, shall preserve them at least one additional year or, at the option of the County, delivered to the County for storage by the County, with County responsible for paying the actual cost of storage. This documentation shall include, for example, original time records, expense receipts, and documentation supporting the amount charged by Attorney for expense items generated by the Attorney or his or her firm. County reserves the right not to pay any fee or expense item for which sufficient documentation is not available to determine whether the item was necessary and reasonable. Upon prior written Agreement by the County, Attorney may provide the documentation in digital electronic form in Adobe Portable Document Format (PDF) or in Alchemy format in lieu of the manual preservation requirements detailed above.

6. Payment terms: Attorney's request for payments and reimbursements may be made in either the Attorney's name or the name of the Attorney's law firm, as appropriate. Attorney bills complying with this Agreement are due and payable upon receipt. If the bill materially fails to comply with the requirements of this Agreement, then it is not due and payable until its deficiencies are remedied by Attorney. County is entitled to a 1% prompt payment discount if a bill is paid within 15 days of receipt by County or correction of deficiencies by Attorney, whichever is later, (or if the bill is satisfied by funds held by Attorney, e.g., in a trust account). County shall not be liable for interest or other late charges unless specifically agreed to in advance in a writing signed by County.

7. Budgets. Attorney will, within thirty (30) days after the effective date of this Agreement, prepare an estimate or budget of the likely costs, by task, of this matter, including fees and expenses, and a plan for handling the matter. Attorney will update the budget and plan at least once every three months. In the event that Attorney obtains information indicating that the budget (or any line item) may be exceeded by more than five percent, he or she will notify County of that immediately. In a written statement accompanying each bill, preferably in tabular form. Attorney will reconcile the budget with each month's bill, e.g., by explaining whether the billed amounts, by task, are more or less than the amounts budgeted therefore. County shall have the right not to pay any amounts that are over budget or not included within the budget.

8. Staffing and matter management. Attorney has been retained specifically because Attorney, personally, is understood by County to be able to handle this matter. Employment of additional individuals, whether attorneys, paralegals, or others, who will bill time to County is not permitted without the advance written approval of County.

8.1. Time-keeper changes. Changes in time-keepers, e.g., replacement of an attorney as well as increases or decreases in the number of the time-keepers working on the subject-matter of this Agreement, must have the advance written approval of County. County expects to receive discounts or other concessions so that any increases or changes in time-keepers will not result in unnecessary or unreasonable charges to County, e.g., for training, internal conferences, and management.

8.2. Duplication of effort. Unless advance County approval is obtained, Attorney will not have more than one time-keeper bill for court appearances, attendance at depositions and meeting, including meetings with County representatives, and internal conferences. In the event that more than one person attends, only the time of the person with the lowest rate will be billable. Attorney is not permitted to use this matter to provide on the job training for a time-keeper, and bill for that time-keeper's services, without County's advance approval.

8.3. Matter management. Attorney is responsible for managing the matter cost-effectively and competently, e.g., by insuring that additional time-keepers are competent, properly supervised, efficient, and in compliance with the terms of this Agreement as well as with ethical obligations.

8.4. Communications. County will expect that all communications between Attorney and County will be reviewed by Attorney and that Attorney will serve as the point of contact for this matter, including billing questions. The point of contact for this matter at County is the County Attorney or the individual specifically identified in **Exhibit A.**

8.5. Case monitoring. County will be advised promptly by Attorney of all significant facts and developments in the matter so that County may mange the matter effectively and made informed decisions about strategy, tactics, settlement, scheduling, costs, and other related matters. County will promptly receive from Attorney copies of all orders, opinions, pleadings, briefs, memoranda (internal and external), correspondence, and any other document material to the subject matter of this Agreement, such that the County will have a current, up-to-date, "mirror" copy of the County's file maintained by Attorney. For discovery materials or exhibits that are lengthy, Attorney should discuss them with County before providing a copy. Documents available in digital electronic/computerized form should be provided in that form in lieu of paper copies. ~~Additionally, Attorney may be required to submit, on a monthly basis, a case status and progress report to be submitted to the Board of County Commissioners. The format of the report shall be in the form required by the County Attorney~~.

8.6. Case control. Attorney shall discuss all significant issues of strategy and tactics, including motions, discovery, pleadings, briefs, trial preparation, experts, and settlement, with County before implementation. Attorney is expected to exercise independent professional judgment, but to implement the decisions of County as expressed to the County by the County Attorney.

8.7. Attorney cooperation. Attorney will cooperate with County or County's representatives to promptly provide all information County requests or needs about the subject matter of this Agreement and Attorney's bills.

8.8. County cooperation. Attorney should consult with County about all opportunities for County to save money or make use of County's expertise to assist in, e.g., responding to discovery, preparing for trial, locating experts, and the like. County may also have personnel and facilities available to reduce the expenses related to the subject matter of this Agreement.

8.9. Temporary staff, delegation, outsourcing. Attorney will not bill County for the time and expenses of temporary employees, including so-called "Temps" or contract attorneys or other staff from outside companies, nor "outsource" or delegate work, nor charge for summer associates, law clerks, or student clerks, (collectively "temporary staff" even if not temporarily employed) without full advance disclosure of the employee's temporary or short-term status to County, including disclosure of the actual amount paid or to be paid to the individual. Unless County expressly agrees in writing to paying additional amounts after full disclosure by Attorney, Attorney may not charge County more than the actual cost paid by attorney.

9. Confidentiality and public relations: Attorney is not authorized to waive or release any privilege or other protection of information – confidential, secret, or otherwise – obtained from or on behalf of County. Attorney is to keep all confidential, privileged, or secret information confidential. This requirement is perpetual, i.e., it will continue even after the termination of the relationship and this Agreement. This requirement is also intended to prohibit Attorney from using information obtained from or on behalf of County, including work product prepared at County's expense, for other client's of Attorney or his or her firm, without County's advance written approval. Attorney is not authorized to identify County as a County, e.g., for purposes of marketing or advertising, without County's prior approval. Upon termination of the representation, Attorney agrees to return promptly all information obtained from or on behalf of County to County. Attorney is not authorized to communicate with the public, including the press, about County or this matter without the advance approval of County.

10. Ownership of Attorney files and work product: Attorney understands that all files and work product prepared by Attorney or his or her firm at the expense of County (or for which County is otherwise billed) is the property of County. Without County's prior written approval, this work product may not be used by Attorney or his or her firm nor disclosed by Attorney or his or her firm to others, except in the normal course of Attorney's representation of County in this matter. Attorney agrees that County owns all rights, including copyrights, to materials prepared by County or by Attorney on behalf of County. Attorney shall notify County in writing at least 60 days in advance of destroying any such records and, in the event that County requests that they be preserved, shall preserve them at least one additional year (with County responsible for paying the actual cost of storage). Attorney shall provide County with prompt access to (including the ability to make copies of) all attorney files and work product, regardless of whether the representation or matter is ongoing and whether attorney fees and expenses have been paid in full.

11. Dispute resolution: Attorney and County agree that all disputes regarding Attorney's fees or expenses are to be resolved pursuant to the procedures and practices for mediation by the Attorney Consumer Assistance Program of the Florida Bar.

12. Governing law, modification of this Agreement, entire agreement: This Agreement is to be interpreted in accordance with the laws of Florida and with the ethical requirements of that jurisdiction. The Agreement may not be modified in any way without the express, written agreement of both parties. This represents the entire agreement of the parties.

13. Monroe County Code Ethics Provisions: This provision is found in Section 18.8 below.

14. Time Keeper Defined: As used in this Agreement, the term "time keeper" shall include Attorney and other attorneys and individuals identified in **Exhibit A** who will be providing services under this Agreement and who will bill the County for their services in accordance with this Agreement.

15. Methods of Approval and Consent By County: Any consents or approvals required by this Agreement to be made by the County shall, unless the context expressly states otherwise, be made by the County Attorney or an authorized Assistant County Attorney in written form, to include but not limited to hand-written, typed, or printed notes, electronic mail, letters, or facsimile transmissions.

16. Florida Government-in-the-Sunshine Law: Attorney agrees that, unless specifically exempted or excepted by Florida law, the provisions of Chapter 120, Florida Statutes, generally require full and public discussion of matters to be voted upon by the Board of County Commissioners. Attorney agrees to consult with the County Attorney's office concerning the application of the Sunshine law from time to time concerning specific circumstances that may arise during the term of this Agreement.

17. Florida Public Records Law: Attorney agrees that, unless specifically exempted or excepted by Florida law or Rules and Regulations of The Florida Bar, the provisions of Chapter 119, Florida Statutes, generally require public access to all records and documents which may be made or received under this Agreement. Attorney agrees to consult with the County Attorney's office concerning the application of the Public Records Law from time to time concerning specific circumstances that may arise during the term of this Agreement.

18. County's Standard Contract Terms:

18.1 No Assignments. Without the prior written consent from the County, Attorney shall not assign or transfer this Agreement.

18.2 Entire Agreement. The entire agreement between the County and Attorney with respect to the subject matter hereof is contained in this Agreement. This Agreement supersedes all prior oral and written proposals and communications between the County and Attorney related to this Agreement. No provision of this Agreement shall be deemed waived, amended or modified by either party unless such waiver, amendment or modification is in writing and signed by the party against whom the waiver, amendment or modification is claimed. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their permitted successors and assigns.

18.3 Severability. If a term, covenant, condition or provision of this Agreement shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provision of this Agreement would prevent the accomplishment of the original intent of this Agreement. The County and Attorney agree to reform the Agreement to

replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

18.4 Captions. The captions set forth herein are for convenience of reference only and shall not define, modify, or limit any of the terms hereof.

18.5 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State. Venue for any legal action which may arise out of or under this agreement shall be in Monroe County, Florida.

18.5.1 Conflicts in interpretation. The County and Attorney agree that, in the event of conflicting interpretations of the terms or a term of this Agreement by or between them, the final interpretation by the County shall apply.

18.5.2 Adjudication of Disputes and Disagreements. The County and Attorney agree that all disputes and disagreements between them shall be attempted to be resolved by a meet and confer session between representatives of the County and Attorney. If the issue or issues are still not resolved to the satisfaction of both within 30 days after the meet and confer session, then either shall have the right to seek such relief as may be provided by this Agreement or by Florida law.

18.5.3 Cooperation. In the event any administrative or legal proceeding is instituted against either the County or Attorney relating to the formation, execution, performance, or breach of this Agreement, the County and Attorney each agree to participate, to the extent required by the other, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement. The County and Attorney each agree that neither shall be required to enter into any arbitration proceedings related to this Agreement or any Attachment or Addendum to this Agreement.

18.5.4 Legal Obligations and Responsibilities; Non-delegation of Constitutional or Statutory Duties. This Agreement is not intended to relieve, nor shall it be construed as relieving, either the County or Attorney from any obligation or responsibility imposed upon each by law except to the extent of actual and timely performance thereof by the other, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further this Agreement is not intended to authorize, nor shall it be construed as authorizing, the delegation of the constitutional or statutory duties of the County, except to the extent permitted by the Florida Constitution, state statutes, case law, and, specifically, the provisions of Chapter 125, Florida Statutes.

18.6 Attorney's Fees and Costs. In the event any administrative proceeding or cause of action is initiated or defended by the County or Attorney relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include reasonable attorney's fees, court costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement

or as may be required by a court of competent jurisdiction shall be conducted in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.

18.7 Records. Attorney shall maintain all books, records, and documents directly pertinent to performance under this Agreement, including the documents referred to in Sections 5.4 and 10 of this Agreement, in accordance with generally accepted accounting principles, consistently applied. Upon ten (10) business days written notice to the other, representatives of either the County or Attorney shall have access, at all reasonable times, to all the other party's books, records, correspondence, instructions, receipts, vouchers and memoranda (excluding computer software) pertaining to work under this Agreement for the purpose of conducting a complete independent fiscal audit. Attorney shall retain all records required to be kept under this Agreement for a minimum of five years, and for at least four years after the termination of this agreement. Attorney shall keep such records as are necessary to document the performance of the agreement and expenses as incurred, and give access to these records at the request of the County, the State of Florida or authorized agents and representatives of said government bodies. It is the responsibility of Attorney to maintain appropriate records to insure a proper accounting of all collections and remittances. Attorney shall be responsible for repayment of any and all audit exceptions which are identified by the Auditor General for the State of Florida, the Clerk of Court for Monroe County, the Board of County Commissioners for Monroe County, or their agents and representatives.

18.7.1 Public Access. The County and Attorney shall allow and permit reasonable access to and inspection of, all documents, papers, letters, or other materials subject to the Florida Public Records Law, as provided in Chapter 119, Florida Statutes, and made or received by the them, unless specifically exempted by State Statute, Rules and Regulations of The Florida Bar, or case law. County shall have the right to cancel this agreement upon violation of this provision by Attorney.

18.8 Monroe County Code Ethics Provision. Attorney warrants that he has not employed, retained or otherwise had act on his behalf any former County officer or employee in violation of Section 2 of Ordinance No. 10-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 10-1990. For breach or violation of this provision the County may, at its discretion, terminate this Agreement without liability and may also, at its discretion, deduct from the sums owed under the Agreement, or otherwise recover, the full amount of any fee, commission, percentage, gift, or consideration paid to the former or present County officer or employee. County employees and officers are required to comply with the standards of conduct delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts, doing business with one's agency, unauthorized compensation, misuse of public position, conflicting employment or contractual relationship, and disclosure of certain information.

18.9 Authority. Attorney warrants that he and the authorized time keepers are authorized by law and the Rules and Regulations of The Florida Bar to engage in the performance of the activities encompassed by this Agreement. If Attorney is a member of a law firm, either as partner, shareholder, associate, or other relationship, Attorney warrants that he is authorized to enter into this Agreement by Attorney's law firm.

18.10 Public Entity Crime Statement. Florida law provides that person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on an agreement to provide any goods or services to a public entity, may not submit a bid on a agreement with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a agreement with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. Attorney warrants the neither Attorney nor any authorized time keeper has been named to the convicted vendor list.

18.11 Anti-kickback. Attorney warrants that no person has been employed or retained to solicit or secure this Agreement upon any contract or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the County has any interest, financially or otherwise, in this Agreement, except as expressly stated herein. For breach or violation of this warranty, the County shall have the right to annul this agreement without liability or, in its discretion, to deduct any sums to be paid by County under this Agreement, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

18.12 Modifications and Amendments. Any and all modifications of the terms of this agreement shall only be amended in writing and executed by the Board of County Commissioners for Monroe County and by Attorney.

18.13 Independent Contractor. At all times and for all purposes hereunder, Attorney is an independent contractor and not an employee of the Board of County Commissioners of Monroe County. No statement contained in this Agreement shall be construed so as to find Attorney or any of the authorized time keepers, to be the employees of the Board of County Commissioners of Monroe County, and they shall be entitled to none of the rights, privileges or benefits of employees of Monroe County.

18.14 Compliance with Law. In carrying out Attorney's obligations under this agreement, Attorney shall abide by all statutes, ordinances, rules and regulations pertaining to or regulating the provisions of this Agreement, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules or regulations shall constitute a material breach of this Agreement and shall entitle the County to terminate this Agreement immediately upon delivery of written notice of termination to Attorney.

18.15 Licensing and Permits. Attorney warrants that Attorney shall have, prior to commencement of work under this agreement and at all times during said work, all required licenses and permits whether federal, state, County or City.

18.16 Non-Discrimination. Attorney shall not discriminate, in its employment practices and in providing services hereunder, on the basis of race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status, or age, and shall

abide by all federal and state laws regarding non-discrimination. Upon a determination by a court of competent jurisdiction that such discrimination has occurred, this Agreement automatically terminates without any further action by the County, effective the date of the court order. Attorney is aware of the provisions of Section 13-101 through 13-106, Monroe County Code, relating to non-discrimination, and agrees to abide by the Code's non-discrimination requirements.

18.17 Claims for State or Federal Aid. The County and Attorney agree that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this Agreement, provided that all applications, requests, grant proposals, and funding solicitations by Attorney shall be approved by the County prior to submission.

18.18 Non-Reliance by Non-Parties. No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the County and Attorney agree that neither the County nor Attorney or any officer, agent, or employee of each shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated under this Agreement.

18.19 Attestations. Attorney agrees to execute such documents as the County may reasonable require, including a Drug-Free Workplace Statement, and a Public Entity Crime Statement.

18.20 Signatures of Parties Required. This Agreement shall not be effective until executed by both County and Attorney and received in final executed form by an authorized representative of County.

18.21 County Authority. This Agreement has been at a duly noticed and legally held public meeting conducted in Monroe County, Florida.

18.22 No Personal Liability. No covenant or obligation contained in this Agreement shall be deemed to be a covenant or obligation of any member, officer, agent or employee of the Board Of County Commissioners of Monroe County in his or her individual capacity and no member, officer, agent or employee of the Board Of County Commissioners of Monroe County shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

18.23 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument and the County and Attorney may execute this Agreement by signing any such counterpart.

THIS AGREEMENT has been signed and executed by the Board of County Commissioners of Monroe County, Florida, and has been signed and executed by Attorney, on the dates indicated below.

BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA

ATTEST:

BY: _____
Charles "Sonny" McCoy, Mayor

DANNY L. KOLHAGE, CLERK,

By: _____
Deputy Clerk

Date: _____

Date: _____

Witnesses For Attorney:

_____
Signature

_____
Printed Name

_____
Signature

_____
Printed Name

ATTORNEY STEPHEN J. MOORE, P.C.

by: Stephen Moore, Pres.
Signature

Stephen Moore
Printed Name

_____
Mailing Address

1500 Traders on Grand Building
~~1125 Grand Ave.~~

~~Kansas City, MO 64106~~
City/State/ZIP

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
ROBERT B. SHILLINGER, JR.
ASSISTANT COUNTY ATTORNEY
Date 7/5/8

Attachment:

AMENDMENTS
TO
AGREEMENT NUMBER CAY LIT 2006-02-01

2. (add to Line 3) As provided in Exhibit A, Attorney practices with others who also will provide services to County. Attorney understands that County expects that Attorney will be responsible for managing and coordinating representation with lead counsel (Robert H. Freilich, Special Land Use Counsel of Paul Hastings, Los Angeles) and others within Attorney's firm with the terms of this Agreement and ethical requirements, preparing and substainting all bills, and communication with County. Except as provided in Exhibit A, Attorney may not delegate or outsource this work without full written disclosure to, and prior written approval from the County.

MONROE COUNTY, FLORIDA
STANDARD LEGAL SERVICES AGREEMENT
(LITIGATION)

AGREEMENT NUMBER:
CAY LIT 2006-02-01

EXHIBIT A

Litigation Identification: Thomas Collins, et al. V. Monroe County, CA M 04-379.

References:

3.2: Limitations to Scope of Representation: Robert Freilich shall serve as lead counsel; County Attorney's office shall serve as co-counsel.

3.4: County expectations and goals: Prompt, efficient, competent representation as co-counsel.

4. : Attorney's Hourly Fee Rate: Stephen Moore $ 235.00 Out of Court; $285.00 Deposition and In-court. Associates: $155.00; $195.00 for Trial or Deposition.

4.4: Approved Additional Time Keepers:

Name:	Hourly Rate:
David Edlow, Paralegal	$60.00
Elizabeth A. Moran, Graduate Law Student	$50.00

8.4: County Point of Contact:

Robert B. Shillinger
Assistant County Attorney
P.O. Box 1026
Key West, FL 33041-1026
(305) 292-3470
(305) 292-3516 (fax)
Shillinger-Bob@monroecounty-fl.gov

STEPHEN J. MOORE, P.C.
by: Stephen Moore pres.
Attorney
Date: 4/10/06

County Representative
Date: 7-5-6