

FILE 2791 — December 2, 2022

CONFLICT OF INTEREST

CONTRACT BETWEEN COUNTY COMMISSIONER'S AGENCY AND EMPLOYER REINSTATED PURSUANT TO LITIGATION SETTLEMENT AGREEMENT

To: Robert B. Shillinger, County Attorney (Monroe County)

SUMMARY:

A member of the Monroe County Board of County Commissioners will not have a prohibited conflict of interest if a contract between her Board and her private employer that was executed prior to her appointment to office is reinstated through a litigation settlement agreement and if options written into that contract are then exercised to extend the contract. Analysis is also provided regarding whether the Commissioner will have a prohibited conflict of interest if amendments are made to the terms of the contract, and guidance is provided concerning potential voting conflicts. Referenced are CEO 76-118, CEO 77-14, CEO 77-126, CEO 78-86, CEO 81-2, CEO 82-10, CEO 84-107, CEO 90-24, CEO 96-31, CEO 96-32, CEO 97-11, CEO 02-14, CEO 02-19, CEO 03-17, CEO 08-4, CEO 09-1, CEO 12-13, CEO 17-4, CEO 19-7, CEO 20-8, and CEO 20-10.

QUESTION 1:

Will a prohibited conflict of interest be created for a member of the Monroe County Board of County Commissioners if a terminated contract between the County and the member's employer that was originally executed before the member's appointment to the Board is reinstated to settle litigation between the employer and the County?

This question is answered in the negative.

You write your letter of inquiry on behalf of Holly Merrill Raschein,¹ a current member of the Board of County Commissioners of Monroe County (Board). In your letter, you explain a sequence of events concerning the County's vendor agreement with AshBritt, Inc. (Ashbritt), a provider of emergency management and disaster relief services. On June 21, 2017, the County contracted with AshBritt for disaster relief services. The term of the contract was five years (expiration date of June 20, 2022), but the contract also contained options for the County to renew the agreement in one-year increments for up to five additional years (latest possible expiration date of June 20, 2027), with all other terms remaining the same. On October 25, 2017, however, AshBritt sued the County and, on August 18, 2018, the County terminated the contract with AshBritt. On December 1, 2020, AshBritt hired Ms. Raschein as its new director of government relations. In that role, she is not an owner, officer, or corporate director of AshBritt. On September 24, 2021, Governor DeSantis appointed Ms. Raschein to a vacant seat on the Board. On June 20, 2022, the expiration date passed for the original five-year term of the contract between the County and Ashbritt. On July 25, 2022, AshBritt made an offer to settle its litigation against the County. On August 23, 2022, Commissioner Raschein won the open primary for the special election to fill the remaining two years of the unexpired term to which she had originally been appointed. On August 31, 2022, AshBritt amended its settlement offer.

Under the terms of the July 25, 2022 settlement offer, Ashbritt would dismiss all claims with prejudice and waive payments for additional fees, including attorney's fees, and, in exchange, the County would reinstate the June 21, 2017 contract and exercise its option to extend the term

¹ When summarizing the chronology of events, we refer to her as Ms. Raschein when referencing events occurring before her appointment to the Board of County Commissioners and as Commissioner Raschein when referencing events occurring after her appointment.

of the contract for one additional year. The terms of the August 31, 2022 amended settlement offer are identical, except it stipulates the County will agree to exercise all five of its options to extend the term of the contract by one year, for a total of five years. Under the terms of the amended settlement agreement, once the options to extend the agreement are exercised, the contract would be set to expire on June 20, 2027. In subsequent communications with Commission staff, you indicate it remains unclear whether the settlement agreement will be rendered as part of a judicial order, though you expect that AshBritt would prefer this and you expect the County will have no objection to it.

It is expected that on November 15, 2022, Commissioner Raschein will begin serving a two-year term (after which the seat will return to its normal election cycle). The following day, on November 16, 2022, you expect the Board to consider AshBritt's settlement offer in a closed, attorney-client session. You and Commissioner Raschein have exchanged correspondence and participated in video conferences with Commission staff about her ethical obligations and you have informed Commission staff that Commissioner Raschein will not be participating in the closed attorney-client session, and will follow the procedures for a voting conflict under Section 112.3143, Florida Statutes, relating to any votes pertaining to AshBritt or the litigation (more on that below).

With this background, you ask whether a conflict of interest will be created for Commissioner Raschein if the County accepts the original settlement agreement or the amended settlement agreement.

Relevant to this inquiry, Section 112.313(7)(a), Florida Statutes, states:

No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee . . . ; nor shall an officer or employee of an agency have or hold

any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

The first clause of this statute prohibits a public officer or employee from having any employment or contractual relationship with a business entity or an agency that is regulated by or is doing business with his or her agency. The second clause of Section 112.313(7)(a) prohibits a public officer or employee from having employment or a contractual relationship that would create a continuing or frequently recurring conflict of interest or would create an impediment to the full and faithful discharge of his or her public duties.

We first review Commissioner Raschein's employment with AshBritt under the first clause of Section 112.313(7)(a). In your request for an ethics opinion, you detail two separate contractual agreements requiring analysis: (1) the settlement agreement extinguishing the lawsuit AshBritt brought against the County; and (2) the 2017 contract between the County and AshBritt for disaster relief services that will be reinstated under the terms of the proposed settlement agreement.

We address the settlement agreement first. We have not previously had the opportunity to address whether a settlement agreement could create a conflict of interest for a public officer or employee under the first clause of Section 112.313(7)(a). We have said in the past that an agency and business entity are not "doing business" when they commence or participate in a lawsuit against each other. See CEO 17-4 (citing CEO 77-14). In practical terms, a settlement of an active lawsuit before the courts is a necessary part of the lawsuit—its end—and represents resolution of the conflict. Because a settlement agreement is part of a lawsuit, and a lawsuit does not constitute "doing business," we find that an agreement to settle a lawsuit that has been filed in the courts also does not constitute "doing business." Therefore, the settlement agreement between the County

and AshBritt does not create a prohibited conflict of interest under the first clause of Section 112.313(7)(a) for Commissioner Raschein.

We next address the 2017 contract for disaster relief services. It is clear that if this contract is reinstated, Commissioner Raschein will have employment with a business entity (AshBritt) that is doing business with her agency (the County). There may, however, be an exception available to negate the conflict.

In certain situations when a conflict of interest under the first clause of Section 112.313(7)(a) is present, the conflict can be negated by an application of Section 112.316, Florida Statutes,² if the public officer's or public employee's private employment or contractual relationship and the "doing business" relationship between the business entity and the agency both predate the public officer's office holding or the public employee's public employment. CEO 82-10; CEO 96-31; CEO 96-32; CEO 02-14; CEO 02-19; CEO 08-4, footnote 6; and CEO 09-1. In our numerous opinions on this topic, we have referred to this negation of the conflict of interest as "grandfathering." For example, in CEO 19-7, a preexisting business relationship between a water management district and a corporation was found not to be a prohibited conflict of interest under Section 112.313(7)(a) for a shareholder of the corporation who was later appointed to the governing board of the water management district. Even when preexisting contracts are "grandfathered," renewals and amendments to those contracts are considered new contracts no longer benefiting from the application of "grandfathering," unless "the renewal is for a time certain

² Section 112.316 provides:

Construction.—It is not the intent of this part, nor shall it be construed, to prevent any officer or employee of a state agency or county, city, or other political subdivision of the state or any legislator or legislative employee from accepting other employment or following any pursuit which does not interfere with the full and faithful discharge by such officer, employee, legislator, or legislative employee of his or her duties to the state or the county, city, or other political subdivision of the state involved.

provided for in the original [contract] and the terms of the renewal remain the same as those of the original contract." CEO 09-1 (citing CEO 03-17).

We find that grandfathering is available to negate the prohibited conflict of interest under the first clause of Section 112.313(7)(a). The contract was originally executed on June 21, 2017, and Commissioner Raschein's employment with AshBritt began on December 1, 2020; both events predate her appointment to the Board on September 24, 2021. Although the contract for disaster relief services was not continuously in effect, having been terminated in 2018, we find that the contract represents a meeting of the minds between the County and AshBritt that occurred in a conflict-free environment for Commissioner Raschein, long before she was appointed to the Board. Thus, the termination and subsequent reinstatement of the contract does not affect the availability of "grandfathering" to negate the conflict.

The exercise of the options to extend the reinstated contract also do not vitiate the availability of "grandfathering." The options were included in the terms of the original contract and merely extend the term of the deal for a time certain, while leaving all other terms unchanged. We allowed similar extension options to be exercised in CEO 03-17 and CEO 09-1 without vitiating the availability of "grandfathering"; we allow it here for the same reasons.

For these reasons, the prohibited conflict of interest created under the first clause of Section 112.313(7)(a) by the reinstatement of the 2017 contract is negated by "grandfathering."

Lastly, we must analyze Commissioner Raschein's employment with AshBritt under the second clause of Section 112.313(7)(a). We see no indication that the second clause of Section 112.313(7)(a) poses a prohibited conflict of interest for her, given that there is nothing obvious about her private role that would tempt her to dishonor her public responsibilities. Previous contacts with Commission staff indicate that she does not represent AshBritt's interests before the

County Commission or County staff. As Commission staff wrote to you in a March 8, 2022 letter, such communications made on behalf of AshBritt would violate the second clause of Section 112.313(7)(a) by creating a continuing and frequently recurring conflict between her public duties and her private employment; potentially tempting her to dishonor her public responsibilities. See Zerweck v. Commission on Ethics, 409 So. 2d 57 (Fla. 4th DCA 1982); see also CEO 77-126, CEO 78-86, and CEO 20-8, Question 1.³

We understand that you and Commissioner Raschein have been in regular contact with Commission staff to clarify her ethical obligations in light of her ongoing employment with AshBritt. In those communications, Commission staff have provided guidance for complying with the voting conflict law, specifically when votes on the litigation between AshBritt and the County are presented to the Board. You did not specifically ask about voting conflicts in the instant ethics inquiry, but we take this opportunity to endorse what has already been communicated to you about voting conflicts⁴ because you indicate votes about the settlement agreement will be presented to the Board in November.

³ We briefly note that the prohibition in Section 112.313(3), Florida Statutes, is inapplicable to the scenario because (1) Commissioner Raschein is not acting in an official capacity (i.e., through her board, as in CEO 90-24) to buy, rent, or lease any realty, goods, or services from a company in which she, her spouse, or her child are an officer, partner, director, or proprietor and (2) she is not acting in a private capacity (i.e., personally, as in CEO 12-13, or through a company in which is an officer, director, or owner of more than a 5 percent interest, as in CEO 81-2 and CEO 09-1) to sell, rent or lease any realty, goods, or services to the County or any agency of her political subdivision.

⁴ In a letter to you concerning Commissioner Raschein dated March 8, 2022, Commission staff addressed these topics, writing:

Lastly, you asked about the applicability of the voting conflicts statute, Section 112.3143(3)(a), Florida Statutes

Section 112.3143(3)(a) prohibits a local public officer from voting on any matter that will inure to his or her special private gain or loss or that he or she knows would inure to the special private gain or loss of a principal by whom he or she is retained, a relative, or business associate. One is only retained by a principal when, as the definition requires, the principal directs one's conduct in exchange for compensation or other consideration. See, e.g., CEO 20-10 and CEO 84-107. . . .

QUESTION 2:

Will a prohibited conflict of interest be created for a member of the Monroe County Board of County Commissioners if a terminated contract between the County and the member's employer that was originally executed before the member's appointment to the Board is reinstated to settle litigation between the employer and the County, but with many contract provisions amended to include new terms, some mandated by state law and others required by the Federal government to make the contract eligible for Federal reimbursement?

This question is answered as follows.

In communications subsequent to your initial request for a formal advisory opinion, you have indicated that the County is considering a scenario whereby it settles the matter as described in Question 1, above, but, additionally, as part of the settlement of the lawsuit, the parties agree to amend certain provisions of the 2017 contract.

As you have explained in written and telephonic communications with Commission staff, the Federal Emergency Management Agency (FEMA) has authority to reimburse certain eligible contracts for disaster relief services between disaster relief service providers and state or local

In Commissioner Raschein's case, Ashbritt is a principal by whom she is retained, given that the company is her employer. Therefore, any vote that would inure to Ashbritt's special private gain or loss will pose a voting conflict for her. You asked specifically about certain votes that may be scheduled for the Board of County Commissioners in the future. Any vote concerning the payment of legal fees or *the settlement of the litigation* would inure to Ashbritt's special private gain or loss because those matters directly affect the County's ability to pursue the litigation, which will necessarily affect the size of Ashbritt's recovery or liability in the lawsuit. . . .

Pursuant to Section 112.3143(3)(a), Florida Statutes, when Commissioner Raschein is presented with a voting conflict, she is required to publicly state to the assembly the nature of her interest in the matter, abstain from voting, and file a CE Form 8B, "Memorandum of Voting Conflict for County, Municipal and other Local Public Officers," with the person responsible for taking the minutes of the meetings of the Board of County Commissioners.

[Emphasis added. Internal footnotes omitted.]

governments when those contracts contain particular terms. FEMA provides suggested language for these contract provisions, but the suggested language need not be used word-for-word to effectuate eligibility for the reimbursement. According to you and your staff, because the wording of the suggested language is somewhat fungible, the phrasing of the amendments is technically negotiable, though, historically, the disaster relief companies that have contracted with the County have never attempted to negotiate the wording when the County has proposed amendments to remain eligible for FEMA reimbursement.

You explain that FEMA now requires more terms in disaster relief contracts to be eligible for reimbursement than it did when the 2017 contract was executed and, because of that, there is a compelling reason to amend the 2017 contract to include the additional terms suggested by FEMA—so the County will be eligible for the reimbursement of costs by FEMA. If the County and AshBritt reinstate the 2017 contract without amending it to comport to the FEMA requirements, the contract will be enforceable, but the County will not be eligible for Federal reimbursement for the disaster relief services provided by AshBritt. According to you and your staff, reinstating the 2017 contract without the amendments means forgoing reimbursements from FEMA, which, in turn, means the County could potentially incur tens of millions of dollars in otherwise-reimbursable costs.

Compliance with the FEMA requirements for reimbursement would require amending the 2017 contract to add terms spanning many topics: those requiring adherence to the standards of certain Federal laws, including the Contract Work Hours and Safety Standards Act, the Clean Air Act, the Byrd Anti-Lobbying Amendment, the Resource Conservation and Recovery Act, and the Energy Policy and Conservation Act; those requiring compliance with certain standards prohibiting contractors from purchasing communication devices produced by Huawei

Technologies Company or ZTE Corporation; and those allowing the Department of Homeland Security to access and inspect records and the vendor's staff.

According to you, if the 2017 contract is reinstated, the County also will be required by state laws implemented since 2017 to include additional terms that must be incorporated into certain vending contracts. These additions are separate and apart from the changes necessary to achieve FEMA reimbursement. These nondiscretionary terms, which are required by state law and set out in Section 287.135, Florida Statutes, include County options for early termination of the contract if AshBritt is placed on the "Scrutinized Companies that Boycott Israel List," the "Scrutinized Companies with Activities in Sudan List," or the "Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List," or if AshBritt has been engaged in business operations in Cuba or Syria.

With this background, you ask whether the reinstatement of the 2017 contract will still benefit from the "grandfathering" described in the discussion of Question 1 if the contract is amended to comport to the FEMA requirements for reimbursement or the separate requirements set forth in state law.

We have consistently opined that "[t]he essential purpose of s. 112.313(7) is to prevent a public officer from using [his or her] official position to secure business for [his or her] private employer." CEO 76-118. We have kept this in mind whenever we have applied "grandfathering" to negate a conflict of interest resulting from the mechanical application of Section 112.313(7)(a) to a contract executed by a public agency *before* the public officer or employee assumed their public position. We have even applied grandfathering to allow contracts negotiated before one's assumption of public office or employment to be renewed *after* one's assumption of public office or employment. Prior to 2002, we allowed these contracts to be renewed without vitiating their

grandfathered status when the terms of the contract remained "substantially identical" to the original contract. See, e.g., CEO 76-118 (allowing the extension of a loan between the City and a bank to benefit from grandfathering "so long as the annual renegotiation of terms remains *substantially the same* as those in the original contract"); CEO 96-31 (allowing the assignment of a leasehold of city-owned property from one corporation to another owned by a member of the City council to benefit from grandfathering "as long as the terms of the lease agreement remain *substantially identical* to the terms of the lease agreement that was originally signed by the City"); and CEO 97-11 (allowing the renewal of a contract between the County and a County commissioner's law firm with an upward adjustment in the fees paid to benefit from grandfathering "as long as the terms of the contract remain *substantially the same*" [emphasis added]).

In 2002, we departed from that reasoning, instead requiring the terms of a contract to remain exactly "the same" to maintain grandfathering through a renewal occurring after the public officer or employee's assumption of their public position. See CEO 02-14 (allowing the extension of a school district's contract with an investment banking firm that marketed district bonds to benefit from grandfathering "provided the terms of the contract remain *the same* as those of the original") [emphasis added]. We have, since then, reiterated our view that the terms of a contract must remain precisely "the same" to maintain grandfathering. See CEO 03-17, footnote 6 ("We recognize that it might be difficult for the terms of a renewal to remain the same in your situation due to the original lease's providing for a renegotiation of rental rates regarding a renewal. However, since the issuance of CEO 96-31, we have clearly and recently stated our view that the terms of a renewal must remain the same." [emphasis in original]); see also CEO 08-4, footnote 6 and CEO 09-1.

In the scenario presented here, the terms to be added to the 2017 contract to achieve eligibility for FEMA reimbursement will create numerous, new obligations for the parties, particularly for AshBritt, and create new rights for early termination by the County. Furthermore, those addition of the terms will have the effect of creating a stronger business opportunity for the Commissioner's private employer, AshBritt, by ensuring the effective availability of a surety that will guarantee the reimbursement of tens of millions of dollars coming from the Federal government. Because the amended contract will not be the same as when it was executed in 2017, we find the inclusion of the terms to achieve eligibility for FEMA reimbursement would create a prohibited conflict of interest for the Commissioner under the first part of Section 112.313(7)(a) that cannot be negated by an application of grandfathering.

We contrast the inclusion of the FEMA terms, which is discretionary and potentially subject to negotiation, with the inclusion of the terms required by state law. Because you indicate the state law terms are required by law to be included in the contract, and given that their inclusion would confer no benefit on the private interests of the Commissioner's employer, we find that their inclusion would not vitiate grandfathering. Therefore, the addition of the state law terms will not create a prohibited conflict of interest for the Commissioner under the first part of Section 112.313(7)(a), provided that the rest of the contract remains the same.

Your questions are answered accordingly.

JG/sjz/ks

cc: Mr. Robert B. Shillinger
Ms. Holly Merrill Raschein

County of Monroe
The Florida Keys



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August 26, 2022

Kerrie Stillman, Executive Director
The Florida Commission on Ethics
P.O. Drawer 15709
Tallahassee, FL 32317-5709

Re: Monroe County Commissioner Holly Merrill Raschein

Dear Ms. Stillman:

This office represents the Board of County Commissioners of Monroe County, Florida. At the request of Monroe County Commissioner Holly Merrill Raschein (District V), I request a formal written opinion on the issue more fully set forth below. This request emanates from a follow up discussion with General Counsel Steven Zuilkowski, who authored an informal letter to me dated March 8, 2022, in response to a request I had sought on behalf of Commissioner Raschein. Attached please find that letter for additional background and context (Attachment A).

The precise question presented is:

Whether the "grandfather clause" set forth in F.S. 112.313(3)(c) would operate to resolve any conflicts that Commissioner Holly Merrill Raschein would have under F.S. 112.313(3) and (7)(a), either directly or indirectly via F.S. 112.316, if the County Commission were to vote (a) to reinstate an Agreement for Disaster Response and Recovery Services between Monroe County and Commissioner Raschein's private employer AshBritt, Inc. ("AshBritt") and (b) to exercise the County's option to extend the term of the Agreement an additional one (1) year pursuant to the terms of that agreement, in order to settle litigation between AshBritt and the County. The County had terminated the agreement for convenience prior to Commissioner Raschein joining the Commission.

Background

The relevant sequence of events is as follows:

June 17, 2017 – AshBritt enters into a contract (Attachment B) with Monroe County for a term of 5 years, with the County having the option to extend that agreement in one-year increments for up to 5 additional years. (See, Article 1.1.8 of Attachment B)

October 25, 2017 – AshBritt sues Monroe County, 17-CA-802-K (16th Circuit).

August 18, 2018 – Monroe County terminates for convenience the AshBritt contract.

December 1, 2020 – AshBritt hires Holly Merrill Raschein as its new director of government relations.¹

September 24, 2021 – Governor DeSantis appoints Holly Merrill Raschein to the Monroe County Commission to fill the District V vacancy that arose when Commissioner Mike Forster died earlier that month.² Commissioner Raschein's appointment runs until November 15, 2022³, after which the winning candidate in a special election will serve the remaining 2 years of Commissioner Forster's term.

June 17, 2022 – The original five-year term in the contract between the County and AshBritt expires.

July 25, 2022 – AshBritt proposes (Attachment C) to resolve 17-CA-802-K by dismissing of all pending claims with prejudice, waiving any payment for additional fees including attorney's fees incurred, in exchange for Monroe County:

a) Reinstating the June 21, 2017, Agreement, and

b) Exercising the County's option to extend the term of the Agreement for an additional one (1) year pursuant to Article 1.1.8 of the agreement.

August 23, 2022 – Commissioner Raschein wins the open primary for the special election to fill the *remaining 2 years in Commissioner Forster's unexpired term*.

November 15, 2022 – Commissioner Raschein will begin serving a 2-year term after which the District V seat will return to its normal cycle per F.S. 100.041(2)(a).

November 16, 2022 – The B.O.C.C. is expected to consider AshBritt's offer in an attorney client closed session.

¹ <https://floridapolitics.com/archives/385711-personnel-note-ashbritt-environmental-taps-holly-raschein-as-government-relations-director/>

² <https://www.flgov.com/2021/09/24/governor-ron-desantis-appoints-holly-raschein-to-the-monroe-county-board-of-county-commissioners/>

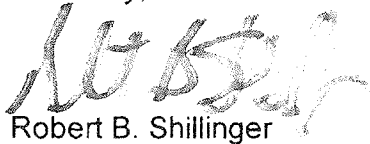
³ See F.S. 114.04 (. . . "otherwise, until the first Tuesday after the first Monday following the next general election."

AshBritt is a Florida for-profit corporation, which provides emergency management and disaster response services.⁴ Commissioner Raschein works full time as the Government Affairs Director for the company. She is paid on a fixed salary. She does not own any interest in the company. Her job description is attached. (Attachment D.)

As County Attorney, I must convey AshBritt's offer to resolve the litigation to the County Commission. I have requested a closed attorney client session pursuant to F.S. 286.011(8) to discuss the proposal, which will be held after the Ethics Commission issues its opinion. Commissioner Raschein recused herself on the vote to hold the closed session. She has announced that she would not participate in the closed session, heeding the cautionary advice provided by Mr. Zuilkowski in his letter dated March 8, 2022. She has also indicated that she would abstain from any vote on a settlement agreement with AshBritt. The Ethics Commission's opinion on question posed above on behalf of Commissioner Raschein will be necessary for the other four members of the County Commission to fully evaluate AshBritt's settlement proposal.

Thank you for your consideration of this request. Please contact me should you require additional information.

Sincerely,



Robert B. Shillinger
Monroe County Attorney

Attachment A: Zuilkowski letter to Shillinger dated March 8, 2022
Attachment B: AshBritt contract dated June 21, 2017
Attachment C: AshBritt letter dated
Attachment D: Raschein/AshBritt Job Description

Cc: The Honorable Holly Merrill Raschein, County Commission District V
Mr. Roman Gastesi, County Administrator
Mr. Steven Zuilkowski, General Counsel

⁴<https://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=ASHBRITT%20P920000006000&aggregateId=domp-p92000000600-f837aed0-d4df-436b-9f44-95cfcfb0bdc5&searchTerm=Ashbritt&listNameOrder=ASHBRITT%20P920000006000>; see also www.Ashbritt.com.

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March 8, 2022

Robert B. Shillinger, Monroe County Attorney
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BY EMAIL

Dear Mr. Shillinger:

This letter is written in response to your recent ethics inquiry. You are the County Attorney for Monroe County and, with the knowledge and acquiescence of Holly Merrill Raschein, you write a request for ethics guidance on her behalf. On September 24, 2021, Governor DeSantis appointed Commissioner Raschein to fill a vacancy on the Monroe County Board of County Commissioners.¹ According to you, she has private employment with one business entity, has a paid consultancy with another business entity, is the officer of a state-level advisory board, and is an uncompensated member of the board of directors of several nonprofit organizations. Your ethics inquiry questions whether Commissioner Raschein's relationship to each entity individually creates a conflicting contractual relationship or a voting conflict for her.

Ashbritt, Inc.

You explain in your ethics inquiry that Commissioner Raschein has employment with Ashbritt, Inc., a provider of emergency management and disaster relief services, as its Government Affairs Director. You further explain that she does not have an ownership interest in the company.

According to you, the County used to have a vendor agreement with Ashbritt, but the County terminated the agreement and now there is ongoing litigation between the County and Ashbritt, the current venue of which is the Third District Court of Appeal. You state that the

¹ See <https://www.flgov.com/2021/09/24/governor-ron-desantis-appoints-holly-raschein-to-the-monroe-county-board-of-county-commissioners/> (visited January 12, 2022).

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Board of County Commissioners could be required, at some time in the future, to vote to approve any litigation costs (including the payment of the County Attorney's fees) exceeding the County Administrator's spending authority (\$50,000) and/or any proposed settlement of the litigation. Unrelated to the litigation, the County plans to issue a request for proposals (RFP) for a new vendor agreement after the expiration of the current vendor agreement on October 22, 2022. You explain that it is possible that Ashbritt could submit a proposal in response to the RFP. Related to the RFP, the Board of County Commissioners will eventually vote to approve the specifications of the RFP, vote to issue the RFP, vote to review multiple vendors in a selection process, and, finally, vote to award the contract to a single vendor.

Relevant to this inquiry, Section 112.313(7)(a), Florida Statutes, states:

No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee . . . ; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

The first clause of this statute prohibits a public officer or employee from having any employment or contractual relationship with a business entity or an agency that is regulated by or is doing business with his or her agency. The second clause of this statute prohibits a public officer from having employment or a contractual relationship that would create a continuing or frequently recurring conflict of interest or would create an impediment to the full and faithful discharge of his or her public duties.

In CEO 77-14, the Commission on Ethics found that a lawsuit between a business entity and an agency did not constitute "doing business" for purposes of Section 112.313(7)(a). Therefore, the litigation between the County and Ashbritt will not be the source of a conflict of interest under Section 112.313(7)(a). See also CEO 17-4.

The RFP could, however, result in a conflict of interest for Commissioner Raschein if Ashbritt is selected in the RFP process to become the new vendor of the County. If that were to occur, then she would have employment with a business entity (Ashbritt) that was doing business with her agency (the County). Although this circumstance would present a conflict of interest on its face, the conflict could possibly be negated by an exception. Because this scenario is presented hypothetically and there are no specific facts to that end, I am unable to say for certain whether any particular exception applies, but you should be cognizant that the exception for sealed competitive bidding, Section 112.313(12)(b), Florida Statutes, could apply if the County decided to obtain a vendor by that method rather than by RFP. See CEO 89-48 (finding RFPs are not sealed competitive bids and do not benefit from the exception in Section 112.313(12)(b), F.S.).

Also relevant to your question on conflicts of interest, Section 112.313(3), Florida Statutes, states:

DOING BUSINESS WITH ONE'S AGENCY.—No employee of an agency acting in his or her official capacity as a purchasing agent, or public officer acting in his or her official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his or her own agency from any business entity of which the officer or employee or the officer's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or the officer's or employee's spouse or child, or any combination of them, has a material interest. Nor shall a public officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods, or services to the officer's or employee's own agency, if he or she is a state officer or employee, or to any political subdivision or any agency thereof, if he or she is serving as an officer or employee of that political subdivision . . . This subsection shall not affect or be construed to prohibit contracts entered into prior to:

- (a) October 1, 1975.
- (b) Qualification for elective office.
- (c) Appointment to public office.
- (d) Beginning public employment.

The first clause of this provision operates to prevent a public employee from acting in his or her public capacity as a purchasing agent, or a public officer acting in his or her official capacity, to purchase, rent, or lease any realty, goods, or services for his or her agency from any business entity in which he or she or his or her spouse or child is an officer or director or in which the employee or officer or his or her spouse or child owns more than a five-percent ownership interest. The Commission on Ethics has found that a member of a board acts in his or her official capacity when the board acts to purchase, rent, or lease on behalf of the agency, even when the board member abstains from the vote. CEO 90-24 and CEO 10-4. The second clause of this subsection prevents a public employee or officer from acting in his or her private capacity to rent, lease, or sell any realty, goods, or services to his or her public agency or to any agency of his or her political subdivision. The Commission on Ethics has found in the past that a public officer or employee acts in a private capacity to sell, rent, or lease to their agency when a business entity of which he or she is an officer or director sells, rents, or leases to his or her agency. CEO 87-41 and CEO 09-1.

As with Section 112.313(7)(a), the Commission has opined that lawsuits between an agency and a business entity do not fall within the scope of the prohibition of Section 112.313(3). See CEO 77-14. Therefore, the litigation between the County and Ashbritt will not form the basis of a prohibited conflict of interest under Section 112.313(3).

Turning now to analysis of the potential vendor agreement with Ashbritt under Section 112.313(3), Commissioner Raschein apparently will not have a prohibited conflict of interest under the first clause Section 112.313(3) because she is not an officer or director in Ashbritt and she does not own a material interest in the company. She also apparently will not have a prohibited conflict of interest under the second clause of Section 112.313(3) because it does not

seem that she will be personally involved in the sale on behalf of Ashbritt and she is not an officer or director in the company.²

Lastly, you asked about the applicability of the voting conflicts statute, Section 112.3143(3)(a), Florida Statutes, which states in the relevant part:

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

The term "principal by whom retained" is defined in Section 112.3143(1)(a), Florida Statutes, as:

an individual or entity, other than an agency as defined in s. 112.312(2), that for compensation, salary, pay, consideration, or similar thing of value, has permitted or directed another to act for the individual or entity, and includes, but is not limited to, one's client, employer, or the parent, subsidiary, or sibling organization of one's client or employer.

Section 112.3143(3)(a) prohibits a local public officer from voting on any matter that will inure to his or her special private gain or loss or that he or she knows would inure to the special private gain or loss of a principal by whom he or she is retained, a relative, or business associate. One is only retained by a principal when, as the definition requires, the principal directs one's conduct in exchange for compensation or other consideration. See, e.g., CEO 20-10 and CEO 84-107. One is a business associate to another when a common business enterprise is shared between them. See, e.g., CEO 94-10 and CEO 98-9.

In Commissioner Raschein's case, Ashbritt is a principal by whom she is retained, given that the company is her employer. Therefore, any vote that would inure to Ashbritt's special private gain or loss will pose a voting conflict for her. You asked specifically about certain votes that may be scheduled for the Board of County Commissioners in the future. Any vote concerning the payment of legal fees or the settlement of the litigation would inure to Ashbritt's special private gain or loss because those matters directly affect the County's ability to pursue the litigation, which will necessarily affect the size of Ashbritt's recovery or liability in the lawsuit.

² If Commissioner Raschein is personally involved in the sale of services to the County on behalf of Ashbritt (e.g. acting as the salesperson or having another role in the processing of the transaction), then that apparently would violate Section 112.313(3).

Regarding the votes to create and approve the RFP, Commissioner Raschein will have a voting conflict if it appears that Ashbritt "will or might" submit a bid or proposal. See CEO 91-7, Question 2. Once the RFP has been approved and Ashbritt has submitted a proposal that remains under consideration, any vote to eliminate, advance, or award any of the submitted proposals will inure to the special private gain or loss of Ashbritt and, therefore, will pose a voting conflict to Commissioner Raschein.

Pursuant to Section 112.3143(3)(a), Florida Statutes, when Commissioner Raschein is presented with a voting conflict, she is required to publicly state to the assembly the nature of her interest in the matter, abstain from voting, and file a CE Form 8B, "Memorandum of Voting Conflict for County, Municipal and other Local Public Officers," with the person responsible for taking the minutes of the meetings of the Board of County Commissioners.

Commissioner Raschein will not be limited from discussing votes related to Ashbritt with her fellow board members at public meetings. The limitations on appointed public officers found in Section 112.3143(4), Florida Statutes,³ will not apply to Commissioner Raschein. Although Commissioner Raschein was appointed to the Board of County Commissioners, which is an elective position, she will be considered an elected public officer for purposes of Section 112.3143(4), and thus will not be limited by that provision. See CEO 87-14 and CEO 09-9, footnote 4. Commissioner Raschein, however, for the sake of appearances, may wish to refrain from those discussions when she will ultimately abstain due to a voting conflict.

Addressing the next question in your inquiry, Commissioner Raschein is not permitted to appear before the Board of County Commissioners to represent the interests of Ashbritt or otherwise appear on behalf of Ashbritt because such a scenario is prohibited by the second clause of Section 112.313(7)(a), discussed above. The statute operates preventatively, and prohibits situations where one might be tempted to dishonor his or her public responsibilities, even when he or she might have the strength of character to resist such temptations; the presence of a temptation is all that is required to find a conflicting contractual relationship under the second clause of Section 112.313(7)(a). See *Zerweck v. Commission on Ethics*, 409 So. 2d 57 (Fla. 4th DCA 1982). The Commission has interpreted the second clause of Section 112.313(7)(a) to prohibit public officers from representing the interests of their employers or other entities with which they have contractual relationships before their own boards. See CEO 77-126, CEO 78-86, and CEO 20-8, Question 1. For this reason, she would not be able to represent Ashbritt before the Board of County Commissioners while she is a member of that board.

You ask whether Commissioner Raschein must recuse herself from discussing matters related to Ashbritt with County staff. As discussed above, Commissioner Raschein is prohibited from representing her employer, Ashbritt, before her agency. Thus, if she wished to have

³ Section 112.3143(4) states:

No appointed public officer shall participate in any matter which would inure to the officer's special private gain or loss; which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer, without first disclosing the nature of his or her interest in the matter.

discussions with staff on behalf of Ashbritt, Section 112.313(7)(a) would prohibit those discussions. We further advise, given that it will be difficult for staff and the public to discern which conversations concerning Ashbritt are occurring on behalf of Ashbritt and which conversations are occurring in Commissioner Raschein's capacity as a County Commissioner, it would be best if she avoid all conversations with staff concerning Ashbritt until first obtaining ethics guidance particular to the facts surrounding a potential conversation, thereby avoiding the risk of incurring a prohibited conflict of interest.

Your last question concerning Commissioner Raschein's employment with Ashbritt relates to the litigation between Ashbritt and the County. Specifically, you ask whether Commissioner Raschein may participate in attorney-client closed sessions held pursuant to Section 286.011(8), Florida Statutes.⁴ Although the Code of Ethics for Public Officers and Employees does not contain any mechanism to require the exclusion of a board member from either an open or closed session of his or her own board, there are some prohibitions of which Commissioner Raschein should be aware. Section 112.313(8), Florida Statutes, prohibits a public officer or employee from disclosing information not available to members of the general public and gained by reason of his or her public position to achieve a gain personally or for another person or business entity. To the extent that nearly all the information discussed in an attorney-client closed session about the Ashbritt litigation will not be available to the general public, yet gained by reason of Commissioner Raschein's position, Section 112.313(8) would prohibit her from disclosing that information to Ashbritt or to anyone else likely to benefit from having the information. Also, Section 112.313(6), Florida Statutes,⁵ and the recent amendment to the Florida Constitution currently found at Article II, Section 8(g)(2), Florida Constitution,⁶ would prohibit Commissioner Raschein from taking any action that was contrary to the proper performance of her public duties to achieve a benefit for her employer. If Commissioner Raschein is taking a specific action that she is concerned may be prohibited by these prohibitions, she is advised to call the Commission on Ethics to seek specific ethics guidance.

First State Bank

You state that Commissioner Raschein works as an independent contractor for First State Bank as its Upper Keys Market Advisor, work for which she is paid an hourly wage with no commissions. You state that the County currently has no contracts with First State Bank, but, at various times in the past, First State Bank has served as a depository for the County. According

⁴ These are commonly referred to as "shade meetings."

⁵ Section 112.313(6), Florida Statutes, states:

No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. 104.31.

⁶ Article II, Section 8(g)(2), Florida Constitution, states:

A public officer or public employee shall not abuse his or her public position in order to obtain a disproportionate benefit for himself or herself; his or her spouse, children, or employer; or for any business with which he or she contracts; in which he or she is an officer, a partner, a director, or a proprietor; or in which he or she owns an interest. The Florida Commission on Ethics shall, by rule in accordance with statutory procedures governing administrative rulemaking, define the term "disproportionate benefit" and prescribe the requisite intent for finding a violation of this prohibition for purposes of enforcing this paragraph. Appropriate penalties shall be prescribed by law.

to you, it is the Clerk of the Circuit Court for Monroe County, not the County Commission, that arranges depository accounts with banks for the County. You ask whether these circumstances amount to a conflict of interest or voting conflict for Commissioner Raschein.

Because the County is not presently doing business with First State Bank, there can be no conflict of interest under Sections 112.313(3) or (7)(a). See, e.g., CEO 08-14. However, if the Clerk of the Circuit Court for Monroe County initiated a depository account for the County with First State Bank, it would appear, on its face to be a conflict under Section 112.313(7)(a); Commissioner Raschein would have a contractual relationship with a business entity (the bank) doing business with her agency (the County).

There is an exception in Section 112.313(12)(g), Florida Statutes,⁷ but it will not be applicable to Commissioner Raschein. Section 112.313(12)(g) operates to negate a conflict of interest derived from a public officer or employee being an "stockholder, officer, or director of a bank" when the bank is also a depository for the agency. Commissioner Raschein is an independent contractor of the bank and not a shareholder, officer, or director, foreclosing the potential applicability of that exception. There is no precedent in the Commission's formal opinions as to whether Section 112.316 might apply to negate the conflict in this instance; if it appears likely that the Clerk of the Circuit Court might choose First State Bank as the County's depository while Commissioner Raschein has an active independent contractor relationship with the bank, she may wish to seek a formal opinion from the Commission on Ethics.

Healthy Start

You indicate that Commissioner Raschein also serves as an uncompensated member of the board of directors of Healthy Start, a nonprofit organization. In a subsequent email, you indicated that Commissioner Raschein is not a rank-and-file member of the nonprofit organization. According to you, Monroe County has contracted with Healthy Start annually for the last 15 years to provide it funding. These contracts take the form of grant agreements between the Board of County Commissioners and Healthy Start and the source of funding are budgetary funds set aside each year to support nonprofits in Monroe County. It is expected that the County Commission will vote to approve funding to Healthy Start for the upcoming year. Additionally, in 2020, Healthy Start applied for and received CARES Act funding from Monroe County.

Because Commissioner Raschein is uncompensated in her role with Healthy Start, she does not have employment or a contractual relationship with that business entity. Therefore, Healthy Start cannot be the basis of a conflicting employment or contractual relationship under Section 112.313(7)(a). Similarly, in reference to the voting conflict statute, because she is uncompensated in her role at Healthy Start, Healthy Start is not a principal by whom she is retained, so there would only be a voting conflict on matters pertaining to Healthy Start if they

⁷ Section 112.313(12)(g) states:

The fact that a county or municipal officer or member of a public board or body, including a district school officer or an officer of any district within a county, is a *stockholder, officer, or director of a bank* will not bar such bank from qualifying as a depository of funds coming under the jurisdiction of any such public board or body, provided it appears in the records of the agency that the governing body of the agency has determined that such officer or member of a public board or body has not favored such bank over other qualified banks. [Emphasis added.]

would inure to Commissioner Raschein's special private gain or loss (personally). Given that your letter does not indicate there is any reason to believe that any vote concerning Healthy Start would inure to her special private gain or loss, it does not appear Commissioner Raschein would have a voting conflict if she voted on matters pertaining to Healthy Start.

It does not appear that Commissioner Raschein will have a conflict of interest under Section 112.313(3), either. While she is a director of Healthy Start, Healthy Start is not renting, leasing, or selling any realty, goods or services to the County and the County is not purchasing, renting, or leasing any realty, goods, or services from Healthy Start. See CEO 18-6. For this reason, the prohibition in Section 112.313(3) is apparently inapplicable to Commissioner Raschein's relationship with Healthy Start.

Based on the facts presented in your letter, it appears that Healthy Start is not the source of a prohibited conflict of interest or a voting conflict for Commissioner Raschein.

Leadership Monroe

In your letter, you state that Commissioner Raschein is an uncompensated member of the board of directors of a nonprofit organization called Leadership Monroe. Leadership Monroe offers leadership classes and the County usually pays the tuition for County officers and employees selected to attend the program. You ask whether this scenario presents Commissioner Raschein with a conflict of interest.

Because Commissioner Raschein is uncompensated in her role with Leadership Monroe, she does not have employment or a contractual relationship with that business entity. Therefore, Leadership Monroe cannot be the basis of a conflicting employment or contractual relationship under Section 112.313(7)(a).⁸ Similarly, in reference to the voting conflict statute, because she is uncompensated in her role at Leadership Monroe, Leadership Monroe is not a principal by whom she is retained, so there would only be a voting conflict on matters pertaining to Leadership Monroe if they would inure to Commissioner Raschein's special private gain or loss. Given that your letter does not indicate there is any reason to believe that any vote concerning Leadership Monroe would inure to her special private gain or loss, it does not appear Commissioner Raschein would have a voting conflict if she voted on matters pertaining to Leadership Monroe.

If the County pays tuition to Leadership Monroe, Commissioner Raschein will, however, have a conflict of interest under Section 112.313(3), *supra*, unless she otherwise benefits from an exception. If the County purchases tuition for the classes, she will be acting in a private capacity as a director of a business entity (Leadership Monroe) to sell services (leadership classes) to her agency (the County Commission) or an agency of her political subdivision. See CEO 81-2 and CEO 09-1.

It is unclear from the facts presented whether any exception will apply to Commissioner Raschein to negate the conflict of interest in this instance. If the total purchase price the County

⁸ This conclusion assumes Commissioner Raschein is not a rank-and-file member of Leadership Monroe. If she is a rank-and-file member of Leadership Monroe, then she would indeed be considered to have a contractual relationship with Leadership Monroe. See CEO 10-2. In such a scenario, she would have a contractual relationship with a business entity (Leadership Monroe via her membership in the nonprofit) doing business with her agency (the County).

typically pays to Leadership Monroe in a calendar year is less than \$500 per calendar year, Section 112.313(12)(f), Florida Statutes, may be applicable. Depending on the availability of leadership classes elsewhere in the County, it is possible that Leadership Monroe might be a sole source of supply in the political subdivision, as contemplated in Section 112.313(12)(e), Florida Statutes. Additional facts would be needed to determine whether either of these exceptions would apply. It is not readily apparent that any other exception to Section 112.313(3) would apply. If you believe one of these exceptions might be available to Commissioner Raschein, please contact me for updated guidance.

If Commissioner Raschein does not benefit from an exception to Section 112.313(3), it would be advisable either (1) for the County to stop purchasing services from Leadership Monroe or (2) for Commissioner Raschein to resign from the board of directors of Leadership Monroe.

Monroe County Education Foundation, Inc., also known as "the Take Stock Board"

You write that Commissioner Raschein serves as an uncompensated member of the board of directors of the Monroe County Education Foundation, Inc., which is a nonprofit organization commonly referred to by residents of Monroe County as "the Take Stock Board." The County Commission usually grants funding to the Take Stock Board, having done so most recently in 2020 by a grant of CARES Act funding. All contracts between the Take Stock Board and Monroe County have expired; there currently are no active contracts between the two. You inquire whether a conflict of interest or voting conflict would arise if the Board of County Commissioners voted to make a new grant to the Take Stock Board.

Regarding the possibility of a voting conflict, as noted above with regard to her uncompensated service on other nonprofit boards of directors, Commissioner Raschein will not have a voting conflict if the Board of County Commissioners votes to grant the Take Stock Board funding. Because she is uncompensated by the Take Stock Board, the Take Stock Board is not a principal by whom she is retained. Also, because the vote would not inure to Commissioner Raschein's special private gain or loss personally, it would not pose a voting conflict for her.

Regarding possible conflicts of interest if the County resumed funding to the Take Stock Board, Section 112.313(7)(a) would not pose a prohibited conflict of interest to Commissioner Raschein. Because her service on the Take Stock Board is uncompensated, she has neither employment nor a contractual relationship with the Take Stock Board.⁹ Thus, the prohibition in Section 112.313(7)(a) would not be applicable to Commissioner Raschein's service on the Take Stock Board.

Similarly, the prohibition in Section 112.313(3) would not be applicable because the Take Stock Board is not renting, leasing, or selling any realty, goods or services to the County and the County is not purchasing, renting, or leasing any realty, goods, or services from the Take

⁹ This conclusion assumes Commissioner Raschein is not a rank-and-file member of the Take Stock Board. If she is a rank-and-file member of the Take Stock Board, then she would indeed be considered to have a contractual relationship with it. See CEO 10-2. In such a scenario, she would have a contractual relationship with a business entity (the Take Stock Board via her membership in the nonprofit) doing business (the grant agreement) with her agency (the County).

Mr. Robert B. Shillinger
March 8, 2022
Page 10

Stock Board. See CEO 18-6. For this reason, the prohibition in Section 112.313(3) is inapplicable to Commissioner Raschein's service on the Take Stock Board.

Florida Council on Arts and Culture

Lastly, you explain that Commissioner Raschein is a member of the Florida Council on Arts and Culture (Arts Council), which is an advisory body of the Florida Department of State and created pursuant to Section 265.285, Florida Statutes. The chief duties of the Arts Council include reviewing applications for grant funding to acquire, renovate, or construct cultural facilities and to recommend a particular prioritization of those grants. To the best of your knowledge, the County does not currently have any grant agreements with the Arts Council, though you anticipate that the County might want to apply for such a grant in the future. You ask whether those circumstances would amount to a voting conflict.

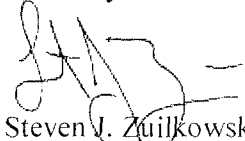
Neither a vote by Commissioner Raschein as a member of the Board of County Commissioners to apply for funding from the Arts Council nor a vote by her as a member of the Arts Council to recommend an award of funding to the County will pose a voting conflict for Commissioner Raschein. Neither vote will inure to her personal special private gain or loss. Also, neither vote would inure to the special private gain or loss of a principal by whom she is retained. By definition, a "principal by whom retained" does not include another agency. See Section 112.3143(1)(a), Florida Statutes. For this reason, neither vote would amount to a voting conflict.

If the Arts Council did give a grant to the County, such an arrangement would not result in a prohibited conflict of interest. In that scenario, both her position as a County Commissioner and her position as an uncompensated Arts Council board member would be considered "office holding," not employment or a contractual relationship. See CEO 92-39 and CEO 15-8. In the absence of employment or a contractual relationship, there can be no *conflicting* employment or contractual relationship under Section 112.313(7)(a).

Conclusion

Your inquiries are answered accordingly. The guidance provided in this letter is limited to the facts that have been provided. If there are additional material facts, or if I have misstated them in this letter, please contact me again. The referenced statutes and advisory opinions are available on the Commission's website at www.ethics.state.fl.us. If you have any other questions about the guidance contained in this letter, please send me an email at zuilkowski.steven@leg.state.fl.us.

Sincerely,



Steven J. Zuilkowski
Senior Attorney

SMITH/HAWKS

ATTORNEYS AT LAW

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July 25, 2022

VIA EMAIL ONLY

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RE: Settlement Demand – Case No.: 2017-CA-802-K; AshBritt, Inc. v. Monroe County,
Florida and Florida Department of Transportation.

PRIVILEGED AND CONFIDENTIAL SETTLEMENT COMMUNICATION

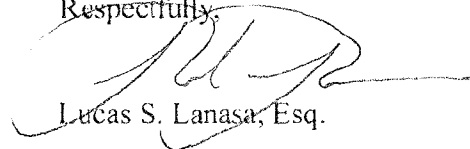
Dear Mr. Hochman,

As you are aware, this firm represents AshBritt, Inc. (“AshBritt”) in the above captioned matter. Please accept this letter as a formal offer for settlement to fully resolve the above captioned claim.

AshBritt proposes dismissal of all pending claims with prejudice, waiving any payment for additional haul-out fees, removal of putrefied waste, and attorneys’ fees incurred, in exchange for Monroe County reinstating the June 21, 2017 Agreement for Disaster Response and Recovery Services by and between the parties (“Agreement”) and further exercising its option to extend the term of the Agreement for an additional one (1) year pursuant to Article 1.1.8. of same.

Please feel free to reach out with any questions or concern. We look forward to your response and the opportunity to fully resolve these claims without the need for further litigation and to the mutual benefit of all parties.

Respectfully,



Lucas S. Lanasa, Esq.

Cc: Client
Robert Schillinger, County Attorney

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SMITH/HAWKS
ATTORNEYS AT LAW

Lucas S. Lanasa, Esq.
Telephone: (305) 296-7227
Email: Luke@SmithHawks.com

August 31, 2022

VIA EMAIL ONLY

Jeffrey L. Hochman, Esq.
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Burke, Piper, & Hochman, P.A.
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Fort Lauderdale, Florida 33304
Email: hochman@jambg.com

RE: Revised Settlement Demand – Case No.: 2017-CA-802-K; AshBritt, Inc. v. Monroe County, Florida and Florida Department of Transportation.

PRIVILEGED AND CONFIDENTIAL SETTLEMENT COMMUNICATION

Dear Mr. Hochman,

Please accept this letter as an amendment to the formal offer for settlement previously tendered by correspondence dated July 25, 2022.

AshBritt proposes dismissal of all pending claims with prejudice, waiving any payment for additional haul-out fees, removal of putrefied waste, and attorneys' fees incurred, in exchange for Monroe County reinstating the June 21, 2017, Agreement for Disaster Response and Recovery Services by and between the parties ("Agreement") and further exercising all remaining one (1) year options, pursuant to Article 1.1.8. of the Agreement, providing for an expiration date of June 20, 2027.

Please feel free to reach out with any questions or concern. We look forward to your response and the opportunity to fully resolve these claims without the need for further litigation and to the mutual benefit of all parties.

Respectfully,


Lucas S. Lanasa, Esq.

Cc: Client
Robert Schillinger, County Attorney

**AGREEMENT FOR
DISASTER RESPONSE AND RECOVERY SERVICES**

This Agreement ("Agreement") made and entered into this **21st** day of **June, 2017** by and between **Monroe County**, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, Florida, 33040, its successors and assigns, hereinafter referred to as "COUNTY," through the Monroe County Board of County Commissioners ("BOCC"),

AND

Ashbritt, Inc., a corporation of the State of Florida, whose address is 565 E Hillsboro Boulevard, Deefield Beach, Florida, 33441, its successors and assigns, hereinafter referred to as "CONTRACTOR",

WITNESSETH:

WHEREAS, COUNTY desires to employ the professional services of CONTRACTOR for Disaster Response and Recovery Services; and

WHEREAS, CONTRACTOR has agreed to provide professional services which shall include but not be limited to providing Disaster Response and Recovery Services, which services shall collectively be referred to as the "Project";

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, COUNTY and CONTRACTOR agree as follows:

FORM OF AGREEMENT

ARTICLE 1

1.1 REPRESENTATIONS AND WARRANTIES

By executing this Agreement, CONTRACTOR makes the following express representations and warranties to the COUNTY:

- 1.1.1** The CONTRACTOR shall maintain all necessary licenses, permits or other authorizations necessary to act as CONTRACTOR for the Project until the CONTRACTOR'S duties hereunder have been fully satisfied;
- 1.1.2** The CONTRACTOR has become familiar with the Project site and the local conditions under which the work is to be completed.
- 1.1.3** The CONTRACTOR shall prepare all documentation required by this Agreement in such a manner that they shall be accurate, coordinated and adequate for use in verifying work completed by debris contractors and associated costs and shall be in conformity and comply with all applicable law, codes and regulations. The CONTRACTOR warrants that

the documents prepared as a part of this Agreement will be adequate and sufficient to document costs in a manner that is acceptable for reimbursement by government agencies, therefore eliminating any additional cost due to missing or incorrect information;

- 1.1.4 The CONTRACTOR assumes full responsibility to the extent allowed by law with regards to his performance and those directly under his employ.
- 1.1.5 The CONTRACTOR'S services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. In providing all services pursuant to this agreement, the CONTRACTOR shall abide by all statutes, ordinances, rules and regulations pertaining to, or regulating the provisions of such services, including those now in effect and hereinafter adopted. Any violation of said statutes, ordinances, rules and regulations shall constitute a material breach of this agreement and shall entitle the Board to terminate this contract immediately upon delivery of written notice of termination to the CONTRACTOR.
- 1.1.6 At all times and for all purposes under this agreement the CONTRACTOR is an independent contractor and not an employee of the Board of County Commissioners for Monroe County. No statement contained in this agreement shall be construed so as to find the CONTRACTOR or any of his/her employees, contractors, servants, or agents to be employees of the Board of County Commissioners for Monroe County.
- 1.1.7 The CONTRACTOR shall not discriminate against any person on the basis of race, creed, color, national origin, sex, age, or any other characteristic or aspect which is not job related, in its recruiting, hiring, promoting, terminating, or any other area affecting employment under this agreement or with the provision of services or goods under this agreement.
- 1.1.8 The effective date of this AGREEMENT shall be **June 21, 2017**. The term of the AGREEMENT shall be for a **five year period**, unless otherwise terminated as provided herein. The COUNTY shall have the option of extending the AGREEMENT in one year increments for up to five additional years at the same terms and conditions with approval of the COUNTY'S governing board. Such extension(s) shall be in the form of a written Amendment to the AGREEMENT and shall be executed by both parties.

ARTICLE II

SCOPE OF BASIC SERVICES

2.1 DEFINITION

CONTRACTOR'S Scope of Basic Services consists of those described in **Attachment A**. The CONTRACTOR shall commence work on the services provided for in this Agreement promptly upon his receipt of a written notice to proceed from the COUNTY. The notice to proceed will be in the form of a task order and must contain a description of the services to be performed, and the time within which services must be performed.

2.2 CORRECTION OF ERRORS, OMISSIONS, DEFICIENCIES

The CONTRACTOR shall, without additional compensation, promptly correct any errors, omissions, deficiencies, or conflicts in the work product of the CONTRACTOR or its subCONTRACTORS, or both.

2.3 NOTICE REQUIREMENT

All written correspondence to the COUNTY shall be dated and signed by an authorized representative of the CONTRACTOR. Any notice required or permitted under this agreement shall be in writing and hand delivered or mailed, postage pre-paid, to the COUNTY by certified mail, return receipt requested, to the following:

Mr. Kevn Wilson, P.E.
Assistant County Administrator
1100 Simonton Street
Key West, Florida 33040

And: Mr. Roman Gastesi, Jr.
Monroe County Administrator
1100 Simonton Street, Room 2-205
Key West, Florida 33040

For the CONTRACTOR:

DOUG KNIGHT
565 E HILLSBORO BLVD
DEERFIELD BEACH, FL 33441

ARTICLE III

ADDITIONAL SERVICES

- 3.1** The services described in Article III that may be provided by the CONTRACTOR (provided for example purposes only) and are not included in Basic Services. If requested by the COUNTY they shall be paid for as an addition to the compensation paid for the Basic Services but only if approved by the COUNTY before commencement.

A. Providing services of CONTRACTOR for other than the previously listed scope of the Project provided as a part of Basic Services.

B. Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted debris recovery operations.

B. Providing representation before public bodies in connection with the Project, upon approval by COUNTY.

- 3.2** If Additional Services are required, such as those listed above, the COUNTY shall issue a letter requesting and describing the requested services to the CONTRACTOR. The CONTRACTOR shall respond with a fee proposal to perform the requested services. Only after receiving an amendment to the Agreement and a notice to proceed from the COUNTY, shall the CONTRACTOR proceed with the Additional Services.

ARTICLE IV

COUNTY'S RESPONSIBILITIES

- 4.1 The COUNTY shall provide full information regarding requirements for the Project including physical location of work, county maintained roads, and any available maps.
- 4.2 The COUNTY shall designate a representative to act on the COUNTY's behalf with respect to the Project. The COUNTY or its representative shall render decisions in a timely manner pertaining to documents submitted by the CONTRACTOR in order to avoid unreasonable delay in the orderly and sequential progress of the CONTRACTOR'S services.
- 4.3 Prompt written notice shall be given by the COUNTY and its representative to the CONTRACTOR if they become aware of any fault or defect in the Project or non-conformance with the Agreement Documents. Written notice shall be deemed to have been duly served if sent pursuant to paragraph 2.3.
- 4.4 The COUNTY shall furnish the required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the CONTRACTOR'S services and work of the contractors.
- 4.5 The COUNTY's review of any documents prepared by the CONTRACTOR or its subcontractors shall be solely for the purpose of determining whether such documents are generally consistent with the COUNTY's criteria, as, and if, modified. No review of such documents shall relieve the CONTRACTOR of responsibility for the accuracy, adequacy, fitness, suitability or coordination of its work product.
- 4.6 The COUNTY shall provide copies of necessary documents required to complete the work.
- 4.7 Any information that may be of assistance to the CONTRACTOR that the COUNTY has immediate access to will be provided as requested.

ARTICLE V

INDEMNIFICATION AND HOLD HARMLESS

The CONTRACTOR covenants and agrees to indemnify, hold harmless and defend COUNTY, its commissioners, officers, employees, agents and servants from any and all claims for bodily injury, including death, personal injury, and property damage, including damage to property owned by Monroe County, and any other losses, damages, and expenses of any kind, including attorney's fees, court costs and expenses, which arise out of, in connection with, or by reason of services provided by CONTRACTOR or its Subcontractor(s) in any tier, occasioned by the negligence, errors, or other wrongful act or omission of the CONTRACTOR, its Subcontractor(s) in any tier, their officers, employees, servants and agents.

In the event that the completion of the project (to include the work of others) is delayed or suspended as a result of the CONTRACTOR's failure to purchase or maintain the required insurance, the CONTRACTOR shall indemnify COUNTY from any and all increased expenses resulting from such delay. Should any claims be asserted against COUNTY by virtue of any deficiency or ambiguity in the plans and specifications provided by the CONTRACTOR, the CONTRACTOR agrees and warrants that CONTRACTOR hold the County harmless and shall indemnify it from all losses occurring thereby and shall further defend any claim or action on the COUNTY's behalf.

The first ten dollars (\$10.00) of remuneration paid to the CONTRACTOR is consideration for the indemnification provided for above.

The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere within this agreement.

This indemnification shall survive the expiration or earlier termination of the Agreement.

ARTICLE VI **PERSONNEL**

6.1 PERSONNEL

The CONTRACTOR shall assign only qualified personnel to perform any service concerning the project. At the time of execution of this Agreement, the parties anticipate that the following named individuals will perform those functions as indicated:

NAME	FUNCTION
<u>DOW KNIGHT</u>	<u>SR.V.P. /PROJECT MANAGER</u>
<u>MATT GIERDEN</u>	<u>V.P. / OPERATIONS MANAGER</u>
<u>CHRIS HOISINGER</u>	<u>TECHNICAL ASSISTANCE MANAGER</u>
<u>BRETT POSTELL</u>	<u>ENVIRONMENTAL HEALTH & SAFETY MGR</u>
<u>ROB RAY</u>	<u>SR. V.P. / QUALITY CONTROL MGR</u>
<u>RALPH DAHLGREN</u>	<u>SR.V.P. / LOGISTICS MANAGER</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>

So long as the individuals named above remain actively employed or retained by the CONTRACTOR, they shall perform the functions indicated next to their names. If they are replaced the CONTRACTOR shall notify the COUNTY of the change immediately.

ARTICLE VII **COMPENSATION**

7.1 PAYMENT SUM

7.1.1 The COUNTY shall pay the CONTRACTOR in current funds for the CONTRACTOR'S performance of this Agreement based on rates negotiated and agreed upon and shown in Attachment A.

7.2 PAYMENTS

7.2.1 For its assumption and performances of the duties, obligations and responsibilities set forth herein, the CONTRACTOR shall be paid monthly.

- (A) If the CONTRACTOR'S duties, obligations and responsibilities are materially changed by amendment to this Agreement after execution of this Agreement,

compensation due to the CONTRACTOR shall be equitably adjusted, either upward or downward;

- (B) As a condition precedent for any payment due under this Agreement, the CONTRACTOR shall submit monthly, unless otherwise agreed in writing by the COUNTY, a proper invoice to COUNTY requesting payment for services properly rendered and reimbursable expenses due hereunder. The CONTRACTOR'S invoice shall describe with reasonable particularity the service rendered. The CONTRACTOR'S invoice shall be accompanied by such documentation or data in support of expenses for which payment is sought at the COUNTY may require, including but not limited to back up documentation sufficient for reimbursement of expenses by FEMA or other governmental agencies.
- (C) Payment shall be made pursuant to the Local Government Prompt Payment Act, 218.735, Florida Statute.

7.3 REIMBURSABLE EXPENSES

Rates shall be inclusive of all reimbursable expenses.

7.4 BUDGET

- 7.4.1** The CONTRACTOR may not be entitled to receive, and the COUNTY is not obligated to pay, any fees or expenses in excess of the amount budgeted for this contract in each fiscal year (October 1 - September 30) by COUNTY's Board of County Commissioners. The budgeted amount may only be modified by an affirmative act of the COUNTY's Board of County Commissioners.
- 7.4.2** The COUNTY's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Board of County Commissioners and the approval of the Board members at the time of contract initiation and its duration.

ARTICLE VIII **INSURANCE AND BONDS**

- 8.1** The CONTRACTOR shall obtain insurance as specified and maintain the required insurance at all times that this Agreement is in effect. In the event the completion of the project (to include the work of others) is delayed or suspended as a result of the CONTRACTOR'S failure to purchase or maintain the required insurance, the CONTRACTOR shall indemnify the COUNTY from any and all increased expenses resulting from such delay.
- 8.2** The coverage provided herein shall be provided by an insurer with an A.M. Best rating of VI or better, that is licensed to business in the State of Florida and that has an agent for service of process within the State of Florida. The coverage shall contain an endorsement providing sixty (60) days notice to the COUNTY prior to any cancellation of said coverage. Said coverage shall be written by an insurer acceptable to the COUNTY and shall be in a form acceptable to the COUNTY.
- 8.3** CONTRACTOR shall obtain and maintain the following policies:

- A. Workers' Compensation insurance as required by the State of Florida, sufficient to respond to Florida Statute 440.
- B. Employers Liability Insurance with limits of \$1,000,000 per Accident, \$1,000,000 Disease, policy limits, \$1,000,000 Disease each employee.
- C. Comprehensive business automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, hired or non-owned vehicles, with Five Million Dollars (\$5,000,000.00) combined single limit and Five Million Dollars (\$5,000,000.00) annual aggregate.
- D. Commercial general liability, including Personal Injury Liability, covering claims for injuries to members of the public or damage to property of others arising out of any covered act or omission of the CONTRACTOR or any of its employees, agents or subcontractors or subcontractors, including Premises and/or Operations, Products and Completed Operations, Independent Contractors; Broad Form Property Damage and a Blanket Contractual Liability Endorsement with Five Million Dollars (\$5,000,000) per occurrence and annual aggregate.

An Occurrence Form policy is preferred. If coverage is changed to or provided on a Claims Made policy, its provisions should include coverage for claims filed on or after the effective date of this contract. In addition, the period for which claims may be reported must extend for a minimum of 48 months following the termination or expiration of this contract.

- E. Pollution Liability insurance of Five Million Dollars (\$5,000,000.00) per occurrence and Ten Million Dollars (\$10,000,000.00) annual aggregate. If the policy is a "claims made" policy, CONTRACTOR shall maintain coverage or purchase a "tail" to cover claims made after completion of the project to cover the statutory time limits in Chapter 95 of the Florida Statutes.
- F. COUNTY shall be named as an additional insured with respect to CONTRACTOR'S liabilities hereunder in insurance coverages identified in Paragraphs C and D.
- G. CONTRACTOR shall require its subcontractors to be adequately insured at least to the limits prescribed above, and to any increased limits of CONTRACTOR if so required by COUNTY during the term of this Agreement. COUNTY will not pay for increased limits of insurance for subcontractors.
- H. CONTRACTOR shall provide to the COUNTY certificates of insurance or a copy of all insurance policies including those naming the COUNTY as an additional insured. The COUNTY reserves the right to require a certified copy of such policies upon request.
- I. If the CONTRACTOR participates in a self-insurance fund, a Certificate of Insurance will be required. In addition, the CONTRACTOR may be required to submit updated financial statements from the fund upon request from the COUNTY.

- 8.4 The Contractor shall furnish a Performance and Payment Bond in a form acceptable to the Owner as a guarantee for the faithful performance of the Contract (including guarantee and maintenance provisions) and the payment of all obligations arising thereunder. The

Performance and Payment Bond shall be in an amount at least equal to the contract price. This contract is subject to the provisions of Section 255.05, Florida Statutes, which are incorporated herein. If contract amendments render the contract more than ten (10%) percent higher than the bond amount, the Contractor shall increase the bond amount to cover the entire difference.

ARTICLE IX **MISCELLANEOUS**

9.1 SECTION HEADINGS

Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

9.2 OWNERSHIP OF THE PROJECT DOCUMENTS

The documents prepared by the CONTRACTOR for this Project belong to the COUNTY and may be reproduced and copied without acknowledgement or permission of the CONTRACTOR.

9.3 SUCCESSORS AND ASSIGNS

The CONTRACTOR shall not assign or subcontract its obligations under this agreement, except in writing and with the prior written approval of the Board of County Commissioners for Monroe County and the CONTRACTOR, which approval shall be subject to such conditions and provisions as the Board may deem necessary. This paragraph shall be incorporated by reference into any assignment or subcontract and any assignee or subcontractor shall comply with all of the provisions of this agreement. Subject to the provisions of the immediately preceding sentence, each party hereto binds itself, its successors, assigns and legal representatives to the other and to the successors, assigns and legal representatives of such other party.

9.4 NO THIRD PARTY BENEFICIARIES

Nothing contained herein shall create any relationship, contractual or otherwise, with or any rights in favor of, any third party.

9.5 TERMINATION

- A. In the event that the CONTRACTOR shall be found to be negligent in any aspect of service, the COUNTY shall have the right to terminate this agreement after five days written notification to the CONTRACTOR.
- B. Either of the parties hereto may cancel this Agreement without cause by giving the other party ninety (90) days written notice of its intention to do so, however this provision may not be exercised during hurricane season (June 1 to November 30) unless both parties mutually agree to terminate the agreement

9.6 CONTRACT DOCUMENTS

This contract consists of the Proposal Statement, any addenda, the Form of Agreement (Articles I-IX), the CONTRACTOR'S response to the RFP, the documents referred to in the Form of Agreement as a part of this Agreement, and Attachment A, and modifications made after execution by written amendment. In the event of any conflict between any of the Contract documents, the one imposing the greater burden on the CONTRACTOR will control.

9.7 PUBLIC ENTITIES CRIMES

A 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 contracts to provide any goods or services to a public entity, may not submit a bid on a contract 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, subcontractor, or CONTRACTOR under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

By signing this Agreement, CONTRACTOR represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes). Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from COUNTY's competitive procurement activities.

In addition to the foregoing, CONTRACTOR further represents that there has been no determination, based on an audit, that it or any subcontractor has committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CONUSULTANT has been placed on the convicted vendor list.

CONTRACTOR will promptly notify the COUNTY if it or any subcontractor or CONTRACTOR is formally charged with an act defined as a "public entity crime" or has been placed on the convicted vendor list.

9.8 MAINTENANCE OF RECORDS

CONTRACTOR shall maintain all books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. Records shall be retained for a period of seven years from the termination of this agreement or for a period of three years from the submission of the final expenditure report as per 2 CFR §200.333, whichever is greater. Each party to this Agreement or its authorized representatives shall have reasonable and timely access to such records of each other party to this Agreement for public records purposes during the term of the Agreement and for four years following the termination of this Agreement. If an auditor employed by the COUNTY or Clerk determines that monies paid to CONTRACTOR pursuant to this Agreement were spent for purposes not authorized by this Agreement, or were wrongfully retained by the CONTRACTOR, the CONTRACTOR shall repay the monies together with interest calculated pursuant to Sec. 55.03, of the Florida Statutes, running from the date the monies were paid by the COUNTY.

9.9 GOVERNING LAW, VENUE, INTERPRETATION, COSTS, AND FEES

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. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, COUNTY and CONTRACTOR agree that venue shall lie in the 16th Judicial Circuit, Monroe County, Florida, in the appropriate court or before the appropriate administrative body. This agreement shall not be subject to arbitration. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.

9.10 SEVERABILITY

If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) 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 provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The COUNTY and CONTRACTOR 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.

9.11 ATTORNEY'S FEES AND COSTS

The COUNTY and CONTRACTOR agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of the Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs, as an award against the non-prevailing party, and shall include attorney's fees and courts costs in appellate proceedings.

9.12 BINDING EFFECT

The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the COUNTY and CONTRACTOR and their respective legal representatives, successors, and assigns.

9.13 AUTHORITY

Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary County and corporate action, as required by law.

9.14 CLAIMS FOR FEDERAL OR STATE AID

CONTRACTOR and COUNTY 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 shall be approved by each party prior to submission.

9.15 ADJUDICATION OF DISPUTES OR DISAGREEMENTS

COUNTY and CONTRACTOR agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If no resolution can be agreed upon within 30 days after the first meet and confer session, the issue or issues shall be discussed at a public meeting of the Board of County Commissioners. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law. This provision does not negate or waive the provisions of paragraph 9.5 concerning termination or cancellation.

9.16 COOPERATION

In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, COUNTY and CONTRACTOR agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. COUNTY and CONTRACTOR specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

9.17 NONDISCRIMINATION

CONTRACTOR and COUNTY agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. CONTRACTOR or COUNTY agrees to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as may be amended from time to time, relating to nondiscrimination on the basis of disability; 10) Monroe County Code Chapter 13, Article VI, which prohibits discrimination on the basis of race, color, sex, religion, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; 11) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

9.18 COVENANT OF NO INTEREST

CONTRACTOR and COUNTY covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

9.19 CODE OF ETHICS

COUNTY agrees that officers and employees of the COUNTY recognize and will be required to comply with the standards of conduct for public officers and employees as 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 or use of certain information.

9.20 NO SOLICITATION/PAYMENT

The CONTRACTOR and COUNTY warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the provision, the CONTRACTOR agrees that the COUNTY shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

9.21 PUBLIC ACCESS.

Public Records Compliance. Contractor must comply with Florida public records laws, including but not limited to Chapter 119, Florida Statutes and Section 24 of article I of the Constitution of Florida. The County and Contractor shall allow and permit reasonable access to, and inspection of, all documents, records, papers, letters or other "public record" materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the County and Contractor in conjunction with this contract and related to contract performance. The County shall have the right to unilaterally cancel this contract upon violation of this provision by the Contractor. Failure of the Contractor to abide by the terms of this provision shall be deemed a material breach of this contract and the County may enforce the terms of this provision in the form of a court proceeding and shall, as a prevailing party, be entitled to reimbursement of all attorney's fees and costs associated with that proceeding. This provision shall survive any termination or expiration of the contract.

The Contractor is encouraged to consult with its advisors about Florida Public Records Law in order to comply with this provision.

Pursuant to F.S. 119.0701 and the terms and conditions of this contract, the Contractor is required to:

- (1) Keep and maintain public records that would be required by the County to perform the service.
- (2) Upon receipt from the County's custodian of records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable

time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the County.

(4) Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the Contractor or keep and maintain public records that would be required by the County to perform the service. If the Contractor transfers all public records to the County upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of records, in a format that is compatible with the information technology systems of the County.

(5) A request to inspect or copy public records relating to a County contract must be made directly to the County, but if the County does not possess the requested records, the County shall immediately notify the Contractor of the request, and the Contractor must provide the records to the County or allow the records to be inspected or copied within a reasonable time.

If the Contractor does not comply with the County's request for records, the County shall enforce the public records contract provisions in accordance with the contract, notwithstanding the County's option and right to unilaterally cancel this contract upon violation of this provision by the Contractor. A Contractor who fails to provide the public records to the County or pursuant to a valid public records request within a reasonable time may be subject to penalties under section 119.10, Florida Statutes.

The Contractor shall not transfer custody, release, alter, destroy or otherwise dispose of any public records unless or otherwise provided in this provision or as otherwise provided by law.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, BRIAN BRADLEY AT PHONE# 305-292-3470 BRADLEY-BRIAN@MONROECOUNTY-FL.GOV, MONROE COUNTY ATTORNEY'S OFFICE 1111 12TH Street, SUITE 408, KEY WEST, FL 33040.

9.22 NON-WAIVER OF IMMUNITY

Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the CONTRACTOR and the COUNTY in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the COUNTY be required to contain any provision for waiver.

9.23 PRIVILEGES AND IMMUNITIES

All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the COUNTY, when performing their respective functions under this Agreement within the territorial limits of the COUNTY shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the COUNTY.

9.24 LEGAL OBLIGATIONS AND RESPONSIBILITIES

Non-Delegation of Constitutional or Statutory Duties. This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, 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 statute, and case law.

9.25 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 CONTRACTOR and the COUNTY agree that neither the CONTRACTOR nor the COUNTY or any agent, officer, or employee of either 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 in this Agreement.

9.26 ATTESTATIONS AND TRUTH IN NEGOTIATION

CONTRACTOR agrees to execute such documents as COUNTY may reasonably require, including a Public Entity Crime Statement, an Ethics Statement, and a Drug-Free Workplace Statement. Signature of this Agreement by CONTRACTOR shall act as the execution of a truth in negotiation certificate stating that wage rates and other factual unit costs supporting the compensation pursuant to the Agreement are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the agency determines the contract price was increased due to inaccurate, incomplete, or concurrent wage rates and other factual unit costs. All such adjustments must be made within one year following the end of the Agreement.

9.27 NO PERSONAL LIABILITY

No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of Monroe County in his or her individual capacity, and no member, officer, agent or employee 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.

9.28 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 any of the parties hereto may execute this Agreement by signing any such counterpart.

9.29 FEDERAL CONTRACT REQUIREMENTS

The Contractor and its subcontractors must follow the provisions as set forth in Appendix II to Part 200, as amended, including but not limited to:

- 9.29.1** Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b).
- 9.29.2** Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The COUNTY must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The COUNTY must report all suspected or reported violations to the Federal awarding agency. The contractors must also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). As required by the Act, each contractor or subrecipient is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The COUNTY must report all suspected or reported violations to the Federal awarding agency.
- 9.29.3** Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the COUNTY in excess of \$100,000 that involve the employment of mechanics or laborers must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

9.29.4 Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

9.29.5 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

9.29.6 Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

9.29.7 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

9.29.8 Procurement of recovered materials as set forth in 2 CFR § 200.322.

Other Federal Requirements:

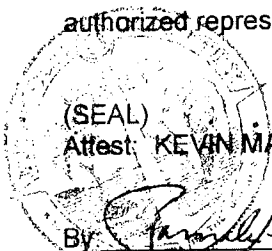
9.29.9 Americans with Disabilities Act of 1990 (ADA) – The CONTRACTOR will comply with all the requirements as imposed by the ADA, the regulations of the Federal government issued thereunder, and the assurance by the CONTRACTOR pursuant thereto.

9.29.10 Disadvantaged Business Enterprise (DBE) Policy and Obligation - It is the policy of the COUNTY that DBE's, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with COUNTY funds under this Agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement. The COUNTY and its

CONTRACTOR agree to ensure that DBE's have the opportunity to participate in the performance of this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBE's have the opportunity to compete for and perform contracts. The COUNTY and the CONTRACTOR and subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement.

- 9.30 The Contractor shall utilize the U.S. Department of Homeland Security's **E-Verify system** to verify the employment eligibility of all new employees hired by the Contractor during the term of the Contract and shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative on the day and year first above written.



(SEAL)
Attest: KEVIN MADOK, Clerk

By: [Signature]
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: [Signature]
Mayor/Chairman

Date: June 21, 2017

(Seal)
Attest:

BY: [Signature]
Title: C.R.C.

ASHBRITT, INC.

By: [Signature]
Title: JOHN NOBLE C.O.O.

CLK. CIR. CL.
MONROE COUNTY, FLA

FILED FOR RECORD
2017 AUG -1 AM 10:44

END OF AGREEMENT

MONROE COUNTY ATTORNEY

APPROVED AS TO FORM:

[Signature]

CHRISTINE M. LIMBERT-BARROWS

ASSISTANT COUNTY ATTORNEY

Date: 7/21/17

SECRETARY'S CERTIFICATE

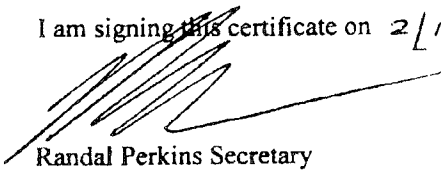
I, Randal Perkins, Secretary of Ashbritt, Inc., a Florida corporation, (the "Corporation"), certify that the following are true and complete resolutions which were adopted unanimously at a duly called and held meeting of the Board of Directors of the Corporation held on the 11 day of MARCH, 2014, and that such resolutions have not been amended or modified and continue to be in full force and effect:

RESOLVED, that the Corporation execute and deliver all contracts which it deems to be necessary or appropriate to carry out its business, including without limitation any and all contracts; and

RESOLVED, that John Noble, as Vice-President of the Corporation, is directed to execute and deliver all contracts on behalf of the Corporation, including without limitation any and all contracts, and to do all things necessary or appropriate to carry out the terms of those contracts, including executing and delivering all agreements and documents contemplated by those contracts.

I further certify that John Noble now holds the office of Vice-President and that he has held that office since November 14, 1994.

I am signing this certificate on 2/18/2016


Randal Perkins Secretary
AshBritt, Inc. a Florida Corporation
565 E Hillsboro Blvd
Deerfield Beach, FL 33441

ATTACHMENT A
SCOPE OF WORK AND PRICING

In the event of a disaster, upon Notice to Proceed from the COUNTY, the CONTRACTOR shall be responsible for providing emergency debris clearance (PUSH), Debris Recovery (loading and hauling of disaster related debris), management of Temporary Debris Storage and Reduction sites (TDSR), and tree stump and limb removal. All disaster response and recovery services shall be performed in compliance with FEMA and FHWA guidelines. Documentation and reports of work performed shall be in a form suitable for FEMA reimbursement.

1. These tasks may include, but are not limited to:

A. Emergency Debris Clearing from County Rights of Way and Facilities

- Immediately after a disaster, provide all necessary equipment, tools and personnel to clear primary roads and critical government facilities of debris to allow emergency vehicles access to areas in need of assistance as directed by the County.
- Debris should be stacked along the edge of pavement on the shoulder of the road and not blocking driveways, side streets or utilities of any kind.
- Emergency Debris Removal may require loading the debris, hauling the debris to an approved dumpsite, and dumping the debris at the approved dumpsite.
- Provide daily reporting to include cumulative, daily, and hourly statistics detailing type of equipment and personnel used

Pricing for Emergency Debris Clearing equipment shall be at the hourly rates detailed as follows (equipment operator included):

Equipment Type	Hourly Equipment Rate
Bobcat Loader	\$107.01
Bucket Truck w/Operator	\$165.00
Crash Truck w/Impact Attenuator	\$135.60
Dozer, Tracked, D5 or similar	\$118.70
Dozer, Tracked, D6 or similar	\$131.61
Dozer, Tracked, D7 or similar	\$182.96
Dozer, Tracked, D8 or similar	\$222.94
Dump Truck, 18 CY-25 CY	\$90.00
Dump Truck, 25 CY-35 CY	\$95.00
Dump Truck, 35 CY-45 CY	\$115.00
Dump Truck, 50 CY or larger	\$125.00
Generator and Lighting	\$99.78
Grader w/12' Blade	\$102.00
Hydraulic Excavator, 1.5 CY	\$140.53
Hydraulic Excavator, 2.5 CY	\$169.89
Knuckleboom Loader	\$200.00
Equipment Transport	\$130.00
Mobile Crane (Adequate for hanging limbs/leaning trees)	\$195.00
Pickup Truck, .5 Ton	\$109.82
Truck, Flatbed	\$138.81

Water Truck	\$111.32
Wheel Loader, 2.5 CY, 950 or similar	\$130.94
Wheel Loader, 3.5 – 4.0 CY, 966 or similar	\$148.68
Wheel Loader, 4.5 CY, 980 or similar	\$150.00
Wheel Loader-Backhoe, 1.0 – 1.5 CY	\$130.94
Track Hoe, John Deere 690 or similar	\$140.00
Stump Grinder	\$65.00
30 ton or larger Crane	\$250.00

Labor rates for emergency debris clearing and other work directed by COUNTY which require hourly billing shall be invoiced as follows:

Labor Category	Hourly Labor Rate
Operations Manager w/Cell Phone and Pickup	\$120.00
Crew Foreman w/Cell Phone and Pickup	\$50.00
Tree Climber/Chainsaw	\$85.00
Laborer w/Chain Saw	\$40.00
Laborer w/small tools, traffic control, flag person	\$30.00

B. Debris Recovery and Disposal (Load and Haul) from County Roads and Facilities

- Provide all necessary equipment and personnel to load and haul disaster-generated debris to an approved TDSR site.
- Disaster-related debris will be sorted into categories: clean vegetative, non-vegetative, seaweed, white goods, household hazardous waste, mixed and ineligible at the load sites.
- All debris shall be mechanically loaded and reasonably compacted.
- Provide control of pedestrian and vehicular traffic in the work area; include flag persons, signs or other devices necessary to ensure safe debris recovery operations.
- Provide daily reports on all debris recovery operations; include all equipment and personnel used. The report shall detail daily and cumulative-to-date statistics on the number of truckloads, number of cubic yards of debris hauled, locations of completed work, and locations of current work for each type of debris recovered.
- Identify landfills and/or other final disposal site(s) for all debris.
- Immediately investigate claims of damage to private property and/or County roads and rights-of-way due to debris operations and ensure proper repairs are made promptly at no cost to the County.
- Provide all necessary equipment and personnel to remove seaweed and other debris from beach sand by screening and return clean sand to beach as directed by the County.

Unit Costs associated with collection and hauling of debris from County rights of way to TDSRs are on a per cubic yard (CYD) basis or per item basis for white goods. Rates are inclusive of all costs and shall be invoiced at the following rates:

Description	Unit	Unit Price
Collect and Haul Vegetative Debris		
0 -15 mi	CYD	\$7.75
15.1 - 30 mi	CYD	\$11.50
> 30 mi	CYD	\$15.95
Collect and Haul Non-Vegetative (C&D) Debris		
0 - 15 mi.	CYD	\$7.75
15.1 - 30 mi	CYD	\$11.50
> 30 mi	CYD	\$15.95
Collect and Haul White Goods		
0 -15 mi	EACH	\$10.00
15.1 - 30 mi	EACH	\$25.00
> 30 mi	EACH	\$50.00
Collect and Haul Electronic Waste (e-waste)		
0 -15 mi	CYD	\$80.00
15.1 - 30 mi	CYD	\$100.00
> 30 mi	CYD	\$150.00
Collect and Haul Household Hazardous Waste		
0 -15 mi	CYD	\$30.00
15.1 - 30 mi	CYD	\$45.00
> 30 mi	CYD	\$65.00
Collect and Haul Seaweed		
0 -15 mi	CYD	\$25.00
15.1 - 30 mi	CYD	\$25.00
> 30 mi	CYD	\$35.00

Disposal of animal carcasses shall be \$ 30.00 per unit.

C. Management of Temporary Debris Storage and Reduction (TDSR) Sites

- Provide sufficient personnel and equipment to operate multiple TDSR sites simultaneously within unincorporated Monroe County
- Fully document pre-existing conditions at proposed TDSR sites with photographs and appropriate environmental sampling.
- Prepare each approved TDSR site to accept debris, to include clearing, erosion control, grading, construction and maintenance of haul roads and entrances and installation of inspection towers and security fencing
- Establish site layout, including entrance, exit and internal haul roads at each TDSR site
- Provide all management, supervision, labor, machines, tools, and equipment necessary to accept, process, reduce, sort, and dispose of disaster related debris.
- Provide at least one inspection tower at each TDSR site constructed to pre-approved county specifications.
- Vegetative Debris reduction shall be performed by chipping / grinding only
- Ensure all debris is properly staged and sorted.

- Provide daily and cumulative-to-date reports for each TDSR site.
- Ensure TDSR sites are secure and not accessible by the public during operation and after working hours.
- Haul debris from TDSR sites to final disposal site(s).
- After all debris has been reduced and hauled to final disposal sites, perform site restoration and closeout; include removal of site equipment (temporary toilets, inspection towers, security fence, etc) and restore the site to pre-work conditions.

Costs related to testing to establish TDSR site initial conditions, site mobilization and site restoration shall be invoiced at CONTRACTOR cost with no mark-up.

Unit costs for TDSR site management and debris reduction are on a per cubic yard basis or per unit basis for white goods. Costs are inclusive of all work required to manage and reduce debris, except as noted above, (freon removal from white goods is a separate, per unit cost), and shall be invoiced as follows:

Description	Unit	Unit Price
Debris Site Management		
vegetative	CYD	\$3.50
non-vegetative	CYD	\$3.50
white goods	EACH	\$3.75
household haz waste	CYD	\$19.00
electronic waste (e-waste)	CYD	\$25.00
seaweed	CYD	\$6.50

Freon removal from white goods shall be invoiced at **\$ 10.00 per unit** from which Freon is removed; the price for Freon removal includes transport and disposal of Freon at an approved disposal site.

Price for Haul out of reduced debris to Final Disposal sites shall be inclusive of all costs and shall be invoiced on a per cubic yard basis as follows:

Description	Unit	Unit Price
Haul out to Final Disposal		
0 - 60 mi	CYD	\$8.00
61 - 100 mi	CYD	\$6.00
101 - 130 mi	CYD	\$8.00
greater than 130 mi	CYD	\$12.25
white goods	EACH	\$50.00

- D. Contractor will identify final disposal locations for all debris classes. Cost associated with landfill tipping fees and/or disposal facility fees will be a pass through cost; the CONTRACTOR will invoice the COUNTY at actual cost, without any additional fees. Wherever possible, recycling, or other approved re-use facilities (ie. for metals) will be identified in order to reduce disposal costs.
- E. **Beach Sand Screening and Replacement**

Provide all necessary equipment and personnel to screen all sand to remove debris deposited by an event. This task includes the pick-up of debris laden sand, hauling debris laden sand to the processing screen located on or near the beach, processing the debris

laden sand and returning the clean sand to the approximate original location on the beach as directed by the COUNTY. Debris removed from the sand will be picked up, hauled and processed based on the scope of work and unit prices for debris removal from COUNTY rights of way.

The cost associated with collection, screening and returning sand to the beach shall be invoiced at **\$ 20.00 per cubic yard**.

F. Right of Entry (ROE) Work

As directed by the County, the CONTRACTOR will provide labor, equipment and materials to clear vegetative debris from private property, and demolish and remove non-vegetative debris from private property. Work may include trimming limbs and trees that present a hazard, clearing debris from private property and hauling it to the closest public right of way.

Work will not proceed until appropriate rights of entry forms and hold harmless agreements are obtained.

The following rates apply for right of entry work:

Vegetative debris: **\$ 10.00 per cubic yard**

Demolish and Remove non-vegetative debris from private property: **\$ 15.00 per cubic yard**.

Note: Right of Entry (ROE) work rates apply to clearing debris from private property and hauling to closest public Right of Way. Standard debris rates apply to further handling.

G. Tree and Limb Removal

- Provide all equipment, tools and personnel to safely remove hazardous leaning trees or hanging tree limbs, as directed by Monroe County.
- Provide control of pedestrian and vehicular traffic in the work area, to include flag persons, signs or other devices necessary to ensure safe tree/limb removal operations
- Ensure that strict Right-of-Entry procedures are followed for any hazardous tree or limb removal operations that affect private property.
- As directed by the County, remove all hazardous tree stumps, both uprooted and intact.
- Cut up trees and/or limbs, load and transport to the closest temporary debris site as directed by the County.

The cost of hazardous tree and hanging limb removal shall be invoiced as follows:

Hazardous Tree and Limb Removal*	Unit	Unit Price
hazardous tree removal 6" to 23.99" in diameter	Per Tree	\$135.00
hazardous tree removal 24" to 35.99" in diameter	Per Tree	\$215.00
hazardous tree removal 36" to 47.99" in diameter	Per Tree	\$295.00
hazardous tree removal 48" and greater in diameter	Per Tree	\$495.00
tree limb removal	Per Limb	\$95.00

*Unit price for tree and limb removal will include cost to cut trees or limbs and stack on public right of way. Collection, reduction and haul out will be at standard unit rates for vegetative debris.

The cost of tree stump removal shall be invoiced as follows:

Tree Stump Removal*	Unit	Unit Price
Greater than 24" but Less than 48" in Diameter	Per Stump	\$300.00
48" and Greater in Diameter	Per Stump	\$400.00

*The per stump unit prices for removal of stumps greater than 24" in diameter will include the cost to remove, transport and dispose of stump and to backfill the root cavity.

2. Required Response Level and Time

The following minimum response levels and timeframes are required by the contractor:

- A. Contractor's senior representative will be present at County EOC 24 hours prior to anticipated event, if requested by County; if not already present Contractor's senior representative will report to County EOC within 24 hours of notification by County *after* an event.

- B. Emergency Debris Clearance (PUSH) from Roads

5 crews (personnel and equipment) within 12 hours of notification by County
10 crews (personnel and equipment) within 24 hours of notification by County

- C. Debris Collection/Removal from County Roads

Within 24 hours of notification by County, contractor personnel will establish presence in county and prepare a minimum of four temporary debris sites for the following levels of response for debris collection:

Tropical Storm or Category 1 hurricane	50 trucks (incl. personnel and loading equipment);
Category 2 or 3 hurricane	150 trucks
Category 4 or 5 hurricane	200 trucks

33% of minimum equipment requirement must be present and working with 72 hours
66% of minimum requirement present and working with 120 hours of request
100% of minimum requirement present and working within 180 hours of request.

The response levels indicated above represent the minimum required; as needed contractor will be required to increase response levels to effectively respond to a specific event as debris operations proceed.

Failure to meet the minimum required response levels and timeframes will be considered non-performance and a default under the contract.

Client#: 1095194

ASHBRINC

DATE (MM/DD/YYYY)

6/12/2017

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER USI Insurance Services, LLC 500 Columbia Drive, Ste 102 West Palm Beach, FL 33409-2718 561 693-0500	CONTACT NAME: Kandi Schmitz	FAX (A/C, No): 855-420-6662
	PHONE (A/C, No, Ext): 561-693-0504	E-MAIL ADDRESS: kandi.schmitz@usi.com
INSURED AshBritt, Inc 565 East Hillsboro Blvd Deerfield Beach, FL 33441	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Starr Surplus Lines Insurance C	NAIC # 13604
	INSURER B: Starr Indemnity & Liability Com	38318
	INSURER C: Federal Insurance Company	20281
	INSURER D:	
	INSURER E:	
INSURER F:		

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	X	X	1000065645171	05/22/2017	05/22/2018	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COM/OP AGG \$2,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	X	X	SISIPCA08263217	05/22/2017	05/22/2018	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	UMBRELLA LIAB <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$			1000336529171	05/22/2017	05/22/2018	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y/N <input checked="" type="checkbox"/> N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	X		10000027880	05/22/2017	05/22/2018	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
A	Pollution	X	X	1000065645171	05/22/2017	05/22/2018	\$1,000,000 per loc
A	Professional	X	X	1000065645171	05/22/2017	05/22/2018	\$1,000,000 per claim
C	Equipment			06639855	05/22/2017	05/22/2018	See Desc of Operations w/ attachments

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

10 Days Notice for non payment; 30 Days Notice for all other. General Liability, Professional Liability and Pollution includes Primary & Non-Contributory, Additional Insured and Waiver of Subrogation. Auto policy includes Pollution and Waiver of Subrogation. Workers Compensation includes Waiver of Subrogation. Equipment Coverage is \$31,616, leased/borrowed or rented \$500,000 any one occurrence, not to exceed, \$250,000 on any one item, including Wind at 5% of the value of the item, subject to a minimum of \$2,500.

CERTIFICATE HOLDER

CANCELLATION

Monroe County Board of County Commissioners
1100 Simonton Street
Key West, FL 33040-0000

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – PRIMARY/NON-CONTRIBUTORY
COVERAGE WHEN REQUIRED BY CONTRACT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

The following is added to SECTION IV – Commercial General Liability Conditions, Paragraph 4, entitled "Other Insurance", subsection b. entitled "Excess Insurance", paragraph (1):

This insurance is excess over:

- (v) Any other insurance naming an additional insured as an insured on a primary basis, excess, contingent or on any other basis unless a written contract specifically requires that this insurance be primary and noncontributing. The written contract must be currently in effect or become effective during the term of this policy and must be executed prior to the "bodily injury", "property damage" or "personal and advertising injury."

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTUAL LIABILITY - RAILROADS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Scheduled Railroad: ALL CONTRACTS FOR WORK DONE FOR RAILROADS.	Designated Job Site:
---	-----------------------------

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

With respect to operations performed for, or affecting, a Scheduled Railroad at a Designated Job Site, the definition of "insured contract" in the Definitions section is replaced by the following:

9. "Insured Contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in Paragraph (1) above and supervisory, inspection, architectural or engineering activities.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**LAND IMPROVEMENT CONTRACTORS
EXTENDED LIABILITY COVERAGE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

It is agreed that the provisions listed below apply only upon the entry ☒ in the box next to the caption of of such provision.

- | | |
|--|--|
| A. <input checked="" type="checkbox"/> Partnership and Joint Venture Extension | J. <input checked="" type="checkbox"/> Broadened Conditions |
| B. <input checked="" type="checkbox"/> Contractors Automatic Additional Insured Coverage | K. <input checked="" type="checkbox"/> Automatic Additional Insureds – Equipment Leases |
| C. <input checked="" type="checkbox"/> Automatic Waiver of Subrogation | L. <input checked="" type="checkbox"/> Insured Contract Extension - Railroad Property and Construction Contracts |
| D. <input checked="" type="checkbox"/> Extended Notice of Cancellation, Nonrenewal | M. <input checked="" type="checkbox"/> Construction Project General Aggregate Limits |
| E. <input checked="" type="checkbox"/> Unintentional Failure to Disclose Hazards | N. <input checked="" type="checkbox"/> Fellow Employee Coverage |
| F. <input checked="" type="checkbox"/> Broadened Mobile Equipment | O. <input checked="" type="checkbox"/> Property Damage to the Named Insured's Work |
| G. <input checked="" type="checkbox"/> Personal Injury - Contractual Coverage | P. <input checked="" type="checkbox"/> Care, Custody or Control |
| H. <input checked="" type="checkbox"/> Nonemployment Discrimination | |
| I. <input checked="" type="checkbox"/> Liquor Liability | |

A. PARTNERSHIP AND JOINT VENTURE EXTENSION

The following provision is added to **SECTION II - WHO IS AN INSURED**:

The last full paragraph which reads as follows:

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

is deleted and replaced with the following:

With respect to the conduct of any past or present joint venture or partnership not shown as a Named Insured in the Declarations and of which you are or were a partner or member, you, and others identified in items **1.a., 1.b., and 1.c.**, subject to the conditions and limitations contained therein, are insureds, but only with respect to liability arising out of "your work" on behalf of any partnership or joint venture not shown as a Named Insured in the Declarations, provided no other similar liability insurance is available to you for "your work" in connection with your interest in such partnership or joint venture.

A partnership or joint venture, not shown as a Named Insured in the Declarations, of which you have 33% or more ownership interest at the time of "bodily injury" or "property damage" caused by an "occurrence" or "personal and advertising injury" caused by an offense, is an insured, provided that no other similar liability insurance is available to that partnership or joint venture.

B. CONTRACTORS AUTOMATIC ADDITIONAL INSURED COVERAGE

SECTION II - WHO IS AN INSURED is amended to include:

Any "owner", "contractor", "construction manager", "engineer" or "architect" if it is required in your written contract or written agreement executed by you and all other parties to the contract or agreement prior to any loss that such person(s) or organization(s) be added as an additional insured on your policy but only for the project designated in your written contract or written agreement and only with respect to "bodily injury," "property damage" or "personal and advertising injury" caused, at least in part, by your negligence and with respect to liability resulting from:

- A.** Your ongoing operations for the additional insured(s), or
- B.** Acts or omissions of the additional insured(s) in connection with their general supervision of such operations.

With respect to the insurance afforded such additional insureds pursuant to this endorsement and the above referenced General Liability Form, the following additional provisions apply to limit that coverage:

- 1.** We will have no duty to defend the additional insured against any "suit" seeking damages for "bodily injury," "property damage" or "personal and advertising injury," until we receive written notice from the additional insured requesting that we defend it in the "suit."
- 2.** The Limits of Insurance applicable to the additional insureds under this endorsement are the minimum limits specified in the written contract or agreement requiring this coverage, or as stated in **SECTION III - LIMITS OF INSURANCE** of the **COMMERCIAL GENERAL LIABILITY COVERAGE FORM**, whichever is less. These Limits of Insurance are inclusive of and not in addition to the Limits of Insurance described in **SECTION III** of that form.
- 3.** As additional conditions of coverage under this form, an additional insured under this endorsement will as soon as practicable:
 - a.** Give written notice to us of an "occurrence" or an offense which may result in a claim. This shall include:
 - (1)** How, when and where the "occurrence" or offense took place;
 - (2)** The names and addresses of any injured persons and witnesses; and
 - (3)** The nature and location of any injury or damage arising out of the "occurrence" or offense.
 - b.** Give written notice to us of a claim or "suit" brought against the additional insured including specifics of the claim or "suit" and the date it was received.
 - c.** Give written notice of such claim or "suit," including a demand for defense and indemnity, to any other insurer who had coverage for the claim or "suit" under its policy(ies), either at the time of, or at any time subsequent to the occurrence of the "bodily injury," "property damage" and/or the offense causing the "personal and advertising injury," which is the basis for such claims or "suit".
 - (1)** Such notification must demand the full coverage available under that policy; and
 - (2)** The additional insured shall not take any action to waive or limit such other coverage available to it.

4. This insurance does not apply to:

- a. "Bodily injury" "property damage" or "personal and advertising injury" occurring after:**
 - (1)** All work on the project (other than service, maintenance, or repairs) to be performed by you or on your behalf for the additional insured(s) has been completed; or
 - (2)** That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
- b. "Bodily injury" "property damage" or "personal and advertising injury" resulting from any act or omission of the additional insured(s) or any of their employees, other than the general supervision of work performed for the additional insured(s) by you.**
- c. "Bodily injury" "property damage" or "personal and advertising injury" resulting from work performed on a project where other valid and collectible insurance is available to the additional insured under an Owner Controlled Insurance Program or Consolidated (wrap-up) Insurance Program.**
- d. "Bodily injury," "property damage" or "personal and advertising injury":**
 - (1)** Arising out of the rendering or failure to render any professional services by any insured, or on their behalf, but only with respect to either or both of the following operations:
 - (a)** Providing engineering, architectural or surveying services to others in the insured's capacity as an engineer, architect or surveyor, and
 - (b)** Providing, or hiring independent professionals to provide, engineering, architectural or surveying services in connection with work the insured performs.
 - (2)** Subject to paragraph **(3)** below, professional services include:
 - (a)** The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
 - (b)** Supervisory or inspection activities performed as part of any related architectural or engineering activities but does not include the general supervision of your operations on such project.
 - (3)** Professional services do not include services within construction means, methods, techniques, sequences and procedures employed by you in connection with your operations as a construction contractor.

For the purpose of this endorsement, the following definitions are added:

"Owner" means a person or organization who has ownership in the project premises, designated in your written contract or written agreement, at which you are performing operations.

"Contractor" means a person or organization with whom you have agreed in a written contract or written agreement to perform operations for at the project designated in the written contract or written agreement.

"Construction Manager" means a person or organization designated as "construction manager" in your written contract or written agreement, and has management or supervisory responsibilities over your operations for the project designated in your written contract or written agreement.

COMMERCIAL GENERAL LIABILITY
55091 (10-08)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL GENERAL LIABILITY PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.**1. EXTENDED WATERCRAFT LIABILITY**

Under **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, 2. Exclusions, g., exclusion (2) is deleted and is replaced by the following:

(2) A watercraft you do not own that is:

- (a) Less than 50 feet long; and
- (b) Not being used to carry persons or property for a charge;

2. HIRED AUTO AND NON-OWNED AUTO LIABILITY

Coverage for "bodily injury" and "property damage" liability provided under **SECTION I COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, is extended as follows under this item, but only if you do not have any other insurance available to you which affords the same or similar coverage.

Coverage

We will pay those sums the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" arising out of the maintenance or use of an "auto":

- a. You do not own;
- b. Which is not registered in your name; or
- c. Which is not leased or rented to you for more than ninety consecutive days

and which is used in your business.

Exclusions

With respect to only **HIRED AUTO AND NON-OWNED AUTO LIABILITY**, the exclusions which apply to **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, other than the Nuclear Energy Liability Exclusion Endorsement, do not apply. The following exclusions apply to this coverage:

This coverage does not apply to:

- a. "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.
- b. Any obligation of the Insured under a workers compensation, disability benefits or unemployment compensation law or any similar law.
- c. (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
 - (a) That are, or are contained in any property that is:
 - 1) Being transported or towed by, handled or prepared for placement into or upon, or taken from the "auto";

- 2) Otherwise in the course of transit by you or on your behalf; or
 - 3) Being disposed of, stored, treated or processed into or upon the "auto";
- (b) Before such "pollutants" or property containing "pollutants" are moved from the place they are accepted by you or anyone acting on your behalf for placement into or onto the "auto"; or
- (c) After such "pollutants" or property containing "pollutants" are removed from the "auto" to where they are delivered, disposed of or abandoned by you or anyone acting in your behalf.
- c. (1) (a) above does not apply to "pollutants" that are needed or result from the normal mechanical, electrical or hydraulic functioning of the "auto" or its parts. If the discharge, release, escape, seepage, migration or dispersal of such "pollutants" is directly from a part of the "auto" designed to hold, store, receive or dispose of such "pollutants" by the "auto" manufacturer.
- c. (1) (b) and c. (1) (c) above do not apply, if as a direct result of maintenance or use of the "auto", "pollutants" or property containing "pollutants" which are not in or upon the "auto", are upset, overturned or damaged at any premises not owned by or leased to you. The discharge, release, escape, seepage, migration or dispersal of the "pollutants" must be directly caused by such upset, overturn or damage.
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
- (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of "pollutants".
- d. "Bodily injury" or "property damage" however caused, arising directly or indirectly, out of:
- (1) War, including undeclared or civil war;
 - (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
 - (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.
- e. "Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:
- (1) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. However, if the insurance under this policy does not apply to the liability of the insured, it also does not apply to such liability assumed by the insured under an "insured contract".
 - (2) That the insured would have in the absence of the contract or agreement.
- f. "Property damage" to:
- (1) Property owned or being transported by, or rented or loaned to any insured; or
 - (2) Property in the care, custody or control of any insured

other than "property damage" to a residence or a private garage by a private passenger "auto" covered by this coverage.

g. "Bodily Injury" to:

- (1) An "employee" of the insured arising out of and in the course of employment by the insured; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to:

- (1) Liability assumed by the insured under an "insured contract".
- (2) "Bodily injury" to any "employee" of the insured arising out of and in the course of his domestic employment by the insured unless benefits for such injury are in whole or in part either payable or required to be provided under any workers compensation law.

Who Is An Insured

With respect to only this coverage, **SECTION II - WHO IS AN INSURED**, is deleted and replaced by the following:

SECTION II - WHO IS AN INSURED

Each of the following is an insured with respect to this coverage:

- a. You.

- b. Your partners if you are designated in the Declarations as a partnership or a joint venture.
- c. Your members if you are designated in the Declarations as a limited liability company.
- d. Your "executive officers" if you are designated in the Declarations as an organization other than a partnership, joint venture or limited liability company.
- e. Any person using the "auto" and any person or organization legally responsible for the use of an "auto" not owned by such person or organization, provided the actual use is with your permission.

None of the following is an insured:

- a. Any person engaged in the business of his or her employer with respect to "bodily injury" to any co-"employee" of such person injured in the course of employment.
- b. Any person using the "auto" and any person other than you, legally responsible for its use with respect to an "auto" owned or registered in the name of:
 - (1) Such person; or
 - (2) Any partner or "executive officer" of yours or a member of his or her household; or
 - (3) Any "employee" or agent of yours who is granted an operating allowance of any sort for the use of such "auto".
- c. Any person while employed in or otherwise engaged in duties in connection with an "auto business", other than an "auto business" you operate.
- d. The owner or lessee (of whom you are a sublessee) of a hired "auto" or the owner of an "auto" you do not own or which is not registered in your name which is used in your business or any agent or employee of any such owner or lessee.

- e. Any person or organization with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

Additional Definitions

The following definition applies to only this coverage:

"Auto business" means the business or occupation of selling, repairing, servicing, storing or parking "autos".

Limits of Insurance

With respect to only this coverage, SECTION III - LIMITS OF INSURANCE, is deleted and replaced by the following:

SECTION III - LIMITS OF INSURANCE

- a. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- (1) Insureds;
- (2) Claims made or "suits" brought; or
- (3) Persons or organizations making claims or bringing "suits".

- b. We will pay damages for "bodily injury" or "property damage" up to the limits of liability stated in the Declarations for this coverage. Such damages shall be paid as follows:

- (1) When Hired Auto and Non-Owned Auto Each Occurrence Limit is shown in the Declarations, such limit is the total amount of coverage and the most we will pay for all damages because of or arising out of all "bodily injury" and "property damage" in any one "occurrence".
- (2) When Bodily Injury Hired Auto and Non-Owned Auto Each Occurrence Limit and Property Damage Hired Auto and Non-Owned Auto Each Occurrence Limit are shown in the Declarations:

- (a) The limit shown for Bodily Injury Hired Auto and Non-Owned Auto Each Occurrence is the total amount of coverage and the most we will pay for all damages because of or arising out of all "bodily injury" in any one "occurrence".

- (b) The limit shown for Property Damage Hired Auto and Non-Owned Auto Each Occurrence is the total amount of coverage and the most we will pay for all damages because of or arising out of all "property damage" in any one "occurrence".

3. BROADENED SUPPLEMENTARY PAYMENTS

Under SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, COVERAGE B. PERSONAL INJURY AND ADVERTISING INJURY LIABILITY and SUPPLEMENTARY PAYMENTS - COVERAGES A AND B:

Paragraph 4., the amount we will pay for the actual loss of earnings is increased from \$250 per day to \$400 per day.

4. ADDITIONAL PRODUCTS-COMPLETED OPERATIONS AGGREGATE LIMIT

If the endorsement, EXCLUSION - PRODUCTS COMPLETED OPERATIONS HAZARD, CG 21 04, is not attached to this policy, then the following is added to SECTION III - LIMITS OF INSURANCE:

Commencing with the effective date of this policy, we will provide one additional Products-Completed Operations Aggregate Limit, for each annual period, equal to the amount of the Products-Completed Operations Aggregate Limit shown in the Declarations. The maximum Products-Completed Operations Aggregate Limit for any annual period will be no more than two times the original Products-Completed Operations Aggregate Limit.

5. PERSONAL INJURY EXTENSION

- a. If the endorsement EXCLUSION - PERSONAL INJURY AND ADVERTISING INJURY, 55350, is attached to this policy, then this provision, 5. PERSONAL INJURY EXTENSION, does not apply.
- b. If the endorsement EXCLUSION - PERSONAL INJURY AND ADVERTISING INJURY, 55350, is not attached to this policy, then under **SECTION V - DEFINITIONS, 15. "Personal injury"** is deleted and replaced by the following:
 - 15. "Personal injury" means, other than "bodily injury", arising out of one or more of the following offenses:
 - a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor;
 - d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral or written publication of material that violates a person's right of privacy; or
 - f. Discrimination, humiliation, sexual harassment and any violation of civil rights caused by such discrimination, humiliation or sexual harassment.

6. BROADENED KNOWLEDGE OF OCCURRENCE

Under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 2. Duties In The Event Of**

Occurrence, Offense, Claim Or Suit, the following paragraph is added:

Paragraphs a. and b. of this condition will not serve to deny any claim for failure to provide us with notice as soon as practicable after an "occurrence" or an offense which may result in a claim:

- a. If the notice of a new claim is given to your "employee"; and
- b. That "employee" fails to provide us with notice as soon as practicable.

This exception shall not apply:

- a. To you; or
- b. To any officer, director, partner, risk manager or insurance manager of yours.

7. DAMAGE TO PREMISES RENTED TO YOU

Under **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, the last paragraph is deleted and replaced by the following:

Exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke or water damage to premises rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in **7. DAMAGE TO PREMISES RENTED TO YOU, a. Limits of Insurance**.

The following additional exclusions apply to "property damage" arising out of Water Damage to premises rented to you or temporarily occupied by you with permission of the owner:

(1) "Property damage" to:

- (a) The interior of the premises caused by or resulting from rain or snow, whether driven by wind or not; or
- (b) Heating, air conditioning, plumbing or fire protection systems, or other equipment or appliances.

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(2) "Property damage" caused by or resulting from any of the following:

- (a) Mechanical breakdown, including bursting or rupture caused by centrifugal force;
- (b) Cracking, settling, expansion or shrinking;
- (c) Smoke or smog;
- (d) Birds, insects, rodents or other animals;
- (e) Wear and tear;
- (f) Corrosion, rust, decay, fungus, deterioration, hidden or latent defect or any quality in property that causes such property to destroy or damage itself; or
- (g) Water that flows or leaks from any heating, air conditioning, plumbing or fire protection system caused by or resulting from freezing, unless:
 - 1) You make a reasonable effort to maintain heat in the building or structure; or
 - 2) You drain the equipment and shut off the water supply if the heat is not maintained.

(3) "Property damage" caused directly or indirectly by any of the following:

- (a) Water that backs up from a drain or sewer;
- (b) Mud flow or mudslide;
- (c) Volcanic eruption, explosion or effusion;
- (d) Any earth movement, such as earthquake, landslide, mine subsidence, earth sinking, earth rising or earth shifting;

(e) Regardless of the cause, flood, surface water, waves, tides, tidal waves, storm surge, overflow of any body of water, or their spray, all whether wind driven or not;

(f) Water under the ground surface pressing on, or seeping or flowing through:

- 1) Walls, foundations, floors or paved surfaces;
- 2) Basements, whether paved or not; or
- 3) Doors, windows or other openings.

(4) "Property damage" for which the insured is obligated to pay as damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of this contract or agreement.

a. Limits of Insurance

With respect to this coverage only, under **SECTION III - LIMITS OF INSURANCE**, paragraph 6. is deleted and replaced by the following:

6. The most we will pay under Coverage A for damages because of "property damage" to premises rented to you or temporarily occupied by you with permission of the owner arising out of or caused by fire, lightning, explosion, smoke and water damage is the amount shown in the Declarations under Damage to Premises Rented to You.

b. Under SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 4. Other Insurance, paragraph b., the word fire is amended to include fire, lightning, explosion, smoke or water damage.

8. BLANKET ADDITIONAL INSURED - LESSOR OF LEASED EQUIPMENT

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- a. **SECTION II - WHO IS AN INSURED** is amended to include as an additional insured any person or organization with whom you have agreed:

- (1) In a written contract or agreement, executed prior to loss, to name as an additional insured; or
- (2) In an oral contract or agreement, executed prior to loss, to name as an additional insured only if a Certificate of Insurance was issued prior to loss indicating that the person or organization was an additional insured

but only with respect to liability for:

- (1) "Bodily injury";
- (2) "Property damage";
- (3) "Personal Injury"; or
- (4) "Advertising injury"

caused in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

- b. With respect to the insurance afforded to an additional insured, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

- c. The following is added to **SECTION III - LIMITS OF INSURANCE**:

The Limits of Insurance for the additional insured are those specified in the written contract or agreement between the insured and the lessor, not to exceed the limits provided in this policy. These limits are inclusive of and not in addition to the Limits of Insurance shown in the Declarations.

9. BLANKET ADDITIONAL INSURED - MANAGERS OR LESSORS OF PREMISES

- a. **SECTION II - WHO IS AN INSURED** is amended to include as an additional insured any person or organization with whom you have agreed:

- (1) In a written contract or agreement, executed prior to loss, to name as an additional insured; or
- (2) In an oral contract or agreement, executed prior to loss, to name as an additional insured only if a Certificate of Insurance was issued prior to loss indicating that the person or organization was an additional insured

but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you.

- b. This provision is subject to the following additional exclusions, applicable to this provision only:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises.
- (2) Structural alterations, new constructions or demolition operations performed by or on behalf of the additional insured.

- c. The following is added to **SECTION III - LIMITS OF INSURANCE**:

The Limits of Insurance for the additional insured are those specified in the written contract or agreement between the insured and the manager or lessor of the premises, not to exceed the limits provided in this policy. These limits are inclusive of and not in addition to the Limits of Insurance shown in the Declarations.

10. NEWLY FORMED OR ACQUIRED ORGANIZATIONS

Under **SECTION II - WHO IS AN INSURED**, Paragraph 4. is deleted and replaced by the following:

4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

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- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage B does not apply to "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

11. BLANKET WAIVER OF SUBROGATION

The following is added to SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 8. Transfer Of Rights of Recovery Against Others To Us.

When you have agreed to waive your right of subrogation in a written contract, executed prior to loss, with any person or organization, we waive any right to recovery we may have against such person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard".

All other policy terms and conditions apply.

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ENDORSEMENT

This endorsement forms a part of the policy to which it is attached. Please read it carefully.

WAIVER OF SUBROGATION

It is agreed that the Company, in the event of any payment under this policy, waives its right of recovery against any Principal, but only at the specific written request of the Named Insured either before or after loss, wherein such waiver has been included before loss as part of a contractual undertaking by the Named Insured.

This waiver shall apply only with respect to losses occurring due to operations undertaken as per the specific contract existing between the Named Insured and such Principal and shall not be construed to be a waiver with respect to other operations of such Principal in which the Named Insured has no contractual interest.

No waiver of subrogation shall directly or indirectly apply to any employee, employees or agents of either the Named Insured or of the Principal, and the Company reserves its right or lien to be reimbursed from any recovery funds obtained by any injured employee.

This waiver does not apply in any jurisdiction or situation where such waiver is held to be illegal or against public policy or in any situation wherein the Principal against whom subrogation is to be waived is found to be solely negligent.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

BLANKET ADDITIONAL INSURED (CONTRACTORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. WHO IS AN INSURED – (Section II) is amended to include any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:
 - a) Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
 - b) If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies. The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.
2. The insurance provided to the additional insured by this endorsement is limited as follows:
 - a) In the event that the Limits of Insurance of this Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement shall not increase the limits of insurance described in Section III – Limits Of Insurance.
 - b) The insurance provided to the additional insured does not apply to "bodily injury", "property damage" or "personal injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services, including:
 - i. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or the preparing, approving, or failing to prepare or approve, drawings and specifications; and
 - ii. Supervisory, inspection, architectural or engineering activities.
- c) The insurance provided to the additional insured does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.
3. The insurance provided to the additional insured by this endorsement is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover under this endorsement. However, if the "written contract requiring insurance" specifically requires that this insurance apply on a primary basis or a primary and non-contributory basis, this insurance is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured for such loss, and we will not share with that "other insurance". But the insurance provided to the additional insured by this endorsement still is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under such "other insurance".
4. As a condition of coverage provided to the additional insured by this endorsement:
 - a) The additional insured must give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:

COMMERCIAL GENERAL LIABILITY

- i. How, when and where the "occurrence" or offense took place;
 - ii. The names and addresses of any injured persons and witnesses; and
 - iii. The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b) If a claim is made or "suit" is brought against the additional insured, the additional insured must:
- i. Immediately record the specifics of the claim or "suit" and the date received; and
 - ii. Notify us as soon as practicable.
- The additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c) The additional insured must immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
- d) The additional insured must tender the defense and indemnity of any claim or "suit" to

any provider of "other insurance" which would cover the additional insured for a loss we cover under this endorsement. However, this condition does not affect whether the insurance provided to the additional insured by this endorsement is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured as described in paragraph 3. above.

5. The following definition is added to SECTION V. - DEFINITIONS:

"Written contract requiring insurance" means that part of any written contract or agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

- a. After the signing and execution of the contract or agreement by you;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective
Insured

Policy No.

Endorsement No.
Premium \$

Insurance Company

Countersigned by _____

71

Ash

Director, Government Relations, AshBritt

Job Description – Holly Raschein November 20, 2021

Job Summary: The Government Relations Director (GRD) manages and directs AshBritt's goals of successful client retention, target client acquisition, and overall healthy public relations with clients and potential clients at the elected and staff level. AshBritt's objective for its government relations efforts is to strengthen AshBritt's relationships with various decision makers at all levels of government across the United States to ensure effective disaster planning and response.

The GRD supports the work of and works in partnership with the Chairman of the Board, Chief Executive Officer (CEO), and the Chief Strategy Officer (CSO), all who play varying yet active roles in government relations. The GRD also maintains active work with AshBritt's Client Managers (CM) and Client Relations team members to ensure AshBritt has 360 degree working knowledge and relations with each city/county/state client.

Overview: The GRD must proactively meet with elected officials and key stakeholders at all levels of government to strengthen and build relationships that are advantageous to client retention, new client identification, and business development efforts of AshBritt.

At the Municipal Level, in relation to AshBritt's clients and target clients, the GRD will

- Develop an annual strategic plan for government relations engagement to include multi-level touch points such as virtual meetings, in-person meetings, conferences, events, workshops, panels, etc.
- Ensure CSO and CEO are aware of all elections (both primary and general) in areas AshBritt has contracts or on target client list; make recommendations; coordinate any corporate engagement.
- Manage elected official database, and provide biweekly reports to CSO and CEO.
- Attend and present at city/county commission meetings.
- Ensure client elected officials know about corporate operations, activities, initiative, etc.
- Support client relations, media, public relations as assigned.
- Attend events on behalf of client relations, industry events, government relation events, etc.
- Conduct biweekly meetings with CMs to nest strategy and review current and target clients.
- Coordinate with external consultants and Client Relations team, as assigned, and in order to achieve Company's approved target client list and plans.
- Meet biweekly with CSO; coordinate regularly with Chief Administrative Officer (CAO).

At the Gubernatorial Level, in relation to AshBritt's state contracts, the GDR will

- Attend RGA and DGA member events.
 - Identify opportunities for AshBritt to engage/attend events, organize travel and itinerary for AshBritt which may include GRD, CSO, CEO, Board members, and/or senior team members.

- Identify, recommend, and set up strategic individual meetings with Governors and key staff.
- Participate in events and meetings; lead pre-meeting and post-meeting follow-up.
- Work directly with Governor's offices and consultants to build AshBritt's relationships.
- Identify, recommend, and direct contributions to a state Party/Pac or directly to the candidate's campaign.

Position Information: The GRD reports to the CSO with routine interaction with the CEO and Chairman of the Board. The GRD is a remote full-time, exempt position with the requirement to report to AshBritt Headquarters at a minimum of twice (2) monthly or on an as needed basis for key projects and/or planning sessions.

- Position requires strong presentation, verbal, and writing skills. Word, Excel, and Power Point utilization is required.
- Position requires the ability to travel, at times on a short notice.
- The primary hours for the GRD are traditional Monday thru Friday work hours; however, the nature of the GRD position, and the expectation, is that the GRD will routinely attend meetings, events, commission meetings and other public engagements that will occur before and after traditional workday hours and on the weekends. As such, the position is a flexible position to achieve a 40-hour work week. Work beyond 40 hours will be required as necessary and during operations.
- Position requires a company issued cellular phone in the performance of their duties.

Reviewed By: _____

Employee Signature: _____

Steverson, Kathryn

From: Shillinger-Bob <Shillinger-Bob@MonroeCounty-FL.Gov>
Sent: Tuesday, September 6, 2022 5:37 PM
To: Zuilkowski, Steven
Subject: RE: AshBritt, Inc. v. Monroe County, Florida and Florida Department of Transportation | Case No.: 2017-CA-802-K | Revised Settlement Demand -August 31, 2022

Perfect. Thanks.

From: Zuilkowski, Steven <ZUILKOWSKI.STEVEN@leg.state.fl.us>
Sent: Tuesday, September 06, 2022 5:24 PM
To: Shillinger-Bob <Shillinger-Bob@MonroeCounty-FL.Gov>
Subject: RE: AshBritt, Inc. v. Monroe County, Florida and Florida Department of Transportation | Case No.: 2017-CA-802-K | Revised Settlement Demand -August 31, 2022

CAUTION

See below.

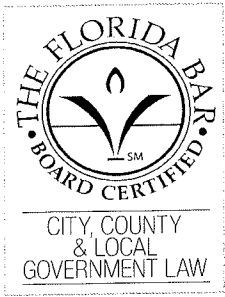
From: Shillinger-Bob <Shillinger-Bob@MonroeCounty-FL.Gov>
Sent: Tuesday, September 6, 2022 4:27 PM
To: Zuilkowski, Steven <ZUILKOWSKI.STEVEN@leg.state.fl.us>
Subject: RE: AshBritt, Inc. v. Monroe County, Florida and Florida Department of Transportation | Case No.: 2017-CA-802-K | Revised Settlement Demand -August 31, 2022

Steven:

A couple of things . . .

- 1) What would your time frame be to place an item on the COE's 10/21/22 agenda?
 - a. When is the agenda for the 10/21 meeting published? 10/5 in the afternoon
 - b. When would you need to complete the draft your proposed opinion? The draft opinion is never really considered complete until it is mailed to the Commissioners. That occurs on 10/5.
 - c. What would be the last date to withdraw the request for an opinion? The rule for withdrawing the opinion request is found in Rule 34-6.006(7), F.A.C. It says, "The person requesting an advisory opinion may not withdraw his request after copies of the working draft of the opinion have been sent to him and to Commission members except with the consent of the Commission for good cause shown. Any advisory opinion issued by the Commission subsequent to an attempted withdrawal of request shall be binding in accordance with Rule 34-6.008, F.A.C." So, until the point we mail it to the Commissioners (10/5) and to you as the requestor, it can be withdrawn. Of course, if withdrawal is on the table, sooner is better, from a resource management perspective.
- 2) I want to clarify that if the County Commission were to accept AshBritt's proposal, we would need to amend the contract to change the language providing for 5 1-year extensions to 1 5-year extension. I trust that won't affect your analysis but didn't want to assume that and not disclose that fact to you. Noted. I haven't really started researching this in earnest yet, but one of the things I would write about in the draft opinion is whether the changing of a term like this would vitiate the grandfathering.

Thanks. Bob



Bob Shillinger
County Attorney
Monroe County Attorney's Office
1111 12th Street, Suite 408
Key West, FL 33040
(305) 292-3470
(305) 292-3516 (facsimile)

Note, Florida has a broad public records law. Any information you send to this address, including your contact information, may be subject to public disclosure.

From: Zuilkowski, Steven <ZUILKOWSKI.STEVEN@leg.state.fl.us>
Sent: Wednesday, August 31, 2022 2:22 PM
To: Shillinger-Bob <Shillinger-Bob@MonroeCounty-FL.Gov>; stillman.kerri@leg.state.fl.us
Cc: Raschein-Holly <Raschein-Holly@MonroeCounty-FL.Gov>
Subject: RE: AshBritt, Inc. v. Monroe County, Florida and Florida Department of Transportation | Case No.: 2017-CA-802-K | Revised Settlement Demand -August 31, 2022

CAUTION

Received. Thank you.

Steven J. Zuilkowski
Deputy Executive Director & General Counsel
Florida Commission on Ethics
P.O. Drawer 15709
Tallahassee, FL 32317-5709
(850) 488-7864
(850) 488-3077 (Fax)
ethics.state.fl.us

Physical address:
325 John Knox Road
Building E, Suite 200
Tallahassee, FL 32303

From: Shillinger-Bob <Shillinger-Bob@MonroeCounty-FL.Gov>
Sent: Wednesday, August 31, 2022 11:46 AM
To: Zuilkowski, Steven <ZUILKOWSKI.STEVEN@leg.state.fl.us>; stillman.kerri@leg.state.fl.us
Cc: Raschein-Holly <Raschein-Holly@MonroeCounty-FL.Gov>
Subject: FW: AshBritt, Inc. v. Monroe County, Florida and Florida Department of Transportation | Case No.: 2017-CA-802-K | Revised Settlement Demand -August 31, 2022

Ms. Stillman and Mr. Zuilkowski:

I write to supplement my request for a formal ethics opinion on behalf of Monroe County Commissioner Holly Merrill Raschein, submitted 8.26.22, with this updated settlement offer from AshBritt that I just received minutes ago.

Please contact me if you have any questions.

Respectfully,



Bob Shillinger
County Attorney
Monroe County Attorney's Office
1111 12th Street, Suite 408
Key West, FL 33040
(305) 292-3470
(305) 292-3516 (facsimile)

Note, Florida has a broad public records law. Any information you send to this address, including your contact information, may be subject to public disclosure.

From: Jenipher S. Cabot <jen@smithhawks.com>

Sent: Wednesday, August 31, 2022 11:36 AM

To: 'hochman@jambg.com' <hochman@jambg.com>

Cc: Shillinger-Bob <Shillinger-Bob@MonroeCounty-FL.Gov>; Luke Lanasa <Luke@smithhawks.com>; Brandi Green <brandi@smithhawks.com>

Subject: AshBritt, Inc. v. Monroe County, Florida and Florida Department of Transportation | Case No.: 2017-CA-802-K | Revised Settlement Demand -August 31, 2022

...

CAUTION: This email originated from outside of the County. Whether you know the sender or not, do not click links or open attachments you were not expecting.

Good morning Mr. Hochman,

Attached please find correspondence from our firm, of today's date, regarding the above-referenced matter.

Please do not hesitate to contact our office should you have any questions.

Sincerely,

Jenipher S. Cabot, FRP
Paralegal

SMITH/HAWKS

ATTORNEYS AT LAW

138 SIMONTON STREET, KEY WEST, FLORIDA 33040 U.S.A.

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Steverson, Kathryn

From: Zuilkowski, Steven
Sent: Thursday, September 22, 2022 2:05 PM
To: Steverson, Kathryn
Subject: FW: AshBritt, Inc. v. Monroe County, Florida and Florida Department of Transportation | Case No.: 2017-CA-802-K | Revised Settlement Demand -August 31, 2022
Attachments: AshBritt-Monroe County - Revised Settlement Demand - August 31, 2022 (2017-CA-802-K) (00267948xDBB48).pdf

From: Shillinger-Bob <Shillinger-Bob@MonroeCounty-FL.Gov>
Sent: Wednesday, August 31, 2022 11:46 AM
To: Zuilkowski, Steven <ZUILKOWSKI.STEVEN@leg.state.fl.us>; stillman.kerri@leg.state.fl.us
Cc: Raschein-Holly <Raschein-Holly@MonroeCounty-FL.Gov>
Subject: FW: AshBritt, Inc. v. Monroe County, Florida and Florida Department of Transportation | Case No.: 2017-CA-802-K | Revised Settlement Demand -August 31, 2022

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Please contact me if you have any questions.

Respectfully,



Bob Shillinger
County Attorney
Monroe County Attorney's Office
1111 12th Street, Suite 408
Key West, FL 33040
(305) 292-3470
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From: Jenipher S. Cabot <jen@smithhawks.com>
Sent: Wednesday, August 31, 2022 11:36 AM
To: 'hochman@jambg.com' <hochman@jambg.com>
Cc: Shillinger-Bob <Shillinger-Bob@MonroeCounty-FL.Gov>; Luke Lanasa <Luke@smithhawks.com>; Brandi Green <brandi@smithhawks.com>
Subject: AshBritt, Inc. v. Monroe County, Florida and Florida Department of Transportation | Case No.: 2017-CA-802-K | Revised Settlement Demand -August 31, 2022

...

CAUTION: This email originated from outside of the County. Whether you know the sender or not, do not click links or open attachments you were not expecting.

Good morning Mr. Hochman,

Attached please find correspondence from our firm, of today's date, regarding the above-referenced matter.

Please do not hesitate to contact our office should you have any questions.

Sincerely,

Jenipher S. Cabot, FRP
Paralegal

SMITH/HAWKS

ATTORNEYS AT LAW

138 SIMONTON STREET, KEY WEST, FLORIDA 33040 U.S.A.

TEL. 305-296-7227 FAX. 305-296-8448 WEB. SMITHHAWKS.COM

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SMITH / HAWKS

ATTORNEYS AT LAW

Lucas S. Lanasa, Esq.
Telephone: (305) 296-7227
Email: Luke@SmithHawks.com

August 31, 2022

VIA EMAIL ONLY

Jeffrey L. Hochman, Esq.
Johnson, Anselmo, Murdoch,
Burke, Piper, & Hochman, P.A.
2455 E. Sunrise Blvd. Ste. 1000
Fort Lauderdale, Florida 33304
Email: hochman@jambg.com

RE: Revised Settlement Demand – Case No.: 2017-CA-802-K; AshBritt, Inc. v. Monroe County, Florida and Florida Department of Transportation.

PRIVILEGED AND CONFIDENTIAL SETTLEMENT COMMUNICATION

Dear Mr. Hochman,

Please accept this letter as an amendment to the formal offer for settlement previously tendered by correspondence dated July 25, 2022.

AshBritt proposes dismissal of all pending claims with prejudice, waiving any payment for additional haul-out fees, removal of putrefied waste, and attorneys' fees incurred, in exchange for Monroe County reinstating the June 21, 2017, Agreement for Disaster Response and Recovery Services by and between the parties ("Agreement") and further exercising all remaining one (1) year options, pursuant to Article 1.1.8. of the Agreement, providing for an expiration date of June 20, 2027.

Please feel free to reach out with any questions or concern. We look forward to your response and the opportunity to fully resolve these claims without the need for further litigation and to the mutual benefit of all parties.

Respectfully,


Lucas S. Lanasa, Esq.

Cc: Client
Robert Schillinger, County Attorney

Amendment to Agreement
for Disaster Response and Recovery Services

This Amendment and Extension to the Agreement for Disaster Response and Recovery Services dated October 30, 2017, is entered into this 17th day of August 2022 between Monroe County Board of County Commissioners (County or BOCC) and DRC Emergency Services, LLC (Contractor).

WHEREAS, the County and Contractor entered into an Agreement for Disaster Response and Recovery Services on October 30, 2017 (Agreement), an addendum to the Agreement was entered into on December 14, 2017; and

WHEREAS, the term of the Agreement is for a five-year period and provides that the County shall have the option of extending the Agreement in one-year increments for up to five additional years at the same terms and conditions; and

WHEREAS, the County desires to extend the agreement and the Contractor has agreed; and

WHEREAS, the Agreement needs to be updated with new county, state and federal provisions;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficient of which is hereby acknowledged, County and Contractor agree as follows:

1. The County and Contractor agree to extend the agreement for an additional 7-month period at the same terms and conditions and to amend paragraph 1.1.8 to reflect the extension as follows:

- 1.1.8 The effective date of this Agreement shall be October 30, 2017, for an initial 5-year term ending on October 30, 2022, unless otherwise terminated as provided for herein. The County and Contractor hereby agree to exercise the option to extend this Agreement for an additional 7-month period at the same terms and conditions to May 31, 2023, unless otherwise terminated under the provisions provided for herein.

2. Article VI PERSONNEL, paragraph 6.1 shall be revised to read as follows:

The CONSULSTANT shall assign only qualified personnel to perform any service concerning the project. At the time of execution of this Amendment and Extension, the parties anticipate that the following named individuals will perform those functions indicated:

NAME	FUNCTION
John Sullivan	President
Kristi Fuentes	VP of Compliance and Administration
Joe Newman	VP of Operations
Mark Stafford	VP of Response
Lisa Walsh	Contract Manager
Evan Fancher	Regional/Project Manager

So long as the individuals named above remain actively employed or retained by the CONTRACTOR, they shall perform the functions indicated next to their names. If they are replaced the CONSULSTANT shall notify the COUNTY of this change immediately.

3. Paragraph 9.5 TERMINATION shall be revised to add the following:

- E. For Contracts of any amount, if the County determines that the CONTRACTOR has submitted a false certification under Section 287.135(5), Florida Statutes or has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, the County shall have the option of (1) terminating the Agreement after it has given the CONTRACTOR written notice and an opportunity to demonstrate the agency's determination of false certification was in error pursuant to Section 287.135(5)(a), Florida Statutes, or (2) maintaining the Agreement if the conditions of Section 287.135(4), Florida Statutes, are met.
- F. For Contracts of \$1,000,000 or more, if the County determines that the CONTRACTOR submitted a false certification under Section 287.135(5), Florida Statutes, or if the CONTRACTOR has been placed on the Scrutinized Companies with Activities in the Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, the County shall have the option of (1) terminating the Agreement after it has given the CONTRACTOR written notice and an opportunity to demonstrate the agency's determination of false certification was in error pursuant to Section 287.135(5)(a), Florida Statutes, or (2) maintaining the Agreement if the conditions of Section 287.135(4), Florida Statutes, are met.

4. Paragraph 9.8 shall be revised to read as follows:

9.8 MAINTENANCE OF RECORDS

CONTRACTOR shall maintain all books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. Records shall be retained for a period of seven years from the termination of this agreement or for a period of FIVE years from the submission of the final expenditure report as per 2 CFR §200.333, whichever is greater. Each party to this Agreement or its authorized representatives shall have reasonable and timely access to such records of each other party to this Agreement for public records purposes during the term of the Agreement and for seven years following the termination of this Agreement. If an auditor employed by the COUNTY or Clerk determines that monies paid to CONTRACTOR pursuant to this Agreement were spent for purposes not authorized by this Agreement, or were wrongfully retained by the CONTRACTOR, the CONTRACTOR shall repay the monies together with interest calculated pursuant to Sec. 55.03, of the Florida Statutes, running from the date the monies were paid by the COUNTY.

5. Paragraph 9.14 shall be revised to read as follows:

9.14 CLAIMS FOR FEDERAL OR STATE AID: CONTRACTOR and COUNTY 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. Any conditions imposed as a result of funding that effect the Project will be provided to each party.

6. Paragraph 9.29.2 will be revised to read as follows:

9.29.2 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, which includes all FEMA grant and cooperative agreement programs, all contracts awarded by the COUNTY in excess of \$100,000 that involve the employment of mechanics or laborers must comply with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. § 3702 of the Act, each contractor must compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation

or transmission of intelligence.

Compliance with the Contract Work Hours and Safety Standards Act.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph 29 C.F.R. § 5.5(b)(1) the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 29 C.F.R. § 5.5 (b)(1), in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 29 C.F.R. § 5.5 (b)(1).

(3) *Withholding for unpaid wages and liquidated damages.* FEMA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime

contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 29 C.F.R. § 5.5 (b)(2).

(4) *Subcontracts*. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph 29 C.F.R. § 5.5 (b)(1) through (4) and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 29 C.F.R. § 5.5 (1) through (4).

7. Paragraph 9.29.4 shall be revised to read as follows:

9.29.4 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387). Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended (42 U.S.C. §§7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. §§1251-1387) and will report violations to FEMA/Federal Agency and the appropriate Regional Office of the Environmental Protection Agency (EPA). The Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—applies to Contracts and subgrants of amounts in excess of \$150,000. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA/Federal agency. The contractor agrees to report each violation to the COUNTY and understands and agrees that the COUNTY will, in turn, report each violation as required to assure notification to FEMA/Federal Agency and the appropriate EPA Regional Office.

8. Paragraph 9.29.5 shall be revised to read as follows:

9.29.5. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award under a “covered transaction” (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR Part 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension” and the Department of Homeland Security’s regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and suspension) SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov. Contractor is required to verify that none of the contractor’s principals (defined at 2 C.F.R. §180.935) or its affiliates (defined at 2 C.F.R. §180.905) are excluded (defined at 2 C.F.R. §180.940) or disqualified

(defined at 2 C.F.R. §180.935). the contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. This certification is a material representation of fact relied upon by the COUNTY. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the COUNTY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Bidders or Proposers agree to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Bidder or Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

9. Paragraph 9.29.6 shall be revised to read as follows:

9.29.6 Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency. If award exceeds \$100,00, the attached certification must be signed and submitted by the contractor to the COUNTY.)

10. Paragraph 9.29.7 shall be revised to read as follows:

9.29.7 Compliance with Procurement of recovered materials as set forth in 2 CFR § 200.323. CONTRACTOR must comply with section 6002 of the Solid Waste Disposal Act, as amended, by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. In the performance of this contract, the

Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

1. Competitively within a timeframe providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site,

<https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

11. Paragraph 9.29 shall be revised to add the following:

9.29.8 Prohibition on certain telecommunications and video surveillance services or equipment as set forth in 2 CFR § 200.216. Recipients and subrecipients and their CONTRACTORS and subcontractors may not obligate or expend any federal funds to (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

9.29.9 Domestic preference for procurements as set forth in 2 CFR §200.322. The COUNTY and CONTRACTOR should, to the great extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). These requirements of this section must

be included in all subawards including contracts and purchase orders for work or products under federal award. For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

12. The following provisions shall be added as follows:

9.31 Energy Efficiency- CONTRACTOR will comply with the Energy Policy and Conservation Act (P.L. 94-163; 42 U.S.C. 6201-6422) and with all mandatory standards and policies relating to energy efficiency and the provisions of the state Energy Conservation Plan adopted pursuant thereto.

9.32 ADDITIONAL FEMA REQUIREMENTS:

Access to Records: Contractor and their successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing the Department of Homeland Security (DHS) and the Federal Emergency Management Agency's (FEMA) access to records, accounts, documents, information, facilities, and staff. CONTRACTORS must 1. cooperate with any compliance review or complaint investigation conducted by DHS 2. Give DHS access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance. 3. Submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.

DHS Seal, Logo and Flags: CONTRACTOR shall not use the Department of Homeland Security seal(s), logos, crests, or reproduction of flags or likeness of DHS agency officials without specific FEMA pre-approval. The CONTRACTOR shall include this provision in any subcontracts.

Changes to Contract: The CONTRACTOR understands and agrees that any cost resulting from a change or modification, change order, or constructive change of the agreement must be within the scope of any Federal grant or cooperative agreement that may fund this Project and be reasonable for the completion of the Project. Any contract change or modification, change order or constructive change must be approved in writing by both the COUNTY and CONTRACTOR.

Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that FEMA financial assistance may be used to fund all or a portion of the contract. The CONTRACTOR will comply will all applicable Federal Law, regulations, executive orders, FEMA policies, procedures, and directives

No Obligation by Federal Government. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the COUNTY/non-Federal entity, CONTRACTOR, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts. If applicable, the CONTRACTOR acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONTRACTOR's actions pertaining to this contract.

9.33 FLORIDA DEPARTMENT OF EMERGENCY MANAGEMENT PROVISIONS

The CONTRACTOR is bound by any terms or conditions of the federally-funded subaward and Grant Agreement between COUNTY and the Florida Division of Emergency Management (Division).

The CONTRACTOR shall hold the Division and COUNTY harmless against all claims of whatever nature arising out of the CONTRACTOR's performance of work under this Agreement, to the extent allowed and required by law.

9.34 E-Verify System - Beginning January 1, 2021, in accordance with F.S. 448.095, the CONTRACTOR and any subcontractor shall register with and shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees hired by the CONTRACTOR during the term of the Contract and shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees hired by the subcontractor during the Contract term. Any subcontractor shall provide an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The CONTRACTOR shall comply with and be subject to the provisions of F.S. 448.095.

13. The Agreement dated October 30, 2017, as revised by the addendum dated December 14, 2017, and as amended herein shall remain in full force and effect.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative on the day and year first above written.



KEVIN MADOK, CLERK

As Deputy Clerk

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

By: _____

Mayor

FILED FOR RECORD
2022 SEP 15 AM 11:39
CLERK CIR. CT.
MONROE COUNTY, FL

(SEAL)

Attest:

By:

Lisa Walsh

Title: Contracts Manager

DRC EMERGENCY SERVICES, LLC

By:

Kristy Fuentes

Title: Vice President, Secretary, Treasurer

MONROE COUNTY ATTORNEY

APPROVED AS TO FORM:

Christine Limbert-Barrows

CHRISTINE LIMBERT-BARROWS

ASSISTANT COUNTY ATTORNEY

DATE 8/4/22



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/24/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
McGriff Insurance Services, Inc.
10100 Katy Freeway, #400
Houston, TX 77043

CONTACT NAME: Julia Becvar
PHONE (A/C, No, Ext): 713-877-8975 **FAX (A/C, No):** 713-877-8974
E-MAIL ADDRESS: jbecvar@mcgriff.com

INSURED
DRC Emergency Services, LLC
P.O. Box 17017
Galveston, TX 77552

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A :Crum & Forster Specialty Insurance Company	44520
INSURER B :The Phoenix Insurance Company	25623
INSURER C :Texas Mutual Insurance Company	22945
INSURER D :Argonaut Insurance Company	19801
INSURER E :	
INSURER F :	

COVERAGES

CERTIFICATE NUMBER:RV3ZVZ9R

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			ECG106665	05/26/2022	03/31/2023	EACH OCCURRENCE \$ 5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 5,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$ 5,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			810-6P127610-22-26-G	05/26/2022	03/31/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$			EFX120408	05/26/2022	03/31/2023	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
C D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	N/A	0001307608 TX WC928868471754 OS	05/26/2022	03/31/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Contractors Pollution & Errors & Omissions			PKC112979	05/26/2022	03/31/2023	Contractor's Pollution \$ Errors & Omissions \$ 5,000,000 Policy Aggregate \$ 5,000,000 \$ \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Disaster Response and Recovery Services, Monroe County, Florida

Monroe County Board of County Commissioners are included as an Additional Insured on the General Liability, Automobile Liability and Excess Liability policies. Waiver of Subrogation applies in favor of Monroe County Board of County Commissioners as respects General Liability, Automobile Liability, Workers' Compensation and Excess Liability. The General Liability Policy includes a Per Project Aggregate. Coverage is primary and non-contributory as respects to General Liability, Automobile Liability and Excess Liability policies. All as required by written contract subject to policy, terms, conditions, and exclusions. In the event of cancellation by the insurance companies the policies have been endorsed to provide 30 days Notice of Cancellation (except for non-payment) to the Certificate Holder shown below.

CERTIFICATE HOLDER

CANCELLATION

APPROVED BY RISK MANAGEMENT

BY
DATE 8/2/2022

WAIVER N/A YES

Monroe County Board of County Commissioners
1100 Simonton Street
Key West, FL 33040

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



Kevin Madok, CPA

Clerk of the Circuit Court & Comptroller – Monroe County, Florida

DATE: September 15, 2022

TO: Cheryl Sullivan, Director
Solid Waste Department

FROM: Liz Yongue, Deputy Clerk

SUBJECT: August 17th BOCC Meeting

Enclosed is a copy of the following item for your handling:

C26 1st Amendment to extend the Disaster Response and Recovery Agreement with DRC Emergency Services, LLC for debris removal for seven months.

Should you have any questions please feel free to contact me at (305) 292-3550.

cc: County Attorney
Finance
File

KEY WEST
500 Whitehead Street
Key West, Florida 33040

MARATHON
3117 Overseas Highway
Marathon, Florida 33050

PLANTATION KEY
88770 Overseas Highway
Plantation Key, Florida 33070

91

Zuilkowski, Steven

From: Limbert-Christine <Limbert-Christine@MonroeCounty-FL.Gov>
Sent: Thursday, November 3, 2022 1:59 PM
To: Zuilkowski, Steven; Shillinger-Bob
Subject: RE: Raschein Opinion - Additional information FEMA language

Yes. The AshBritt termination provisions will need some additional updates that were already included in the DRC original contract and therefore not needed in the DRC Amendment. The termination provisions are required by 2 CFR Part 200, Appendix II B.

Christine M. Limbert-Barrows
Asst. County Attorney
Monroe County Attorney's Office
P.O. Box 1026
Key West, FL 33041-1026
(305) 292-3470
(305) 292-3516 (fax)

Please note: Florida has a very broad public records law. Most written communications to or from the County regarding County business are public record, available to the public and media upon request. Your e-mail communication may be subject to public disclosure.

From: Zuilkowski, Steven <ZUILKOWSKI.STEVEN@leg.state.fl.us>
Sent: Thursday, November 3, 2022 1:23 PM
To: Limbert-Christine <Limbert-Christine@MonroeCounty-FL.Gov>; Shillinger-Bob <Shillinger-Bob@MonroeCounty-FL.Gov>
Subject: RE: Raschein Opinion - Additional information FEMA language

...

CAUTION: This email originated from outside of the County. Whether you know the sender or not, do not click links or open attachments you were not expecting.

Christine, thanks for this. Would I be correct to assume the amendments to the AshBritt contract would be similar in number, scale, and scope, to the DRC amendment you attached?
Steve

Steven J. Zuilkowski
Deputy Executive Director & General Counsel
Florida Commission on Ethics
P.O. Drawer 15709
Tallahassee, FL 32317-5709
(850) 488-7864
(850) 488-3077 (Fax)
ethics.state.fl.us

Physical address:
325 John Knox Road
Building E, Suite 200
Tallahassee, FL 32303

From: Limbert-Christine <Limbert-Christine@MonroeCounty-FL.Gov>
Sent: Friday, October 14, 2022 11:44 AM

To: Shillinger-Bob <Shillinger-Bob@MonroeCounty-FL.Gov>; Zuilkowski, Steven <ZUILKOWSKI.STEVEN@leg.state.fl.us>
Subject: RE: Raschein Opinion - Additional information FEMA language

Here is the DRC amendment, these provide a summary of the amendments that would necessary.

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From: Shillinger-Bob <Shillinger-Bob@MonroeCounty-FL.Gov>
Sent: Friday, October 14, 2022 11:31 AM
To: Zuilkowski, Steven <ZUILKOWSKI.STEVEN@leg.state.fl.us>; Limbert-Christine <Limbert-Christine@MonroeCounty-FL.Gov>
Subject: Raschein Opinion - Additional information FEMA language

Here's each others email addresses.



Bob Shillinger
County Attorney
Monroe County Attorney's Office
1111 12th Street, Suite 408
Key West, FL 33040
(305) 292-3470
(305) 292-3516 (facsimile)

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Zuilkowski, Steven

From: Shillinger-Bob <Shillinger-Bob@MonroeCounty-FL.Gov>
Sent: Tuesday, November 8, 2022 1:54 PM
To: Zuilkowski, Steven; Limbert-Christine
Subject: RE: Raschein Opinion - Additional information FEMA language

Steve:

The lack of such provisions would jeopardize the County's eligibility for reimbursement by FEMA.

The contract between AshBritt and the County would still be an enforceable contract, notwithstanding its potential ineligibility for reimbursement by FEMA.



Bob Shillinger
County Attorney
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(305) 292-3516 (facsimile)

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From: Zuilkowski, Steven <ZUILKOWSKI.STEVEN@leg.state.fl.us>
Sent: Friday, November 04, 2022 10:57 AM
To: Limbert-Christine <Limbert-Christine@MonroeCounty-FL.Gov>; Shillinger-Bob <Shillinger-Bob@MonroeCounty-FL.Gov>
Subject: RE: Raschein Opinion - Additional information FEMA language

CAUTION

Bob/Christine,

Would it be correct for me to say that the termination provisions required by 2 CFR 200, Appendix II(B), are necessary for the County (non-federal entity) to obtain reimbursement from the Federal government? Or is it that the lack of these provisions renders the contract between AshBritt and the County unenforceable? Or is there some other consequence for not including these provisions?

Steve

From: Limbert-Christine <Limbert-Christine@MonroeCounty-FL.Gov>
Sent: Thursday, November 3, 2022 1:59 PM
To: Zuilkowski, Steven <ZUILKOWSKI.STEVEN@leg.state.fl.us>; Shillinger-Bob <Shillinger-Bob@MonroeCounty-FL.Gov>
Subject: RE: Raschein Opinion - Additional information FEMA language

Yes. The AshBritt termination provisions will need some additional updates that were already included in the DRC original contract and therefore not needed in the DRC Amendment. The termination provisions are required by 2 CFR Part 200, Appendix II B.

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From: Zuilkowski, Steven <ZUILKOWSKI.STEVEN@leg.state.fl.us>

Sent: Thursday, November 3, 2022 1:23 PM

To: Limbert-Christine <Limbert-Christine@MonroeCounty-FL.Gov>; Shillinger-Bob <Shillinger-Bob@MonroeCounty-FL.Gov>

Subject: RE: Raschein Opinion - Additional information FEMA language

...

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Steve

Steven J. Zuilkowski

Deputy Executive Director & General Counsel

Florida Commission on Ethics

P.O. Drawer 15709

Tallahassee, FL 32317-5709

(850) 488-7864

(850) 488-3077 (Fax)

ethics.state.fl.us

Physical address:

325 John Knox Road

Building E, Suite 200

Tallahassee, FL 32303

From: Limbert-Christine <Limbert-Christine@MonroeCounty-FL.Gov>

Sent: Friday, October 14, 2022 11:44 AM

To: Shillinger-Bob <Shillinger-Bob@MonroeCounty-FL.Gov>; Zuilkowski, Steven <ZUILKOWSKI.STEVEN@leg.state.fl.us>

Subject: RE: Raschein Opinion - Additional information FEMA language

Here is the DRC amendment, these provide a summary of the amendments that would necessary.

Christine M. Limbert-Barrows
Asst. County Attorney
Monroe County Attorney's Office
P.O. Box 1026
Key West, FL 33041-1026
(305) 292-3470
(305) 292-3516 (fax)

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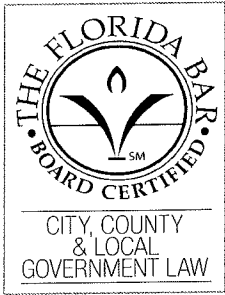
From: Shillinger-Bob <Shillinger-Bob@MonroeCounty-FL.Gov>

Sent: Friday, October 14, 2022 11:31 AM

To: Zuilkowski, Steven <ZUULKOWSKI.STEVEN@leg.state.fl.us>; Limbert-Christine <Limbert-Christine@MonroeCounty-FL.Gov>

Subject: Raschein Opinion - Additional information FEMA language

Here's each others email addresses.



Bob Shillinger
County Attorney
Monroe County Attorney's Office
1111 12th Street, Suite 408
Key West, FL 33040
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(305) 292-3516 (facsimile)

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