MEMORANDUM

Date: October 9, 2025 City Commission Meeting

To: Honorable Mayor and Commissioners

From: Kendal Harden, Interim City Attorney

Subject: Authorization to Reimburse Commissioner Carey and Payment of Attorneys' Fees to Juan-Carlos Planas for the Defense of the Recall Petition

Background

Commissioner Lisette Carey was subject to a recall petition initiated in June 2025 and filed with the City Clerk of the City of Key West on July 23, 2025. The petition alleged that Commissioner Carey should be recalled from the office of District IV City Commissioner for committing misfeasance, malfeasance, incompetence and neglect of duty as a commissioner. Commissioner Carey engaged legal counsel Juan-Carlos Planas to defend against these allegations, incurring legal expenses and costs in the amount of $6,175.00.

Legal Authority

The Florida Supreme Court enunciated a common law doctrine affording public officials the right "to legal representation at public expense to defend themselves against litigation arising from the performance of their public duties while serving a public purpose," *Thornber v. City of Ft. Walton Beach*, 568 So.2d 914, 916-7 (Fla. 1990); see, also, *Maloy v. B.O.C.C. of Leon County*, 946 So.2d 1260, 1263 (Fla. 1st DCA 2007) The Supreme Court has held that this "entitlement to attorney's fees arises independent of statute, ordinance, or charter." *Thornber*, 568 So.2d at 917.

In order for a public official "to be entitled to representation at public expense, the litigation must: (1) arise out of or in connection with the performance of their official duties; and (2) serve a public purpose;" *Thornber*, 568 So.2d at 917. The Supreme Court observed that the "purpose of this common law rule is to avoid the chilling effect that a denial of representation might have on public officials in performing their duties properly and diligently," *Id.*

Recommendation

Adopt the Resolution authorizing reimbursement in accordance with Florida Law.