

Sponsored by: Council

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2009-124**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A MEMORANDUM OF UNDERSTANDING WITH MONROE COUNTY TO SUPPORT THE CONTINUING EFFORTS OF FAIR INSURANCE RATES IN MONROE ("FIRM") TO REDUCE THE PROPOSED MONROE COUNTY WINDSTORM INSURANCE RATES; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the grass-roots organization Fair Insurance Rates in Monroe (FIRM) requested assistance in providing legal counsel and a professional actuary to fight the intended increase in windstorm rates by Citizens over the next several years; and

**WHEREAS**, in 2006, the County, with subsidization from Key West and Marathon, contracted with Volpe, Bajalia, Wickes, Rogerson, & Wachs, P.A. ("Firm") to provide legal services and AIS Risk Consultants ("AIS") to provide actuarial services in challenging an earlier insurance rate filing by Citizens Property Insurance Corporation; and

**WHEREAS**, that challenge was highly successful in reducing the proposed rates to below the then-existing rates charged for Monroe County properties; and

**WHEREAS**, Citizens Property Insurance Corporation has recently filed new rates affecting Monroe County; and

**WHEREAS**, on August 12, 2009, the County entered into contracts with maximum payments for services in challenging the windstorm insurance rates of \$100,000 for the legal services and \$50,000 for the actuarial services; and

**WHEREAS**, the City Council wishes to assist FIRM in this effort to protect low rates throughout the Florida Keys;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:**

**Section 1.** The above recitals are true and correct and incorporated herein.

**Section 2.** The City Council hereby authorizes the City to enter into a Memorandum of Understanding with Monroe County in support of FIRM's continuing efforts to lower windstorm insurance rates in Monroe County, substantially in the form of Exhibit A hereto.

**Section 3.** The City shall contribute up to \$21,000 from the Council's contingency fund, based on the application of the percentage of residency of Marathon to the total costs to the County, to protect and promote lower insurance rates in Monroe County as part of the City's state legislative agenda for the 2009 legislative session.

**Section 4.** This resolution shall take effect immediately upon its adoption.


**PASSED AND APPROVED** by the City Council of the City of Marathon, Florida, this 8<sup>th</sup> day of September, 2009.

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Mayor Mike Cinque**


AYES: Ramsay, Snead, Vasil, Worthington, Cinque  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ATTEST:**

  
\_\_\_\_\_  
Diane Clavier  
City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

  
\_\_\_\_\_  
City Attorney

**WINDSTORM INSURANCE RATE CHALLENGE**  
**MEMORANDUM OF UNDERSTANDING**

**This Agreement** is made and entered into by **Monroe County** (County), a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, FL 33040, and the **City of Marathon** (City), a municipal corporation of the State of Florida and whose address is 9805 Overseas Highway, Marathon, Florida 33050.

**WHEREAS**, the grass-roots organization Fair Insurance Rates in Monroe (**FIRM**) requested assistance in providing legal counsel and a professional actuary to fight the intended increase in windstorm rates by Citizens over the next several years; and

**WHEREAS**, in 2006, the County, with subsidization from Key West and Marathon, contracted with Volpe, Bajalia, Wickes, Rogerson, & Wachs, P.A. ("Firm") to handle the provide legal services and AIS Risk Consultants ("AIS") to provide actuarial services in challenging an earlier insurance rate filing in by Citizens Property Insurance Corporation; and

**WHEREAS**, that challenge was highly successful in reducing the proposed rates to below the then-existing rates charged for Monroe County properties; and

**WHEREAS**, Citizens Property Insurance Corporation has recently filed new rates affecting Monroe County; and

**WHEREAS**, on August 12, 2009, the County entered into contracts with maximum payments for services in challenging the windstorm insurance rates of \$100,000 for the legal services and \$50,000 for the actuarial services; now therefore,

**IN CONSIDERATION OF** the mutual promises and conditions contained herein, the Parties agree as follows:

**1. TERM.**

Subject to and upon the terms and conditions set forth herein, this Agreement shall be effective August 12, 2009, and continue through December 31, 2009, unless earlier terminated pursuant to the provisions in Section 11, below. Additionally, the term of this Agreement may be extended by a written amendment executed by both parties.

**2. OBLIGATIONS OF PARTIES.**

**(A) MONROE COUNTY**

(1) The County shall contract with TIMOTHY WAYNE VOLPE ("Attorney") of the firm of Volpe, Bajalia, Wickes, Rogerson, & Wachs, P.A. ("Firm") at an amount not to exceed \$100,000 for legal services for the purpose of challenging insurance rate filing in 2009 by Citizens Property Insurance Corporation.

(2) The County shall contract with AIS Risk Consultants ("Consultant") at an amount not to exceed \$50,000 for actuarial services the purpose of challenging the

insurance rate filing in 2009 by Citizens Property Insurance Corporation.

- (3) Upon payment of the final invoices of the Firm and Consultant, County shall submit a bill to City for payment of the applicable share of the costs which is based on residency of Marathon. In the event the total amount of the expenditures by the County under the combined contracts with Firm and Consultant, is less than \$150,000, then County will bill City based on the percentage that the combined costs to County are to the combined maximum of \$150,000, which percentage shall be applied to the maximum set by City.

**(B) MARATHON.** City shall pay to County up to \$21,000, based on the application of the percentage of residency of Marathon to the total costs to the County, as further described in 2(A)(3), above.

### **3. SCOPE OF SERVICES**

The County shall provide, through contracts for legal and actuarial services, a challenge to windstorm insurance rates filed in 2009 by Citizens Property Insurance Corporation, including administrative hearings and litigation, as necessary, and any other tasks reasonably related to the goals of the Parties regarding windstorm insurance.

**4. COMPENSATION.** The Parties agree to collectively fund the costs for windstorm insurance rates filed in 2009 by Citizens during the term of this agreement. Monroe County shall submit invoices to City for its share of the County's current billing from the Firm and Consultant with copies of documentation that support the current billing. Payment shall be made by City pursuant to the Local Government Prompt Payment Act. City has been assured that similar memoranda of understanding are being entered between the County and other municipalities based on residency and a \$2.08 per resident basis, with pro rata reductions if the services cost less than the maximum allowed by the contracts with the Firm and Consultant.

**5. RECORDS — ACCESS AND AUDITS.** The Parties shall maintain adequate and complete records for a period of four years after each fiscal year allocation. Each of the Parties, its officers, employees, agents and contractors shall have access to each of the Parties' books, records, and documents related to this Agreement upon request. The access to and inspection of such books, records, and documents by the Parties shall occur at any reasonable time.

**6. RELATIONSHIP OF PARTIES.** The Parties are independent of each other and shall at no time be legally responsible for any negligence on the part of the other Party, its employees, agents or volunteers resulting in either bodily or personal injury or property damage to any individual, property or corporation. It is understood and agreed that the Firm is acting as an independent contractor and not as an employee of either of the Parties. Furthermore, it is acknowledged that the Firm is not a party to this Agreement and nothing in this Agreement should be construed to create any sort of contractual relationship between City and the Firm.

**7. TAXES.** The Parties are not subject to taxes and assessments with regard to the funds shared under this Agreement.

**8. INSURANCE.** The Parties to this Agreement stipulate that each entity is a state governmental agency as defined by Florida Statutes and represent to the other that it has purchased suitable Public Liability, Vehicle Liability, and Workers' Compensation insurance, or is self-insured, in amounts adequate to respond to any and all claims under federal or state actions for civil rights violations, which are not limited by Florida Statutes Section 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes Section 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes arising out of the activities governed by this Agreement. Each party agrees to keep in full force and effect the required insurance coverage during the term of this Agreement.

**9. HOLD HARMLESS.** To the extent allowed by law, each Party is liable for and must fully defend, release, discharge, indemnify and hold harmless the other party, the members of their governing boards, officers and employees, agents and contractors, from and against any and all claims, demands, causes of action, losses, costs and expenses of whatever type - including investigation and witness costs and expenses and attorneys' fees and costs - that arise out of or are attributable to the operations under this Agreement except for those claims, demands, damages, liabilities, actions, causes of action, losses, costs and expenses that are the result of the sole negligence or malfeasance of the respective Party. The purchase of the insurance required under this Agreement does not release or vitiate any Party's obligations under this Section. No Party waives any of its sovereign immunity rights, including but not limited to, those expressed in Section 768.28, Florida Statutes.

**10. COMPLIANCE WITH LAWS.** Each Party shall comply with all applicable laws of the State of Florida and the federal government in carrying out their obligations under this agreement.

**11. GOVERNING LAWS/VENUE AND ATTORNEY FEES.** This Agreement is governed by the laws of the State of Florida and the United States. Venue for any dispute arising under this Agreement must be in Monroe County, Florida. In the event of any litigation, the prevailing party is entitled to a reasonable attorney's fee and costs.

**12. ETHICS CLAUSE.** Each party warrants that it has not employed, retained or otherwise had act on its behalf any former County officer or employee subject to the prohibition of Section 2 of Ordinance No. 010-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 010-1990. For breach or violation of this provision, the County may, in its discretion, terminate this agreement without liability and may also, in its discretion, recover the full amount of any fee, commission, percentage, gift or consideration paid to the former County officer or employee.

**13. NOTICES.** Notices in this Agreement, unless otherwise specified, must be sent by certified mail to the following:

**COUNTY:**

County Administrator  
1100 Simonton Street  
Key West, FL 33040

**MARATHON:**

Mayor Mike Cinque  
9805 Overseas Highway  
Marathon, FL 33050

&

&

County Attorney  
PO Box 1026  
Key West, FL 33041-1026

Jimmy Morales  
City Attorney for Marathon  
150 W. Flagler Street, Suite 2200  
Miami, FL 33130

**14. NON-RELIANCE BY NON-PARTIES.** No person or entity shall be entitled to rely upon the terms, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement or benefit of any service or program contemplated hereunder, and each party agrees that neither the party nor any officer, agent, or employee of the Party shall have the authority to inform, counsel or otherwise indicate that any particular individual or groups of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to or superior to the community in general or for the purposes contemplated under this Agreement.

**15. FULL UNDERSTANDING.** This Agreement is the parties' final mutual understanding regarding the subject matter hereof. It replaces any earlier agreements or understandings, whether written or oral. This Agreement cannot be modified or replaced except by another written and signed agreement.

**IN WITNESS WHEREOF,** each Party has caused this Agreement to be executed by its duly authorized representative.

(SEAL)  
ATTEST: DANNY L. KOLHAGE, CLERK  
By: Sabel C. DeSantis  
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA  
By: George R. Neugeb  
Mayor

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM  
Suzanne A. Hutt  
SUZANNE A. HUTT  
COUNTY ATTORNEY  
2/18/09

(SEAL)  
ATTEST:  
By: Diane Clavier  
Clerk

CITY OF MARATHON  
By: \_\_\_\_\_  
Mayor

APPROVED AS TO FORM:  
[Signature]  
City Attorney