

Sponsored by: Bull

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2006-121**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY AND THE MIDDLE KEYS COMMUNITY LAND TRUST, INC. FOR ASSISTANCE IN ACCOMPLISHING THE GOAL OF PROVIDING AND PRESERVING AFFORDABLE/WORKFORCE HOUSING IN THE ANNUAL AMOUNT OF \$50,000**

**WHEREAS**, the City of Marathon, Florida (the “City”) Comprehensive Plan, Objective 2-2.2, provides that the City shall develop a housing program that encourages the creation and preservation of affordable housing for current and future residents of the City; and

**WHEREAS**, the Middle Keys Community Land Trust, Inc., (the “Land Trust”) is a community based non profit organization with a mission to create and preserve affordable/workforce housing and is experienced in the acquisitions, construction, financing and management of affordable housing in the Florida Keys; and

**WHEREAS**, the City Council desires to enter into an Agreement with the Land Trust to assist the City with accomplishing its goal of providing and preserving affordable/workforce housing;

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


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

**Section 2. Approval of Agreement.** The Agreement for Professional Services between the City and the Land Trust, a copy of which is attached as Exhibit “A” hereto, together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is approved.

**Section 3. Authorization of City Officials.** The City Manager is authorized to expend budgeted funds in connection with the Agreement and the Mayor is authorized to execute the Agreement


**PASSED AND APPROVED** by the City Council of the City of Marathon,  
Florida this 22<sup>nd</sup> Day of August, 2006.

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
Christopher M. Bull, Mayor

AYES: Mearns, Pinkus, Tempest, Worthington, Bull  
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

**PROFESSIONAL SERVICES AGREEMENT BETWEEN  
THE CITY OF MARATHON  
AND  
THE MIDDLE KEYS COMMUNITY LAND TRUST, INC.**

**THIS AGREEMENT** is made between THE MIDDLE KEYS COMMUNITY LAND TRUST, INC, a Florida not-for-profit corporation, (hereinafter the “Land Trust”), and THE CITY OF MARATHON, FLORIDA, a Florida municipal corporation, (hereinafter the “City”).

**WHEREAS**, the Land Trust and the City, through mutual negotiations, have agreed upon a scope of services, schedule and fee for the Land Trust to perform certain housing related functions for the City; and

**WHEREAS**, the City desires to engage the Land Trust to perform the services specified below.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the Land Trust and the City agree as follows.

1. **Scope of Services.**

The Land Trust shall:

- 1.1. Identify available properties and work with the City Manager to determine appropriateness of each property for acquisition and development.
- 1.2. Acquire ownership of identified properties for development of affordable /workforce housing units in the City, subject to City Council approval of the acquisition and proposed density for the property.
- 1.3. Work with neighbors, neighborhoods and homeowners associations to work cooperatively in planning and design of appropriate affordable/workforce housing.
- 1.4. Design, permit and construct affordable/workforce housing units.
- 1.5. Secure funding from all available resources for acquisition, construction and permanent financing of affordable/workforce housing.
- 1.6. Retain ownership of real property developed as homeownership units to ensure compliance with the City’s Affordable Housing Deed Restrictions.
- 1.7. Create an application system for eligibility based upon the City’s Comprehensive Plan and Land Development Regulations and City Code. Prepare all required documents to lease/sell completed units to eligible applicants.

- 1.8. Manage all properties developed as affordable/workforce units, and monitor occupancy to ensure compliance with the City's Comprehensive Plan, Land Development Code and Restrictive Covenants pertaining to Affordable/Workforce Housing.
  - 1.9. Insure compliance and report as may be required in consideration of funding from the Monroe County Land Authority, the Florida Housing Finance Corporation or any other financial partners.
  - 1.10. Provide the City Council and City committees (as directed by the Council and the City Manager) input on proposed acquisitions, design and construction of housing units and updates on plans, progress and activities on a monthly basis.
  - 1.11. Provide the City a copy of the Land Trust's audited financial statements on an annual basis, or more frequently as may be requested by the City Manager.
  - 1.12. Provide the City Council with a quarterly written report on all activities and provide a bi-annual oral report to the Council.
  - 1.13. Conduct income certifications and annual compliance monitoring and reporting for existing deed restricted affordable housing in the City .
2. **Term/Renewal.**
- 2.1. This Agreement shall become effective upon execution by both parties and shall remain in effect through September 30, 2009, unless earlier terminated in accordance with Section 5 (the "Term").
  - 2.2. The City Manager may extend the term of this Agreement up to an additional 30 days by written notice to the Land Trust. No less than 90 days before the date of expiration of the Term of this Agreement, the City Council may extend the term of this Agreement for up to three (3) additional years by written notice to the Land Trust (the "Renewal Term").

3. **Compensation and Payment.**

- 3.1. The Land Trust shall be compensated \$50,000.00 per year for providing all services specified in Section 1 of this Agreement for the Term of this Agreement, effective October 1, 2006.
- 3.2. Annual payment to the Land Trust for the Term shall be in 12 equal monthly installments upon the receipt by the City of an invoice from the Land Trust.
- 3.3. During the Renewal Term, compensation to the Land Trust shall be \$10.00 per year.

4. **City's Responsibilities.**

The City shall:

- 4.1. Identify a contact person with the City staff to act as a liaison to the Land Trust and its Board of Directors.
- 4.2. Through the Affordable Housing and Land Acquisition Committees of the City, assist in the identification of land appropriate for acquisition and development of affordable/workforce housing units.
- 4.3. Work with the Land Trust to obtain additional affordable/workforce housing permit allocations.
- 4.4. Furnish to the Land Trust, at the Land Trust's written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by the Land Trust which are in the possession of the City.
- 4.5. Arrange for access to and make all provisions for the Land Trust to enter onto real property as required for the Land Trust to perform services as may be requested in writing by the Land Trust.

5. **Termination.**

- 5.1. The City Manager without cause may terminate this Agreement upon 60 days written notice to the Land Trust, or immediately with cause.
- 5.2. Upon receipt of the City's written notice of termination, the Land Trust shall stop work on the acquisition of any properties unless directed otherwise by the City Manager.

- 5.3. In the event of termination by the City, the Land Trust shall be paid for all work accepted by the City Manager up to the date of termination, provided that the Land Trust has first complied with the provisions of Paragraph 5.4.
- 5.4. The Land Trust shall transfer all books, records, reports, working drafts, documents, maps, and data (the "Records") pertaining to any acquired properties and any pending acquisitions to the City, in a hard copy and electronic format, within 14 days from the date of the written notice of termination by either party or the date of expiration of this Agreement.
- 5.5. The Land Trust may without cause terminate this Agreement upon 60 days written notice to the City.
- 5.6. In the event that the Land Trust is declared bankrupt, insolvent or otherwise non-operational, the City may immediately terminate the Agreement.
- 5.7. Upon termination by either party, with or without cause, the Land Trust shall 1) transfer management of all properties acquired in the City to the City or to any other legal entity designated by the City; 2) execute any required deeds and assignment of any documents to transfer ownership of the properties to the City; 3) deliver any and all Records to the City; and 4) assign all obligations and rights to the City.

6. **Insurance.**

The Land Trust shall secure and maintain throughout the duration of this Agreement insurance of such type and in such amounts as required by the City Manager. The underwriter of such insurance shall be qualified to do business in the State of Florida and have agents upon whom service of process may be made in the State of Florida. If requested by the City Manager, the insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers. The insurance coverages shall include a minimum of:

- 6.1. Worker's Compensation and Employer's Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law.
- 6.2. Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$500,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

- 6.3. Commercial General Liability. If applicable, commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- 6.4. Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies shall be provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

7. **Nondiscrimination.**

- 7.1. The Land Trust shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and agrees to abide by all Federal and State laws regarding nondiscrimination.
- 7.2. The Land Trust shall comply with all applicable federal and state Fair Housing laws and regulations.

8. **Attorneys Fees and Waiver of Jury Trial.**

- 8.1. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- 8.2. In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

9. **Indemnification.**

- 9.1. The Land Trust shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with the Land Trust's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Land Trust and third parties made pursuant to this Agreement. The Land Trust shall reimburse the City for all its expenses including reasonable attorney's fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of,

related to, or in any way connected with the Land Trust's performance or non-performance of this Agreement.

9.2. The provisions of this section shall survive termination or expiration of this Agreement.

10. **Notices/Authorized Representatives.**

10.1. Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the City:

Mike Puto, City Manager  
City of Marathon  
10045 Overseas Hwy.  
Marathon, FL 33050  
(305) 743-0033

For The Land Trust:

Richard Casey, Administrator  
Middle Keys Community Land Trust Inc.  
P.O. Box 500194  
Marathon, FL 33050  
(305) 743-5624

With a copy to:

John R. Herin, Jr., Esquire  
Stearns, Weaver, Miller, Weissler, Aldaheff, & Sitterson, P.A.  
Museum Tower, 150 West Flagler Street  
Miami, Florida 33130  
Telephone: (305) 789-3200

11. **Governing Law.**

11.1. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, Middle Keys Division of the Circuit Court or the Southern District of Florida.



12. **Entire Agreement/Modification/Amendment.**

12.1. This writing contains the entire Agreement of the parties and supercedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

12.2. No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

13. **Ownership and Access to Records and Audits.**

13.1. All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Land Trust providing services to the City under this Agreement shall be the property of the City.

13.2. The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Land Trust involving transactions related to this Agreement. Should an audit reveal that the Land Trust was paid for unperformed services, the City shall be entitled to a reimbursement for the same.

13.3. The City may cancel this Agreement for refusal by the Land Trust to allow access by the City Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

14. **Nonassignability.**

14.1. This Agreement shall not be assignable by the Land Trust unless such assignment is first approved by the City Manager. The City is relying upon the apparent qualifications and personal expertise of the Land Trust, and such entity's familiarity with the City's area, circumstances and desires.

15. **Severability.**

15.1. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

16. **Independent Contractor.**

16.1. The Land Trust and its employees, volunteers and agents shall be and remain independent contractor and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

17. **Compliance with Laws.**

17.1. The Land Trust shall comply with all applicable federal and state laws, ordinances, rules, regulations, in carrying out the services specified in this Agreement.

18. **Waiver**

18.1. The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

19. **Survival of Provisions.**

19.1. Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, including but not limited to the Land Trust's obligation to maintain all acquired properties in the City as Affordable housing, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

20. **Prohibition Of Contingency Fees.**

20.1. The Land Trust warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Land Trust, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Land Trust, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

21. **Counterparts.**

21.1. This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties execute this Agreement on the respective dates under each signature: The City, signing by and through its Mayor, attested to by its City Clerk, duly authorized to execute same and by Land Trust by and through its President, whose representative has been duly authorized to execute same.

Attest:

CITY OF MARATHON

Diane Clavier  
Diane Clavier, City Clerk

By: Christopher M. Bull  
Christopher M. Bull, Mayor

Date: Aug 24, 2006

MIDDLE KEYS COMMUNITY  
LAND TRUST, INC.

By: Debbie Love  
Debbie Love, President

Date: 9/13/06

APPROVED AS TO FORM AND LEGALITY  
FOR THE USE AND BENEFIT OF CITY OF MARATHON ONLY

[Signature]  
CITY ATTORNEY