

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2006-190**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE PUBLIC-PRIVATE JOINT VENTURE AGREEMENT WITH THE MIDDLE KEYS COMMUNITY LAND TRUST, INC. FOR PURPOSES OF APPLYING FOR STATE FUNDS TO DEVELOP AFFORDABLE HOUSING ON THE 104<sup>TH</sup> STREET PROPERTY OWNED BY THE CITY; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO FINALIZE THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, the City Of Marathon has identified, owns and controls property located at 104<sup>th</sup> Street and US 1, and more particularly described on Exhibit A attached hereto (the “Property”);

**WHEREAS**, the City acquired the Property and desires to utilize the parcel for the purpose of providing affordable/workforce housing for the benefit of the community;

**WHEREAS**, the City has executed a legally binding restrictive covenant limiting the eligibility of the prospective residents of the Property to those that qualify for affordable housing under the City’s Code and Comprehensive Plan;

**WHEREAS**, the Florida Housing Finance Corporation recently published a competitive Request for Proposal (RFP 2006-05), under the Community Workforce Housing Innovation Pilot Program to “Provide Affordable Rental and Homeownership Community Workforce Housing for Essential Service Personnel,” pursuant to Section 420.5095, F.S. (the “RFP”);

**WHEREAS**, the Community Land Trust has prior experience in the development of affordable housing and intends to submit a response to the RFP;

**WHEREAS**, the RFP requires, among other things, that a qualified applicant must be a “Public-Private Partnership” (the “Partnership”), which is defined as any form of business entity that includes substantial involvement of at least one county, municipality or public sector entity, and at least one private sector for profit or non-profit business or charitable entity, and may be any form of business entity, including a joint venture or contractual agreement;

**WHEREAS**, the RFP also requires that the Applicant will receive Contributions (as defined therein, which includes land) from the Partnership or other sources totaling at least fifteen percent (15%) of the Total Development Costs (as defined therein); and

**WHEREAS**, the City and the Community Land Trust wish to enter into this Agreement to establish the joint venture required under the RFP and evidence the Contribution by the City of the Property to the joint venture for purposes of the affordable housing development thereon.

**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 are incorporated herein

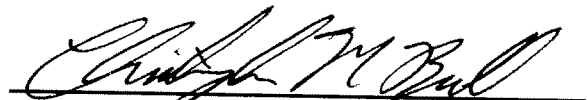
**Section 2.** The Council approves the Public-Private Joint Venture Agreement between the City of Marathon and the Middle Keys Community Land Trust, Inc., a copy of which is attached hereto as Exhibit "B", together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney.

**Section 3.** The City Manager is authorized to sign the Agreement.

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

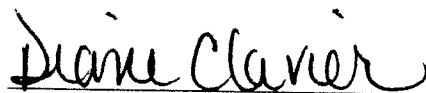
**PASSED AND APPROVED** by the City Council of the City of Marathon, Florida, this 12th day of December, 2006.

**THE CITY OF MARATHON, FLORIDA**

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

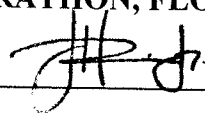
AYES: Mearns, Pinkus, Tempest, Worthington, Bull  
NOES: None  
ABSENT: None  
ABSTAIN: None

**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

## EXHIBIT A

### LEGAL DESCRIPTION OF PROPERTY

A PART OF GOVERNMENT LOT 2, SECTION 6, TOWNSHIP 66 SOUTH, RANGE 33 EAST, ON KEY VACA, U.S. 1 AT 104TH STREET, MARATHON, MONROE COUNTY, FLORIDA, and more particularly described as follows:

COMMENCING at the intersection of the West line of Section 6, T. 66 S., R. 33 E. and the Southerly right-of-way line of U. S. Highway No. 1 for a distance of 1709.80 feet to a point of intersection of the Southerly right-of-way of U. S. Highway No. 1, THENCE with a deflected angle to the right of 10 degrees and 00 minutes and Northeasterly along the Southerly right-of-way line of U. S. Highway No. 1 for a distance of 270.05 feet to the POINT OF BEGINNING of the property hereinafter described, from said POINT OF BEGINNING continue Northeasterly along the Southerly right-of-way line of U. S. Highway No. 1 for a distance of 270.05 feet to a point; THENCE with a deflected angle to the right of 102 degrees and 09 minutes and South for a distance of 450.00 feet; THENCE with a deflected angle to the right of 77 degrees and 51 minutes and Southwesterly for a distance of 270.05 feet; THENCE with a deflected angle to the right of 102 degrees and 09 minutes and north for a distance of 450.00 feet to the POINT OF BEGINNING

## PUBLIC-PRIVATE JOINT VENTURE AGREEMENT

**THIS PUBLIC-PRIVATE JOINT VENTURE AGREEMENT** (the "Agreement") is made and entered into this 12th day of December 2006 by and between THE CITY OF MARATHON, a Florida municipal corporation with an address at 10045-55 Overseas Highway, Marathon, Florida 33050 (the "City"), and THE MIDDLE KEYS COMMUNITY LAND TRUST, INC, a Florida Non-Profit Corporation with an address at P.O. Box 500194  
Marathon, FL 33060 (the "Community Land Trust").

**WHEREAS**, the City has identified, owns and controls property located at 104<sup>th</sup> Street and US 1, and more particularly described on Exhibit A attached hereto (the "Property");

**WHEREAS**, the City acquired the Property and desires to utilize the parcel for the purpose of providing affordable/workforce housing for the benefit of the community;

**WHEREAS**, the City has executed a legally binding restrictive covenant limiting the eligibility of the prospective residents of the Property to those that qualify for affordable housing under the City's Code and Comprehensive Plan;

**WHEREAS**, the Florida Housing Finance Corporation (the "FHFC") recently published a competitive Request for Proposal (RFP 2006-05), under the Community Workforce Housing Innovation Pilot Program (herein "CWHIP") to "Provide Affordable Rental and Homeownership Community Workforce Housing for Essential Service Personnel," pursuant to Section 420.5095, F.S. (the "RFP");

**WHEREAS**, the Community Land Trust has prior experience in the development of affordable housing and intends to submit a response to the RFP;

**WHEREAS**, the RFP requires, among other things, that a qualified applicant must be a "Public-Private Partnership" (the "Partnership"), which is defined as any form of business entity that includes substantial involvement of at least one county, municipality or public sector entity, and at least one private sector for profit or non-profit business or charitable entity, and may be any form of business entity, including a joint venture or contractual agreement;

**WHEREAS**, the RFP also requires that the Applicant will receive Contributions (as defined therein, which includes land) from the Partnership or other sources totaling at least fifteen percent (15%) of the Total Development Costs (as defined therein); and

**WHEREAS**, the City and the Community Land Trust wish to enter into this Agreement to establish the joint venture required under the RFP and evidence the Contribution by the City of the Property to the joint venture for purposes of the affordable housing development thereon.

**NOW THEREFORE**, the parties hereto, in consideration of the consideration expressed and the terms and conditions contained herein, hereby agree as follows:

1. PUBLIC-PRIVATE PARTNERSHIP FORMED. (a) The City and the Community Land Trust hereby form a contractual joint venture for the limited purpose of submitting a proposal under the RFP and developing up to forty (40) affordable workforce-housing units on the Property consistent with the proposal and the RFP. This joint venture shall represent the “Public-Private Partnership” as required by the RFP.

(b) The City acknowledges that the Community Land Trust may form a Florida limited liability company (LLC) for the purposes of assigning to such LLC its rights and duties under this Agreement (a “Permitted Assignee”), including submitting an RFP response for the Partnership. For the purposes of this Agreement, reference to the Community Land Trust shall include and be interpreted to also mean a Permitted Assignee. The parties also acknowledge that the City and the Community Land Trust may in the future choose to convert this contractual joint venture into a limited liability company, limited liability partnership or other form of business entity for purposes of jointly developing and/or operating the affordable housing on the Property.

(c) This joint venture shall not extend beyond the limited purposes set forth herein, and establishes no other relationship, be it any form of joint venture, partnership or other contractual or equitable venture, between the parties hereto and neither party shall be the agent of the other for any purposes other than the making of an RFP response and securing RFP funding for the RFP project if successful.

(d) Except to the extent otherwise provided in this Agreement, neither party hereto shall have any financial obligation hereunder, including any obligations to make cash or other financial Contributions or otherwise provide credit or financing to the joint venture.

2. RESPONSE TO RFP. The parties agree that the Community Land Trust shall be primarily responsible for preparing and submitting a timely and complete response to the RFP on behalf of the joint venture, but there shall be no obligation for the Community Land Trust to respond to the RFP if, after consultation with the City, the Community Land Trust determines that the proposed project would not, in its reasonable business judgment, be feasible or that it would otherwise not be appropriate for the Community Land Trust, as a non-profit entity, to proceed with the project.

3. TERM OF AGREEMENT. The term of this Agreement (the “Term”) shall commence upon the later of the approval of this Agreement by the Marathon City Council or the execution date hereof (the “Commencement Date”), and shall extend as follows:

- a. For so long as required by the FHFC and the terms of the RFP should the response to the RFP successfully result in satisfactory funding of the RFP Project by the FHFC;
- b. Until such date that the joint venture receives formal notification from the FHFC that the joint venture has not received an award under the RFP or that the proposal is otherwise rejected;

- c. Until such date that the joint venture receives formal notification from the FHFC that the FHFC will not actually fund the RFP Project in an amount deemed minimally acceptable to either party to this Agreement even though the FHFC's initial award notifications regarding the joint venture's response to the RFP indicated the FHFC's initial intent to award RFP funding to the RFP Project; or
- d. Prior to the receipt of funds from the FHFC pursuant to the RFP, until such date as a party hereto gives at least thirty (30) days' prior written notice of the termination of this Agreement.

4. SITE CONTROL AND CONTRIBUTION OF LAND. (a) The City agrees to commit the use of the Property, and thereby set aside the Property, for the purposes set forth herein from the commencement date of this Agreement through the Term hereof or the earlier termination thereof pursuant to Section 3 hereof.

(b) In the event the joint venture proposal receives acceptable funding under the RFP, the parties shall work together to secure such funding and identify, if necessary, such other financing or resources necessary and available on a commercially reasonable basis to successfully complete the affordable housing development on the Property, provided, however, that neither party shall have any obligation hereunder to provide any such financing or credit support without its agreement at such time.

(c) In the event the joint venture proposal receives acceptable funding under the RFP, the City shall contribute the Property to the joint venture, the Community Land Trust or such other appropriate legal entity either by warranty deed, long term lease or such other mechanism as reasonably determined by the City to be in the best interests of the City and most likely to achieve the objective of building and maintaining affordable housing on the Property.

5. NON-EXCLUSIVITY. The City recognizes and acknowledges that the Community Land Trust, for the purposes of submitting a successful response to the RFP, may be entering into agreements, similar in form and intent as this agreement, with other local governments, non profits and/or public sector entities to expand the scope and number of affordable/workforce housing units developed under the proposal. Without its prior written consent, the City is in no way obligated or liable under the terms and conditions of such agreements with the Community Land Trust's other potential partners or agreements. The Community Land Trust agrees and warrants that it shall not submit any responses to the RFP other than the one contemplated by this Agreement in joint venture with the City and such other entities as described above.

6. NO ORAL AGREEMENTS. This Agreement constitutes the entire agreement of the parties regarding the matters described in this Agreement and the parties hereto agree that this Agreement supersedes any prior understandings or agreements between them related to the subject matter of the RFP, and there are no representations, warranties, or oral agreements other than those expressly set forth herein. Notwithstanding the foregoing, nothing herein shall be deemed to supersede the Professional Services Agreement between the City of Marathon and the Middle Keys Community Land Trust, Inc. pursuant to which the Middle Keys Community Land Trust provides affordable housing consulting and other services for the City.

7. NO WAIVER OF BREACH. The failure of a party to insist on strict performance of any provision of this Agreement shall not be construed to constitute a waiver of a breach of any other provision or of a subsequent breach of the same provision.

8. SEVERABILITY. This Agreement is severable, and if any term or provision is determined to be unenforceable, this shall not affect the enforceability of the remainder of the Agreement.

9. OTHER ACTS. Each party agrees to timely perform such other acts that are reasonably necessary or that may be reasonably requested by the joint venture or other party to effectuate the provisions of this Agreement.

10. RESOLUTION OF FUTURE DISPUTES. In the event of any disagreement regarding an issue between the parties, the parties shall first confer and exercise reasonable efforts to resolve such a dispute. Any dispute arising under or relating to this Agreement or any of the parties' obligations hereunder shall be resolved first through mandatory mediation. Should mediation fail to resolve the dispute, the matter shall be submitted to binding arbitration in Monroe County, Florida, if possible, and if not, in Miami-Dade County, Florida, in accordance with the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association then in effect. **AS SUCH, BOTH PARTIES HERETO HEREBY WAIVE ANY RIGHT TO A JURY TRIAL IN CONNECTION WITH THIS AGREEMENT OR ANY MATTERS RELATED THERETO.**

11. VENUE AND GOVERNING LAW. The laws of the State of Florida shall govern the construction and enforcement of this Agreement. Venue for any such action arising under or relating to this Agreement shall lie exclusively with a court of competent jurisdiction in the City of Marathon, Monroe County, Florida.

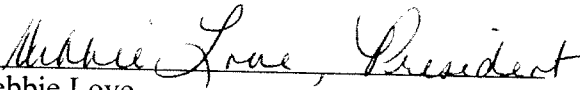
12. REMEDIES FOR ENFORCEMENT. The terms and provisions of this Agreement are enforceable in contract, in addition to any remedies for enforcement that may also be available under any law or rule of equity.

13. COUNTERPARTS. This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

14. **NOTICES.** All consents, notices, requests and other communications under this Agreement shall be in writing and shall be deemed to have been duly received (a) upon receipt if delivered by hand delivery, or (b) on the first business day after delivery to an overnight courier service for next business day delivery, to the addresses of the parties set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Public-Private Venture Agreement as of the date first set forth above.


MIDDLE KEYS COMMUNITY LAND TRUST, INC.

  
Debbie Love  
President

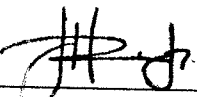
THE CITY OF MARATHON, FLORIDA

  
Michael H. Puto  
City Manager

**ATTEST:**

  
Diane Clavier  
City Clerk

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

  
City Attorney



**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

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