

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2007-142**

**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 AN ANNUAL AMOUNT NOT TO EXCEED \$40,000; AND PROVIDING AN EFFECTIVE DATE.**

**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

**Section 4. Effective Date.** This Resolution shall become effective immediately upon its adaptation


**PASSED AND APPROVED** by the City Council of the City of Marathon, Florida this 9th of October, 2007.

**THE CITY OF MARATHON, FLORIDA**

  
Christopher M. Bull, Mayor

AYES: Cinque, Tempest, Vasil, 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 negotiation, 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 provide the following services:

**A. COMPLIANCE MONITORING**

The Land Trust shall provide active monitoring of all City of Marathon Affordable Deed Restricted Properties for various types of affordable deed restricted properties as follows:

i. **OWNERSHIP UNITS**

The Land Trust shall provide annual written notification to owners of all affordable deed restricted properties in the City which are identified as owner occupied units by virtue of having filed a homestead exemption with the Monroe County Property Appraisers Office. Notification shall be by regular mail and certified letter. Copies of all notifications shall be provided to the Planning Department.

- ii. **RENTAL UNITS**  
The Land Trust shall provide annual written notification to owners of all affordable deed restricted properties in the City which are identified as rental units by virtue of having not filed a homestead exemption with the Monroe County Property Appraisers Office. Notification shall be by regular mail and certified letter. Each tenant shall be certified as eligible or ineligible. Summary of compliance/non-compliance shall be reported to the Planning Department. Copies of all owner notifications and Certificates of Compliance shall be provided to the Planning Department.
- iii. **UNITS SOLD (Sold without notification to City)**  
The Land Trust shall identify any units sold in the prior year where the property was sold, transferred or conveyed without the City having the opportunity to certify the eligibility of the buyer. The Land Trust shall notify the buyer/owner requesting verification of compliance. Copies of all notifications and Certificates of Compliance shall be provided to the Planning Department.
- iv. **UNITS SOLD (Sold with notification to City)**  
The Land Trust shall provide compliance monitoring for all units sold, transferred or conveyed as notified by the buyer, seller, realtor and/or other persons. Copies of all notifications and Certificates of Compliance shall be provided to the Planning Department.
- v. **NEWLY CONSTRUCTED UNITS**  
Upon the request of the City or owner of an affordable deed restricted property, the Land Trust shall provide compliance monitoring for all newly constructed units. Copies of all notifications and Certificates of Compliance shall be provided to the Planning Department.

All compliance monitoring shall be conducted to meet the requirements of the City of Marathon Land Development Regulations, Chapter 104, Article 1, Affordable Housing. The Land Trust shall continuously maintain ongoing tracking and documentation of all affordable deed restricted properties.

## **B. PUBLIC INFORMATION**

The Land Trust will respond to public inquires related to affordable housing deed restricted properties. These inquiries may range from requesting copies of the deed restrictions and corresponding codes/ordinances, to explaining the impact of the restriction on the value, marketability and demand for these properties. The Land Trust will provide information/advice on how to finance, price, market and appraise affordable deed restricted properties. Based on the date of the deed restriction, the Land Trust will provide specific information related to the maximum income, monthly payment, term and issues related to specific deed restrictions.

## **C. DEED RESTRICTIONS (Recording)**

The Land Trust shall endeavor to continue to secure executed affordable housing deed restrictions from those property owners who were issued an affordable housing building allocation/permit where the deed restriction was not properly recorded. At such time as the Land Trust and the Planning Department agree that they have exhausted all possible means of securing the outstanding deed restrictions, the Land Trust shall prepare a list of non-compliant properties notifying for consideration of additional legal action by the City.

The Land Trust shall annually review deed restricted affordable housing and coordinate with the Monroe County Property Appraisers Office to ensure that the affordability restrictions are recognized in the public record.

## **D. DEED RESTRICTION (Future Building Permits)**

The Land Trust shall provide the City a list of affordable properties that do not have a recorded deed restriction. The list will be used to check for recordation prior to issuance of any building permit. It is recommended that the City immediately implement a policy that withholds issuance of a permit on affordable properties that do not have the appropriate deed restriction recorded. Should the City adopt this policy recommendation, the Land Trust will update the list periodically as may be needed.

**E. DIRECT TECHNICAL ASSISTANCE TO CITY**

The Land Trust shall regularly and actively participate in meetings of the City of Marathon Affordable Housing Committee and Land Acquisition Committees and provide support and technical assistance as may be directed by the Planning Department. The Land Trust shall provide technical assistance to the Planning Department staff; City Manager, City Council, City Attorney and individual Council Members as may be directed by the Planning Department. This assistance may include input on proposed acquisitions, design and financing of affordable housing developments, the impact of policy changes and/or other assistance as may be directed by the Planning Department.

**F. CONDUIT FOR AFFORDABLE HOUSING INFORMATION**

The Land Trust shall act as a conduit for the City for information related to its active coordination/membership with the following affordable housing entities:

- Florida Housing Coalition
- Florida Community Land Trust Institute
- Florida Housing Finance Corporation
- CLT Network
- Monroe County Affordable Housing Task Force
- Monroe County Land Authority
- City of Islamorada, Affordable/Workforce Housing Committee

Information regarding matters important and/or applicable to the City will be circulated to designated persons as directed by the Planning Department for the purposes of sharing innovation, remaining informed with regards to the activities of other local governments and continued education in the area of affordable housing.

**G. DEVELOPMENT OPPORTUNITIES**

The Land Trust shall identify properties and funding sources; secure/compete for properties and funding sources; and design, permit and construct affordable housing in partnership with the City.

## **H. REPORTING**

In addition to the reporting requirements articulated herein, the Land Trust shall provide a monthly status report to the Planning Department and distributed to the City Manager and City Council. The report shall incorporate the activities within each of the contracted areas. A representative of the Land Trust (Board and or staff) shall present an oral update to the City Council as may be directed by the Planning Department. The Land Trust shall also provide the City with a copy of the Land Trust's audited financial statements on an annual basis, or more frequently as may be requested by the Planning Director.

## **I. ADDITIONAL SERVICES/TECHNICAL ASSISTANCE**

The Land Trust shall provide additional services as may be designated by the City's Planning Department on an as needed basis if it is determined by both parties that the services desired are within the experience and capabilities of the Land Trust to fulfill. Any additional services shall be by written agreement of both parties and contain specific scope of additional services with clearly defined goals/objectives, schedules and deliverables. The written agreement shall detail the anticipated time required to achieve the stated goal(s) and any additional costs.

### **2. Term/Renewal.**

- 2.1. This Agreement shall become effective as of October 1, 2007 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 thirty (30) days by written notice to the Land Trust. Not less than ninety (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 on a monthly basis for providing all services specified in Section 1 of this Agreement in accordance with the fee schedule attached hereto as Exhibit A (the "Fee Schedule"); provided, however, that total compensation hereunder shall not exceed \$40,000 per year.
- 3.2. The Land Trust shall submit a monthly invoice to the Planning Department, setting forth, in detail, the services provided to the City and the corresponding fees as per the Fee Schedule. Any flat annual fee set forth in the Fee Schedule shall be paid in twelve (12) equal installments and shall be indicated as such on the monthly invoice. The City shall pay the invoice in accordance with the Florida Prompt Payment Act.

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, assist in the identification of land appropriate for acquisition and development of affordable/workforce housing units.
- 4.3. 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, in possession of the City.
- 4.4. 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 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 fourteen (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 sixty (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.

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 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. 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 Highway  
Marathon, FL 33050  
(305) 743-0033

With a copy to:

Jimmy L. Morales  
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.  
Museum Tower, 150 W. Flagler Street  
Miami, FL 33130  
(305) 789-3200

For The Land Trust:

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

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 supersedes 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 firm'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 all of which 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 \_\_\_\_\_, whose representative has been duly authorized to execute same.

Attest:

CITY OF MARATHON

*Diane Clavier*  
City Clerk

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

Date: 10-9-07

MIDDLE KEYS COMMUNITY  
LAND TRUST, INC.

By: *Mike Lane*

Date: 10/24/07

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

*[Signature]*  
CITY ATTORNEY

**EXHIBIT A**

**MIDDLE KEYS COMMUNITY LAND TRUST, INC.  
AFFORDABLE HOUSING SUPPORT SERVICES, CITY OF MARATHON  
FEE SCHEDULE**

<b>FEE SCHEDULE</b>			
	<i>Item</i>	<i>Flat Fee</i>	<i>Per Event</i>
*	Compliance Monitoring		\$ 350.00
	Public Information/Inquiries	\$7,500.00	
**	Deed Restrictions (Recording)		\$ 400.00
	Direct Technical Assistance & Information Conduit & Development Opportunities	\$9,000.00	
***	<b>TOTAL COSTS/FEES</b>	<u><u>\$16,500.00</u></u>	

\* Information/Services requested by the City of Marathon Planning Department

\*\* Pricing includes recording costs.

\*\*\* Subject to a cap on compensation in any one year of \$40,000