

**CITY OF MARATHON, FLORIDA
RESOLUTION 2008-152**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF MARATHON, MONROE COUNTY AND THE CITY OF MARATHON TO ALLOW TRANSFERABLE DEVELOPMENT RIGHTS ACROSS JURISDICTIONAL BOUNDARIES BETWEEN THE COUNTY; AND THE CITY, AUTHOSIZING THE CITY MANAGER AND THE CITY ATTORNEY TO FINALIZE THE TERMS AND CONDITIONS OF THE AGREEMENT, AUTHORIZING THE MANAGER TO EXECUTE THE AGREEMENT, AND PROVIDING FOR AND EFFECTIVE DATE

WHEREAS, the City of Marathon (the “City”) recognizes the value of regional partnerships in smart growth; and

WHEREAS, Monroe County and the City of Marathon have previously entered into Interlocal Agreements to accept ROGO units and TDRs; and

WHEREAS, Monroe County has been approached by various interested parties seeking the potential transfer of development rights from the Florida Keys Land & Sea Trust/Crane Point, a non-profit entity located within the City of Marathon, to unincorporated Monroe County to facilitate project completion in support of environmental conservation and in a financially sound manner; and

WHEREAS, Monroe County recognized the potential for transferable development rights within the real property holdings of the Florida Keys Land & Sea Trust/Crane Point prior to the incorporation of the City of Marathon, and the City of Marathon, in turn, has recognized the same potential; and

WHEREAS, Monroe County recognizes the value of deflating jurisdictional boundaries to facilitate even development potential within the regional planning area; and

WHEREAS, Monroe County and the City of Marathon recognize the potential economic value of such transferable rights and desire to reduce the limitations on realizing potential profits for such local non-profit entities as Crane Point; and

WHEREAS, this Agreement is entered into according to the authority of Florida Statutes, Section 163.01 *et. seq.*, Florida Interlocal Cooperation Act of 1969, which states

“It is the purpose of this section to permit local government units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.”; and

WHEREAS, the comprehensive plans of Monroe County and the City of Marathon expressly identify interlocal agreements as a means of resolving issues mutually affecting their respective jurisdictions; and

WHEREAS, the parties have determined that this Agreement is in the best interests of the public;

WHEREAS, the Monroe County Board of County Commissioners has already approved a version of the agreement; and

WHEREAS, the changes to the Monroe County approved agreement requested by the City simply clarify the procedures applicable to City approval of TDR transfers and do not affect any substantive rights or obligations of the County thereunder;

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 by this reference.


Section 2. The City Council hereby approves the Interlocal Agreement between Monroe County and the City, a copy of which is attached hereto as Exhibit A. The City Council further authorizes the Mayor to execute the Interlocal Agreement on behalf of the City Council.

Section 3. The City Council hereby further approves the transfer of fifteen (15) transferable development rights from the Florida Keys Land and Sea Trust / Cranepoint to Old Town Key West Development Ltd. For allocation to Key Haven Estates located on Stock Island in the unincorporated area of Monroe County.

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 23rd day of September, 2008.

THE CITY OF MARATHON, FLORIDA


Edward P. Worthington, Mayor

AYES: Bull, Cinque, Tempest, Vasil, Worthington
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:


Jimmy Morales, City Attorney

AN INTERLOCAL AGREEMENT BETWEEN MONROE COUNTY AND
THE CITY OF MARATHON TO ALLOW TRANSFERABLE
DEVELOPMENT RIGHTS ACROSS JURISDICTIONAL BOUNDARIES
BETWEEN THE COUNTY AND THE CITY.

This Agreement ("Agreement") is made and entered into this 15th day of Oct., 2008 by and between Monroe County, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, FL 33040 ("County"); and the City of Marathon, a municipal corporation of the State of Florida, whose address is 9805 Overseas Highway, Marathon, FL 33050 (the "City"); and

WITNESSETH:

WHEREAS, Monroe County and the City of Marathon recognize the value of regional partnerships in smart growth; and

WHEREAS, Monroe County and the City of Marathon have previously entered into Interlocal Agreements to accept ROGO units and TDRs; and

WHEREAS, Monroe County has been approached by various interested parties seeking the potential transfer of development rights from the Florida Keys Land & Sea Trust/Crane Point, a non-profit entity located within the City of Marathon, to unincorporated Monroe County to facilitate project completion in support of environmental conservation and in a financially sound manner; and

WHEREAS, Monroe County recognized the potential for transferable development rights within the real property holdings of the Florida Keys Land & Sea Trust/Crane Point prior to the incorporation of the City of Marathon, and the City of Marathon, in turn, has recognized the same potential; and

WHEREAS, Monroe County recognizes the value of deflating jurisdictional boundaries to facilitate even development potential within the regional planning area; and

WHEREAS, Monroe County and the City of Marathon recognize the potential economic value of such transferable rights and desire to reduce the limitations on realizing potential profits for such local non-profit entities as Crane Point; and

WHEREAS, this Agreement is entered into according to the authority of Florida Statutes, Section 163.01 *et. seq.*, Florida Interlocal Cooperation Act of 1969, which states

“It is the purpose of this section to permit local government units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.”; and

WHEREAS, the comprehensive plans of Monroe County and the City of Marathon expressly identify interlocal agreements as a means of resolving issues mutually affecting their respective jurisdictions; and

WHEREAS, the parties have determined that this Agreement is in the best interests of the public;

NOW, THEREFORE, the parties hereto hereby agree as follows:

Section 1. TRANSFER: The parties agree to permit the transfer, in one or more transactions, of up to fifty (50) transferable development rights (TDRs) from The Florida Keys Land & Sea Trust/Crane Point to the unincorporated area of Monroe County, if the transfer adheres to the following conditions:

1. The planning department for the City, subject to the approval of the City Council, provides a written account of development rights to be transferred, detailing at a minimum:
 - a. any conditions on transfer to the unincorporated area of Monroe County; and
 - b. an accurate accounting of the total development rights available to the sender site, the amount proposed for transfer, the amount remaining following the successful transfer, and the identity, ownership, and conditions of the receiver site in unincorporated Monroe County.
2. The sender party shall adhere to all of the requirements governing transfer of development rights found in the Monroe County 2010 Comprehensive Plan and the Land Development Regulations including but not limited to:
 - a. environmental sensitivity requirements;
 - b. density requirements; and
 - c. procedural requirements requiring a minor conditional use approval to complete the transfer from the sender site(s) and the receiver site(s).
3. The parties agree that none of the proceeds of the sale or transfer of the TDRs shall be used to purchase the U.S. 1 right-of-way fronting Crane Point Hammock.

Section 2. TERM: Subject to and upon the terms and conditions set forth herein, this Agreement shall continue in force until otherwise retracted by action of the County or the City affecting only its jurisdiction.

Section 3. GOVERNING LAWS/VENUE: 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. This Agreement is not subject to arbitration.

Section 4. NONDISCRIMINATION. The Parties agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. The Parties agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (2) Section 504 of the Rehabilitation Act of 1973, as amended (20 U.S.C. s. 794), which prohibits discrimination on the basis of handicap; (3) The Age Discrimination Act of 1975, as amended (42 U.S.C. ss. 6101-6107), which prohibits discrimination on the basis of age; (4) The Drug Abuse Office And Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (5) The Comprehensive Alcohol Abuse And Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (6) The Public Health Service Act of 1912, ss. 523 and 527, (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (7) The Americans With Disabilities Act of 1990 (42 U.S.C. s. 1201 Note), as may be amended from time to time, relating to nondiscrimination on the basis of disability; (8) The Florida Civil Rights Act of 1992, (Chapter 760, Florida Statutes, and Section 509.092, Florida Statutes), as may be amended from time to time, relating to nondiscrimination; and (9) any other nondiscrimination provisions in any federal or state statutes or local ordinances which may apply to the parties to, or the subject matter of, this Agreement.

Section 5. CODE OF ETHICS. The parties agree that their officers and employees recognize and will be required to comply with the standards of conduct relating to public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

Section 6. NO SOLICITATION/PAYMENT. The Parties warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the each party agrees that the other party shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

Section 7. SUBORDINATION: This Agreement is subordinate to the laws and regulations of the United States and the State of Florida, whether in effect on commencement of this agreement or adopted after that date.

Section 8. INCONSISTENCY: If any item, condition or obligation of this agreement is in conflict with other items of this Agreement, the inconsistencies shall be construed so as to give meaning to those terms which limit the County's responsibility and liability.

Section 9. PUBLIC ACCESS TO RECORDS. The Parties shall allow and permit members of the public reasonable access to, and inspection of, all documents, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by the parties in conjunction with this Agreement.

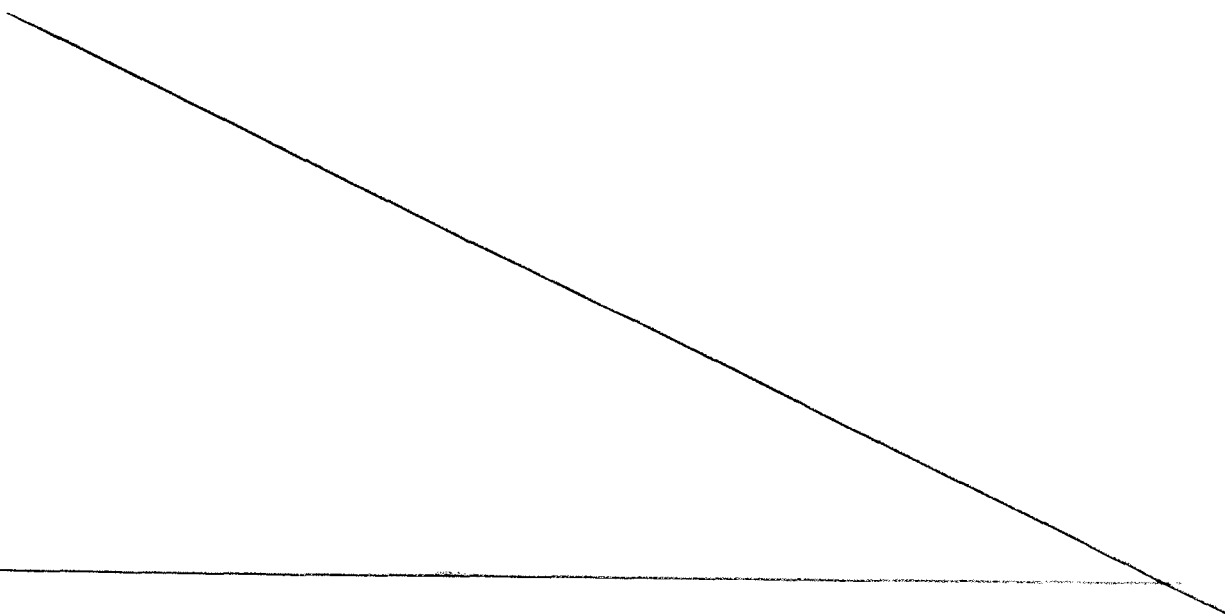
Section 10. NON-RELIANCE BY NON-PARTIES. No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the parties agree that neither the County nor the City or any agent, officer, or employee of each shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group 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 in this Agreement.

Section 11. NO PERSONAL LIABILITY. No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of a party in his or her individual capacity, and no member, officer, agent or employee of a party shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

Section 12. NOTICES: Notices in this Agreement, unless otherwise specified, must be sent by certified mail to the parties at their respectively listed addresses.

Section 13. FULL UNDERSTANDING: This Agreement is the parties' mutual understanding. 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.

Section 14. EFFECTIVE DATE: This Agreement shall take effect on September 23, 2008 for the undersigned parties.



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

(SEAL)

BOARD OF COUNTY
COMMISSIONERS
OF MONROE COUNTY, FLORIDA

ATTEST: DANNY L. KOLHAGE, CLERK

By: Isabel C. De Santis
Deputy Clerk

By: Mario DiGennaro
Mayor Mario DiGennaro

CITY OF MARATHON

By: Pete Worthington
Mayor Pete Worthington

ATTEST:

By: Diane Clavier
Diane Clavier, City Clerk

Acknowledged and Agreed this 1st day of OCTOBER, 2008:

FLORIDA KEYS LAND AND SEA TRUST

By: Lynn C. Mapes
Lynn C. Mapes
Chairman of the Board

Approved as to form &
legal sufficiency
Susan M. Grimaldi, A.C.
October 15, 2008